

Indiana Election Commission
Minutes
September 5, 2002

Members Present: Dudley Cruea, Chairman of the Indiana Election Commission (“Commission”); S. Anthony Long, Vice-Chairman of the Commission; Butch Morgan, Commission member; Claudia Cummings, Commission member.

Members Absent: None.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Spencer Valentine, Co-Director of the Election Division; Kristi Robertson, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Pam Potesta, Campaign Finance staff, Election Division; Michelle Thompson, Campaign Finance staff, Election Division; Lori Hershberger, Special Projects staff, Election Division.

Also Attending: Mr. Frank Arkenberg; Mr. William Bennett; Mr. Anthony Bolden; Mr. Steve Corey; Mr. Ken Hughes; Ms. Bettye Lou Jerrell; Mr. C. Jones; Brad Klopfenstein; Mr. Phil Sachtleben; Mr. Steve Shamo; Mr. Trent Van Haaften.

1. Call to Order

The Chair called the September 5, 2002 meeting of the Commission to order at 1:00 p.m. in Indiana Government Center South Conference Room 5, 402 West Washington Street, Indianapolis, Indiana.

The Chair noted that proper notice of the meeting had been given, as required by state law. A copy of the meeting notice, agenda, and designations of proxy are incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division Office.]*

2. Transaction of Business

The Commission transacted the business set forth in the Transcript of Proceedings prepared by Ms. Rhonda J. Hobbs, RPR, of Connor+Associates Reporting. A copy of this document is incorporated by reference in these minutes.

The following corrections of scrivener’s errors in this document are approved by the Commission:

Throughout the document, replace “Van Hafften” with “Van Haaften”.

Page 87, line 14, replace “On” with “on”.

Page 87, line 18, replace "indicate" with "indicates".

Page 130, line 6, replace "M. THOMPSON" with "K. ROBERTSON".

Page 181, line 19, after "hear" insert "Mr.".

3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Ms. Cummings moved, seconded by Mr. Cruea, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Cruea, Mr. Long, Mr. Morgan, and Ms. Cummings), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 5:30 p.m.

Respectfully submitted,

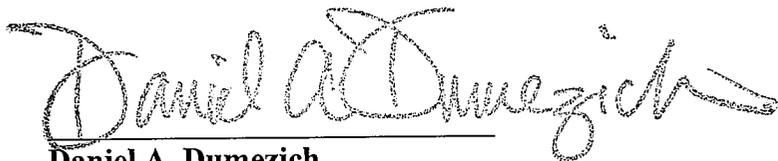


Trent Deckard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

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2 INDIANA ELECTION COMMISSION
3 MEETING AGENDA
4
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6 Conducted On: Thursday, September 5, 2002
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11 Location: Indiana Government Center South
12 Conference Center, Room 5
13 302 West Washington Street
14 Indianapolis, Indiana 46204
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17

18 Rhonda J. Hobbs, RPR
19 Notary Public
20 Stenographic Reporter
21
22

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24 _____
25 Connor Reporting, Inc.
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Indianapolis, IN 46282
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A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

- Mr. Dudley Cruea - Chairman
- Mr. S. Anthony Long - Vice Chairman
- Mr. Butch Morgan - Commission Member
- Ms. Claudia Cummings - Commission Member

INDIANA ELECTION DIVISION STAFF:

- Mr. Bradley King - Co-Director
- Mr. Spencer Valentine - Co-Director
- Ms. Kristi Robertson - Co-Legal Counsel
- Mr. Dale Simmons - Co-Legal Counsel
- Ms. Pam Potesta
- Ms. Michelle Thompson
- Ms. Lori Hershberger

1 CHAIRMAN D. CRUEA: I now call to order the
2 Indiana Election Commission meeting for Thursday,
3 September 5th, 2002. Let the record reflect that
4 proper notice was given for this meeting and that
5 we have three commission members here. The fourth
6 member, Butch Morgan, is running behind, so we're
7 going to do what business we can with three members
8 and we'll have to proceed with the others, once
9 Commissioner Morgan arrives.

10 First off, I'd like to welcome Claudia
11 Cummings to the meeting. This is her first meeting
12 as a commission member. She was recently appointed
13 by the governor and we want to welcome you.

14 COMMISSION MEMBER C. CUMMINGS: Thank you.

15 CHAIRMAN D. CRUEA: Okay. First, we have
16 approval of commission minutes.

17 MS. K. ROBERTSON: Mr. Chairman and Members of
18 the Commission, we hope to have the recent minutes
19 ready for you, but we don't have the October 25th
20 minutes finished at this time -- we will have those
21 ready for you at the next meeting, but the March
22 28th and June 27th meetings minutes are in your
23 packet and are ready to be approved.

24 VICE CHAIR A. LONG: You ready? I move
25 approval of the March 28th and June 27th minutes.

1 COMMISSION MEMBER C. CUMMINGS: Second.

2 CHAIRMAN D. CRUEA: All those in favor,
3 signify by saying aye?

4 THE COMMISSION: Aye.

5 CHAIRMAN D. CRUEA: Okay. Next we'll go to
6 litigation update.

7 MR. D. SIMMONS: Mr. Chairman and Members of
8 the Commission, the cases listed on the agenda,
9 starting with Toth versus Gilroy, a case involving
10 the voting systems. That case as I reported in the
11 last meeting had been scheduled for trial to the
12 court. August 30th that trial was continued. It
13 has not been reset so there is no current trial
14 date on the Toth case.

15 There was a decision that's included in your
16 packet on the Hawkins case, however, it's only a
17 partial decision. There are cross-motions for
18 summary judgment pending in that case and the court
19 granted partial summary judgment on behalf of the
20 Defendants, including the Commission as to Count
21 I of the complaint.

22 Count I of the complaint was alleged for
23 Mr. Hawkins, the Plaintiff, in his capacity as a
24 candidate. Count II of that complaint, it is
25 alleged in his capacity as a voter. The Court

1 found it somewhat speculative that Mr. Hawkins
2 would be a candidate. He was not currently a
3 candidate and so dismissed Count I on the basis of
4 candidate. However, Count II in the case is still
5 pending so the case has not totally gone away.
6 Count II, which it's alleged as Mr. Hawkins in his
7 capacity as a voter is still pending in that
8 lawsuit.

9 There are the two cases I have been reporting
10 on, the Majors case and the Williamson case
11 involving a Libertarian issue about whether they're
12 supposed to file campaign finance documents or
13 whether their candidates have that responsibility
14 because they don't really spend over \$100.

15 They have raised that issue in those lawsuits.
16 There has been no further action on that. However,
17 just to alert you at this meeting, there may be a
18 potential offer of settlement that will require an
19 executive session at the next meeting.

20 We also included in your packet the letter I
21 sent to the attorney general discussing the
22 commission's position on how to dispose of cases.
23 The attorney general -- the collection cases that
24 the attorney general deems uncollectible. These
25 are cases where the commission has imposed a fine.

1 The fine has been pending in our office for some
2 period of time. We forward those to the attorney
3 general's office and the attorney general commences
4 a collection action.

5 Those collection actions continue for some
6 time, they attempt to collect, and at some point
7 they have put an effort -- they need to be non-cost
8 effective and they make a recommendation to dismiss
9 those or to cease collection action.

10 We had planned to discuss how you want to
11 dispose of those and we had planned to do that in
12 executive session because technically that is a
13 matter involving pending litigation. I didn't want
14 to presume that the Commission did not want to.
15 However, we weren't able to schedule an executive
16 session this time out.

17 I have not received any further correspondence
18 from the attorney general but I did invite him to
19 appear at the commission meeting and I don't think
20 Mr. Miller is here today to do that so...I'd like
21 the Commission -- we'll be wanting to schedule an
22 executive session anyway on another matter and we
23 can at the Commission's pleasure discuss how you
24 want to handle those at that executive session
25 meeting or you can determine if you just want to

1 handle those all in open session.

2 VICE CHAIR A. LONG: It would seem to me that
3 the attorney general, we put the faith in them to
4 tell us that they're no longer cost effective, I
5 think that if they recommend that they be closed,
6 that that should be just -- should be done.

7 I think that my concern is we should flag
8 these committees in some fashion if they try to
9 reorganize in the future. We might need to seek
10 some punitive or prevent them from organizing or
11 seek some -- if we need legislation, to not allow a
12 committee to reorganize that has a delinquent
13 penalty outstanding.

14 But as far as I'm concerned -- I'll be happy
15 to discuss it in executive session, but if the
16 attorney general says they don't think they're
17 collectible, that's good enough for me.

18 CHAIRMAN D. CRUEA: It seems to me that we've
19 discussed these in open meetings before with the
20 last administration on cases where the money hasn't
21 been collected so I don't see any reason why we
22 can't continue that.

23 VICE CHAIR A. LONG: I still want the -- if
24 the attorney general has to handle \$50 fines, I
25 think he ought to handle it, personally.

1 CHAIRMAN D. CRUEA: I would like to see a
2 list, though, of the committees that haven't paid
3 and what the fine is and what the status -- even if
4 they cannot attend a commission meeting, if we
5 could get that for our next meeting.

6 VICE CHAIR A. LONG: I think we'll see
7 instances where we'll have the individual candidate
8 committees, that that candidate may well file again
9 and we may have some leverage in that regard. I
10 think some of these group type committees that will
11 never surface again, we'll probably never ever
12 collect them. But I think if we -- the computer --
13 somehow it ought to be monitored that if somebody
14 is reorganizing that has an outstanding matter, we
15 should bring it before the commission.

16 CHAIRMAN D. CRUEA: I agree with that. Are
17 any of these cases where -- I know -- you don't
18 need to refresh my memory on -- some of these we
19 can administratively dissolve the committees; are
20 some of these some of those cases, and what is -- I
21 forgot now, can you tell me exactly again what has
22 to happen so that we can dissolve some of these
23 committees so that they don't keep coming up for
24 hearings and...

25 MS. P. POTESTA: There are statutory

1 requirements before they're at the level where they
2 can be dissolved and I haven't looked at that
3 statute in a while but you have (indiscernible)
4 three fines before or...

5 MR. D. SIMMONS: Michelle might have --
6 obviously, there's a flag to this, to bring them to
7 the commission as soon as she can, is my
8 understanding.

9 CHAIRMAN D. CRUEA: Do you happen to know
10 what...

11 MS. M. THOMPSON: Well, they have to have a
12 zero balance. Some of these committees still have
13 money in their committees and so that
14 (indiscernible).

15 CHAIRMAN D. CRUEA: Okay.

16 VICE CHAIR A. LONG: If they had money in the
17 committees, the attorney could --

18 MS. P. POTEESTA: I think it's three years.

19 MS. M. THOMPSON: Three years, yeah.

20 VICE CHAIR A. LONG: There's a procedure to
21 attach their money if they physically have money.
22 I bet they don't have my money but they're still
23 carrying some on their reports.

24 MS. M. THOMPSON: Yeah, or they have a debt
25 and they can't close them.

1 VICE CHAIR A. LONG: Do we have -- is there
2 another level?

3 MS. M. THOMPSON: There was a legislative
4 change that does allow us to administratively
5 disband the committee when it has a debt because it
6 doesn't interfere with the debt or the collection
7 of the debt. So that is something that we should
8 be able to administratively disband if -- that is
9 if they have a debt. Now if they have a balance,
10 then they still have money, then we can't -- I
11 would think they would want to try to collect it.

12 CHAIRMAN D. CRUEA: Okay.

13 VICE CHAIR A. LONG: Corporations can be
14 administratively dissolved even if they have
15 balances. I mean, are we statutorily precluded
16 from disbanding the committee or -- if they have an
17 asset balance?

18 MR. D. SIMMONS: Actually, we discussed that
19 issue at the staff level. I think we can -- we
20 could go ahead and close this.

21 VICE CHAIR A. LONG: I mean, it just seems to
22 me administratively if you've got this dead wood
23 out of your files, it would make your job a whole
24 lot easier.

25 MR. D. SIMMONS: I think we still have a

1 passage of time requirement that...

2 MS. M. THOMPSON: The three years. I think
3 this just went into effect a couple of years ago
4 and three years now so we're starting to get to the
5 point where we might be able to disband some of
6 these.

7 CHAIRMAN D. CRUEA: Well, we have disband
8 some. Maybe last year we did that so this must be
9 the fourth year, okay.

10 VICE CHAIR A. LONG: Either that or they don't
11 have anything else to do.

12 CHAIRMAN D. CRUEA: That's right. Okay. Do
13 we have anything else under litigation update?

14 MR. D. SIMMONS: No. Thank you.

15 CHAIRMAN D. CRUEA: Well, it looks to me that
16 we've covered everything that we can cover without
17 four members being here, so again, I apologize.

18 We're going to have to take a brief recess
19 until our fourth commission member gets here, and
20 I'm not going to say a time because he said he was
21 running approximately 30 minutes late so -- but
22 just as soon as he...

23 MR. D. SIMMONS: There was a slow down of
24 traffic there but I didn't see...

25 CHAIRMAN D. CRUEA: Okay. So just as soon he

1 walks in, I will reconvene this commission meeting.

2 (A recess was taken.)

3 CHAIRMAN D. CRUEA: Okay. I'll reconvene the
4 meeting of the Indiana Election Commission for
5 Thursday, September 5th, 2002. Let the record
6 reflect now that there are all four commission
7 members present. Just for your information,
8 Commissioner Morgan, we have gone the approval of
9 commission minutes and we did go through the
10 litigation update in your absence.

11 COMMISSION MEMBER B. MORGAN: Thank you,
12 Mr. Chairman.

13 CHAIRMAN D. CRUEA: Okay. At this time we're
14 ready to start our candidate challenges. Anyone
15 that is here today that is going to testify in one
16 of these causes, if you'll please stand and take an
17 oath at this time?

