

Indiana Election Commission
Minutes
March 23, 2007

Members Present: Thomas E. Wheeler, II, Chairman of the Indiana Election Commission ("Commission"); S. Anthony Long, Vice Chairman of the Commission; Robert Vane, proxy for Daniel A. Dumezich, Commission member; Samuel Durheimer, proxy for Sarah Steele Riordan.

Members Absent: Daniel A. Dumezich; Sarah Steele Riordan

Staff Attending: Mr. Gordon White, Deputy Attorney General, Attorney for the Commission; J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Pamela Potesta, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division.

Also Attending: Mr. John R. Price, Attorney for Respondent MicroVote General Corporation; The Honorable Penny Bogan, Boone County Circuit Court Clerk; Andrew Wood.

1. Call to Order

The Chair called the March 23, 2007 meeting of the Commission to order at 2:00 p.m. in the Indiana Government Center South Conference Center Room 18, 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 Rhonda J. Hobbs of Connor 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:

- Page 3, line 20, replace "proxys" with "proxies".
- Page 5, line 11, replace "proxys" with "proxies".
- Page 6, line 19, replace "?" with ".".
- Page 11, line 4, replace "is" with "are".
- Page 32, line 19, replace "node" with "need".
- Page 51, line 11, replace "Warren" with "Warrick".
- Page 58, line 25, delete "if".

Page 58, line 26, replace "so" with "ipso".

Page 82, line 24, replace "contending" with "intending".

Page 92, line 4, replace "mike" with "mic".

Page 97, line 17, replace "super response to" with "super responsible".

3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Mr. Long moved, seconded by Mr. Vane, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Wheeler, Mr. Long, Mr. Vane, and Mr. Durheimer), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 4:00 p.m.

Respectfully submitted,

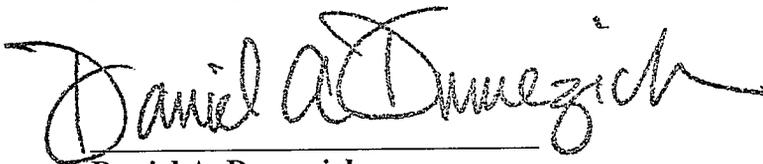


Trent Deckard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

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BEFORE THE
INDIANA ELECTION COMMISSION

IN THE MATTER OF MICRO VOTE)
GENERAL CORPORATION)

Date: March 23, 2007

At: Indiana Government Center South
402 West Washington Street
Indianapolis, Indiana 46204

A STENOGRAPHIC RECORD BY:
Rhonda J. Hobbs, RPR
Notary Public
Stenographic Reporter

Connor + Associates, Inc.
1650 One American Square
Indianapolis, IN 46282
(317) 236-6022

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FOR THE RESPONDENT(S):

Mr. John R. Price
PRICE OWEN
9000 Keystone Crossing
Suite 150
Indianapolis, Indiana 46240

INDIANA ELECTION COMMISSION

Mr. Gordon White - Commission's Attorney
Mr. Thomas E. Wheeler, II (Chairman)
Commissioner S. Anthony Long
Mr. Robert Vane (Proxy for Commissioner
Daniel A. Dumezich)
Mr. Samuel Durheimer (Proxy for Commissioner
Sarah Steele Riordan)

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1 CHAIRMAN T. WHEELER: First of all, I'd
2 like to apologize, at least on behalf of myself,
3 I had a hearing, and that's the reason I moved
4 the meeting from 1:00 to 2:00, and then
5 unfortunately, (indiscernible) probably some of

6 the reasons -- Tony had -- traveling is a little
7 bit difficult with the weather.

8 I'm going to go ahead and call the meeting
9 to order. I have Tony Long on my right, and we
10 have two proxys; could you introduce yourselves?

11 MR. S. DURHEIMER: My name is Samuel
12 Durheimer.

13 CHAIRMAN T. WHEELER: And you're sitting in
14 for Sarah; correct?

15 MR. S. DURHEIMER: Yes.

16 MR. R. VANE: My name is Robert Vane. I'm
17 here for Dan Dumezich.

18 CHAIRMAN T. WHEELER: Great. All right.

19 MR. B. KING: And excuse me, Mr. Chairman,
20 just note for the record the proxys for both
21 individuals have been filed.

22 COMMISSIONER A. LONG: Could you spell your
23 principal's name for us for the record?

24 CHAIRMAN T. WHEELER: This meeting has
25 properly been noticed and we are meeting in

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1 Conference Room 18 of the Government Center
2 South. Now we have an agenda right now. The
3 first item on our agenda is a presentation of
4 the complaint of the violation of the election
5 laws, Cause No. 2007-01. Who's going to be
6 presenting on that -- all right.

7 And then I note also sitting with the
8 Commission right now is a representative from
9 the attorney general's office. Gordon, could

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you introduce yourself.

MR. G. WHITE: Yes. My name is Gordon White. I'm the deputy attorney general advising the Commission today.

CHAIRMAN T. WHEELER: And it's my understanding that Gordon will be advising the Commission, specifically, with respect to Cause No. 2007-01. With respect to the remaining information that we'll be discussing, we'll be advised by our two legal counsel on both sides, as well as the two directors. From the Division, who's going to be presenting the complaint?

MR. B. KING: Mr. Chairman, we'd like to begin with Dale Simmons, co-general counsel, and then if it's the desire of the Commission, we're

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prepared to -- to read the count in the record and make individual presentations by the remaining three of us.

CHAIRMAN T. WHEELER: Please.

MR. B. KING: Dale.

MR. D. SIMMONS: Mr. Chairman, Members of the Commission, we thought it might be helpful to give sort of a background of what led up to today, not only for the benefit of certainly members who have served continuously, but our -- for our proxys. So with your permission, I'll -- I'll go ahead and just give a short brief summary of that.

14 I would say this started on April 19, 2006
15 at the commission meeting there. Certainly, the
16 Chairman and Vice Chairman recall that there was
17 testimony at that meeting by Micro Vote
18 representatives who were at that time seeking to
19 have approved an upgrade of their voting system,
20 the Micro Vote Infinity, and at that meeting, it
21 was learned -- there was testimony that prior --
22 prior to that being certified by the Commission,
23 it was -- actually had been installed in the
24 counties.

25 Now after that particular meeting, April

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1 28th, 2006, the Commission went ahead and met
2 again and approved the Micro Vote Infinity from
3 Hardware/Software Versions 2.04 to -- to new
4 versions, Infinity Firmware Version 3.07 and
5 their Election Management Version 3.1, and that
6 was approved at that meeting on April 28th, 2006
7 before the primary in May of '06.

8 Then immediately after the primary, the
9 Commission met on May 5th, 2006, and at that
10 meeting they determined pursuant to a state
11 statute, 3-6-4.1-21, Subsection B, that there
12 was substantial reason to believe that election
13 law violation had occurred and then the
14 Commission directed the co-directors of the
15 Election Division to initiate an investigation.

16 Then fast forward to the Commission's last
17 meeting, January 31st, 2007, and the Commission

18 at that time inquired as to the status of the
19 investigation? Members of the staff indicated
20 that it was their sort of judgment that
21 sufficient documentation existed to draft and
22 present to the co-directors a draft complaint
23 alleging election law violations.

24 There was also some discussion about the
25 roles of the Election Division and the Election

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1 Commission, if such complaint was drafted and
2 presented to the Commission, which led to the
3 request and decision to seek counsel, Mr. White,
4 Gordon White, to assist the Commission in their
5 role in this matter.

6 The Election Division did draft a
7 complaint. We did have discussion about whether
8 that draft should be immediately provided as
9 soon as possible to Micro Vote and we did so
10 after the initial draft was prepared. We served
11 that along with a notice of proceeding to Micro
12 Vote. The notice of proceeding advised Micro
13 Vote of our intent to present the draft
14 complaint, advised of the time, place and date
15 of today's meeting, the initial notice of 1:00
16 p.m.

17 That was served by the State Police
18 March 15th, by leaving a copy of that, and we do
19 have a return of service we will tender on that.
20 We did serve that as well upon Micro Vote by UPS
21 overnight, and since we knew Micro Vote had

22 counsel in other matters, we served a copy of
23 that on Mr. Price, Micro Vote's counsel as well.

24 CHAIRMAN T. WHEELER: Dale, if I may?

25 MR. D. SIMMONS: Sure.

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1 CHAIRMAN T. WHEELER: The Commission
2 Members each have a small packet of documents
3 which is normally the practice for the
4 Commission with a variety of documents that are
5 on the agenda, not limited to this particular
6 hearing. In fact, there's a number of other
7 documents related to other agenda items.

8 within the agenda documents that we've
9 received, there's a notation, at least in the
10 packet that I have, immediately after the public
11 session notice and agenda, there's something
12 entitled, "First Notice of Proceeding;" is that
13 the notice of proceeding to which --

14 MR. D. SIMMONS: That is --

15 CHAIRMAN T. WHEELER: -- you refer?

16 MR. D. SIMMONS: That is the first notice
17 of proceeding. The second -- of one o'clock.
18 The second page of that notice is the return of
19 service as far as the notice. That was returned
20 to us after being served by State Police Officer
21 Christopher Mc Daniels indicating service by
22 leaving copy with Carol Blackwell.

23 CHAIRMAN T. WHEELER: Let me -- let me stop
24 there and make a notice that -- John, could you
25 introduce yourself?

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1 MR. J. PRICE: Certainly. My name is John
2 Price. I'm with Price Owen Law at 9000 Keystone
3 Crossing, Suite 150, Indianapolis, 46240. I'm
4 here today representing Micro Vote General
5 Corporation.

6 CHAIRMAN T. WHEELER: And Mr. Price, I
7 apologize for referring to you as John. You and
8 I've known each other for -- for quite some time
9 both on the same side of the table and
10 sometimes --

11 MR. J. PRICE: Well, that is my name so
12 that's okay.

13 CHAIRMAN T. WHEELER: Sometimes across the
14 table. Do you have any concern or reservations
15 with the notice that you received?

16 MR. J. PRICE: No. Actually, I've -- I've
17 been doing the law thing for several years and
18 I've never had a notice served four different
19 ways so I think they did it pretty well.

20 CHAIRMAN T. WHEELER: They got it covered,
21 all right. Go ahead, Dale.

22 COMMISSIONER A. LONG: Would it be
23 appropriate --

24 CHAIRMAN T. WHEELER: I'm sorry.

25 COMMISSIONER A. LONG: -- maybe at that

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1 point that the notices be received and entered
2 as a part of the record if there's no objection

3 to it.

4 MR. B. KING: We have no objection.

5 CHAIRMAN T. WHEELER: No objection, all
6 right.

7 COMMISSIONER A. LONG: Then I'll show that
8 as a motion that the notices be determined to be
9 properly served and entered as a part of the
10 record for this cause.

11 CHAIRMAN T. WHEELER: Do you have a second
12 on the motion?

13 MR. S. DURHEIMER: I second it.

14 CHAIRMAN T. WHEELER: The motion's been
15 made and seconded. Any further discussion?

16 (No response from the Commission.)

17 CHAIRMAN T. WHEELER: All in favor, signify
18 by saying Aye?

19 THE COMMISSION: Aye.

20 CHAIRMAN T. WHEELER: Those opposed, same
21 sign?

22 (No response from the Commission.)

23 CHAIRMAN T. WHEELER: Motion carries. I
24 vote the first and second notice in the board's
25 packet, and I assume, Dale, you have copies for

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1 the record as well?

2 MR. D. SIMMONS: Mr. Chairman, if it please
3 the Commission, I tender the original of these
4 return of services and there is additional
5 documents that I'm not sure that are in the
6 commission's packet on the service by UPS.

7 CHAIRMAN T. WHEELER: Okay. You've given
8 me a document that has two UPS slips, what I
9 would refer to as the first notice, and then a
10 complaint of violation of election laws totaling
11 five pages. I assume that would be Division's
12 Exhibit 1?

13 MR. D. SIMMONS: Yes.

14 CHAIRMAN T. WHEELER: Do you want to use
15 numbers, letters, whoever -- do we have any
16 exhibit markers, any exhibit stickers?

17 COMMISSIONER A. LONG: I'll just call it...

18 CHAIRMAN T. WHEELER: The Vice Chairman has
19 been kind enough to take us through --

20 COMMISSIONER A. LONG: I'll just write on
21 the first notice here as Exhibit 1, how's that?

22 CHAIRMAN T. WHEELER: Luckily -- it's lucky
23 to have an experienced trial attorney --

24 COMMISSIONER A. LONG: That is right.

25 CHAIRMAN T. WHEELER: Sitting next to me.

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1 COMMISSIONER A. LONG: Give that to our
2 counsel.

3 CHAIRMAN T. WHEELER: And then, Dale, as I
4 understand it, you also have the second notice
5 as well?

6 MR. D. SIMMONS: Yes.

7 CHAIRMAN T. WHEELER: Do you have a copy of
8 the second notice?

9 MR. D. SIMMONS: The second notice was the
10 result of the --

11 CHAIRMAN T. WHEELER: Let me -- let me stop
12 you there just to move along here.

13 MR. D. SIMMONS: Sure.

14 CHAIRMAN T. WHEELER: I believe you
15 stipulated that, and I think the Commission has
16 already admitted both the first and second
17 notices, and so if you have the second notice,
18 we can just accept that into evidence and pass
19 that along to Gordon.

20 MR. D. SIMMONS: It is part of the same
21 packet there, the second notice.

22 CHAIRMAN T. WHEELER: I did not see the --
23 is this the second notice -- maybe Gordon may
24 have seen it?

25 MR. G. WHITE: I do not see it.

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1 MR. B. KING: Yeah, it's not --

2 MR. J. PRICE: We'll stipulate we received
3 it.

4 CHAIRMAN T. WHEELER: I think you already
5 did actually, but I appreciate it.

6 COMMISSIONER A. LONG: That can be
7 substituted.

8 CHAIRMAN T. WHEELER: All right. We'll go
9 ahead and substitute that. The Commission's
10 already admitted others. If you'll give that to
11 the vice chairman, he will mark it and pass it
12 along.

13 COMMISSIONER A. LONG: I'll make that
14 Exhibit 2.

15 MR. D. SIMMONS: Let me make sure -- yeah.

16 MR. B. KING: And just briefly, Mr.
17 Chairman, that was a result of a meeting being
18 scheduled -- rescheduled from 1:00 p.m. to 2:00
19 p.m. on the same date.

20 CHAIRMAN T. WHEELER: And let me note that
21 was, again, at my request based upon my thing
22 which I was late for. Again, I apologize to
23 all -- all the members as well as the public.

24 MR. D. SIMMONS: Since that original
25 complaint was drafted, the Division did go back

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1 and make a number of changes for a revised
2 complaint to tender today, some of them to fix
3 typos, some of those changes involve other
4 things, and we're prepared to sort of discuss
5 that change.

6 CHAIRMAN T. WHEELER: All right. For
7 purposes of the record, the Commission Members
8 have a document, John, that is marked as
9 original complaint which actually has yellow
10 highlighting on it, and then what is called a
11 filed complaint immediately thereafter. I
12 assume the original complaint is the one -- it
13 looks like perhaps the dates 2005 were used in
14 place of 2006 on a number of occasions.

15 MR. D. SIMMONS: Yes, and I'm prepared to
16 discuss those and describe those changes in
17 detail or...

18 CHAIRMAN T. WHEELER: John, have you had an
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19 opportunity to see both the original and the
20 changed complaint?

21 MR. J. PRICE: We received the original
22 with the notice. Today is the first opportunity
23 that we've received what's been called here the
24 filed complaint, and of course, having just been
25 hand it today, we haven't had a chance to...

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1 CHAIRMAN T. WHEELER: I understand that,
2 and it's -- I'm going to have Gordon go through
3 briefly kind of what our -- our due process
4 procedures are under AOPA with this hearing once
5 we get through kind of an informal narrative
6 with Dale's presenting, which I think will be
7 relevant to the complaint, and allow you respond
8 to the complaint.

9 MR. J. PRICE: May I ask one question?

10 CHAIRMAN T. WHEELER: Please.

11 MR. J. PRICE: You refer to this as a
12 hearing. I -- I think under AOPA, it's probably
13 not a hearing.

14 CHAIRMAN T. WHEELER: Correct. It's a
15 commission meeting. I apologize.

16 MR. J. PRICE: We're not ready for a
17 hearing.

18 CHAIRMAN T. WHEELER: If you want to have a
19 hearing, we will.

20 MR. G. WHITE: Did it make you nervous, did
21 it?

22 MR. J. PRICE: Yeah.

23 MR. G. WHITE: With them, too, I think.

24 CHAIRMAN T. WHEELER: What I'd like to do,
25 Dale, before you engage in a formal presentation

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1 of the complaint, is I would like to flip over
2 to Gordon and have Gordon outline kind of what
3 our process is, what our procedure is here, and
4 clarify so I don't -- I don't misuse terms.

5 MR. G. WHITE: Okay. Well, as -- as some
6 of you may or may not know, I work a lot with
7 the different boards and commissions and work a
8 lot in the area of administrative law. However,
9 this is the first time I have worked -- worked
10 with you folks so I'm kind of an amateur, as far
11 as election law is concerned, but I'm somewhat
12 familiar with the process.

13 And this commission is -- is governed by
14 the AOPA so you'll generally be following the
15 same process. As Mr. Price pointed out, calling
16 today's proceeding a hearing is probably a
17 misnomer or is a misnomer, because as I
18 understand it, what the Commission is doing
19 today is taking a look at this complaint and
20 deciding whether or not it should be filed,
21 which would initiate, you know, proceedings
22 against Micro Vote.

23 I think at that stage of the game, the
24 Commission, you know, at its -- at its
25 discretion and perhaps at the request of the

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1 parties would consider, you know, having Micro
2 Vote file an answer, or you know, setting this
3 case down for a prehearing conference.

4 Also, one of the things you might want to
5 consider is how you want to conduct the hearing,
6 whether you want to appoint one member to be an
7 ALJ or hear the whole case as a group as an ALJ
8 and basically kind of go through the -- you
9 know, the process of deciding how you want to
10 proceed.

11 And I think that probably the threshold
12 question is whether or not you want to accept
13 this as your filed complaint to start this
14 proceeding off, and then what most of the boards
15 I work with, the real first question is how --
16 how many people are going to hear this case?

17 Because I know I'm working with a group
18 here, sometimes the whole group wants to hear
19 it, sometimes a portion of that group or one
20 person or appointing someone else, so that's
21 usually the first question to address, and then
22 pretrial matters like prehearing conferences and
23 things like that.

24 CHAIRMAN T. WHEELER: Gordon, with respect
25 to the process, do we need to make a decision on

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1 whether we're accepting the filed complaint
2 prior to those other decisions?

3 MR. G. WHITE: I would say yes, under your
4 own statute, which I have not memorized, but I
5 believe the Commission asked these folks conduct
6 an investigation, they have done so, charges are
7 being filed or a complaint is being filed and
8 then Micro Vote, of course, is entitled to a --
9 to a hearing after that.

10 So I think we're kind of at a stage here
11 where this draft has been presented to you, and
12 then the first question is whether or not you
13 accept it -- you know, is this going to be the
14 foundation for the administrative proceeding yet
15 to come?

16 CHAIRMAN T. WHEELER: When we decide to
17 accept, and I apologize for these questions, --

18 MR. G. WHITE: Oh, that's fine.

19 CHAIRMAN T. WHEELER: -- at least since
20 I've been on the Commission, and I -- I'm not
21 sure, Tony's been on the Commission an awful lot
22 longer than I have.

23 COMMISSIONER A. LONG: Oh, hold on. I
24 think that's an awful lot.

25 CHAIRMAN T. WHEELER: He certainly has some

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1 weight on the Commission. In my time on the
2 Commission we have not had any -- any hearings
3 like this. I don't know if you had any since
4 then?

5 COMMISSIONER A. LONG: No, we did not.

6 CHAIRMAN T. WHEELER: And Tony, you've

7 been -- you've been on the election commission
8 since?

9 COMMISSIONER A. LONG: A couple of years.

10 MR. B. KING: Since '97.

11 CHAIRMAN T. WHEELER: '97.

12 COMMISSIONER A. LONG: '97, ten years.

13 MR. B. KING: Yes, sir.

14 CHAIRMAN T. WHEELER: So he's got ten
15 years. So this is first hearing in ten years.

16 COMMISSIONER A. LONG: We ought to be
17 having a party and give me a watch.

18 CHAIRMAN T. WHEELER: I -- I apologize to
19 everybody for a being a bit evasive here and I
20 know John has an administrative practice, I have
21 an administrative practice involved, and I want
22 to make sure we do that we do this properly and
23 that's why we've invited the AG to advise us
24 through this process.

25 MR. G. WHITE: Well, that's quite all

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1 right. And of course, as Mr. Price has pointed
2 out, you know, his client is certainly entitled
3 to know exactly what it is -- is in play here,
4 and I think that's the first question, you know,
5 what -- you know, is this it -- I mean, is this
6 the complaint, and that's what these folks are
7 presenting to you. So I'd say that's the first
8 thing we address.

9 CHAIRMAN T. WHEELER: All right. In that
10 case, we'll let the Division go forward, and as

11 I understand it, we aren't making a
12 determination as to any -- we're not making, you
13 know, a probable cause determination or anything
14 like that.

15 We're simply asking the Division to
16 essentially say this is the complaint, these are
17 the allegations, which then gives Mr. Price an
18 opportunity -- so he's not shooting at a moving
19 target, he knows what the claims are?

20 MR. G. WHITE: Absolutely, and then -- I
21 won't do it now, but at some point I'll --
22 we'll chat about ex parte communications and
23 things like that, which I know isn't going to
24 happen, but that's what they paid me to come
25 down here and do, but we'll do that, too, but

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1 maybe we'll do that a little bit later.

2 COMMISSIONER A. LONG: I tell you we
3 have -- I think because you raised it at this
4 point, that's something we've zealously ordered
5 that we've tried not to discuss --

6 MR. G. WHITE: Terrific.

7 COMMISSIONER A. LONG: -- any of the --

8 MR. G. WHITE: Terrific.

9 COMMISSIONER A. LONG: -- substantive
10 issues with the Division personnel that -- other
11 than (indiscernible) meetings relating to what
12 we wanted them --

13 MR. G. WHITE: Schedule out.

14 COMMISSIONER A. LONG: -- to physically go

15 out and look into it and investigate it and make
16 their report and periodically have asked the
17 staff of that investigation but...