18 MS. K. ROBERTSON: Please raise your right
19 hand and say I do at the end of the statement?

20 (Participants complied.)

21 MS. K. ROBERTSON: I do solemnly swear or
22 affirm that the testimony I'm about to give is the
23 truth, the whole truth, and nothing but the truth?

24 THE PARTICIPANTS: I do.

25 COMMISSION MEMBER B. MORGAN: You've all just

1 been married now.

2 CHAIRMAN D. CRUEA: Okay. First of all, a
3 little bit of ground rules. What we would like,
4 what we will do is first -- on each case, we will
5 first have the person making the challenge come
6 forward. We would ask that you keep your remarks
7 to five minutes or less and then we will hear from
8 the other side -- again, we ask that you keep your
9 remarks to five minutes or less, and then there
10 will be a time for any questions from commission
11 members and we will also allow a couple of minutes
12 on each side to answer anything that they want to
13 question from the other side. So our first case is
14 Cause No. 2002-118. Who's going to...

15 MS. K. ROBERTSON: Mr. Chairman and Members of
16 the Commission, we received a candidate challenge.
17 It was sent to us by Trent Van Hafften, a
18 registered voter, and the resident is Diana Alvey,
19 a candidate for State Senate District 49, and that
20 information is in your book. And again, we
21 received a letter from Miss Alvey who may respond
22 to (indiscernible.)

23 VICE CHAIR A. LONG: Now you sent that out, as
24 I recollect.

25 MS. K. ROBERTSON: Yeah, I did do that.

1 CHAIRMAN D. CRUEA: Which I will add to the
2 record that my packet went to South Bend.

3 UNIDENTIFIED SPEAKER: I gave it to the pros.

4 CHAIRMAN D. CRUEA: Okay. Is Mr. Van Hafften
5 here?

6 MR. T. VAN HAFFTEN: Yes, Mr. Chairman.

7 CHAIRMAN D. CRUEA: Okay. And also, when you
8 do speak before the Commission, first before you
9 start, tell us your name and where you're from for
10 the record?

11 MR. T. VAN HAFFTEN: My name is Trent Van
12 Hafften, and I'm from Mt. Vernon, Posey County,
13 Indiana. I'm the Posey County Democrat, chairman
14 of the (indiscernible) off the bat. If I may,
15 Mr. Chairman, my comments would be directed towards
16 the first two challenges, that being the State
17 Senate race (indiscernible), and also the state
18 representative race for Daniel Hostettler.

19 VICE CHAIR A. LONG: I would suggest Mr.
20 Chairman, just for the record purpose, since he's
21 the challenger in both, may we join those for that
22 purpose and that'll save getting the testimony
23 twice?

24 CHAIRMAN D. CRUEA: That would be fine with
25 me. Any objections to that?

1 (No response.)

2 CHAIRMAN D. CRUEA: Okay.

3 MR. T. VAN HAFFTEN: The only thing I would
4 address to the Commission is that state statute
5 clearly sets out procedure where there's a vacancy
6 after a primary election (indiscernible). That
7 procedure is a party leader.

8 In the situation of the State Senate race, or
9 state representative race, a designated party
10 leader in the party of the vacancy must file a
11 notice with the Indiana Election Division at least
12 ten days prior to the called caucus.

13 In this particular case, my understanding is
14 Bettye Lou Jerrell, Republican Chair of Vanderburgh
15 County (indiscernible) both the representative
16 races was designated the chairman. She called a
17 caucus for June 27th.

18 She mailed the notice of the caucus to the
19 (indiscernible) and post marked on the envelope
20 (indiscernible) posted June 18th, however it was
21 not file stamped with the Election Division until
22 June 21st.

23 I do not believe that there is anything in the
24 law that indicates in terms of filing for a notice
25 of a caucus and I would direct the Commission's

1 attention to the law that sets forth what filing
2 means in terms of a declaration of candidacy, and
3 it is defined by statute, but a declaration of
4 candidacy is defined on the day and hour being
5 received by the commission.

6 So according to the law, this notice was filed
7 on June 21st. Obviously, not ten days prior to the
8 caucus. The caucus was held. Mr. Hostettler was
9 chosen as the State Representative and Mrs. Alvey
10 was chosen as a State Senator candidate.

11 Once those certificates were filed with the
12 Election Division, (indiscernible) was allowed
13 (indiscernible), that caucus, that certificate.
14 That's what I done. Point blank, they did not
15 follow the rules. It's very clear that when
16 someone does not file during the primary, the
17 responsibility of calling a caucus following the
18 law files with the chairman.

19 They didn't file. There was a
20 (indiscernible), is that the caucus was June 27th,
21 the notice was June 21st. The law requires that
22 notice be filed at least ten days prior, thus,
23 nullifying the legality of that caucus, which I
24 believe in turn nullifies, in reality, both the
25 candidacies of Diana Alvey and Daniel Hostettler.

1 I entertain any questions if the Commission has any
2 questions.

3 CHAIRMAN D. CRUEA: Are there any questions
4 from any commission member?

5 VICE CHAIR A. LONG: May I ask one?

6 CHAIRMAN D. CRUEA: Sure.

7 VICE CHAIR A. LONG: Are you offering -- as I
8 understand the packets, your challenge had
9 submitted some documents, is that where we got
10 these or did the staff...

11 MS. K. ROBERTSON: (Indiscernible).

12 VICE CHAIR A. LONG: Are you offering those
13 into evidence --

14 MR. T. VAN HAFFTEN: Yes.

15 VICE CHAIR A. LONG: -- in the proceedings?

16 MR. T. VAN HAFFTEN: We received copies from
17 the Election Division of a notice of the caucus,
18 including the file stamped, the day it was
19 received. The letter that was sent to the -- it
20 was directed to the Vanderburgh County and Posey
21 County House Republican precinct committeeman,
22 although we representing Vanderburgh, that district
23 also goes to (indiscernible) county -- I'm
24 uncertain. I'm assuming they were notified. I
25 don't know that (indiscernible), but I'm offering

1 that as the new set of documentary evidence of the
2 challenge.

3 VICE CHAIR A. LONG: You might want to -- I
4 guess you ought to -- we ought to rule on the
5 evidentiary submission and then I have one more
6 question. I noticed in count --

7 MS. K. ROBERTSON: Anthony, these are our
8 files submitted by Bettye Lou Jerrel.

9 VICE CHAIR A. LONG: In Count -- in Count II,
10 you've raised the issue of Senate District 49
11 encompassing part of Gibson County. Is there
12 any -- well, I guess I ask this of staff here. Do
13 we have evidence that notice was given to the
14 respective committeeman within Gibson County
15 beyond -- beyond what's in these files?

16 MS. K. ROBERTSON: We simply have a copy of
17 the notice that was sent out to the precinct
18 committeeman (indiscernible).

19 CHAIRMAN D. CRUEA: Where is the challenge
20 form that was -- the original challenge form filed
21 because I think that was the question, you know, if
22 that's -- this has been entered into evidence?

23 VICE CHAIR A. LONG: This is the House
24 District.

25 CHAIRMAN D. CRUEA: These were all the papers

1 that were filed on this -- okay. These will be
2 entered as the evidence in these two causes.

3 VICE CHAIR A. LONG: I don't have any further
4 questions?

5 COMMISSION MEMBER B. MORGAN: Was the old form
6 that we used, did it have a place for where
7 specifically (indiscernible), whether it was a
8 House or Senate District, what specific
9 geographical area it would encompass; isn't that
10 part of where the notice was supposed to go?

11 MS. K. ROBERTSON: I don't think so.

12 COMMISSION MEMBER B. MORGAN: Years ago I
13 think it was. They changed it in the legislature.

14 MS. K. ROBERTSON: I don't think they did.

15 COMMISSION MEMBER B. MORGAN: I know some of
16 it different now because the -- of the
17 redistricting, you know, substantive to the census
18 but...

19 MS. K. ROBERTSON: I don't think -- I think
20 our form is basically the way it was in the 2000
21 election.

22 VICE CHAIR A. LONG: Let me see that manila
23 folder on the other one.

24 COMMISSION MEMBER B. MORGAN: Because the
25 formula at one time, I think still does call for

1 like if it's multi-counties, whatever county has
2 the most precincts, people in it would call
3 (indiscernible) in that county?

4 VICE CHAIR A. LONG: The statutes now is
5 designated -- designee.

6 COMMISSION MEMBER B. MORGAN: Okay.

7 VICE CHAIR A. LONG: I think the State Chair
8 can designate.

9 COMMISSION MEMBER B. MORGAN: Can designate
10 someone?

11 VICE CHAIR A. LONG: Yeah, that's Section 8, I
12 think.

13 MS. K. ROBERTSON: The State -- yeah, the
14 State chair is responsible for calling caucuses and
15 designate someone (indiscernible).

16 VICE CHAIR A. LONG: Staff question, I notice
17 in the -- Mr. Hostettler's letter file there's a
18 copy of the envelope. So I presume they both came
19 in the same envelope?

20 MS. K. ROBERTSON: Uh-huh.

21 VICE CHAIR A. LONG: Okay. The original?

22 MS. K. ROBERTSON: Yeah.

23 VICE CHAIR A. LONG: Okay.

24 CHAIRMAN D. CRUEA: Okay. Any other
25 questions?

1 (No response.)

2 CHAIRMAN D. CRUEA: Okay. Hearing none, we'll
3 hear from the other side.

4 MS. B.L. JERREL: Thank you. My name is
5 Bettye Lou Jerrel, and I'm the Vanderburgh County
6 Republican Chairman, and I appreciate the
7 opportunity to appear before you, and I hope I can
8 answer your questions.

9 I'd like to give you a little timetable of
10 that period of the 14th, 15th and 16th of June.
11 Vanderburgh County was knee deep in the Secretary
12 of State's nomination of the Republican Party. And
13 on the 14th and 15th, I had the secretary working
14 with us, too, from the other side and therefore --
15 and we prepared the forms, the CAN-30 form and the
16 letter to all of the precinct committeemen. I did
17 not have much involvement from -- the chairman from
18 Gibson County was unavailable, meeting the other
19 two chairmen were the ones that came forth and I
20 was designated the chairman of -- officially of the
21 caucus because of the fact that we have more
22 precincts than the others. There were just
23 (indiscernible) and Gibson County, Posey and
24 Warrick and Vanderburgh.

25 We prepared the letter and the CAN form for

1 each of the precinct committeemen that were either
2 legally appointed or duly elected by the county
3 chairman. They were mailed on Saturday morning,
4 the 16th of June. The 14th and 15th I was up here
5 at the convention, and the 16th, mailed all those,
6 and on Monday, I spoke to the election office. And
7 it was not to you, Brad, but it was to someone
8 else, and I do not remember their name, but I
9 asked -- I was asking a lot of questions because I
10 didn't have in my -- my personal opinion enough
11 information to know all the other steps that the
12 candidates were going to have to follow, and if
13 you've ever been a county chairman or if there's
14 anyone that is a county chairman, both parties, you
15 know, it can get very complicated, and we have to
16 (indiscernible) a lot of people is like herding a
17 bunch of candidates.

18 So we went ahead and tried to ask all the
19 questions and it was at that time that I found out
20 and it was my error, and I'm admitting that to you,
21 that this form should have been and I followed the
22 instructions that are at the top of the form and
23 I'm going to read them to you.

24 Instruction: The Chairman of the Committee of
25 the Democratic or Republican Party must issue a

1 call for the meeting to fill an early ballot
2 vacancy, when required by state law. The chairman
3 must send the notice by first class mail at least
4 ten (10) days before the meeting to all persons
5 eligible to participate in the meeting.

6 Now I guess since I taught school for a long
7 time, I've had chance rooms full of students that
8 interpret what they read when we take tests and
9 we've never thrown any of the tests out or thrown
10 the kids out of the class if they didn't follow
11 every little direction.

12 I followed that direction and I mailed to all
13 the eligible people that were going to be voting
14 for that, and I did it ten (10) days -- actually,
15 more than ten days before the actual meeting took
16 place.

17 The notice must state the time, place, and
18 purpose of the caucus. The chairman must also file
19 a copy of the notice with the official who will
20 receive the candidate's -- the certificate of
21 candidate selection under the statute identified
22 after the caucus (the Indiana Election Division.)

23 I did it that way. I put that letter and I
24 did the -- the ironic thing is I mailed the letter
25 notifying your board by snail mail. Everything

1 else I sent \$14.88 UPS because it's very hard to
2 get up here to Indianapolis and do these things
3 firsthand. We -- we need a little bit -- a tragic
4 improvement for that to happen, but that is it in a
5 nutshell.

6 I think all other -- well, I'll -- I'll just
7 the term substantial, substantial qualifications
8 for those candidates has been met. We did this
9 with the people that needed to make the decision,
10 they were going to do the voting and they had the
11 information in a timely manner and all counties
12 participated and the letters went out on Saturday
13 morning, and since that time, it's -- to the best
14 of my knowledge, it's the financial information and
15 the reports.

16 I know we had about five people up here
17 running all over the House and the Senate
18 collecting financial forms so they could be timely
19 filed and that was all done in a timely manner.

20 I think it's very important in this day and
21 age that we provide choices to our electorate and
22 we have no one in this room that will support the
23 strength of the two-voting system any more than I
24 do. Without both parties being strong and -- our
25 country wouldn't be where it is and it wouldn't

1 continue where it is.

2 And I just ask you to consider -- I'm not
3 denying that that form did not reach you until the
4 21st, and that in and of itself speaks to how hard
5 it is to get to Evansville and Indianapolis to do
6 business. It was mailed and post marked on the
7 18th, and I did that after contacting this office
8 and I spoke with Brad King and some of the other
9 individuals who have been most cooperative to try
10 and find the way to meet these requirements.