18 MR. G. WHITE: Very good. Very good.

19 COMMISSIONER A. LONG: I have one other
20 question, and this is more interest in time,
21 because I was late also, and I apologize to
22 everyone for that, I view this as like the
23 filing of a lawsuit in a civil proceeding, this
24 is the complaint and the -- and sort of akin to
25 how formally it's presented to whether or not

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1 Micro Vote wants it formally presented?

2 In criminal proceedings, the waiving of the
3 formal reading, and I guess the ultimate
4 question I have, and I think that if I were
5 representing Micro Vote, is to have the Division
6 say this is the complaint that we're satisfied
7 with and then we would like to proceed forward
8 on...

9 MR. G. WHITE: Right.

10 COMMISSIONER A. LONG: And if they wanted
11 it formally explained, no problem, but apart
12 from that, I think if the Division wants to file
13 it, then it becomes administrative to us to
14 acknowledge the filing, accept it, and then set
15 the procedures.

16 MR. G. WHITE: Right. Right. And I think
17 that's where we are today, yes.

18 CHAIRMAN T. WHEELER: I guess that puts the

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ball in your court.

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COMMISSIONER A. LONG: Do you want it formally presented or...

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CHAIRMAN T. WHEELER: Do you want them to go through it line by line?

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MR. J. PRICE: First of all, let's talk about what "it" is, is there two different

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complaints?

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COMMISSIONER A. LONG: The filed complaint.

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MR. J. PRICE: My understanding is that it's the filed complaint, the more recent one, which makes some typographical errors on dates, that sort of thing, but also there's a paragraph dropped, and apparently, some other changes. If the "it" that we're talking about is this document, which is in this folder, it's the filed complaint.

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CHAIRMAN T. WHEELER: And you -- you have a copy -- as I understand it, you have a copy of the same packet that the Commission Members have in front of them, and you're flipping to what is marked as filed complaint --

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MR. J. PRICE: Filed complaint.

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CHAIRMAN T. WHEELER: -- in my -- in my packet as well.

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COMMISSIONER A. LONG: That's what I'm -- that's where I am.

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CHAIRMAN T. WHEELER: Right.

MR. J. PRICE: So my understanding is

23 pursuant to AOPA that this complaint has been
24 brought to your commission by the agency known
25 as the Indiana Election Division, which is under

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1 the Indiana Secretary of State for your
2 consideration, and that the purpose of today's
3 hearing is to --

4 CHAIRMAN T. WHEELER: It's not a hearing.

5 MR. J. PRICE: Excuse me, sorry -- what am
6 I saying -- what am I saying?

7 MR. G. WHITE: He's been paying attention.

8 MR. J. PRICE: The purpose of today's
9 commission meeting is to formally, I think, take
10 a vote; right, Gordon, on several things?

11 MR. G. WHITE: That's -- that's my
12 understanding. That's kind of a combination of
13 the AOPA and the election law and sometimes
14 they're in sync and sometimes they're not in as
15 good as sync as I would like. That's -- that's
16 the way I see it, so that you'll know and you'll
17 know what the rules of the game are.

18 MR. J. PRICE: Right.

19 MR. G. WHITE: Of course, as time goes by,
20 there might be a need for an amendment of the
21 complaint or something like that, but we're just
22 really at the -- at the starting point.

23 MR. J. PRICE: Well, as I read Chapter 3-6
24 that applies to this commission, and then 4-21.5
25 which is AOPA, you're right. If you combine the

25

1 two, in order for the commission to proceed, you
2 basically have to take a vote as to whether you
3 are going to accept the complaint?

4 I guess it's not really analogous to
5 walking into a clerk and having the clerk stamp
6 it, but in a sense it is, because if the clerk
7 doesn't stamp it, then there's no complaint.

8 So if you accept this complaint, then I
9 think Gordon is correct, that that starts the
10 AOPA process, and when we get to that, there are
11 a number of things we'd like to discuss about
12 that just from a housekeeping viewpoint.

13 But if you're asking me, and I think it's
14 an appropriate question on behalf of -- as
15 counsel for Micro Vote, do we think you should
16 accept this, the answer, of course, is no, I
17 don't think you should, but if you...

18 COMMISSIONER A. LONG: That's not the
19 question.

20 CHAIRMAN T. WHEELER: That's not the
21 question.

22 MR. J. PRICE: But once you do accept it,
23 I -- I agree with you that that starts the
24 process.

25 COMMISSIONER A. LONG: My question is

26

1 simply, do you want us -- want them to basically
2 read it --

3 MR. J. PRICE: We waive the reading.

4 COMMISSIONER A. LONG: -- and formally --
5 and formally present it?

6 MR. J. PRICE: No, we waive the reading of
7 the -- of the filed complaint.

8 CHAIRMAN T. WHEELER: The document known as
9 the filed complaint, all right. Let me ask the
10 Division to go ahead and present the filed
11 complaint.

12 COMMISSIONER A. LONG: From the copies that
13 were originally filed.

14 MR. D. SIMMONS: Aside from the -- this is
15 the originally signed copy.

16 CHAIRMAN T. WHEELER: The originally signed
17 copy?

18 MR. D. SIMMONS: Yeah.

19 COMMISSIONER A. LONG: Do we have -- we
20 don't have a file marker down here, do we? I
21 think these documents -- this should be --

22 CHAIRMAN T. WHEELER: They should be.

23 COMMISSIONER A. LONG: For running of time,
24 should be file marked as it's presented -- I
25 mean, if it's accepted, it should be file

27

1 marked.

2 CHAIRMAN T. WHEELER: Correct. We will tab
3 that as Exhibit 3 right now.

4 COMMISSIONER A. LONG: I'll put that on --
5 well, I'll put it up here in the corner.

6 MR. B. KING: Excuse me, Mr. Chairman?

7 CHAIRMAN T. WHEELER: Yes.

8 MR. B. KING: The co-directors have
9 discussed this -- this file mark problem a
10 little earlier. We don't have a file stamp
11 machine like we do for Election Division
12 filings.

13 CHAIRMAN T. WHEELER: For the Commission?

14 MR. B. KING: So what we would do is we
15 would mark by hand, you know, filed with the
16 Election Commission and date and time.

17 COMMISSIONER A. LONG: Counsel, he can just
18 mark the file once it's -- well, I guess should
19 it be filed before we accept it or after it's
20 accepted or vote on acceptance -- I mean, what's
21 the process?

22 MR. G. WHITE: I don't think anybody knows.
23 Why don't you vote on it?

24 COMMISSIONER A. LONG: I would move that we
25 accept the tendered complaint that has been

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1 marked --

2 MR. G. WHITE: Exhibit 3.

3 COMMISSIONER A. LONG: -- Exhibit 3 for the
4 purpose of identification for the proceedings as
5 the complaint of the Election Division. If I
6 said -- I think -- did I say accept it, we
7 accept it as the filing.

8 MR. G. WHITE: Okay.

9 CHAIRMAN T. WHEELER: Do I have a second on
10 the motion?

11 MR. S. DURHEIMER: I second that.

12 CHAIRMAN T. WHEELER: The motion's been
13 made and seconded. Any further discussion?
14 (No response from the Commission.)
15 CHAIRMAN T. WHEELER: Hearing none, all in
16 favor, signify by saying Aye?
17 THE COMMISSION: Aye.
18 CHAIRMAN T. WHEELER: Those opposed, same
19 sign?
20 (No response from the Commission.)
21 CHAIRMAN T. WHEELER: Motion carries
22 unanimously. The complaint is accepted for
23 filing. Gordon, now that the complaint has been
24 accepted, what's the next step?
25 MR. G. WHITE: Well, I think as far as you

29

1 know what needs to be done here -- I mean,
2 actually physically done, I would say that that
3 is about it. Although, we need to discuss
4 process and I -- and I see that Mr. Price has
5 some notes there so I suspect that he would like
6 to -- to say a few things.

7 CHAIRMAN T. WHEELER: Unfortunately, it
8 looks voluminous.

9 MR. J. PRICE: Oh, and I've written it all
10 so it's hard to read it.

11 MR. G. WHITE: It is big handwriting so
12 maybe it's not that bad, but I think -- the
13 point is, you know, you've considered the
14 complaint, you've accepted it for filing,
15 we're -- we're ready to go, but I think that

16 that's all we were really prepared to do today,
17 just kind of announce the starting of all of
18 this.

19 CHAIRMAN T. WHEELER: Gordon, let me -- I
20 would like to address one thing --

21 MR. G. WHITE: Sure.

22 CHAIRMAN T. WHEELER: -- that you noted,
23 which is -- is a procedural matter, but I think
24 it's important for everyone to understand. With
25 respect to kind of the first item which is

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1 whether the Commission is going to hear this in
2 whole or appoint --

3 MR. G. WHITE: Yes.

4 CHAIRMAN T. WHEELER: -- or designate a
5 specific administrative law judge to hear it
6 similar to what, for example, the Civil Rights
7 Commission does, --

8 MR. G. WHITE: Yes. Yes.

9 CHAIRMAN T. WHEELER: -- there's an ALJ. I
10 sort of want to hear discussion from the
11 Commission Members as to which way they want to
12 go with it, the Commission as a whole hear this
13 or whether we'll designate an ALJ to hear this?

14 MR. G. WHITE: Well, I'll tell you what,
15 let me -- let me kind of go over the ground
16 rules because you know this -- this process may
17 be familiar to some of you and maybe not so much
18 to others but...

19 COMMISSIONER A. LONG: Not to me --

20 MR. G. WHITE: Okay.
21 COMMISSIONER A. LONG: -- so don't -- don't
22 have any fear that you ought to...
23 MR. G. WHITE: Don't presume anything,
24 okay.
25 COMMISSIONER A. LONG: You ought to be

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1 talking down or offend me for making an
2 elementary...
3 MR. G. WHITE: Okay. But in the parlance
4 of the AOPA, these hearings are heard by a -- an
5 administrative law judge, which of course, is a
6 singular now. However, also, in the parlance of
7 the AOPA, that administrative law judge can be
8 one person, two people, three, all of you, or
9 someone that you appoint, and that person can be
10 an attorney or not an attorney, as the case may
11 be.
12 That person or a group of individuals will
13 hear the evidence in this case, and if the case
14 is heard by someone who's appointed, that person
15 will hear the evidence and make a recommendation
16 to you guys who are the final authority and you
17 will make the final decision.
18 On the other hand, if you folks hear this
19 case as a group, you don't have to go through
20 that process. You will hear all the evidence,
21 and because you're the final authority of this
22 agency, you yourselves would make the final
23 decision.

24 One of the things that most boards think
25 about when they go through making this decision

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1 is time commitment, and I must say I have no
2 idea what -- what your schedules are or how this
3 case will develop, but that's a practical issue
4 that the folks on boards need to think about, is
5 if it's going to be very time consuming and you
6 want to hear it as a group, I think you've got
7 to get used to that idea of scheduling and
8 getting together and hearing it as a group.

9 If you have one person do it, or you know
10 like a couple of you do it, you have more
11 flexibility as far as scheduling is concerned,
12 but from a practical standpoint, it kind of
13 strings the process out because that person or
14 group of people will make a recommendation to
15 you guys.

16 These folks will have an opportunity to
17 object to the recommendation, file briefs, have
18 an oral argument, and then you folks as a -- a
19 group node to make a final decision. So it
20 makes things more flexible on the front end, but
21 it kind of slows them down on the -- at the --
22 at the end, whereas if you hear it all as a
23 group, it kind of slows it down on the front
24 end, but you know, speeds it up at the -- at the
25 end.

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1 I don't know if that's's real clear or not,
2 but that's -- that's basically the main question
3 you need to wrestle with is how -- how can --
4 how can you guys do it? Like I say, I don't
5 know what your -- what your schedules are, and
6 certainly, I'll help you do it however you want
7 to do it.

8 CHAIRMAN T. WHEELER: Is there a pool,
9 other entities that have a lot of these, and the
10 ones that I usually deal with from the ICRC
11 (Phonetic), or Indiana Education Employment
12 Relations Board, they have their own hearing
13 examiners. We don't.

14 MR. G. WHITE: Right.

15 CHAIRMAN T. WHEELER: If we were to go with
16 the hearing examiner, where will we find
17 somebody? For example, could it be somebody
18 from the Division staff? Could it be -- I have
19 no idea.

20 MR. G. WHITE: I think I might be a little
21 reluctant to do that because, you know, there
22 always might be the possibility that that person
23 might know more about this case than maybe would
24 make people comfortable. As far as a pool of
25 candidates is concerned, I'm not quite sure what

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1 to tell you. I know that there are agencies
2 that hire administrative law judges from the
3 outside. I know the Department of Health does

4 that. The professional licensing agency does
5 that.

6 CHAIRMAN T. WHEELER: Is there a
7 requirement that they be an attorney?

8 MR. G. WHITE: No. It's always helpful, or
9 at least I'd like to think so, but no, it's not
10 a requirement.

11 CHAIRMAN T. WHEELER: Tony, are you
12 monopolizing the conversation.

13 COMMISSIONER A. LONG: Oh, I've been
14 thinking. I think the --

15 MR. G. WHITE: Or -- or one of you guys.

16 COMMISSIONER A. LONG: I think we ought to
17 hear it.

18 MR. G. WHITE: Or if one of you guys could
19 do it.

20 COMMISSIONER A. LONG: I think -- you know,
21 I think that -- the issues here, I think, are
22 going to be ultimately narrowed down pretty
23 tightly. I mean, as I read the draft of this
24 that was circulating, it basically boils down to
25 a proof of or not proof of certification of

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1 certain levels of -- (indiscernible) -- firmware
2 and software, or whatever they are, and then
3 were they marketed before they were certified?

4 And it seems to me that procedurally, we
5 would be asking the parties to meet -- I think
6 we call it a Rule 16, prehearing conference, and
7 they sit down and try to stipulate as much as

8 they can, which I think the vast amount of this
9 is going to be something that can be stipulated.

10 I don't -- I can't imagine that the -- the
11 actual hearing this would take over a day or
12 two. I guess if nobody stipulated to anything,
13 it'd take a week, but I can't imagine anything
14 I'd rather do than come up to Indianapolis for a
15 week and maybe we can take it during football
16 season or something.

17 MR. G. WHITE: Well, I was going to say,
18 this is what I do a living -- for a living so it
19 doesn't -- it doesn't matter to me one way or
20 the other, but there are certain advantages with
21 doing it as a group, particularly, where there's
22 a group dynamic -- you know, one person will ask
23 a question and that will trigger a question from
24 someone else, that's a very helpful thing, and
25 I've had situations where boards will hire an

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1 administrative law judge who for whatever reason
2 is just totally out of sync with what the final
3 authority wants to do on a case, and that has
4 presented problems for -- for my board so...

5 CHAIRMAN T. WHEELER: I guess -- I guess
6 what I hear -- my concern is, and then Tony
7 alleviated that somewhat, which is I don't have
8 to travel. I've got to walk, you know, across
9 the street. So attending a couple of days of
10 hearings is just not a burden for me. It's
11 probably not a burden for Sarah.

12 COMMISSIONER A. LONG: We've got a condo in
13 Indianapolis. We could come up and stay here.

14 CHAIRMAN T. WHEELER: If the Vice Chair is
15 comfortable with that -- I know we got
16 (indiscernible) this week from Dan, but if we
17 hold a hearing, for example, and say one day we
18 have a full group, and then we only have three
19 for the next day, does that impact the validity
20 of the -- is -- is that person who doesn't hear
21 the evidence that day allowed to weigh in?

22 MR. G. WHITE: I -- I -- that person should
23 be allowed to weigh in provided that person, you
24 know, reads the transcript of what -- obviously,
25 it'd be better if that person was here, yeah.

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1 COMMISSIONER A. LONG: I agree with that.

2 MR. G. WHITE: But they definitely need
3 to...

4 CHAIRMAN T. WHEELER: We've got commission
5 members coming from a -- and Tony's been kind
6 enough, coming from two corners of the state,
7 Franklin, Evansville and Lake County, and so I
8 hate to impose a burden on you guys when Sarah
9 and I literally are walking two blocks, but if
10 you're comfortable, I mean...

11 MR. G. WHITE: Well, I'll put it -- I
12 think -- I think you could do it but I would not
13 recommend it.

14 CHAIRMAN T. WHEELER: Well, we'll try. I
15 guess what we'll do is -- what I hear is from

16 you Tony, you're okay. You'd rather see the
17 Commission as a whole hearing and do it in one
18 shot -- I'm seeing nodding -- that's sort of my
19 inclination as well, and we'll see what Dan --
20 do we need a formal motion on that?

21 MR. G. WHITE: I don't know that -- I don't
22 know that you really do. I mean, --

23 CHAIRMAN T. WHEELER: Because we already
24 have that.

25 MR. G. WHITE: -- my consensus if you've

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1 decided that that's the way you want to
2 proceed...

3 CHAIRMAN T. WHEELER: It would seem to me
4 if we want to do something otherwise, we would
5 probably have to authorize and appoint someone
6 to hear it as an administrative law judge.
7 We're just hoping to hear it ourselves. That's
8 the -- that's the defacto case.

9 MR. G. WHITE: Yeah, that's fine.

10 CHAIRMAN T. WHEELER: All right. That
11 takes us through the first issue you mentioned.
12 And the next issue you mentioned were prehearing
13 issues. May we appoint someone to essentially,
14 like a -- like in federal court, I know Johnson
15 over in federal court, someone who essentially
16 acts as a magistrate for us to handle kind of
17 the prehearing matters, either one member of the
18 commission or designate someone else to handle
19 that?

20 MR. G. WHITE: Yeah, and I would -- yeah --
21 yeah, I think it would be easier if you have one
22 member of the commission do it, but yeah, you
23 could do it either way.

24 CHAIRMAN T. WHEELER: Or could we designate
25 you, for example?

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1 COMMISSIONER A. LONG: That was...

2 MR. G. WHITE: No.

3 CHAIRMAN T. WHEELER: You said no?

4 MR. G. WHITE: No.

5 CHAIRMAN T. WHEELER: Nice try.

6 MR. G. WHITE: Yeah, I was paying
7 attention.

8 CHAIRMAN T. WHEELER: I see that.

9 COMMISSIONER A. LONG: I was thinking along
10 the line, particularly, on the travel issue and
11 the availability, to maintain the balance, that
12 you and Sarah coordinate up here --

13 CHAIRMAN T. WHEELER: I --

14 COMMISSIONER A. LONG: -- because of your
15 flexibility with...

16 CHAIRMAN T. WHEELER: I think since Sarah's
17 not here...

18 COMMISSIONER A. LONG: Yeah, we can maybe
19 nominate -- I mean, the two of you work together
20 to work out the scheduling.

21 CHAIRMAN T. WHEELER: Sarah won't -- Sarah
22 won't miss another meeting.

23 MR. G. WHITE: But -- but I'll be there. I

24

promise.

25

CHAIRMAN T. WHEELER: You will be there as

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1

Sarah's counsel for the prehearing conference?

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MR. G. WHITE: I will be there with you

3

when -- when you do...

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CHAIRMAN T. WHEELER: And there's no reason

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for those to take place, physically. We can do

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those telephonically as well?

7

MR. G. WHITE: That is correct.

8

COMMISSIONER A. LONG: What I'm -- what I'm

9

envisioning is laying out the schedules, the

10

deadlines, the -- what we expect the answers,

11

when we expect them to be filed --

12

MR. G. WHITE: Exactly.

13

COMMISSIONER A. LONG: -- and then when we

14

get down to substantive issues, if there are

15

motions to be decided, then I think that the

16

Commission should -- all decisions, I think,

17

should be made with the board.

18

MR. G. WHITE: Yeah. The AOPA sets out

19

what matters need to be discussed in a pretrial

20

conference, but it's very similar to the trial

21

court model. So I'm sure you'll all be

22

comfortable with that.

23

CHAIRMAN T. WHEELER: Would we -- do we

24

need to designate Ms. Riordan as our

25

representative for the prehearing matters?

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1 COMMISSIONER A. LONG: I'm -- I'm
2 suggesting both you and she.

3 CHAIRMAN T. WHEELER: I -- I heard you say
4 that. Thank you.

5 COMMISSIONER A. LONG: I mean, I think it's
6 important for the -- because of the statutory
7 composition of this board, the way -- that that
8 way we made our -- maintained our bipartisan
9 groups.

10 CHAIRMAN T. WHEELER: So you think we need
11 to both do it -- both be there at all of these,
12 which is fine. That's fine with me, that Sarah
13 and I both do it just to maintain the bipartisan
14 nature of the hearing.

15 COMMISSIONER A. LONG: And that's -- I
16 think that's important just because that's the
17 way the legislature, wisely or not, it's created
18 it for.

19 CHAIRMAN T. WHEELER: That's probably an
20 important precedent for ourselves, too.
21 Obviously, this isn't really a partisan hearing,
22 but we're going to have a partisan hearing if we
23 establish a precedent that one member from
24 each -- each side of the aisle, as it were,
25 would hear it. That makes more sense.

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1 COMMISSIONER A. LONG: And I suggested the
2 two of you primarily. You're both equal, and
3 secondarily, you're both here, and you would be
4 more flexible for Mr. Price and the Division

5 counsel and our counsel.

6 MR. G. WHITE: That's right.

7 CHAIRMAN T. WHEELER: And I assume with the
8 understanding that if for some reason by
9 agreement both of us can't be there, one can
10 serve instead of both?

11 COMMISSIONER A. LONG: As long as you all
12 work it out amongst ourselves, I'm happy.

13 MR. G. WHITE: And I think one of you
14 mentioned the AOPA is very flexible as far as
15 holding the pretrials, doing it telephonically;
16 you know, if we want to loop somebody in by
17 telephone so...

18 CHAIRMAN T. WHEELER: Do we need -- do we
19 need a motion on that to appoint...

20 MR. G. WHITE: Yeah, I would do that.

21 COMMISSIONER A. LONG: I would make the
22 motion I just made --

23 CHAIRMAN T. WHEELER: Is there a second on
24 the motion?

25 COMMISSIONER A. LONG: -- or suggested.

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1 MR. S. DURHEIMER: I second it.

2 CHAIRMAN T. WHEELER: All right. The
3 motion's made and seconded, that the Chair and
4 Commissioner Riordan serve as co- -- what would
5 you use, Gordon; how do I want to use it?

6 MR. G. WHITE: Host and hostess, I don't
7 know.

8 CHAIRMAN T. WHEELER: Prehearing?

9 MR. G. WHITE: Yeah, for prehearing
10 purposes.

11 CHAIRMAN T. WHEELER: Prehearing
12 magistrates. All in favor -- further
13 discussion, I'm sorry?

14 (No response from the Commission.)

15 CHAIRMAN T. WHEELER: Hearing none, all in
16 favor, signify by saying Aye?

17 THE COMMISSION: Aye.

18 CHAIRMAN T. WHEELER: Those opposed, same
19 sign?

20 (No response from the Commission.)