11 And you'll see, it's a chance for the public
12 to have a choice and I think that's important. I
13 think that it was discouraging to me when I read in
14 one of the newsletters around the state that so few
15 people were filed in this caucus process, and I
16 think perhaps the process itself is not well
17 understood, but I would happy to answer any
18 questions you might have, and I appreciate being
19 able to appear before you.

20 CHAIRMAN D. CRUEA: Okay. Any questions?

21 COMMISSION MEMBER C. CUMMINGS: Actually, I
22 have a couple. I'm new to this so please bear with
23 me. So you did mail the notices to the eligible
24 voters on the 16th?

25 MS. B.L. JERREL: Yes, ma'am.

1 COMMISSION MEMBER C. CUMMINGS: Okay. So ten
2 days prior, and you mailed it to all the eligible
3 voters, --

4 MS. B.L. JERREL: Yes.

5 COMMISSION MEMBER C. CUMMINGS: -- including
6 those in Gibson?

7 MS. B.L. JERREL: Yes. My -- my -- the form
8 was sent -- I think they're disgruntled in that
9 area, but to -- Megan Farrell prepared those and
10 had them all stamped and sealed and ready to go.

11 COMMISSION MEMBER C. CUMMINGS: Okay. And so
12 the only remaining question, I suppose, is the
13 question of the filing of the declaration or the
14 document here in Indianapolis. Actually, I had
15 some conversation with Miss Robertson yesterday
16 about another form we'll talk about later, and
17 having worked in the county clerk's office in
18 administration and also in a party headquarters, I
19 know that a lot of times these forms are confusing
20 to folks who use them, and quite frankly, as I
21 first read this, I, too, thought this said that the
22 document was to filed after the election and so
23 that is what you thought?

24 MS. B.L. JERREL: That's why I called Brad.

25 COMMISSION MEMBER C. CUMMINGS: Okay.

1 MS. B.L. JERREL: I called to get
2 clarification, and that's when I found out it
3 should have been sent the day I sent it to all the
4 eligible voting committees. He did this the form
5 that this is referring to which would be CAN-28.

6 COMMISSION MEMBER C. CUMMINGS: I just wanted
7 to make sure I understood myself clearly what had
8 transpired. I don't have any further questions.

9 CHAIRMAN D. CRUEA: Okay. Any other
10 questions?

11 MS. B.L. JERREL: Has there been a lawsuit
12 about this before -- I don't think y'all to give me
13 any legal advice, but has there been a case, any
14 cases filed to -- to place someone in where it
15 involved substantial qualifications
16 (indiscernible)?

17 CHAIRMAN D. CRUEA: Refer to the attorney.
18 This is a fairly new law, this ten (10) day notice.

19 MS. B.L. JERREL: Thank you very much.

20 CHAIRMAN D. CRUEA: Uh-huh. Mr. Van Hafften,
21 do you have anything to respond to that?

22 MR. T. VAN HAFFTEN: I guess I would just like
23 to mention -- say this to the commission. I
24 understand Miss Jerrel has admitted that rules
25 weren't followed under statutory law. When I

1 discovered this and I looked at it -- I did not
2 file this because I didn't want to keep anybody off
3 the ballots. This is (indiscernible) to Mr.
4 Hostettler and Mrs. Alvey, but the context, the way
5 I looked at this, is I thought back to two years
6 ago, the presidential election in 2000, how the
7 rest of the country looked at what was discussed in
8 the State of Florida and the way that way that
9 presidential election came out.

10 And since then, I would venture to say almost
11 every state, including Indiana, took on some type
12 of task force to make sure there is integrity in
13 the election process. In fact, I think the word
14 "integrity" is used in the task force created for
15 the Indiana Secretary of State, and yes, our voters
16 need a choice, but if the process is going to have
17 integrity, the leaders responsible, perceive what
18 the process is and carrying out the process, have
19 to follow the rules, and that's essentially what I
20 decided follows.

21 This comment, this comment is partisan. I
22 have no doubt that the Democratic candidates who
23 would win in the upcoming races, that's a partisan
24 conflict, but putting partisanship aside, in terms
25 of the process itself, the rules weren't followed.

1 If we want a voter to be confident in what
2 they're doing, they need to know the process has
3 integrity to it also. The polls close at 6:00
4 p.m., a person shows up at 6:10 p.m., the
5 registered voter, they've met the substantial
6 qualifications, but the rules are that the polls
7 close at 6:00 so do we allow them to vote? I'm
8 sorry, I just don't think the rules have been
9 followed here, any of the follows rules, I think.
10 Unfortunately, these two candidates do not remain
11 on the ballot (indiscernible).

12 CHAIRMAN D. CRUEA: Mrs. Jerrel, do you have
13 anything to...

14 MS. B.L. JERREL: Only -- only this. You are
15 very (indiscernible). You're from South Bend,
16 you're from (indiscernible) County, you're from
17 Marion County, and you're from...

18 COMMISSION MEMBER C. CUMMINGS: Actually, I'm
19 from Marion and Dudley's from --

20 CHAIRMAN D. CRUEA: I'm from Fountain.

21 MS. B.L. JERREL: Fountain, okay.

22 VICE CHAIR A. LONG: It's a lot like Marion.

23 CHAIRMAN D. CRUEA: Yeah.

24 MS. B.L. JERREL: We -- we're talking about
25 the precinct committee men who live in counties who

1 know the people that are going to vote for these.
2 They met and they met with proper notification at a
3 time and they made a choice, and their declaration
4 of candidacy choices were filed in a timely manner,
5 and I would -- I would hate to see this be taken
6 away from those people as well as all of the people
7 in this state who are going to vote. And the
8 Democrats candidates may very well win, but we'll
9 never know, if they don't have a chance to have a
10 choice.

11 CHAIRMAN D. CRUEA: Okay. Any final
12 questions?

13 VICE CHAIR A. LONG: I have no questions.

14 CHAIRMAN D. CRUEA: Okay, then I'll close the
15 hearing on Cause No. 2002-118 and 2002-119. Any
16 discussion?

17 VICE CHAIR A. LONG: I'd like to say one thing
18 about the form. When I read this, I look back, and
19 I was looking at it last night and I got the
20 statute out and the think the form, while we might
21 be critical of it, tracks the exact language of the
22 statute, so if we're going to be critical of the
23 language that was chosen, we need to talk to the
24 legislature.

25 That's the part that I think is -- has been

1 alluded to as being confusing, but it says under
2 the statute that the requirement for the filing
3 is -- with the official is required to receive the
4 certificate of the candidate selection following a
5 caucus under Section 15 of the -- this chapter.

6 And I guess the thing that -- I would prefer
7 if we are going to err, to err on the side of
8 having candidates run, but I also sit here meeting
9 after meeting and see people fined, have had their
10 reports mailed into us and we don't get them in
11 time.

12 And you all know that I have argued -- I guess
13 it's from the legal standpoint, being a lawyer,
14 that when you put something in the mail, even by
15 certified mail, that the courts, all of the courts
16 in Indiana recognize that as the date of filing,
17 but we don't.

18 The date of filing is -- and there's a reason
19 for that. I think the reason is that if we
20 recognize dates of filing as certified mail, people
21 who might not want to have full and adequate
22 disclosure might choose to mail their letters from
23 Nome, Alaska by certified mail and they get here
24 two weeks after the election and say, well, wait a
25 minute, I was timely under the law, but the

1 law -- we fine people every meet, that -- virtually
2 every meeting that have sent things in through the
3 mail and they don't get here timely, and this --
4 this was not filed in accordance with the law
5 timely from the history that we have.

6 I guess the ultimate question is are we --
7 is -- what if this had of been mailed after the
8 caucus, would that -- then that would be the
9 argument that it was confusing. The statute, I
10 think, is laid out, and the legislature has given
11 us the rules to follow, and I think that at this
12 point in time, we don't have any choice but to
13 follow the statute.

14 MS. B.L. JERREL: Mr. Chairman? This -- not
15 to disagree with Mr. Long, but this does not follow
16 the exact statute. It does not say (indiscernible)
17 that this form also be mailed, and I think just for
18 the future, regardless of what happens today, you
19 ought to protect this board as well as the
20 candidates by changing and adding something to
21 these instructions.

22 COMMISSION MEMBER C. CUMMINGS: Okay. Mr.
23 Chairman, I did want to -- actually I had observed
24 that same thing. The statute does say that it must
25 be filed ten (10) days before the filing with the

1 official days required to receive the certificate
2 and that ten days before the meeting is not
3 captured here in these instructions -- I also
4 wanted to make that clarification.

5 If I may make a comment and that is, again, I
6 deal with these forms on a daily basis, and I know
7 how confusing they are -- Marion County alone in
8 the last election, we had approximately 200
9 declarations of candidacy -- declarations of
10 candidacies that were incorrectly filed, and again,
11 it was as a result of the wording on the form, and
12 folks were -- were confused by that, and I just
13 think that that's a shame that folks choose to run
14 for convention delegate or committeemen, and then
15 in theory, should have been not allowed access to
16 the ballot because they didn't complete the form
17 correctly, and in that particular instance, an
18 administrative remedy was found, and I -- though I
19 definitely believe in following the letter of the
20 law, when the letter of the law is translated into
21 a form which then does not describe the letter of
22 the law but cites law, I feel it's misleading to
23 those who are expected to complete a form.

24 And in that sense, we as an administrative
25 body has -- have failed the citizens in

1 Marion -- in Indiana and I just feel that in this
2 particular situation where this form does quotes a
3 code cite, it looks as though this code cite is
4 saying exactly what it is best to be done, and it
5 does not say ten (10) days prior you must file a
6 copy with this body. I just feel that we should
7 take some responded here and I just wanted to say
8 that.

9 CHAIRMAN D. CRUEA: Any other comments?

10 VICE CHAIR A. LONG: I have a question of the
11 staff.

12 CHAIRMAN D. CRUEA: Okay.

13 VICE CHAIR A. LONG: Where are we at this
14 juncture? I mean, is that -- the issue is we have
15 a challenge before us and I don't recall
16 specifically being dealt with this particular
17 issue. I mean, where do we stand now and then
18 what's the impact of our choices here today?

19 COMMISSION MEMBER C. CUMMINGS: As far as
20 where we are with the certifications of the
21 counties and (indiscernible)?

22 MR. D. SIMMONS: To make a ruling, I don't
23 think this is your question, but you would take a
24 formal motion and vote, but the impact of that, we
25 have certified to the county's candidates a

1 statute, it's 3-13-1-16, and it's on Page 471 of
2 the code book, if you want to have a look at it.

3 VICE CHAIR A. LONG: 3-13-1-16?

4 MR. D. SIMMONS: Yes. This statute treats
5 vacancy candidates a little bit differently than
6 what the commission is probably used to. I know
7 we've had some candidates in the primary. of
8 course, as usual, it takes three votes for official
9 commission action, and that would be a resolution,
10 but under this statute, if there's anything less
11 than two votes, it says in the second sentence of
12 this -- well, actually, in the first sentence, if
13 there's a challenge filed, we're to send out
14 instruction on non-certification.

15 It says you are not to place this candidate on
16 the ballot, not to precipitate their name on the
17 ballot until the question is resolved by the
18 commission. That instruction was sent out with
19 respect to all the candidates on the agenda today
20 that have been challenged. The question is what is
21 a resolution?

22 A resolution is clearly -- we have to refer
23 back then again to the official action statute,
24 which requires a vote, affirmative vote of three
25 commission members to take official action and

1 equate that resolution with that official action.

2 So if there are three votes, it's resolved and
3 we -- we inform the county one way or the other.
4 If there is not three votes, then the status quo
5 remains, that is the counties are still advised
6 pursuant to our certification that the candidate is
7 not to be printed on the ballot.

8 VICE CHAIR A. LONG: And then if we don't
9 resolve it, then it would be up to a court or...

10 MR. D. SIMMONS: It does in that last
11 sentence, the question is resolved by the
12 commission or a court of jurisdiction in the law.
13 So if the commission doesn't resolve it by taking
14 official action, then it -- obviously, it can be
15 appealed to the court.

16 VICE CHAIR A. LONG: So if -- okay.

17 MR. D. SIMMONS: But until that time the
18 instruction is a status quo instruction, don't
19 print this candidate on the ballot remains.

20 VICE CHAIR A. LONG: We agree on the
21 interpretation of the law, Dale. I want to --
22 sometimes you and I don't agree.

23 MR. D. SIMMONS: I know.

24 VICE CHAIR A. LONG: I want to commend your
25 wisdom on this particular motion.

1 COMMISSION MEMBER B. MORGAN: You get two
2 lawyers, you've got four attorneys.

3 COMMISSION MEMBER C. CUMMINGS: Okay. I move
4 that the challenge to, the two candidates
5 challenged by Mr. Van Hafften, Diana Alf -- Alvey
6 and Mr. Hostettler be declined, is that an
7 appropriate word, be dismissed due to the election
8 division and election commission's failure to
9 provide accurate information to the citizens of
10 Indiana on the form that was to be completed.

11 CHAIRMAN D. CRUEA: I'll second that motion.
12 Any discussion?

13 (No response.)

14 CHAIRMAN D. CRUEA: All those in favor,
15 signify by saying aye?

16 THE COMMISSION: Aye.

17 CHAIRMAN D. CRUEA: Opposed?

18 VICE CHAIR A. LONG: No.

19 COMMISSION MEMBER B. MORGAN: No.

20 VICE CHAIR A. LONG: I'll do the corollary. I
21 move we sustain the challenges on Alvey and
22 Hostettler.

23 COMMISSION MEMBER B. MORGAN: Second.

24 CHAIRMAN D. CRUEA: Any discussion?

25 (No response.)