21 CHAIRMAN T. WHEELER: All right. Next
22 step, Gordon.

23 COMMISSIONER A. LONG: Could I suggest
24 that --

25 CHAIRMAN T. WHEELER: I'm sorry.

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1 COMMISSIONER A. LONG: -- all filings that
2 are made at this point forward be copied -- I
3 mean, that the Division see that each member of
4 the Commission gets a copy so that we can read
5 then the -- first, what's going on. You just
6 file them. I'm just saying the Division would
7 copy us to see that we all maintain a file.

8 MR. G. WHITE: In other words, file it with
9 the Division, and then they'll distribute it to
10 the board members.

11 CHAIRMAN T. WHEELER: The Division -- the
12 Division will be responsible for circulating.

13 That doesn't...
14 MR. G. WHITE: Okay.
15 CHAIRMAN T. WHEELER: That means you don't
16 have show up with five or ten copies.
17 MR. G. WHITE: Great.
18 CHAIRMAN T. WHEELER: That'll take of that.
19 MR. B. KING: Yes, we'll commit to doing
20 that.
21 CHAIRMAN T. WHEELER: All right. Gordon,
22 next?
23 MR. G. WHITE: Let's see, you've appointed
24 your administrative, or you know who's going to
25 here the case. You've decided who all is going

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1 to be hosting the preliminary matters as far as
2 pretrial and stuff like that is concerned. I
3 can't think of any procedural matters at this
4 point that you really need to -- to grapple
5 with.
6 So if you -- if you don't mind, the one
7 thing I would like to do at this point is just
8 remind you about the statutory requirements of
9 not -- of participating in any ex parte
10 communications.
11 Some of that's pretty easy to, or I'm
12 sorry -- sorry, some of its pretty intuitive,
13 some of it maybe isn't, so I wanted to go over
14 that ex parte communication means communicating
15 with a party besides, obviously, Micro Vote and
16 these guys, that's pretty apparent, but the AOPA

17 also counsels against communicating with people
18 with an indirect interest in this proceeding.

19 And like I say, I'm not an expert on
20 election law, but I reckon there probably are
21 people with an indirect interest in how this is
22 all going to turn out so...

23 CHAIRMAN T. WHEELER: Let me -- let me
24 pose --

25 MR. G. WHITE: Yes.

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1 CHAIRMAN T. WHEELER: -- some examples of
2 that.

3 MR. G. WHITE: Okay.

4 CHAIRMAN T. WHEELER: A -- Micro Vote
5 serves 47 counties, John, something like that?

6 MR. J. PRICE: Right. Right.

7 CHAIRMAN T. WHEELER: That would include,
8 for example, a county clerk that uses Micro Vote
9 equipment and wants to know are they going to be
10 certified, decertified, what's going to happen?
11 That would qualify as an outside interest?

12 MR. G. WHITE: Yeah. There's no real
13 definition of what indirect interest is, but I
14 guess my counsel would be is if you have any
15 questions whatsoever, if that person has even
16 the slightest indirect -- just steer clear of
17 that conversation all together.

18 CHAIRMAN T. WHEELER: And I think that's
19 important for Commission members because we get
20 calls from clerks on other issues or related

21 issues, and certainly I do, and I've certainly
22 invited them at meetings, that they call me and
23 have any problems.

24 And as I understand it, those -- I hope
25 this is on the record, I don't -- I don't know

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1 if there are any clerks here, but I hope they
2 don't take that adversely, but by direction of
3 counsel, we're instructed not to speak with them
4 about that; is that correct?

5 MR. G. WHITE: That -- that is correct.
6 Also, they're not -- they're not here, but if
7 they were here, I would tell them they're not
8 supposed to call you either. I mean, it's bad
9 for you. It's bad for them as well.

10 CHAIRMAN T. WHEELER: Let me ask a second
11 question. I note there are members of the media
12 here. What about conversations or comments in
13 the media with respect to...

14 MR. G. WHITE: The AOPA also addresses
15 public comments from, or counsels against public
16 comments by the ALJ, other than, you know, like
17 scheduling matters and stuff like that.

18 CHAIRMAN T. WHEELER: All right. So, for
19 example, with respect to the media, we can say
20 yes, we have a meeting scheduled for June 2nd?

21 MR. G. WHITE: Uh-huh.

22 CHAIRMAN T. WHEELER: But other than that,
23 there'll be no comment by Commission Members
24 with respect to the content or -- or even the

25 filing of the complaint, for example; right?

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1 MR. G. WHITE: Yeah. What the AOPA says --
2 says that administrative law judge, which would
3 be you folks as a group, no comments publicly
4 except as to hearings, schedules or procedures
5 about pending or impending proceedings.

6 If you engage in that kind of activity,
7 you're -- you're subject to disqualification.
8 So we don't want -- we don't want that to
9 happen. Nobody wants that to happen so...

10 CHAIRMAN T. WHEELER: Just so we're
11 clear -- and then, obviously, there's comments
12 or things that are made during a public meeting
13 such as this which are subject to reporting by
14 the press as well as...

15 MR. G. WHITE: Sure.

16 CHAIRMAN T. WHEELER: Well, we have a
17 camera here today, that I -- as I understand
18 that AOPA provision, that refers to going out to
19 the media outside?

20 MR. G. WHITE: Right. I would -- don't
21 call a news conference after the meeting today
22 and start telling us what we think.

23 COMMISSIONER A. LONG: (Indiscernible.)

24 MR. G. WHITE: Yeah. But of course, our --
25 you know, our hearing is open to the public

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and -- and that's fine.

CHAIRMAN T. WHEELER: So to the extent that gets reported, --

MR. G. WHITE: Yeah.

CHAIRMAN T. WHEELER: -- that's fair game.

MR. G. WHITE: That's just going to happen, sure.

CHAIRMAN T. WHEELER: All right. Now with respect to -- and I mentioned this, Mr. Price and I have occasionally litigation together. I don't believe we have anything pending right now. There's nothing that prohibits us from communicating on unrelated matters; for example, if he were to sue one of my clients, which I guess is what he usually does, I believe I've sued his clients, at least not in the last ten years, but if we were to have litigation together, we could communicate on those matters, just not on any -- any matters relating to this particular hearing?

MR. G. WHITE: Right. Right. Yeah. I don't think we need to function in a bubble, but we want to make absolutely sure that Micro Vote and the Division here gets the fairest hearing possible.

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CHAIRMAN T. WHEELER: And I want to make sure, and at some point -- I want to make sure John's comfortable with it, but I know there were concerns with the Secretary of State about

5 these issues and I want to make sure if you have
6 particular areas where you think that might be a
7 problem, if you raise those with us so we
8 understand -- again, remember, this is the first
9 time through for all of us, and I want to be --
10 be very clear for all the Commission Members how
11 we do not avoid -- avoid this situation as we go
12 through. For example, I assume the Secretary of
13 State and the Secretary of State's office would
14 be defined as an interested party with respect
15 to this; correct?

16 MR. G. WHITE: One would think. Like I
17 said, this is kind of out of my area of
18 expertise, but one would think, yeah.

19 COMMISSIONER A. LONG: I want to
20 disclose --

21 MR. G. WHITE: I think my main concern is
22 just the counties because you've got a lot of
23 people who are, like I say, interested -- having
24 an indirect interest. I can't point to you a
25 case or a definition of the statute of what that

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1 is, but it's kind of you know it when you see
2 it, I think, so better safe than sorry.

3 COMMISSIONER A. LONG: I want to -- Mr.
4 Price and I are acquainted with each other
5 informally. I mean, we've both been in and
6 around political issues on different sides of
7 the fence, but with respect to that -- I respect
8 him and I hope he respects me but I want to

9 disclose that.

10 I would also say that I disclose that I
11 reside in Warren County, which is one of the 47
12 counties around, and that I practice law there
13 and then I file things at the clerk's office,
14 but other than -- I get the same questions from
15 my clerk as you get from clerks, that you know,
16 are there -- is the equipment going to be
17 certified? Can I hold my election?

18 I just want to make it clear that I'm also
19 the district chairman and I think there are five
20 or six counties in the district that are listed
21 (indiscernible). To my knowledge, they've all
22 held their elections, and I don't know that
23 any -- I've certainly not heard any outcry from
24 any of those about the situation and they've not
25 previously pulled me way or the other in this

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1 matter.

2 MR. G. WHITE: Well -- and I certainly
3 don't anticipate anything going awry here, but
4 now Mr. Price knows who's going to hear this
5 case, he certainly has an opportunity to
6 challenge who those people are if he thinks that
7 there's any bias or anything like that, and of
8 course, that's a remedy that's available to him.
9 Nobody's asking him to -- to commit himself on
10 that today --

11 COMMISSIONER A. LONG: No, I just want to
12 make a disclosure.

13 MR. G. WHITE: -- but he can certainly do

14 that.

15 COMMISSIONER A. LONG: So that -- save me

16 the effort at --

17 MR. G. WHITE: Save me the effort, okay.

18 COMMISSIONER A. LONG: -- showing you where

19 Boonville is.

20 CHAIRMAN T. WHEELER: Let me make a

21 notification -- although Commission Domezich is

22 not here, I know he does reside in Lake County

23 and certainly active in Lake County politics. I

24 will make sure that Gordon conveys the same

25 instructions to --

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1 COMMISSIONER A. LONG: He and Sarah.

2 CHAIRMAN T. WHEELER: -- he and Sarah.

3 MR. G. WHITE: Okay.

4 CHAIRMAN T. WHEELER: Sarah -- I'm not

5 sure -- well, I assume she must reside in Marion

6 County since she's registered --

7 COMMISSIONER A. LONG: I think she does.

8 CHAIRMAN T. WHEELER: -- with the

9 Democratic Party.

10 COMMISSIONER A. LONG: Is she? I didn't

11 know that.

12 CHAIRMAN T. WHEELER: She's moving up,

13 baby, or treasurer -- secretary/treasurer, one

14 of the two. But in any event -- but I believe

15 they're an ES&S County, Marion County. My home

16 county is Boone County, which you'll find out in

17 a couple of minutes is an VTI county, and has
18 their own problems.

19 So with respect to that, if I may, Gordon,
20 what I'd like to do is -- is if you're done with
21 the ex parte, I'd like -- I know you have
22 some -- some things you want to do, but on the
23 ex parte thing, I just -- I really want to be
24 careful on that and I want to make sure that we
25 address -- do you have any concerns or

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1 preliminary questions for the Commission
2 Members, anything like that?

3 MR. J. PRICE: Yes, I do. I think that
4 probably the best way I can start this is to say
5 with all due respect, because I have great
6 respect for all of you -- two I haven't really
7 met yet, but I'm sure you're great guys, but
8 Tony and Tom, through the years have come to
9 know as honorable and good people, so what I'm
10 about to say has nothing to do with that. It's
11 all under AOPA.

12 I think the well's been poisoned, and let
13 me tell you why? What's already on the record
14 here today is that back in April, there was a
15 meeting held at which my clients came and spoke
16 without counsel and this commission heard them
17 speak. There was a transcript that was possibly
18 produced from that. Then the testimony -- or
19 the statements made earlier today indicated that
20 on May the 5th that this commission met and

21 discussed this case and authorized an
22 investigation, which we don't know what the
23 input was, and then on January of this year, the
24 commission met and decided there was sufficient
25 evidence to draft a complaint.

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1 Now I don't know how you can do that
2 without knowing some of the facts and that
3 Gordon white was asked to come in and then Mr.
4 Long said a minute ago that he had read a draft
5 of what was circulated, which indicates a draft
6 of the complaint.

7 All of these fall under the category of ex
8 parte communications, and under AOPA, under
9 4-21.5-3-9, if there's any question as to
10 knowledge of a disputed evidentiary fact that
11 could influence the decision, then the parties
12 withdraws as administrative law judge.

13 The reason I'm bringing this up on the
14 record is I don't want to surprise people later
15 on and have you say well, John, how come you
16 didn't tell us you had these feelings about
17 this?

18 Last year's proceeding with the Secretary
19 of State was truncated, it was very short, and
20 during that short proceeding we learned that the
21 Secretary of State had met with electronic and
22 print media and made statements about the case,
23 made statements about my client, made statements
24 about my client's role in the controversy and

1 protect the voters by ensuring -- and then he
2 made some other statements.

3 So when we brought this to the attention of
4 the Secretary of State and asked him to consider
5 under the section of the law I just referred to,
6 that he withdraw, because he had knowledge of
7 the disputed evidentiary fact, and in fact, what
8 Gordon was saying a minute ago, he had
9 communicated his position on the underlying
10 issue with the media.

11 At first he refused to, but we filed an
12 action in Marion County Superior Court and the
13 judge never actually had to get to the state of
14 hearing it because during the interim, he
15 withdrew, and then he appointed a well known
16 attorney from Shelbyville, J. Lee McNeely as the
17 administrative law judge.

18 That's in a proceeding which has been
19 nominated as Secretary of State 2006-003, and if
20 I may, if I can forebear for just another
21 minute, on that proceeding 2006-003, we have had
22 dispositive motions filed and about two weeks
23 ago in Shelbyville at the new office -- it's a
24 very nice office --

25 CHAIRMAN T. WHEELER: Let me -- I don't

1 mean to interrupt you, but I don't think it's

2 appropriate for you to tell us the proceedings
3 of that hearing as well.

4 MR. J. PRICE: Well, that's -- I'm leading
5 to an objection, and the objection is I think
6 that there's a res judicata issue here, because
7 the same agency, the Election Division, has
8 brought essentially the same, or virtually the
9 same charges before the Secretary of State to
10 appoint an ALJ and now they've brought those
11 same charges to you and asked you to appoint
12 yourself as ALJ to hear the same charges which
13 are pending right now. They're already on the
14 table.

15 CHAIRMAN T. WHEELER: I mean, our problem
16 is --

17 MR. J. PRICE: Part of the argument.

18 CHAIRMAN T. WHEELER: -- with the ex parte,
19 we have no idea what is pending before the
20 Secretary of State. Probably -- I think this is
21 probably better before the prehearing, we
22 address that at a prehearing, and at that point
23 it's probably more appropriate for you to file,
24 if you think that's appropriate, your written
25 motions, which it -- it would be.

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1 I guess you'd ask to stay proceedings or
2 you'd ask that the proceeding be dismissed.
3 Although, there can't be a res judicata until
4 there's a final determination anyway so there's
5 no res judicata issue. The problem will likely

6 be a double jeopardy issue.

7 But in any event, it seems to me it's more
8 appropriate to raise it at that time, and I
9 understand you're just giving us a heads up with
10 this.

11 MR. J. PRICE: Right.

12 CHAIRMAN T. WHEELER: One of the things
13 that concerns me is -- and something -- and I
14 don't know what's going on in the Secretary of
15 the State's proceedings, but I mean in our
16 proceeding, part of this is -- part of it, as I
17 understand what Dale was discussing, was actions
18 that occurred at commission meetings, and I
19 think you refer to it as your client making
20 statements and concessions during commission
21 meetings, I think actually in response to
22 questions by me, and your position as I
23 understood it orally was that as a consequence
24 of the commission, your client doing these
25 actions at an actual commission meeting, that if

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1 so facto, that it disqualifies the entire
2 commission from hearing a remedy against him?

3 MR. J. PRICE: That was just my -- my front
4 door that I went through. My understanding from
5 what's been said by Mr. Simmons earlier
6 that's -- and from Mr. Long, is that there has
7 been a series of meetings in which these matters
8 have been discussed, including I think some
9 disputed evidentiary facts that may have arisen

10 from your questioning on the 19th, that if
11 that's true, it's not reflected in the
12 complaint. There's no charge in this complaint
13 that my client somehow misled the Commission on
14 the 19th. There's a -- there's a litany which
15 is similar to '03.

16 CHAIRMAN T. WHEELER: I mean, for example,
17 I assume that the disputed evidentiary fact will
18 involve whether you sold uncertified software,
19 and of course, the Commission certifies all
20 software.

21 MR. J. PRICE: Right.

22 CHAIRMAN T. WHEELER: So the Commission's
23 actions in certifying software would be an
24 evidentiary fact, if that's -- that's what
25 you're saying. So your argument is that the

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1 Commission is automatically disqualified from
2 ever hearing on these matters; isn't that
3 correct?

4 MR. J. PRICE: I think that argument could
5 be made, but the best thing you could do would
6 be to appoint an independent and impartial ALJ
7 who hears all the facts in evidence and then
8 produces a written report and then submit it to
9 you.

10 CHAIRMAN T. WHEELER: But -- but your
11 argument is that we couldn't act on that because
12 we'd be disqualified from acting on that so...

13 MR. J. PRICE: No, because you're the

14 ultimate authority. The ultimate authority is
15 different from the ALJ. The ultimate authority
16 under Section A gets to make the decision.
17 You're the decision maker. But I think AOPA
18 mitigates against you being judge, jury and
19 prosecutor.

20 I think you get to make the final
21 decisions, which frankly, is really all that
22 counts, but in getting to that final decision, I
23 think AOPA accords to the charged party the
24 right to have the underlying facts heard by a
25 truly independent ALJ.

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1 CHAIRMAN T. WHEELER: Let's do this.
2 That's probably more appropriate to a prehearing
3 motion.

4 MR. J. PRICE: Well, I think you're right.

5 CHAIRMAN T. WHEELER: Certainly, from my
6 standpoint, I certainly want to see legal
7 argument on both sides.

8 COMMISSIONER A. LONG: I do want to get
9 advice of counsel.

10 CHAIRMAN T. WHEELER: Absolutely.

11 MR. G. WHITE: And I want to research it.

12 CHAIRMAN T. WHEELER: And I understand this
13 is -- this is a heads up. You're telling us...

14 MR. J. PRICE: Since we're being fairly
15 informal here, I just want to tell you that's my
16 first reaction.

17 COMMISSIONER A. LONG: Not a problem.

18 CHAIRMAN T. WHEELER: All right. So does
19 that take care of the ex parte part of this
20 conversation?

21 MR. J. PRICE: There are other matters that
22 I'd like to discuss.

23 CHAIRMAN T. WHEELER: I know you want to do
24 that, but let me get through.

25 MR. J. PRICE: Okay. Thanks, yeah.

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1 CHAIRMAN T. WHEELER: All right. Gordon,
2 you've made -- we've discussed who's going to
3 hear it, we've discussed the hearing officers,
4 we've now -- you've given us the ex parte
5 advice, which we really appreciate, and we may
6 have more questions on, obviously, what's our
7 next step?

8 MR. G. WHITE: Well, I would say that's
9 about it for today. I'll prepare an ex parte
10 warning letter, if you will. I think I have one
11 floating around the office somewhere and I can
12 distribute that to you and the -- the other
13 board members.

14 CHAIRMAN T. WHEELER: Is there anything
15 that precludes under other the Open Door Law or
16 the public meetings, the public meetings
17 statute, or AOPA that precludes a Commission
18 Member individually from meeting with you -- for
19 example, Sarah Riordan was not here, if she
20 wants to follow up with you and say all right
21 this ex parte -- because obviously, Tony

22 elaborated some concerns --

23 MR. G. WHITE: Right.

24 CHAIRMAN T. WHEELER: -- that we have
25 individually.

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1 MR. G. WHITE: Right.

2 CHAIRMAN T. WHEELER: And I'm concerned
3 that either Dan or Sarah may have some, is there
4 anything that precludes them from meeting you
5 with one-on-one and saying all right, I'm
6 chairman or I'm secretary of the Marion County
7 Democratic Party and somehow we interact with
8 either John Price or these guys, could they meet
9 with you individually?

10 MR. G. WHITE: Oh, absolutely.

11 CHAIRMAN T. WHEELER: Okay.

12 MR. G. WHITE: Absolutely.

13 CHAIRMAN T. WHEELER: All right. Our next
14 step beyond ex parte?

15 MR. G. WHITE: Well, I -- I was going to
16 say that's about it. I mean, you've got your
17 panel here that's going to hear this case. You
18 know, Mr. Price is thinking about, you know,
19 challenging that and has some legal arguments
20 that he wants to make, and certainly, we're not
21 going to ask him to do that extemporaneously.

22 So I -- formally, I don't know that there's
23 much else we need to do today, but it's at times
24 like this that it's probably not a bad idea to
25 ask counsel have we missed something, see if

1 they -- make them pay attention for a second?

2 CHAIRMAN T. WHEELER: I'll defer to the
3 Division. We'll give the Division the first
4 shot, then John, give you a shot. I know you've
5 got some additional stuff you want to raise. Is
6 there anything else that...

7 MR. B. KING: Do you want to...

8 MR. D. SIMMONS: Yes. I waive the reading,
9 as far as I understand it. The only thing is --
10 sort of aired a comment already made by the
11 Commission, at least from my perspective and
12 certainly anybody here, we're sort of four
13 people, and it's hard to consult and then
14 answer, but I pair the preference that
15 objections and other legal issues be raised in a
16 motion so that we would have ourselves a full
17 and fair opportunity to review that and do our
18 own research and respond.

19 CHAIRMAN T. WHEELER: And I think that's
20 fair to say from both sides that we'll certainly
21 require that and that's...

22 MR. D. SIMMONS: Sure.

23 CHAIRMAN T. WHEELER: But I do appreciate
24 John kind of giving us a heads up as to what his
25 thinking is. Is the Division going to designate

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1 one of you to take the lead on this or are you

2 guys going to act as a four-headed monster or --
3 and I don't know that you need to answer that
4 right now, but it seems to me it makes sense to
5 have --

6 MR. G. WHITE: A four-headed creature of
7 some kind.

8 CHAIRMAN T. WHEELER: So at least by the
9 time you get to the next -- to the prehearing, I
10 think it's fair to John -- I've been on the side
11 where I've had three counsel on the other side,
12 I think it's fair to at least have a designated
13 spokesperson of the group. Brad, you do not
14 need to do that right now, just by the
15 prehearing conference itself.

16 MR. B. KING: All right.

17 CHAIRMAN T. WHEELER: Anything else from
18 the Division's side?

19 MS. L. BARNES: Mr. Chairman, I had a
20 question. I understand if we -- if I understand
21 it, you would like the parties to file any
22 objections raised as a motion and circulate it
23 among the four commission members. Who should
24 we file it with; do we file it with Gordon
25 white, or who would designate it as filed and

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1 accepted?

2 CHAIRMAN T. WHEELER: The technical filing,
3 I think, is with the Division. So the filing --
4 as in a filing stamp, correct me if I'm wrong,
5 Gordon?