1 CHAIRMAN D. CRUEA: All those in favor of
2 Mr. Long's motion, signify by saying aye?

3 VICE CHAIR A. LONG: Aye.

4 COMMISSION MEMBER B. MORGAN: Aye.

5 CHAIRMAN D. CRUEA: Opposed nay?

6 COMMISSION MEMBER C. CUMMINGS: Nay.

7 CHAIRMAN D. CRUEA: Nay.

8 COMMISSION MEMBER B. MORGAN: We broke the
9 coin today.

10 VICE CHAIR A. LONG: The legislature is going
11 to have to...

12 COMMISSION MEMBER B. MORGAN: Yeah.

13 CHAIRMAN D. CRUEA: Okay. Move onto the next
14 cause. Cause No. 2002-120, Ken Hughes, Candidate
15 for State Representative, District 77. Miss
16 Robertson.

17 MS. K. ROBERTSON: Mr. Chairman and the
18 Members of the Commission, that's also in your
19 packet. This is a challenge filed by William
20 Bennett versus Ken Hughes, Candidate for State
21 Representative, District 77.

22 CHAIRMAN D. CRUEA: I assume you're
23 Mr. Bennett.

24 MR. W. BENNETT: Yes, sir.

25 CHAIRMAN D. CRUEA: Okay.

1 MR. W. BENNETT: Again, my name a William
2 Bennett. I'm a resident of District 77.

3 CHAIRMAN D. CRUEA: Have a seat.

4 MR. W. BENNETT: We filed this because we do
5 not believe that the Republicans lived up to their
6 statutory requirements. (Indiscernible) instead of
7 (End of Tape.)

8 MS. B.L. JERREL: Any future litigation that
9 might occur, this will be the record, the official
10 record, since we are -- my comments will have to
11 stand on this. This is not in printed form, so is
12 that accurate?

13 CHAIRMAN D. CRUEA: It will be in printed form
14 but I don't know how quickly.

15 MR. D. SIMMONS: Mr. Chairman, if I may, if an
16 appeal of the commission decision is initiated, the
17 statute directs us to prepare a record. It directs
18 us to prepare minutes of the meeting, however,
19 practices with counsel of the division prepare the
20 minutes, it's that they're very close to being
21 verbatim.

22 MS. B.L. JERREL: Well...

23 MR. D. SIMMONS: The tape is available.

24 MS. B.L. JERREL: Okay. If the tape would be
25 available, I would request that you make them as

1 close as possible to verbatim minutes, if that's...

2 VICE CHAIR A. LONG: They do.

3 MS. B.L. JERREL: Okay.

4 VICE CHAIR A. LONG: I mean, you're
5 welcomed -- I've got a packet from before and you
6 can see how...

7 MS. B.L. JERREL: All right. Thank you.

8 CHAIRMAN D. CRUEA: And the minutes are always
9 posted on the web, too, so once they're on there,
10 you can check it out.

11 MS. B.L. JERREL: That's another thing, we did
12 search the web so you might want to take a look at
13 your web site also to improve the descriptions of
14 the process to be followed.

15 CHAIRMAN D. CRUEA: Okay.

16 MS. B.L. JERREL: Just like the form doesn't
17 really state it, the web site doesn't either.

18 CHAIRMAN D. CRUEA: And I'm going to ask you
19 do -- for the record, do you want your testimony in
20 the other two cases to be the same for this one?

21 MS. B.L. JERREL: Yes, I do. I will not
22 repeat it.

23 CHAIRMAN D. CRUEA: Okay. Is there any
24 questions for Mrs. Jerrel?

25 MS. B.L. JERREL: Mr. Hughes is here, though.

1 CHAIRMAN D. CRUEA: Okay. Sure. I mean...

2 MR. K. HUGHES: Hi. My name is Ken Hughes.

3 I'm one of those guys that's (indiscernible), I'm
4 very concerned that I'd be a representative for the
5 State of Indiana, but clearly, what's of concern to
6 me is the fact that myself and all the other
7 candidates are going to be, in this particular
8 case, Republican.

9 We filed all of the paperwork that we were
10 told to file. We -- because I happen to be a
11 councilman in the Town of Newberry -- not
12 officially ran for an election, we visited both
13 election (indiscernible) in White County as well as
14 Vanderburgh County and we filed all the papers that
15 we were told were necessary to be filed.

16 Now I'm a candidate, I am not a county chair
17 person, but since then all the (indiscernible) that
18 have been going on in this, I have taken the
19 opportunity to take and read the manual -- manuals,
20 I should say for the county chair people, and I
21 think that our chair people filed everything that
22 was necessary to do.

23 The precinct committee people that -- are
24 people who actually vote for the candidates were
25 notified and they voted in a positive manner to

1 elect us as candidates as well as the other ones
2 (indiscernible).

3 So I -- really, I guess from my basic
4 experience of being on the town council, you folks
5 have a tough decision to make and I can certainly
6 appreciate it, but (indiscernible) now, depending
7 on which way you rule by taking candidates, and I
8 don't believe that a candidate -- I may not be the
9 best candidate, but I've got, of course, a
10 responsibility of doing all of the legal paperwork
11 that is not readily available when you ask
12 questions what shall I file or what should I do?

13 I have filed everything at both -- that I'm
14 supposed to do and so are the other candidates
15 so -- and the precinct committee people that are
16 elected, they nominated me as well as the rest of
17 them. So it's a pretty tough decision, guys. I'm
18 really glad I'm not sitting there.

19 COMMISSION MEMBER C. CUMMINGS: Actually, I
20 have a question?

21 MR. K. HUGHES: Yes.

22 COMMISSION MEMBER C. CUMMINGS: Did you
23 mention that you went to your county election board
24 and inquired as to the rules?

25 MR. K. HUGHES: Both at Vanderburgh as well as

1 White, because my district, I have both counties,
2 and I went to them. We filed papers. We filed
3 financial statements. We filed a whole
4 (indiscernible) of paper. My administrative
5 manager could probably direct as to what was
6 actually filed -- she does a better job at that
7 than I do, and we were told that we were home free.
8 Now...

9 COMMISSION MEMBER C. CUMMINGS: So you were
10 not told of the requirement to file --

11 MR. K. HUGHES: Absolutely not.

12 COMMISSION MEMBER C. CUMMINGS: -- ten (10)
13 days prior?

14 MR. K. HUGHES: Absolutely not. No one told
15 me or we certainly would have done it. It's just a
16 matter of filing a piece of paper which is no -- no
17 reason why we wouldn't file it. Why would we not
18 have wanted to file this piece of paper
19 (indiscernible) so...

20 CHAIRMAN D. CRUEA: Okay.

21 MR. K. HUGHES: Any other questions?

22 VICE CHAIR A. LONG: You understand, Ken, this
23 is not a question of you not filing something you
24 should have filed?

25 MR. K. HUGHES: This is true, or I should have

1 made sure what was filed (indiscernible)?

2 VICE CHAIR A. LONG: And it wasn't -- I mean,
3 you weren't -- at the time that the error was made,
4 at least as I see it, you weren't a candidate. It
5 was the error in the calling of the caucus that
6 created your candidacy, not what happened after you
7 became a candidate. That's -- therein lies the
8 difference.

9 MR. K. HUGHES: I should be an attorney, but
10 no, that's -- you know, that's -- in respect to the
11 other candidates that are in the same position I
12 am -- we're all in the same position. We thought
13 we were doing everything we should have so...

14 COMMISSION MEMBER C. CUMMINGS: To further
15 clarify on that point, though, --

16 MR. K. HUGHES: Yes.

17 COMMISSION MEMBER C. CUMMINGS: -- were you
18 acting in concert with your county committee and
19 your county chairman --

20 MR. K. HUGHES: Of course, we --

21 COMMISSION MEMBER C. CUMMINGS: -- when
22 you -- when you made those inquiries?

23 MR. K. HUGHES: (Indiscernible), and so were
24 the other candidates.

25 CHAIRMAN D. CRUEA: Okay. Thank you. Any

1 other questions? Mr. Bennett, do you have anything
2 to add?

3 MR. W. BENNETT: No, sir.

4 CHAIRMAN D. CRUEA: Okay. And I will close
5 the hearing on Cause No. 2002-120. Any discussion?

6 VICE CHAIR A. LONG: The comment I want to
7 make is -- this one's tougher for me than the other
8 one because I didn't know the other candidates, but
9 I've known Ken for a number of years, I consider
10 him a friend, and he's been an effective council
11 member in one of the towns in our county and it
12 makes, as he said, our job tougher to do, but my
13 position is still the same, that we have to follow
14 the mandates of the legislature.

15 COMMISSION MEMBER B. MORGAN: Mr. Chairman?

16 CHAIRMAN D. CRUEA: Yes.

17 COMMISSION MEMBER B. MORGAN: I have couple of
18 comments.

19 CHAIRMAN D. CRUEA: Okay.

20 COMMISSION MEMBER B. MORGAN: This myriad of
21 paper that y'all are involved with once we enter
22 this process -- I mean, it's the electronic age,
23 the paperwork. We seem to be killing more trees
24 now than we ever did. I'm just in the reverse
25 here, a little bit of heartbreaking situations.

1 I've seen one, 1982 and another one in 1994.

2 One was a Congressional race up in the old 3rd
3 District when Dick Bodine ran and there was some
4 questionable things in Elkhart that was
5 (indiscernible), indication -- documentation that
6 there might have been a problem.

7 Well, Mr. Bodine is an attorney and his
8 attorney three hours late, and we'll never know
9 what happened, and in 1994, a young lady who is one
10 of the leaders of the Republican Party in the State
11 of Indiana probably lost a tremendous opportunity
12 to be a Congresswoman, Ann DeVore, with the
13 problems in filing things.

14 I hope through the legislature and people on
15 this commission and staff would want to see things
16 get better and delineated more clearly so that we
17 don't have these types of situations, because
18 they're not pleasant.

19 But it's just something that I -- no matter
20 what happens here today, that we can figure out a
21 way to maybe have a coming together of the four or
22 five key people in the legislature, and Brad and
23 Spence and the rest of the people to help with
24 this.

25 And I -- what Bettye Lou said, I think it's

1 important to keep as much of this as possible
2 verbatim so that everybody can see what we've all
3 went through, and these are tough situations to be
4 in out there so I appreciate you listening to those
5 tales of woe, but I always remember when these kind
6 of things come up, they're 12 years apart, and here
7 we are in 2002, and stuff like this is still
8 happening so hopefully, we can find a way to
9 eliminate it. Thank you.

10 CHAIRMAN D. CRUEA: Okay.

11 COMMISSION MEMBER C. CUMMINGS: Mr. Chairman.M
12 r. Morgan, I appreciate you bringing up those two
13 bits of history, but the former, I perhaps don't
14 remember, but the latter I do, and as I recall in
15 that situation with Miss DeVore, she was aware of
16 the deadline, had been properly advised and simply
17 missed the deadline through some sort of
18 happenstance.

19 I believe that that's greatly different from
20 the situation where citizens are misinformed by
21 this body and I feel strongly that we need to -- to
22 take responsibility when we've erred and not pass
23 that off on citizens of Indiana.

24 I do credit you -- I found here, I -- being
25 new I had asked for a little research on -- I don't

1 know how things typically work around here. I said
2 well, what typically happens with these, and I was
3 told oh, well, typically, they're, you know, out of
4 luck and they're sent on their way, if they don't
5 follow the letter of the law -- no matter the
6 reason, they're sent on their way if, but in a few
7 exceptional circumstances, perhaps folks were
8 allowed just to gain access to the ballot.

9 In some minutes from 1996, August 19th, to be
10 exact, were uncovered for me, where you, Mr.
11 Morgan -- here you go -- thank you -- I believe
12 issued a motion that was approved that Indiana must
13 lead by consent, no, (indiscernible) -- I
14 apologize, I thought it was by consent, okay,
15 stating that, you know, in a situation where
16 someone was unintentionally misinformed formed,
17 that the onus, I believe, comes back on us, and in
18 this particular instance, the candidate prevailed
19 and was allowed onto the ballot.

20 And so I -- I do just want to bring your
21 attention to that, that this not something that has
22 never occurred, that in the past, at least in this
23 instance when the commission, or in this particular
24 case, I believe it was the county election board
25 made a mistake, the individual was allowed on the

1 ballot.

2 COMMISSION MEMBER B. MORGAN: I didn't mean to
3 infer that they were the same. I'm just saying
4 that there are a number of examples of deadline
5 problems, and you are right, there is not the same
6 situation as Ann DeVore or Dick Bodine, there's a
7 myriad of problems inherent upon deadlines and
8 paperwork. Each one is somewhat different from
9 time to time.

10 VICE CHAIR A. LONG: I guess my comment to
11 that would be I don't think the form is that
12 misleading, and maybe I live in a world where we
13 read things closely enough to understand it, but I
14 know my wife's not a lawyer -- she didn't ask my
15 advice, and when she called a caucus, she sent her
16 notice to the caucus to the county election board
17 at the ten (10) day notice, and she picked that up
18 herself.

19 I think the form is reasonably clear. I don't
20 think we've misinformed anyone with regard to it.
21 If someone -- I guess to quote Mr. Hostettler's
22 brother, we can't help how people interpret what we
23 say, and the -- if they've misinterpreted, I
24 suspect, you know, the question would be look at
25 the statute.

1 COMMISSION MEMBER C. CUMMINGS: Mr. Long, I
2 might point out to you that the form makes no
3 mention of submitting it ten (10) days prior to the
4 election division. It makes no mention whatsoever.
5 It mentioned submitting to the election board. It
6 does not give a deadline for that.

7 VICE CHAIR A. LONG: I read it last night and
8 I've read it today and I've read it before but I
9 appreciate you pointing it out to me again. Thank
10 you.

11 CHAIRMAN D. CRUEA: Any other comments?

12 (No response.)

13 COMMISSION MEMBER C. CUMMINGS: Okay. I move
14 that we dismiss the challenge brought to us by
15 Mr. --

16 VICE CHAIR A. LONG: Bennett.

17 CHAIRMAN D. CRUEA: Bennett.

18 COMMISSION MEMBER C. CUMMINGS: -- Bennett on
19 behalf of -- I apologize again, again the candidacy
20 of Mr. Hughes, and the reason being that the -- do
21 I have this correct, I apologize?

22 CHAIRMAN D. CRUEA: Yes.

23 COMMISSION MEMBER C. CUMMINGS: Okay. Because
24 the information submitted or given to the
25 individuals both by their county election boards

1 and by the state election division and commission
2 by means of the form was misleading or incomplete.

3 CHAIRMAN D. CRUEA: I'll second that motion.
4 Any discussion?

5 (No response.)

6 CHAIRMAN D. CRUEA: All those in favor of the
7 motion, signify by saying aye?

8 COMMISSION MEMBER C. CUMMINGS: Aye.

9 CHAIRMAN D. CRUEA: Aye. Opposed, nay?

10 VICE CHAIR A. LONG: Nay.

11 COMMISSION MEMBER B. MORGAN: Nay.

12 VICE CHAIR A. LONG: I move we sustain the
13 challenge.

14 COMMISSION MEMBER B. MORGAN: Second.

15 CHAIRMAN D. CRUEA: Any discussion?

16 (No response.)

17 CHAIRMAN D. CRUEA: All those in favor,
18 signify by saying aye?

19 VICE CHAIR A. LONG: Aye.

20 COMMISSION MEMBER B. MORGAN: Aye.

21 CHAIRMAN D. CRUEA: Opposed nay?

22 COMMISSION MEMBER C. CUMMINGS: Nay.

23 CHAIRMAN D. CRUEA: Nay. Cause No. 2002-121.

24 MS. K. ROBERTSON: Mr. Chairman and Members of
25 the Commission, this is a challenge filed by

1 Franklin Arkenberg against Jeff Melton, Candidate
2 for U.S. Representative in the Ninth District.

3 MR. F. ARKENBERG: My name is Frank Arkenberg.
4 I live in Ripley County within the Ninth District.
5 Mr. Melton (indiscernible) petition. The statute
6 requires that he obtain 2 percent of
7 (indiscernible) in the district (indiscernible).
8 He was required to raise, I think, 3,713 valid
9 signatures, and according to his web site, he did
10 not obtain those (indiscernible). He's at least
11 215 more shy (indiscernible) the ballot.

12 CHAIRMAN D. CRUEA: Okay.

13 VICE CHAIR A. LONG: I'm sorry, your name
14 again, sir.

15 MR. F. ARKENBERG: Frank Arkenberg.

16 VICE CHAIR A. LONG: Okay. You're the...

17 CHAIRMAN D. CRUEA: He's the challenger.

18 3,713 signatures, did you say?

19 MR. F. ARKENBERG: That's correct.

20 CHAIRMAN D. CRUEA: It seems to me a couple of
21 days ago I heard a number less than that.

22 MS. K. ROBERTSON: Mr. Chairman and Members of
23 the Commission, since we thought this might be
24 something you'd be interested in, we went
25 ahead -- Spencer and Brad and Dale and I took a

1 look the numbers, and this is what we came up with.
2 It's a little bit more difficult than it usually
3 ask because of redistricting, we would take the new
4 precincts, the Ninth District, and look at the '98
5 figures so that took us a lot to put that together
6 but we thought you might want to see what we came
7 up with and it's what we believe would be the
8 2 percent figure on the new district.

9 VICE CHAIR A. LONG: 2 percent?

10 MS. K. ROBERTSON: Of the total Secretary of
11 State vote for 1998 for --

12 VICE CHAIR A. LONG: So the problem being, is
13 it...

14 MS. K. ROBERTSON: -- the precinct being the
15 new Ninth District.

16 VICE CHAIR A. LONG: The reprecincting
17 created -- I bet that was fun. No wonder it took
18 all of you.

19 MS. K. ROBERTSON: Yeah, and we had to check
20 and we also totaled up the signatures that we
21 received from Mr. Melton, and I believe that was
22 2,750, I believe is what we came up with. That's
23 the number that -- 2,750 that he turned in, the
24 certified count to certify the signatures.

25 VICE CHAIR A. LONG: This is what you all did?

1 MS. K. ROBERTSON: Yes, adding up the
2 signatures that were sent to us.

3 VICE CHAIR A. LONG: If you want to get your
4 calculator out and...

5 CHAIRMAN D. CRUEA: No.

6 VICE CHAIR A. LONG: Take that back to
7 Indianapolis.

8 CHAIRMAN D. CRUEA: I didn't realize I'm part
9 in her district. I just -- I guess I'm confused on
10 3,712, because somebody a couple of days ago told
11 me like 3,300.

12 MR. F. ARKENBERG: (Indiscernible).

13 MS. K. ROBERTSON: Yeah, we -- I mean, Spencer
14 and I came up with a figure first, we did it first,
15 and then we had Brad and Dale try again.

16 CHAIRMAN D. CRUEA: What figure did you come
17 up with first?

18 MR. S. VALENTINE: 34,000 and some -- and then
19 we got a sum total from one of the counties rather
20 than the final total (indiscernible).

21 MS. K. ROBERTSON: Right. So then Dale and
22 Brad came up with, tracked it, and they had a few
23 discrepancies, so then Brad and I checked those
24 discrepancies this morning and come up with an
25 agreement, so this is what we've all come up with.

1 CHAIRMAN D. CRUEA: So 3,712 is what you came
2 up with this morning?

3 MS. K. ROBERTSON: Yes.

4 CHAIRMAN D. CRUEA: Okay.

5 COMMISSION MEMBER C. CUMMINGS: And what was
6 it previously, 34...

7 MR. B. KING: Mr. Chairman, I -- the first
8 figure that I was given after Spencer and Kristi
9 completed their work was the 3,597.

10 CHAIRMAN D. CRUEA: 3,597, okay.

11 MR. B. KING: There may have been other
12 versions prior to that. I didn't see that...

13 CHAIRMAN D. CRUEA: Okay.

14 VICE CHAIR A. LONG: And I hate to be a real
15 nitpick here, but I would think that you would have
16 to -- if it goes to a fraction, you'd have to go to
17 the next one because it's a minimum of 2 percent.

18 MR. B. KING: Mr. Chairman -- Mr. Long, we
19 actually have a special statute that says to drop
20 the fraction.

21 CHAIRMAN D. CRUEA: Okay. So that's 3,712.

22 VICE CHAIR A. LONG: 3,712 -- was it 3,712,
23 that's how -- I'll take that, 3,712 is the magic
24 number.

25 MR. B. KING: I would just say it's probably

1 the only statute of the election code that runs
2 contra to common sense.

3 COMMISSION MEMBER B. MORGAN: I like the
4 quoting of it.

5 CHAIRMAN D. CRUEA: Okay. Is there -- are
6 there any questions from any commission members for
7 Mr. Arkenberg?

8 COMMISSION MEMBER B. MORGAN: Mr. Chairman,
9 just so I understand -- I know you were discussing
10 it -- both Kristi and Spencer and Brad all agree on
11 the 3,712?

12 MS. K. ROBERTSON: Right.

13 CHAIRMAN D. CRUEA: Okay.

14 VICE CHAIR A. LONG: I don't have any.

15 CHAIRMAN D. CRUEA: Okay. Is Mr. Melton here
16 or anyone representing him?

17 MR. F. ARKENBERG: Probably out getting more
18 signatures.

19 CHAIRMAN D. CRUEA: No one from the -- is it
20 the Green Party, what party is it -- Green Party --
21 no one's here representing the Green Party?

22 (No response.)

23 CHAIRMAN D. CRUEA: Okay. Anyone else here to
24 testify on this?

25 MR. B. KLOPFENSTEIN: Brad Klopfenstein with

1 the Libertarian Party of Indiana. I'd just like to
2 add -- obviously, just mere discussions,
3 (indiscernible) a bit of a sliding scale --
4 however, I did the best I could beforehand and it
5 seems that he's at least met the (indiscernible)
6 signatures, or at least one of those numbers has
7 been thrown out, as was stated earlier, but we're
8 all in favor of more inclusion in the process as
9 opposed to less and we would be very much in favor
10 (indiscernible).

11 CHAIRMAN D. CRUEA: Okay. Any questions?

12 COMMISSION MEMBER B. MORGAN: Do the
13 Libertarians have a candidate in this race?

14 MR. B. KLOPFENSTEIN: Yes we do.

15 COMMISSION MEMBER B. MORGAN: Okay. That's...

16 VICE CHAIR A. LONG: How many petitions did
17 you get?

18 MR. B. KLOPFENSTEIN: I think we got 2 percent
19 of the vote.

20 VICE CHAIR A. LONG: Oh, that's right. Well,
21 actually I take that, one. Our candidate has to
22 sign the (indiscernible).

23 CHAIRMAN D. CRUEA: How -- how many signatures
24 were turned in; does anybody know that on this.

25 MS. K. ROBERTSON: 2,700.

1 MR. B. KING: Mr. Chairman, if I understand
2 your question, are you asking how many total
3 signatures were turned in on petitions, not the
4 number that were certified by the counties?

5 CHAIRMAN D. CRUEA: Uh-huh.

6 MR. B. KING: When Dale and I went through our
7 work and checked the figure of 2,750, we did also
8 tabulate the number of signatures that were
9 submitted on the forms that were not approved.

10 The number that we came up with was 3,604,
11 3-6-0-4, but I do want to say that figure is by
12 necessity somewhat less precise. In other words,
13 there were a number of signatures that appeared to
14 have been crossed off by the Green Party and not
15 submitted to the county clerks.

16 As an example, there was some individuals who
17 signed and put a South Carolina address and it
18 appeared that the Green Party had crossed those out
19 but the counties had not processed, and so
20 those -- those signatures were not included in the
21 count that we came up with.

22 CHAIRMAN D. CRUEA: Okay.

23 COMMISSION MEMBER C. CUMMINGS: So you did not
24 include the (indiscernible)?

25 MR. B. KING: We did not -- we did not include

1 ones that appeared to have been crossed out and
2 never submitted to the clerks or processed by them.

3 CHAIRMAN D. CRUEA: I guess my only question
4 is why was the number needed not figured until
5 today? Why wasn't this figured long before the
6 process so that anyone that has to do this knows
7 how many signatures they have to get? Can anybody
8 answer that?

9 MS. K. ROBERTSON: Mr. Chairman, like it is
10 for all candidates, it's their responsibility to
11 find out the requirements. We don't figure numbers
12 for any candidate. We did this simply because we
13 figured you all may have this question and we would
14 be able to answer, but we believe that's the
15 figure, but we are happy to assist candidates in
16 trying to help with that figure, but it is their
17 responsibility to find out...

18 MR. S. VALENTINE: Mr. Chairman?

19 CHAIRMAN D. CRUEA: Uh-huh.

20 MR. S. VALENTINE: What we've always supplied
21 as part of the candidate guide is the 2 percent
22 count for the county. We've never broken that down
23 less.

24 CHAIRMAN D. CRUEA: Basically with the
25 district change that would have been very difficult

1 to try to -- probably no one even know -- knew that
2 they had to check which district to even check
3 numbers for, I guess that's one of my concerns.

4 MS. K. ROBERTSON: Well, we did
5 assist -- there was a state rep (indiscernible)
6 that ran as an independent candidate that didn't
7 come in. I believe that he met with both Dale and
8 I at different times and we did this kind of trying
9 to figure that out (indiscernible) and we did
10 assist him in trying to keep (indiscernible). He
11 figured that out himself but we were assisting him
12 trying -- trying to figure that out.

13 COMMISSION MEMBER C. CUMMINGS: I'm sorry,
14 Spencer, what were you saying about the counties or
15 the entire county count?

16 MR. S. VALENTINE: We distributed candidate
17 guides, and in it we include a total of the last
18 Secretary of State trace for each county and then
19 we also sent -- do a calculation of what 2 percent
20 of those counties is. It's -- but it's not broken
21 down by congressional district. It's broken out by
22 the counties.

23 COMMISSION MEMBER C. CUMMINGS: And is that
24 what this is or is this is by congressional
25 district -- you did it by congressional district?

1 MR. S. VALENTINE: I'm talking about what we
2 did in reference to the chairman's question as to
3 why we figured it out previously. It was figured
4 out previously by county.

5 COMMISSION MEMBER C. CUMMINGS: Okay. So that
6 would be a higher than what actually is required;
7 right, because that -- because not all every county
8 is included, and that kind of is my question being
9 ignorant.

10 MR. S. VALENTINE: It would be a lower number.

11 COMMISSION MEMBER C. CUMMINGS: Right.

12 MR. S. VALENTINE: I mean, in total. The
13 total of each of those whole counties would have
14 been higher. It would be a higher number --

15 COMMISSION MEMBER C. CUMMINGS: Right.

16 MR. S. VALENTINE: -- than -- it is partial
17 numbers.

18 COMMISSION MEMBER C. CUMMINGS: And then does
19 the Ninth District have partial counties in it -- I
20 would presume yes.

21 CHAIRMAN D. CRUEA: Precinct, elect precinct.

22 COMMISSION MEMBER C. CUMMINGS: Oh, these are
23 the precincts?

24 VICE CHAIR A. LONG: It looks like there's
25 several of them in there.

1 MS. K. ROBERTSON: There's several counties.

2 VICE CHAIR A. LONG: Yeah, that's...

3 COMMISSION MEMBER C. CUMMINGS: And I'm just
4 curious, where would a citizen obtain this level of
5 specificity (indiscernible).