6 MR. G. WHITE: File it with -- file it with
7 yourself, but make sure it gets distributed to
8 the Commission.

9 CHAIRMAN T. WHEELER: I think it would be
10 appropriate --

11 MR. G. WHITE: We have a staff -- not a
12 problem, but an issue, and I'm sure Mr. Price
13 can appreciate that as well -- I don't know that
14 we have any staff, we as a commission, so I'm
15 assuming that would not be a problem for them to
16 simply file them with themselves and then
17 distribute it to the board members so...

18 CHAIRMAN T. WHEELER: John, do you have any
19 objection with -- we discussed a little bit
20 about the ex parte -- I mean, we could have it
21 filed with the Division served on Gordon who
22 then serves it on us?

23 MR. J. PRICE: I don't have any problem
24 with serving you directly.

25 MR. G. WHITE: Okay.

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1 MR. J. PRICE: I don't think they have to
2 go through another attorney. Why waste the
3 papers?

4 MR. G. WHITE: Good.

5 CHAIRMAN T. WHEELER: So from your
6 standpoint -- when you file paperwork, John,
7 just for an explanation, you file with the
8 Division, the Division will then ship it to all
9 of us, and you don't have a problem with that?

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MR. J. PRICE: That's correct.

CHAIRMAN T. WHEELER: And then as I understand it, there can be ex parte contact with respect to scheduling of hearings and rooms or something like that; correct?

MR. G. WHITE: Yes, sir, that's right.

CHAIRMAN T. WHEELER: Now I also -- obviously, we have a lot of contact with the Division outside of this particular item. As I understand the statute, as you've explained, we can continue to have contact with the Division on matters not relating to this particular matter?

MR. G. WHITE: Yes, sir.

CHAIRMAN T. WHEELER: Let me give you an example. For example, Micro Vote comes back

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1 with a new certification of their software or
2 firmware, we could handle that? That -- that is
3 not a (indiscernible); correct?

4 MR. G. WHITE: Yes.

5 MR. B. KING: Mr. Chairman, I do want make
6 sure we do...

7 CHAIRMAN T. WHEELER: Under AOPA and the
8 AOPA hearings, the hearing itself, when it is
9 convened, does that require to be transcribed by
10 the court reporter?

11 MR. G. WHITE: Yes. Not by a court
12 reporter, although don't tell the court reporter
13 that, but normally, they are transcribed by a

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14 court reporter.

15 CHAIRMAN T. WHEELER: My inclination, given
16 our capabilities, is that I would certainly...

17 MR. G. WHITE: That's an excellent idea.

18 CHAIRMAN T. WHEELER: And we'll deal with
19 that (indiscernible).

20 MR. G. WHITE: Yeah. Yeah. I know.

21 CHAIRMAN T. WHEELER: Not to mock our
22 various versions of taping are refined.
23 Anything else from the Division's side?

24 MS. L. BARNES: No.

25 MR. B. KING: No, Mr. Chairman.

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1 CHAIRMAN T. WHEELER: Mr. Price?

2 MR. J. PRICE: Just three quick things. I
3 would ask as a matter of compliance with AOPA,
4 as well as reality, that nothing substantive
5 happen until the primary is over -- we have six
6 weeks from now until the primary, and anything
7 that my clients have to do to prepare for what
8 would, obviously, be a pretty significant effort
9 prior to the primary, especially, since these
10 are issues from last year, it would be harmful.

11 And nobody's jeopardized. The election
12 systems are certified. The same systems that
13 will be used in May was used in November without
14 any problem. So I know you're not making
15 decisions now, and Sarah's -- Sarah's not here
16 to speak for herself...

17 CHAIRMAN T. WHEELER: And what we'll

18 probably do is address that at the prehearing.

19 MR. J. PRICE: Thanks.

20 COMMISSIONER A. LONG: I wouldn't imagine
21 we would be -- the Division has got a primary to
22 conduct also.

23 MR. J. PRICE: Right. We all have the same
24 problem.

25 COMMISSIONER A. LONG: And I can't imagine

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1 we would -- that would be a problem.

2 MR. J. PRICE: Secondly, along the same
3 lines, one of the things we want to talk about
4 at the prehearing, Mr. Chairman, as a matter of
5 expeditiously looking at this, is the subject I
6 touched on a second ago, whether it's double
7 jeopardy or res judicata, we have an interesting
8 election code in which we have two penalties for
9 vendors; one's monetary and one is
10 (indiscernible) -- you go out of business for
11 (indiscernible); one is administered by one
12 agency and one is administered by this agency.

13 We have before you, now that you've
14 accepted this complaint, essentially the same
15 body of charges that Lee McNeely is considered
16 in 003, and so one of the things we're going to
17 be asking at the prehearings, it's just a heads
18 up, is a stay or holding this proceeding in
19 advance until the ALJ rules for a very good
20 reason.

21 If the ALJ rules in favor of the same

22 charging party here, the Election Division, you
23 could literally adopt his findings and make a
24 decision based upon the power that you have
25 without holding your own separate hearing.

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1 CHAIRMAN T. WHEELER: Are they -- I don't
2 know this, okay, I -- I really don't -- I mean,
3 are they sufficiently identical?

4 MR. J. PRICE: They're almost virtually
5 identical.

6 CHAIRMAN T. WHEELER: I mean, do they -- in
7 the Secretary of State's proceeding, for
8 example, do they allege that the use of
9 uncertified software and firmware based upon the
10 admissions made to our election commission,
11 Gordon?

12 MR. G. WHITE: No. No.

13 CHAIRMAN T. WHEELER: Okay.

14 MR. J. PRICE: And yours doesn't either.

15 CHAIRMAN T. WHEELER: I -- I haven't --

16 COMMISSIONER A. LONG: When you file
17 your --

18 CHAIRMAN T. WHEELER: I haven't read ours
19 either because I'm...

20 COMMISSIONER A. LONG: When you file your
21 motion, it would be both helpful to attach a
22 copy of the charging document from the Secretary
23 of State.

24 CHAIRMAN T. WHEELER: That's a -- that's a
25 good idea.

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1 COMMISSIONER A. LONG: I mean, I think
2 ultimately in this motion to stay or the motion
3 to dismiss even would be a Commission decision
4 and not a procedural issue so I think it would
5 be very helpful.

6 MR. J. PRICE: I'll -- I'll do that.

7 COMMISSIONER A. LONG: That's a very
8 interesting point.

9 CHAIRMAN T. WHEELER: And you'll do that in
10 writing by motion?

11 MR. J. PRICE: Yes, I will.

12 CHAIRMAN T. WHEELER: By the time we have
13 to have a prehearing conference?

14 MR. J. PRICE: I will.

15 CHAIRMAN T. WHEELER: Okay.

16 MR. J. PRICE: And if I can get some feel
17 from you and Sarah, who's not here, as to when
18 that first prehearing might be...

19 CHAIRMAN T. WHEELER: That's -- I think
20 we'll do that -- that's going to be -- once you
21 get through -- you had three points. Once you
22 get to the third point, that's our next step, I
23 believe?

24 MR. G. WHITE: Because I -- we're getting
25 there, yeah. Obviously, these are very good

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1 ideas, but we'll need to set some time limits
2 and maybe when we get through your presentation,

3 we'll have a better idea of what those time
4 limits will be.

5 MR. J. PRICE: Well, let me wrap it up by
6 saying that one of the things -- if you decide
7 to go forward with doing this again, which is
8 what Micro Vote's been going through in the 003
9 procedure, (indiscernible), then we will want to
10 have the opportunity to fully brief dispositive
11 motions which is the stage we're in at 003.

12 We haven't had a full-blown hearing there,
13 except for the initial one on April the 14th.
14 And so I guess what I'm saying is this
15 prehearing that we're going to have as a fairly
16 and substantive and important date, which I hope
17 we don't have in the next three or four days
18 because I want to comply with Mr. Long's request
19 and Mr. White's suggestion and put together a
20 document that's well researched where you look
21 at it and balance it and decide what you want to
22 do.

23 COMMISSIONER A. LONG: And they're going to
24 have an opportunity to respond?

25 MR. J. PRICE: Of course. So I think

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1 that's it. That's all I have.

2 CHAIRMAN T. WHEELER: Now Gordon?

3 MR. G. WHITE: Yeah.

4 CHAIRMAN T. WHEELER: The next step?

5 MR. G. WHITE: Well, it makes -- it makes
6 sense to me that you raised some very important

7 legal issues of a preliminary nature, and of
8 course, I'll leave that up to you guys because
9 you guys are the boss and you guys control the
10 docket here, but I would think that, you know,
11 at this stage of the game, you might want to
12 give Mr. Price some idea of when you would like
13 to see this pleading. I'm assuming you would
14 like to see it before the pretrial, although I
15 don't know that.

16 MR. J. PRICE: That's what I'm suggesting.

17 MR. G. WHITE: And then you give these guys
18 an opportunity to respond and that will give us
19 something to talk about at the pretrial among
20 other things, I guess.

21 COMMISSIONER A. LONG: How much -- how much
22 time do you need?

23 MR. J. PRICE: Well, I would say at least
24 30 days.

25 CHAIRMAN T. WHEELER: Well, here's my --

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1 here's my -- here's my concern, John, when did
2 the Secretary of State file against Micro Vote?

3 MR. J. PRICE: When did they what?

4 CHAIRMAN T. WHEELER: When did the
5 Secretary of State file against Micro Vote, the
6 original filing?

7 MR. J. PRICE: They filed three different
8 original filings.

9 CHAIRMAN T. WHEELER: Let's start with the
10 first one.

11 MR. J. PRICE: The very first one would
12 have been Good Friday, last April, 2006.

13 CHAIRMAN T. WHEELER: So you're a year out
14 on an AOPA hearing, you haven't even put in
15 dispositive motions?

16 MR. J. PRICE: Well, that particular matter
17 has been set aside because Judge Johnson in a
18 let's all get together --

19 CHAIRMAN T. WHEELER: I -- I understand. I
20 do.

21 MR. J. PRICE: Let's all get together,
22 that's been disposed of. It doesn't exist
23 anymore so...

24 COMMISSIONER A. LONG: Our case may be over
25 before theirs is.

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1 MR. J. PRICE: But then a new one was filed
2 and that was 003, and then it was filed the
3 second time because the first version was
4 apparently incorrect.

5 CHAIRMAN T. WHEELER: I mean where -- where
6 you're going, you go 30 days out, they go 15 --
7 I mean, you and I do this for a living, you guys
8 are going to end -- we're going to end up
9 looking at the hearing probably around the
10 general election and you're going to go my God,
11 we can't have a hearing go into the general
12 election.

13 So I would prefer to get this done with
14 full -- with full due process and full

15 procedures, I would prefer to give everybody
16 their full shot, but I'd like to do it more
17 quickly rather than less quickly, and you know,
18 you've obviously thought this out...

19 MR. J. PRICE: If we take 30 and they take
20 15, we're at May the 8th or so, which is the
21 primary.

22 CHAIRMAN T. WHEELER: You're not planning
23 on filing a reply then, John?

24 MR. J. PRICE: I'm sorry?

25 CHAIRMAN T. WHEELER: You're not planning

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1 on filing a reply with the Division?

2 MR. J. PRICE: I don't know,
3 (indiscernible).

4 CHAIRMAN T. WHEELER: I've never seen you
5 not file.

6 MR. J. PRICE: I don't know what atrocity
7 they're going to bounce at me.

8 CHAIRMAN T. WHEELER: I figured that. So
9 that takes us -- that takes us two months out
10 right there on briefing.

11 MR. J. PRICE: That's true, and it would be
12 just beyond the primary.

13 CHAIRMAN T. WHEELER: Right. On -- just on
14 the briefing, that means we don't have a
15 prehearing conference until then.