6 MR. S. VALENTINE: Canvass sheets.

7 COMMISSION MEMBER C. CUMMINGS: It would be
8 from the previous district; right -- this is --
9 this is from the current district; correct, from
10 the current Ninth?

11 MR. S. VALENTINE: Yes.

12 COMMISSION MEMBER C. CUMMINGS: That's to be
13 elected this year.

14 MR. S. VALENTINE: Yeah.

15 MS. K. ROBERTSON: Would it be the 1998
16 canvass sheets -- we would look at the precincts
17 from '98 canvass sheets. We should be going off of
18 new districts.

19 COMMISSION MEMBER C. CUMMINGS: Okay.

20 MS. K. ROBERTSON: And you can get all of this
21 in our office. We have all the canvass sheets for
22 the primary and the general election, the
23 (indiscernible) election.

24 COMMISSION MEMBER B. MORGAN: Have we received
25 any (indiscernible)?

1 MS. K. ROBERTSON: No.

2 CHAIRMAN D. CRUEA: All right. I guess
3 another question I would have or comment is that
4 since we went from ten districts to nine, those
5 districts are going to be a lot bigger than what it
6 was for the redistricting. It would be interesting
7 to know what the numbers were from the Ninth
8 District as it stood in '98.

9 COMMISSION MEMBER C. CUMMINGS: Do we have
10 copies of the petition?

11 MR. S. VALENTINE: We have all petitions.

12 CHAIRMAN D. CRUEA: Same way of the challenge,
13 I assume will want to enter that into the record so
14 we should see that.

15 VICE CHAIR A. LONG: Do I understand that the
16 number that Brad came up with, all those signatures
17 were not certified by county clerks? I was
18 confused on that.

19 MR. B. KING: Mr. Chairman?

20 CHAIRMAN D. CRUEA: Yes, Brad.

21 MR. B. KING: Yes, Commissioner, that is
22 correct. The 3604 number is the count that Dale
23 and I came up with in regard to the total numbers
24 submitted to the counties for processing with 2,750
25 being certified by the counties as in compliance

1 with the requirements and so the difference would
2 be -- the difference between the two figures would
3 be the number rejected, petition signatures by the
4 counties.

5 VICE CHAIR A. LONG: So the counties have
6 ruled some 900 approximately signatures to be
7 invalid?

8 MR. B. KING: Yes, sir.

9 VICE CHAIR A. LONG: The county clerks had?

10 MR. B. KING: Uh-huh. Yes, sir.

11 VICE CHAIR A. LONG: Okay.

12 COMMISSION MEMBER C. CUMMINGS: May I have a
13 moment to look at these?

14 CHAIRMAN D. CRUEA: Uh-huh.

15 COMMISSION MEMBER C. CUMMINGS: I don't know
16 if anybody else want to take a look at a different
17 county. This is just (indiscernible).

18 MR. B. KING: If I can say this, Mr. Chairman?

19 CHAIRMAN D. CRUEA: Yes.

20 MR. B. KING: I would like to say I think the
21 petitions have been arranged in alphabetical order
22 by county so there's a particular county petition
23 (indiscernible).

24 CHAIRMAN D. CRUEA: This one said petition
25 found in other filings, is that misfiled, is

1 that...

2 MS. K. ROBERTSON: Yes, Mr. Chairman. That
3 was found in the campaign finance filing or
4 something else. We weren't sure if it came in or
5 after the deadline so we counted it because it was
6 our error in not time stamping it.

7 CHAIRMAN D. CRUEA: Did you go through all the
8 campaign finance files?

9 MR. F. ARKENBERG: Chairman, (indiscernible).

10 CHAIRMAN D. CRUEA: Sure. You don't have any
11 other comments on this?

12 MR. F. ARKENBERG: Not right now.

13 CHAIRMAN D. CRUEA: Okay.

14 MR. F. ARKENBERG: (Indiscernible).

15 CHAIRMAN D. CRUEA: Uh-huh. Is the
16 challenge -- where's the challenge? Enter that
17 into the record.

18 VICE CHAIR A. LONG: Do you want to...

19 CHAIRMAN D. CRUEA: Okay. Let the record
20 reflect that this was entered into evidence, the
21 letter from Mr. Arkenberg in filing the challenge.

22 COMMISSION MEMBER C. CUMMINGS: It's still
23 going.

24 CHAIRMAN D. CRUEA: I'll leave it to Mr. Long
25 to hear it click.

1 VICE CHAIR A. LONG: Are you delegating now?
2 I will try to keep -- we need to get this propped
3 up like this.

4 CHAIRMAN D. CRUEA: Yeah, you're right, so we
5 can see it.

6 VICE CHAIR A. LONG: If they get us -- so we
7 could see that easily. Could we put that on the
8 agenda for the next meeting some sort of -- use
9 that for something. Make some benefit of it.

10 CHAIRMAN D. CRUEA: Yeah, that's a little
11 better. Okay, are there any other -- I'll wait til
12 Mr. Morgan is through with it.

13 COMMISSION MEMBER B. MORGAN: I'm done.

14 VICE CHAIR A. LONG: He's looking at something
15 else.

16 CHAIRMAN D. CRUEA: Okay. Any other comments,
17 any commission members have any discussion on this?

18 COMMISSION MEMBER C. CUMMINGS: Actually, I
19 did have a thought and it gets back to those forms.
20 I hate to keep talking about the wisdom of the
21 county clerks, but one thing that they've enjoyed
22 about having a voice here is that the forms
23 just -- they're just not friendly sometimes and I
24 know a lot of times it's by statute.

25 In this particular case, we have a similar

1 form up for revision this afternoon and I had this
2 question about why does it say residence address,
3 and I was told well, that's because that's what the
4 statute says -- actually, the statute says
5 residence mailing address, and to clarify, the word
6 mailing was taken out in hopes of at least sort of
7 not confusing voters.

8 But the problem is -- the top of the form, it
9 clearly says you must be a registered voter in the
10 State of Indiana, yet, it then asks for your
11 residence address, which in this particular case,
12 as you can tell by that enormous stack from Monroe
13 county -- in Monroe County, for example, there
14 would be a lot of folks there who maybe have a
15 residence in Monroe County who are actually
16 registered to vote someplace else in Indiana due to
17 their college student population.

18 And perhaps this is my personal problem with
19 the forms or -- and oftentimes I see why it's
20 difficult to design them, but again, I just find
21 that form extremely misleading. Had I been a
22 college student and it asked for a residence
23 address, and it said Monroe County at the top of
24 the thing, I would have put my Monroe County
25 address, but I definitely would have been a

1 registered voter Indiana, just here in
2 Indianapolis, and you would not have found me if
3 you had searched, and I have an amount of
4 discomfort with that particular thought. I just
5 wanted that known.

6 VICE CHAIR A. LONG: Actually, isn't your
7 residence where your -- your legal residence is
8 where you're required to register to vote, isn't
9 it? Is that your residence address?

10 COMMISSION MEMBER C. CUMMINGS: I was told
11 that that is by statute what is meant by the word
12 "residence," but I -- again, in common English,
13 especially to a college student, it says at the top
14 of the page Monroe County, I would take that to
15 mean my residence in Monroe County, not
16 my -- necessarily my registration address, and why
17 it doesn't just simply ask for registration
18 address, I don't know.

19 I actually believe this may have been added to
20 the list of issues for the legislative corrections
21 to try and clarify that language -- I think to
22 resident's address rather than residence known. I
23 would like to see it say registration, I guess,
24 personally.

25 CHAIRMAN D. CRUEA: Any other comments?

1 (No response.)

2 CHAIRMAN D. CRUEA: Hearing none, we'll close
3 the hearing on Cause No. 2002-121.

4 VICE CHAIR A. LONG: I'll move we sustain the
5 challenge. He's -- under any scenario, he's not
6 submitted enough petitions in order to be included
7 on the ballot.

8 COMMISSION MEMBER B. MORGAN: Second.

9 CHAIRMAN D. CRUEA: Any discussion?

10 COMMISSION MEMBER C. CUMMINGS: Actually, I
11 would to say a couple of words. I'm not sure at
12 thing particular point that we really know how many
13 petitions he was supposed to have submitted.
14 Yesterday, the number would have been different
15 than it is today, it might be different tomorrow,
16 and I not having an opportunity to figure it myself
17 and not knowing that I actually would figure it
18 correctly, I recognize that the tape was off to us.

19 But again, I -- I just feel as though that
20 it -- the law is very clear in this particular
21 instance and the redistricting here, and with the
22 confusion on the form again, I'm -- I'm just not
23 certain that it's clear to the citizens.

24 And again, not that I'm for not obeying the
25 law because I strongly am a believer in following

1 the letter of the law, but in these particular
2 circumstances, I don't know how -- how we can
3 expect folks to and we have a difficult time
4 understanding them ourselves.

5 CHAIRMAN D. CRUEA: Okay. All those in the
6 favor of the motion, signify by saying aye?

7 VICE CHAIR A. LONG: Aye.

8 COMMISSION MEMBER B. MORGAN: Aye.

9 CHAIRMAN D. CRUEA: Opposed nay?

10 COMMISSION MEMBER C. CUMMINGS: Nay.

11 CHAIRMAN D. CRUEA: Nay.

12 VICE CHAIR A. LONG: Why don't we just get a
13 form and put one name on it and then file it, then
14 we'll say oops that's okay. Hell, you can run for
15 president and senator all at once.

16 COMMISSION MEMBER C. CUMMINGS: I move that we
17 dismiss the challenge that was submitted by
18 Mr. Arkenberg against the Green Party candidate,
19 Mr. Melton.

20 CHAIRMAN D. CRUEA: Second. Any discussion?

21 (No response.)

22 CHAIRMAN D. CRUEA: All those in favor of the
23 motion, signify by saying aye?

24 COMMISSION MEMBER C. CUMMINGS: Aye.

25 CHAIRMAN D. CRUEA: Aye. Opposed, nay?

1 VICE CHAIR A. LONG: Nay.

2 COMMISSION MEMBER B. MORGAN: Nay.

3 CHAIRMAN D. CRUEA: Okay. Campaign finance
4 enforcement.

5 MR. D. SIMMONS: Mr. Chairman, I know there
6 was a question regarding clarification on what was
7 the result of the commission action with respect to
8 the vacancy candidates. As I understand, that was
9 a new statute. It would operate differently in
10 this challenge situation.

11 Without a permanent vote of three members,
12 either way, the challenged candidate, like a
13 primary candidate will remain on the ballot so just
14 to make sure that is clear in everybody's mind that
15 distinction under 3-13-1-6 is a new statute that
16 operates in compliance to vacancy candidates but
17 not a petition candidate -- Mr. Melton, the
18 petitions he had.

19 CHAIRMAN D. CRUEA: Okay. Thank you. Ready
20 for you.

21 MS. P. POTESTA: Did you want to...

22 CHAIRMAN D. CRUEA: Yeah. If there's anyone
23 here to testify on any of these campaign finance
24 enforcement acts, if you would please stand and
25 take an oath at this time.

1 UNIDENTIFIED SPEAKER: I think I am but I'm
2 not sure. I thought we -- part of what we were
3 doing...

4 CHAIRMAN D. CRUEA: I can tell you right now
5 with...

6 UNIDENTIFIED SPEAKER: Okay, so we're going to
7 talk about that.

8 CHAIRMAN D. CRUEA: Yes, we're going to talk
9 about that so...

10 UNIDENTIFIED SPEAKER: (Indiscernible).

11 CHAIRMAN D. CRUEA: Okay. So are you going to
12 be -- are you going to testify?

13 UNIDENTIFIED SPEAKER: Yes.

14 CHAIRMAN D. CRUEA: Okay. If you'd stand and
15 take an oath, please?

16 MS. P. POTEESTA: (Indiscernible)?

17 CHAIRMAN D. CRUEA: Statement of organization.

18 MS. P. POTEESTA: Okay. This is file No. 4906,
19 Cause No. 02-4906-115. They filed their statement
20 of organization on July 10th. They received their
21 notice on August 20th. They are (indiscernible)
22 candidate and their proposed civil penalty is
23 \$54.42.

24 CHAIRMAN D. CRUEA: Okay. To save us some
25 time, I've got a question, I guess for legal

1 counsel. If our action today, Mr. Hughes is not a
2 certified candidate, so he wouldn't be required to
3 file any forms; is that correct?

4 VICE CHAIR A. LONG: I don't believe it is
5 necessary.

6 CHAIRMAN D. CRUEA: Okay.

7 MR. D. SIMMONS: No.

8 CHAIRMAN D. CRUEA: Okay.

9 VICE CHAIR A. LONG: Whenever we get to that
10 point.

11 CHAIRMAN D. CRUEA: If you don't care, I'm
12 going to close the hearing on this.

13 UNIDENTIFIED SPEAKER: So it doesn't exist?

14 CHAIRMAN D. CRUEA: Well...

15 VICE CHAIR A. LONG: Just trust us a second.

16 CHAIRMAN D. CRUEA: Okay. If you'll wait for
17 the motion, okay. So I'm going to close the
18 hearing on the Committee to Elect Ken Hughes and
19 the Committee to Elect Diana Alvey, State Senate
20 District 49.

21 VICE CHAIR A. LONG: Are you ready for a
22 motion?

23 CHAIRMAN D. CRUEA: I'll ready for a motion.

24 VICE CHAIR A. LONG: I move we dismiss these
25 two causes for the reason that they are not -- I

1 believe not candidates and should not be required
2 to file.

3 COMMISSION MEMBER B. MORGAN: Second.

4 CHAIRMAN D. CRUEA: Any discussion?

5 (No response.)

6 CHAIRMAN D. CRUEA: All those in favor,
7 signify by saying aye?

8 THE COMMISSION: Aye.

9 CHAIRMAN D. CRUEA: Opposed?

10 (No response.)

11 CHAIRMAN D. CRUEA: Okay. So it's been
12 dismissed.

13 UNIDENTIFIED SPEAKER: So we won't have any...

14 CHAIRMAN D. CRUEA: You don't have -- won't
15 have any fine, no. Now if you decide to take legal
16 action and are put on the ballot, you'd better --

17 VICE CHAIR A. LONG: You'll have to finance
18 it.

19 CHAIRMAN D. CRUEA: Yeah.

20 VICE CHAIR A. LONG: That was said in jest for
21 (indiscernible).

22 UNIDENTIFIED SPEAKER: I don't think you'll
23 see me again.

24 CHAIRMAN D. CRUEA: Okay. That takes care of
25 those. Let's start with A) the approval of orders.

1 MS. P. POTESTA: There's one more.

2 VICE CHAIR A. LONG: We've got one.

3 COMMISSION MEMBER B. MORGAN: We got one more.

4 VICE CHAIR A. LONG: Do you want to fine --

5 CHAIRMAN D. CRUEA: Okay.

6 VICE CHAIR A. LONG: Surely, you want to fine
7 the Democrats, don't you? You don't want to miss
8 an opportunity.

9 CHAIRMAN D. CRUEA: Let's go ahead with this
10 continuance.

11 MS. P. POTESTA: Co-Director Valentine had
12 some comments on this committee.

13 CHAIRMAN D. CRUEA: Okay.

14 MR. S. VALENTINE: Mr. Chairman, I spoke with
15 the chairman of the 5th -- the 5th Democratic
16 Party. I -- I asked for a continuance last time as
17 the commission was hearing a lot of these and there
18 was testimony that several committees hadn't filed
19 at the county level and so we were -- we were
20 waiving those fines in those cases. I was of the
21 opinion that in a conversation with Mr.
22 (indiscernible) that that happened to be the case,
23 that he filed locally on record and took the time
24 to check that matter, (indiscernible). I checked
25 Mr. (indiscernible). He -- so he -- he admits that

1 that was not filed timely and will take any such
2 action.

3 CHAIRMAN D. CRUEA: Okay. Is there anyone
4 here to testify on this -- don't assume not since
5 no one is supporting it. Okay, then I'm going to
6 close the hearing on cause No. 02-4278-81. Just
7 for our new commission member's information, I'll
8 explain what our past practices has been on
9 committees who are late in filing their campaign
10 finance forms.

11 Normally what we do, except in extenuating
12 circumstances, on the very first time, if they've
13 never been before this committee before, we only
14 fine them 25 percent of the proposed fine plus the
15 mailing costs. The second time they're in here,
16 50 percent. The third time they're in here, it's
17 75 percent. And if they're in here after that,
18 then they get the full penalty, is what we've
19 normally done in the past, for your information,
20 okay.

21 So I'll make a motion on this one that we
22 follow our past practices and reduce the fine to
23 25 percent to be \$50 and mailing cost of \$3.94.

24 COMMISSION MEMBER B. MORGAN: Second.

25 VICE CHAIR A. LONG: Second.

1 CHAIRMAN D. CRUEA: Any discussion?

2 (No response.)

3 CHAIRMAN D. CRUEA: All those in favor,
4 signify by saying aye?

5 THE COMMISSION: Aye.

6 CHAIRMAN D. CRUEA: Opposed?

7 (No response.)

8 CHAIRMAN D. CRUEA: Okay. Now let's do our
9 approval of orders.

10 MS. P. POTEITA: Mr. Chairman and Members of
11 the Commission, these are orders that
12 (indiscernible) at previous meetings and they're
13 ready for your approval. It's 2002-83 through
14 2002-132, and they're not -- I didn't put them in
15 your binder because they were lengthy, and if you
16 would like to look at them, I've got them all here.

17 VICE CHAIR A. LONG: These weren't mailed?
18 You didn't mail these out?

19 MS. P. POTEITA: No, I didn't mail these out.

20 CHAIRMAN D. CRUEA: These are the ones we
21 voted on last meeting?

22 MS. P. POTEITA: Yes.

23 VICE CHAIR A. LONG: It's just a motion to
24 approve the orders as submitted, that's my motion?

25 CHAIRMAN D. CRUEA: Okay. I'll second that.

1 Any discussion?

2 (No response.)

3 CHAIRMAN D. CRUEA: All those in favor,
4 signify by saying aye?

5 THE COMMISSION: Aye.

6 CHAIRMAN D. CRUEA: Opposed?

7 (No response.)

8 CHAIRMAN D. CRUEA: Okay. We've already done
9 B, so C, status report.

10 MS. P. POTEITA: Mr. Chairman, since our last
11 commission meeting, Michelle Thompson and I have
12 sent out 40 letters that were approved by the
13 commission to various committees that we found
14 excess corporate and labor organization
15 contributions.

16 So far we have received either by telephone or
17 mail through funds from those committees -- they've
18 have been cooperative, and at this time most of
19 them are from Indiana courts and (indiscernible).

20 CHAIRMAN D. CRUEA: Okay. Great. Thank you.
21 Anything else? Any questions for the Finance
22 Enforcement Division?

23 (No response.)

24 CHAIRMAN D. CRUEA: Okay. Thank you very
25 much. Now we're ready to go into voting systems.

1 Mr. King, Mr. Valentine?

2 MR. B. KING: Mr. Chairman, I think in your
3 packets under the voting systems tab and memo, that
4 it sets forth each of the voting systems that are
5 before the commission for its consideration today,
6 most of which are for approval of either upgrades
7 or new certifications in voting systems.

8 The first item on that -- the August 27th memo
9 is with regard to MicroVote Infinity DRE Voting
10 System, Model VP-1 Firmware Version 2.06. And as
11 the memo notes this is a firmware upgrade for a
12 previously approved system.

13 In February of this year the Commission
14 approved the Infinity 2.06. MicroVote has
15 submitted an application for the upgrade to 2.06.
16 We know that the application materials had been
17 incorporated with June 27th meeting. I'll call
18 your attention, if I could, to the status of C,
19 escrow, and that is each of the voting systems
20 before the commission today, we've requested
21 documentation of an escrow by the escrow agent.

22 I have not received it for 2.06. That's the
23 date. I don't know whether there's a
24 representative from MicroVote here who may be able
25 to address that development. I'll just call your

1 attention to the second page to say that upgrade
2 had been submitted to Wyle Laboratories, the
3 testing authority. We have that documentation in
4 previous minutes. Co-Director Valentine (end of
5 tape.)

6 MR. D. SIMMONS: The statutes describe the
7 general process -- I'm going to try to simplify it
8 here of the vendors submitting application and for
9 systems of this time -- of this type, they have to
10 be or comply with certain standards because Indiana
11 has adopted their own election commission voluntary
12 standards reporting system.

13 They have to comply with those standards.
14 Those vendors submit their systems to independent
15 testing authorities to test the hardware. One
16 vendor can test, or one independent testing
17 authority to test the hardware and grants
18 compliance with those standards and another
19 independent testing authority to review the
20 software for compliance with those standards and
21 then they report back.

22 And then another part of the process, of
23 course, is to escrow the software with a escrow
24 agent. So it could be accessible in the case
25 of -- let's say a company goes out of business,

1 goes bankrupt for whatever reason described in the
2 escrow agreement that that -- we need access, or in
3 the case a county that has purchased that system
4 needs access to that software, but I'm not sure if
5 that answers your question as to -- I think you're
6 asking something as an issue that's required to
7 look at software code and look at that and apply
8 their expertise -- I don't think that's been the
9 practice, and we rely pretty much on the
10 independent testing authorities to -- to review
11 that and report to us about that system.

12 CHAIRMAN D. CRUEA: Okay. Is there anyone
13 here on this one?

14 MR. S. SHAMO: Yeah.

15 CHAIRMAN D. CRUEA: Okay.

16 MR. S. SHAMO: Steve Shamo.

17 CHAIRMAN D. CRUEA: You want to address some
18 of the questions I guess, or you want to answer
19 the -- about the escrow?

20 MR. S. SHAMO: Yes. (Indiscernible) and Brad
21 can jump him because he and the president of the
22 company have had some discussions about this that I
23 haven't been privy to (indiscernible).

24 The escrow on the Infinity hasn't even been
25 initiated on the -- on the floor because at one

1 point prior we never submitted firmware to escrow
2 on any voting system. Is the -- looking at it from
3 the previous escrow certification, I think the
4 confusion is just a coincidence and the merits in
5 that, the escrow that -- the product that is
6 escrowed for the Infinity system is as the form
7 required or as your application required, the
8 executable image source code of the operating
9 software and that is version 2.0.0, or 2.0.4, and
10 that is the MEMS software package. Now the
11 firmware is a totally different entity and that's
12 why I'm understanding this at this point again, I'm
13 coming in kind of through a conversation without
14 (indiscernible). 2.04 which is a version of
15 firmware which is a resident software panel has
16 never been escrowed.

17 CHAIRMAN D. CRUEA: Mr. King.

18 MR. B. KING: Mr. Chairman and Commission
19 Members, let me just take a moment to reconstruct
20 here. When Mr. Valentine and I were putting
21 together this memo, I contacted each of the vendors
22 that had outstanding documentation that was needed.

23 I believe on August 26th, I spoke to Mr. Shamo
24 and raised the question of escrow for 2.06 and he
25 did express a question at that time as to whether

1 or not the 2.06 would need to be escrowed, but I
2 indicated to him my -- my belief that on the agenda
3 later for there meeting, there are vendors who have
4 escrowed firmware and that we expected that to
5 occur.

6 On the 27th of August, the day this memo went
7 out, I did speak with Jim Ries, Jr. of MicroVote
8 who told me that yes, he would be getting me
9 documentation regarding the escrow of 2.06 so I
10 assumed it was no longer an issue at that point.

11 I did not, however, receive any documentation
12 concerning 2.06, merely some documentation
13 concerning 2.04 as part of your packet.

14 VICE CHAIR A. LONG: Are we going to deal with
15 2.04 later?

16 MR. B. KING: Mr. Chairman -- actually, Mr.
17 Commissioner, the 2.04 was previously approved in
18 February for MicroVote, so no, it's not on the
19 agenda for this meeting.

20 VICE CHAIR A. LONG: And they've not provided
21 an escrow of that?

22 MR. B. KING: They have not for 2.06, that's
23 correct.

24 VICE CHAIR A. LONG: .04, 2.04, is it
25 escrowed?

1 MR. B. KING: The documentation I had
2 indicated an escrow of 2.04, if I understood it
3 correctly.

4 MR. S. SHAMO: It's two different files, two
5 different softwares. 2.0.4 is the version that
6 would be MEMS software which is the programming
7 software for the Infinity. 2.04 is a different
8 2.04. That is the firmware, the resident software,
9 and it can handle itself, and that was not part of
10 the original certification based on the fact that
11 we've never had firmware (indiscernible) system.

12 It goes back to I believe the (indiscernible)
13 days with (indiscernible) essentially that an
14 encrypted code anyhow which is (indiscernible), and
15 we (indiscernible) product that is escrowed, this
16 product to sustain the system and the fact
17 (indiscernible).

18 MR. S. VALENTINE: Mr. Chairman?

19 CHAIRMAN D. CRUEA: Uh-huh.

20 MR. S. VALENTINE: My understanding and legal
21 counsel may offer -- try to offer something else,
22 but my understanding from discussion with Brad was
23 that there was communication with Mr. Ries and
24 there was a promise of an escrow agreement and that
25 was the basis for our recommendation.

1 MR. B. KING: That is correct, Mr. Chairman.

2 MR. S. VALENTINE: Again, (indiscernible).

3 COMMISSION MEMBER B. MORGAN: Did he make it
4 clear, Claudia?

5 COMMISSION MEMBER C. CUMMINGS: Why would you
6 have a source code of something that's encrypted?

7 CHAIRMAN D. CRUEA: Then I would then that
8 your recommendation now would be that we would
9 table this until there is an escrow.

10 MR. S. SHAMO: Actually, the recommendation is
11 unchanged, (indiscernible).

12 CHAIRMAN D. CRUEA: Because your
13 recommendation, yes, is that we have it by the
14 meeting today and we do not have it so...

15 MR. S. SHAMO: My question would be on the
16 application itself, whether there's anyone that's
17 approved firmware? We're talking about two
18 different things here. We're talking about
19 executable image source code, the source code of
20 the programming software on previous
21 certifications, even before (indiscernible), what
22 had been escrowed was the MEMS product and nothing
23 in review of the firmware (indiscernible).

24 CHAIRMAN D. CRUEA: Mr. King.

25 MR. B. KING: Mr. Chairman, I think

1 commissioner, or rather, Co-Director Valentine and
2 I made every effort to get this information from
3 each of the vendors that are on the agenda today
4 and we did not feel comfortable recommending the
5 commission go forward approving the new system,
6 hardware, firmware, software unless the
7 documentation had been provided.

8 If either -- if any representative from
9 MicroVote had provided a written submission or
10 something to that effect to clarify discussions
11 would have been -- we would have felt more
12 comfortable proceeding, but I don't think either of
13 us feel comfortable recommending proceeding at this
14 point.

15 MR. S. SHAMO: Mr. Chair. I concur that
16 we've -- with all these -- all of these have been
17 contacted prior and given the opportunity to
18 provide this information and (indiscernible).

19 VICE CHAIR A. LONG: I got a motion.

20 CHAIRMAN D. CRUEA: Yep.

21 VICE CHAIR A. LONG: I move we table this
22 matter until this -- I guess until the next meeting
23 or presumably they'll -- I guess that's what
24 you -- under the rules or whatever you have to do,
25 table it to a specific, I move we table it til the

1 next meeting.

2 COMMISSION MEMBER B. MORGAN: Second.

3 CHAIRMAN D. CRUEA: I'll second that. Any
4 discussion?

5 (No response.)

6 CHAIRMAN D. CRUEA: All those in favor of
7 tabling it, signify by saying aye?

8 THE COMMISSION: Aye.

9 CHAIRMAN D. CRUEA: Opposed?

10 (No response.)

11 CHAIRMAN D. CRUEA: Okay. No. 2 the MicroVote
12 MEMS software upgrade from Version 7.3 to Version
13 7.5.

14 MR. B. KING: Mr. Chairman, this is On page 2
15 of the memo. This is a little bit different than
16 the other items regarding voting systems that are
17 presented to the commission today. As the status
18 indicate, this is a request from MicroVote
19 Corporation for an emergency voting system change
20 under the cited statute to correct programming
21 errors and previously certified software.

22 As I note here, subject to certain
23 documentation which have been provided by
24 MicroVote, an emergency voting system change may be
25 approved by the election division without prior

1 official action by this body.

2 The statute was originally enacted some years
3 ago to deal with situations where a machine might,
4 or a system have a programming error identified in
5 the period shortly before an election day where it
6 was important to fix it. Not necessarily practical
7 to have a formal preapproval process.

8 With regard to the application, I would note
9 that the documentation was submitted in June, but
10 because this is not an application for a voting
11 system certification, there is not a fee required
12 or paid. A copy of the information submitted by
13 MicroVote is available. My records indicate that
14 MicroVote submitted a copy of its escrow with
15 Brambles with regard to the software and source
16 code for this upgrade and we were advised by
17 MicroVote that they were working with Recall Total
18 Management which is the name of their escrow agent
19 and that MicroVote anticipated that this escrow
20 would be completed by today. I'm sure the panel
21 will have some information on that.

22 I took some time, I won't go through it all
23 here, but just to call your attention with regard
24 to the independent testing authority provisions.

25 The MicroVote 464 DRE software was originally

1 certified by this body in 1997 with Software
2 Version 6.4.

3 Certification for the MV464 system expires at
4 the end of this month and there is some additional
5 business coming before the commission on that
6 system today, but with regard to the software,
7 there was an upgrade approved by the commission in
8 '99, from 6.4 to 7.3, which was to correct the Y2K
9 programming error.

10 I know that the state law doesn't require an
11 emergency voting system change be submitted to an
12 ITA and MicroVote has not done so with regard to
13 the proposed voting system change which would
14 install MEMS software version 7.5.

15 I would just note the final bullet on Page 3
16 that MicroVote has advised the co-directors that
17 MEMS software will be replaced eventually on the
18 MV464 models with the software EMS to be used on
19 the Infinity DRE that we just discussed.

20 On Page 4, I call your attention to the
21 recommendation of the co-directors which is subject
22 to MicroVote completing the escrow requirement
23 described above no later than the September 5th
24 commission meeting.

25 The co-directors requests that the commission

1 find that the interest of the voters would be best
2 served in this matter by the election division's
3 approval of the emergency voting system change
4 requested by MicroVote after the co-directors
5 certify their compliance with the documentation
6 requirements.

7 And secondly, that the commission direct that
8 MicroVote make these changes in all counties using
9 the MV 464 DRE voting system before the
10 November 2002 general election, with the
11 understanding that the correction to this software
12 does not extend the certification of MV464 with
13 MEMS, and I'd defer to Mr. Shamo to discuss the
14 ticker errors that would be corrected by this
15 emergency voting system change and its impact in
16 particular counties that have experienced this
17 problem.

18 MR. S. SHAMO: This is still on the floor,
19 saying basically the programming error that exists
20 in the software has affected three different
21 counties; primarily, (indiscernible) and there's
22 Hamilton and Allen counties, in that -- when --
23 there is a module in it to edit registered voter
24 totals. This has been (indiscernible).
25 (Indiscernible) received calls (indiscernible).

1 You go in and edit registered voter totals,
2 there's a separate file classification that
3 basically marches you through each file or each
4 file record for that precinct which contains
5 information regarding which ballot style was
6 associated with that precinct and machine number.

7 It's a bypass to the precinct file, in that it
8 goes through and allows you to just kind of number
9 all the way through the precincts. Now the error
10 that can occur if you get -- let's say you have 230
11 precincts and you edit all of the registered voter
12 total, then you come back and (indiscernible).

13 You went through to Precinct 67, made the
14 correction and reported it and then left that menu
15 up without completing -- basically hitting enter
16 and recording each of the subsequent ones one more
17 time. Well, what happens is that precinct
18 duplicates itself at the bottom of your precinct
19 (indiscernible) and you can see what that -- it
20 will essentially add that total to the bottom of
21 the election file marked the precincts.

22 It could go without (indiscernible) and it's
23 already election day. You already have your
24 machines out in the field (indiscernible) recording
25 all of your precinct records (indiscernible).

1 CHAIRMAN D. CRUEA: On this one I have
2 received calls from some of the county clerks on it
3 that said they needed this, but again, you've got
4 the problem, I guess with the escrow.

5 MR. S. SHAMO: And the escrow, on
6 that -- that's something that should have been
7 already faxed and emailed to you from Recall. I
8 have -- I have a copy of the submission form that
9 we sent on 8/21 to Monica Roscelli, that's her
10 office, and that's where it stands right now. You
11 know, I know that's been faxed to you for signature
12 on that end.

13 MR. B. KING: Mr. Chairman?

14 CHAIRMAN D. CRUEA: Uh-huh.

15 MR. B. KING: No, I was told in my
16 conversations with MicroVote that there would be a
17 document coming but I have not received it.

18 MR. S. SHAMO: Well, you (indiscernible) any
19 time.

20 MR. S. VALENTINE: I have not, and that was
21 also (indiscernible).

22 CHAIRMAN D. CRUEA: So does this change your
23 recommendation on this one?

24 MR. B. KING: Mr. Chairman, if I can speak and
25 perhaps Co-Director Valentine may have some other

1 thoughts. This is a little different, in that
2 strictly speaking we're not recommending to the
3 commission vote to approve this emergency voting
4 system change. We're bringing it forward because
5 at past commission meetings, members had expressed
6 concerns regarding particular problems that have
7 been recorded that are being corrected by this
8 proposed emergency voting system change.

9 Therefore, I think my -- my recommendation
10 would be that yes, we did, but before asking the
11 commission to take any action, require that that
12 escrow be received and documented, and again, we've
13 worked with every vendor on the agenda today to try
14 to get those documents before now.

15 That being said, if it's the sense of the
16 commission that the interest of the voters will be
17 best served by the election division's approval, I
18 would be willing as a co-director to approve that
19 subsequent to this meeting but only upon the
20 receipt of the required escrow, and I don't know if
21 Mr. Valentine has additional thoughts in this
22 regard.

23 MR. S. VALENTINE: Mr. Chairman, on the one
24 hand, we do have responsibility to try to
25 keep -- treat all vendors equally, and so -- and so

1 I'm much inclined to keep the recommendation as it
2 is pending the (indiscernible) but I -- the fact
3 that we're talking about systems in use
4 (indiscernible) voters in this matter -- if it's
5 the will of the commission, I guess I would like to
6 make a recommendation if we knew of a scheduling of
7 a meeting before the election, before this upcoming
8 election.

9 UNIDENTIFIED SPEAKER: Try and have it
10 installed.

11 MR. S. VALENTINE: Try and have it installed,
12 absolutely.

13 CHAIRMAN D. CRUEA: And we probably won't have
14 one until after the campaign finding -- finance
15 filing in October. What if, because I know this is
16 a problem with some counties, what if the
17 stipulation on the motion was that it is only
18 approved provided the escrow is turned in by
19 September 15th, and if we don't have it, then it's
20 null and void. would you vote --

21 MR. S. VALENTINE: Yes, I think -- originally,
22 I think the motion that states that originally.

23 CHAIRMAN D. CRUEA: Since this is a system
24 that's already...

25 MR. S. VALENTINE: If that's the Commission's

1 will (indiscernible).

2 CHAIRMAN D. CRUEA: Okay.

3 MR. S. SHAMO: I would be inclined with that
4 recommendation. I would also be -- I'd also be
5 inclined to date and time.

6 CHAIRMAN D. CRUEA: Okay. I would be inclined
7 to favor that but I don't know about the other
8 members.

9 VICE CHAIR A. LONG: Make the motion, I'll
10 second it.

11 CHAIRMAN D. CRUEA: Okay. I'll make a motion
12 that on the MicroVote MEMS software upgrade from
13 version 7.3 to version 7.5 that it be approved
14 provided that the escrow is turned into the Indiana
15 Election Commission co-directors by 12:00 noon on
16 September the 15th.

17 VICE CHAIR A. LONG: Can we say a satisfactory
18 escrow agreement?

19 CHAIRMAN D. CRUEA: I will amend that to
20 satisfactory escrow agreement.

21 VICE CHAIR A. LONG: I'll second that.

22 CHAIRMAN D. CRUEA: Any discussion?

23 COMMISSION MEMBER C. CUMMINGS: Mr. Chairman,
24 first of all, my question is you said the
25 emergencies are typically used just prior to

1 election, is that particularly when this provision
2 is used for the emergency change?

3 MR. B. KING: Mr. Chairman?

4 CHAIRMAN D. CRUEA: Uh-huh.

5 MR. B. KING: Madam Commissioner, the
6 reference I made was for the rationale for the
7 statute. There have only been a handful what I
8 call last minute or pre-election voting systems
9 changes that I can recall in the last dozen years
10 and so it's not a typical situation. I was just
11 merely commenting that the statute was designed to
12 address a potential need of risk management more
13 than anything else.

14 COMMISSION MEMBER C. CUMMINGS: Okay. And I
15 guess, Mr. Chairman, is it...

16 MR. S. SHAMO: Shamo.

17 COMMISSION MEMBER C. CUMMINGS: Oh, Shamo. I
18 do have a couple of questions about what exactly
19 I've heard through the grapevine, so please correct
20 the grapevine if it's wrong, but there were some
21 significant problems in Monroe County resulting
22 from the installation of this particular piece of
23 software in the 2000 election prior to the actual
24 machine being upgraded to accept it. Is that at
25 all correct, the grapevine?

1 MR. S. SHAMO: No, but I understand what
2 (indiscernible) come from.

3 COMMISSION MEMBER C. CUMMINGS: Okay.

4 MR. S. SHAMO: At least in a letter to the
5 election commission, one -- where is
6 that -- (indiscernible), and it was in reference
7 not disclosing that it's coming up for
8 recertification or recertify. That was Version 7.4
9 (indiscernible), and essentially, as the letter
10 describes, as we went down (indiscernible) Monroe
11 County, what happened in that instance was the
12 control on software leaks in this state has really
13 been pretty simple up and until this point in time.

14 In fact, if it wasn't for the Y2K situation,
15 we'd still be on 6.4 -- we wouldn't be here today,
16 and so essentially when the version -- Y2K version
17 came out, at that point we started making changes
18 throughout the whole country on our software. We
19 stopped at 7.3 in Indiana.

20 Well, as soft development goes, they go
21 Version 7.4, 7.5, and within each of those points
22 there might be an alpha numeric identification
23 (indiscernible) for each (indiscernible) change.
24 And then you (indiscernible) where you can pop up
25 and can say okay, we have a (indiscernible) to

1 benefit all of our states, but 7.4E stage was
2 extensionally an experimental modular that was
3 taking place, which was never scheduled for release
4 and that's why the E flat lined on the 7.4.

5 What happened was you have a laptop computer
6 that was used for testing, and one of the reps
7 (indiscernible) was in charge of that testing so
8 we've gone down to Monroe County just prior to the
9 presidential election demonstrating internet
10 presentation to me -- it was an automatic
11 presentation of that, and at that point, what you
12 would have chosen on the computer was to copy some
13 executables for the internet presentation.

14 Well, in error, we copied executable for the
15 actual software itself was changed -- their Version
16 7.3 to 7.4.

17 COMMISSION MEMBER C. CUMMINGS: Okay.

18 MR. S. SHAMO: And so at that point all
19 election matters (indiscernible).

20 COMMISSION MEMBER C. CUMMINGS: Now I get
21 (indiscernible) versions. So it was 7.4E of the
22 same software we're talking about 7.54 today?

23 MR. S. SHAMO: Uh-huh.

24 COMMISSION MEMBER C. CUMMINGS: But 7.4E was
25 never installed in Indiana?

1 MR. S. SHAMO: No.

2 COMMISSION MEMBER C. CUMMINGS: Okay. So that
3 was where the error never -- or never approved in
4 Indiana and it was a demonstration. Thank you for
5 clarifying that. And then -- so how long have we
6 been aware of the problems with 7.3 regarding the
7 precincts and the voter registration polls and so
8 forth?

9 MR. S. SHAMO: Since -- that's a good
10 question. I think it first came up in Allen
11 County, if I remember correctly, the primary of
12 2000. That's (indiscernible).

13 COMMISSION MEMBER C. CUMMINGS: Okay.

14 MR. S. SHAMO: And again, it showed up in
15 Hamilton County, I believe, in this past election.
16 But there was a situation where they caught it and
17 corrected it, and of course in Hendricks County, it
18 created this extra file, they caught it and
19 preventing it because after the primary election,
20 once we realized that the procedures for
21 recertification weren't (indiscernible) avenue, per
22 the ITA descriptions, then we had to release a
23 letter to all of our customers and say hey,
24 basically don't do this, even -- even with the
25 attempt to notify people that use the stuff six