16 MR. J. PRICE: Well, you -- I mean, you
17 could have a prehearing conference.

18 MR. G. WHITE: Yeah, and maybe that's
Page 67

19 something we could talk about; you know, if
20 those dispositive motions are moving up that
21 far, you know, maybe we can have a pretrial
22 ahead of time, maybe even go down a couple of
23 tracks. You folks could make your legal
24 arguments, but in the meantime, maybe work on
25 stipulations. I -- I don't know.

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1 CHAIRMAN T. WHEELER: I'd be -- I'd be
2 relying on federal court which is you've got the
3 motions going one way, but you're still moving
4 along in the process.

5 MR. J. PRICE: I don't have any problem
6 with doing a prehearing --

7 CHAIRMAN T. WHEELER: That's fine.

8 MR. J. PRICE: -- at the same time.

9 CHAIRMAN T. WHEELER: Let's do -- let's try
10 to get the prehearing in the next two weeks, and
11 therefore, we'll establish some dates. I'm not
12 going to set a date right now on your calendar,
13 because very frankly, I don't have my calendar.
14 What I'm going to ask is -- I'll probably ask
15 Gordon to coordinate with everyone --

16 MR. G. WHITE: Okay.

17 CHAIRMAN T. WHEELER: -- to avoid an ex
18 parte issue or anything like that --

19 MR. G. WHITE: Okay.

20 CHAIRMAN T. WHEELER: -- on setting a
21 prehearing conference with Sarah, myself. Who
22 should Gordon communicate with on the Division

23 side -- Dale?

24 MR. G. WHITE: Well, you, okay. While
25 they're -- well, they're figuring it out.

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1 CHAIRMAN T. WHEELER: But John, definitely.

2 MR. G. WHITE: John -- oh, okay, you said
3 John -- definitely, John.

4 CHAIRMAN T. WHEELER: You've got -- you've
5 got John's card, Gordon?

6 MR. G. WHITE: I sure do.

7 CHAIRMAN T. WHEELER: Okay. John, you'll
8 follow up on the hearings as well?

9 MR. J. PRICE: Sure, because we're going to
10 have to answer.

11 CHAIRMAN T. WHEELER: Right.

12 MR. B. KING: Mr. Chairman, we propose a
13 two-headed monster.

14 CHAIRMAN T. WHEELER: Okay.

15 MR. B. KING: Co-general counsel.

16 MR. J. PRICE: I have an inquiry of Mr.
17 white?

18 MR. G. WHITE: Yes, sir.

19 MR. J. PRICE: My understanding of AOPA
20 that as of today the clock starts on our answer
21 unless this commission waives or extends the
22 answer time; is that correct?

23 MR. G. WHITE: You know, somebody was
24 asking me about the necessity of an answer. I
25 couldn't find it in the AOPA, but apparently,

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1 you have found it so...

2 MR. J. PRICE: I think we have to respond
3 to the charges.

4 COMMISSIONER A. LONG: How much time do you
5 have?

6 MR. G. WHITE: How much do you have?

7 MR. J. PRICE: Normally, I think it's 30
8 days.

9 COMMISSIONER A. LONG: (Indiscernible.)

10 CHAIRMAN T. WHEELER: All right, spoken
11 like a true trial lawyer.

12 COMMISSIONER A. LONG: Plaintiff's
13 lawyers -- we have defense lawyers, they all
14 want to understand --

15 CHAIRMAN T. WHEELER: That's right.

16 COMMISSIONER A. LONG: -- until the cows
17 come home.

18 CHAIRMAN T. WHEELER: Actually, I was
19 trying to move this proceeding along.

20 COMMISSIONER A. LONG: Yeah.

21 CHAIRMAN T. WHEELER: All right. Now with
22 respect to -- all right, we'll set a prehearing
23 within the next two weeks. Gordon is going to
24 take care of coordinating calendars with
25 everybody.

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1 MR. G. WHITE: All right.

2 CHAIRMAN T. WHEELER: Other than that,

3 anything else from the Division side on the
4 agenda?

5 MR. B. KING: Nothing further.

6 CHAIRMAN T. WHEELER: John, Mr. Price?

7 MR. J. PRICE: No.

8 CHAIRMAN T. WHEELER: And again, I
9 apologize for my formality, I'll slip that in,
10 and it's no disrespect, in general.

11 COMMISSIONER A. LONG: It's none, and you
12 are certainly welcome to refer to me by my first
13 name also.

14 CHAIRMAN T. WHEELER: I refer to you by
15 many things, (indiscernible). With respect --
16 that takes care of item -- Agenda Item 2,
17 presentation of the complaint. Under Agenda
18 Item 3, Commission discussion. Agenda Item 4 I
19 asked be added to the agenda just briefly
20 because I know there's a lot of interest in VTI
21 that doesn't involve Mr. Price or his client.

22 COMMISSIONER A. LONG: I don't even know if
23 they're in town.

24 CHAIRMAN T. WHEELER: That's true. They're
25 looking for help. I don't think they can pay

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1 you anything.

2 COMMISSIONER A. LONG: Pro bono.

3 CHAIRMAN T. WHEELER: It'd be pro bono, no
4 doubt.

5 MR. J. PRICE: Pass.

6 CHAIRMAN T. WHEELER: Just -- just briefly,

7 who from the Division is going to address the
8 VTI situation -- Brad?

9 MR. B. KING: Mr. Chairman, Members of the
10 Commission, Voting Technologies International is
11 the focus of two items we'd like to provide as
12 information to the Commission today. One is the
13 more long-term question of what relief might be
14 available to counties in this situation where
15 their voting system vendor has closed shop, has
16 gone out of business? The other aspect is we
17 have some information we've received as late as
18 this afternoon regarding the status of Voting
19 Technologies International and its relationship
20 with the bank in Wisconsin that we'd like to
21 provide. I can speak to the longer term and
22 Dale has information on the short term.

23 CHAIRMAN T. WHEELER: And I'm not
24 contending to get the whole. Just --

25 MR. B. KING: Okay.

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1 CHAIRMAN T. WHEELER: -- kind of the quick
2 and dirty.

3 MR. B. KING: Here the quick and dirty is
4 I'll recognize Dale to just bring us up to the
5 moment.

6 MR. G. WHITE: Just the quick and dirty.

7 MR. B. KING: Just the dirty.

8 COMMISSIONER A. LONG: (Indiscernible.)

9 MR. B. KING: Go ahead, Dale.

10 MR. D. SIMMONS: Up to the moment we've

11 been talking with the attorney for the bank.
12 His name is Harold Laufer (Phonetic) of the
13 First Wisconsin bank. They have advised that
14 VTI really has nothing. They are a primary
15 creditor. They are secured in accounts
16 receivable including -- and including the
17 server, a server they have.

18 CHAIRMAN T. WHEELER: As I understand it,
19 this is the bank that called the loan that
20 pushed them over the edge?

21 MR. D. SIMMONS: Yes. So the most
22 current -- and I've been in contact with Boone
23 County attorney, Eileen Sims as well, she's
24 talking with Harold Laufer, and they're -- we're
25 trying to come up with some way that the bank,

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1 if they take over the server, that that will
2 maintain functioning. Their concerns are if we
3 take the server, are we going to be responsible
4 and then how are we going to let -- we want to
5 work with you but how are we going to have
6 you --

7 CHAIRMAN T. WHEELER: The key issue --

8 MR. D. SIMMONS: -- get access?

9 CHAIRMAN T. WHEELER: -- with the server is
10 the server supports their ballot builder
11 software; correct?

12 MR. D. SIMMONS: Right.

13 CHAIRMAN T. WHEELER: And do you know if
14 anybody else has an election challenged -- I

15 know Boone County, there are several in the town
16 council raising it?

17 MR. D. SIMMONS: At this time there's
18 nobody else we have?

19 MR. B. KING: No.

20 CHAIRMAN T. WHEELER: So the other counties
21 have built their ballots and the server isn't
22 that important for them going into the primary,
23 except Boone County, which very well may have --
24 at least as I read the paper in Boone County,
25 they've got one challenge in circuit court,

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1 maybe another one coming from the town council
2 races?

3 MR. D. SIMMONS: True, and I do want to
4 mention that today Penny Bogan from the clerk in
5 Boone County and Andrew Wood of voter
6 registration, they're both here, and as late as
7 today, I think, or maybe it was yesterday, they
8 were not able to get access to the server.

9 So apparently, the server may now not be
10 available, and it may be because they ran into
11 some technical difficulties. One of the things
12 that the latest email indicated is that we're
13 having IT infrastructure problems in
14 transferring the server. Your IT guy needs to
15 talk to ours. And Eileen Sims, Boone County
16 attorney indicated --

17 CHAIRMAN T. WHEELER: This is Boone County
18 talking to VTI?

19 MR. D. SIMMONS: Boone County is talking
20 with bank. Their IT -- Boone County's IT
21 person, the bank's IT person, to see if they can
22 figure out the problem is resolved, the
23 infrastructure problems, to get that
24 transferred, but from there, we don't know
25 exactly how access will be gained, what the

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1 bank's role will be, what the county's role will
2 be.

3 CHAIRMAN T. WHEELER: Give me one second.
4 Let me finish with the -- go ahead. I assume
5 you're going to discuss escrow?

6 MR. B. KING: Yes, sir.

7 CHAIRMAN T. WHEELER: Okay.

8 MR. B. KING: We've made significant
9 progress in dealing with Iron Mountain, the
10 escrow company. I've had discussions with
11 members of their staff, Paula Smith, who
12 indicated that all of the escrowed software and
13 firmware was in the process of being released.

14 Ordinarily, they would wait for some
15 additional paperwork to be received before
16 starting the 60-day clock, they have already
17 started the 60-day clock running, and so if
18 escrowed material is needed for the fall
19 election, it should be available.

20 CHAIRMAN T. WHEELER: Fall.

21 COMMISSIONER A. LONG: Being released to
22 us?

23 MR. B. KING: It would be released to the
24 State of Indiana, that's right.

25 CHAIRMAN T. WHEELER: Particularly, the

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1 Division or...

2 MR. B. KING: Yes, the Election Division --

3 CHAIRMAN T. WHEELER: Okay.

4 MR. B. KING: -- is the designated --

5 CHAIRMAN T. WHEELER: Designee.

6 MR. B. KING: -- beneficiary.

7 COMMISSIONER A. LONG: Do we assume then
8 for proprietary control of that -- over that
9 material?

10 MR. D. SIMMONS: Well, actually, the escrow
11 agreement makes us promise that it will only be
12 used within the scope of the current licenses
13 that are granted for the use of...

14 COMMISSIONER A. LONG: Four counties in the
15 state on their equipment?

16 MR. B. KING: Uh-huh.

17 CHAIRMAN T. WHEELER: Does this -- does the
18 escrows -- did they escrow the information for
19 ballot; can we use that escrowed information to
20 put ballot builder on our own server; for
21 example -- the "we" is any of the counties or
22 the state, for that matter?

23 MR. B. KING: Yeah. Mr. Chairman, from the
24 escrowed inventory that was provided by Iron
25 Mountain, the answer to that question should be

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1 yes. We'd have to get access to the material to
2 confirm that that's the case.

3 COMMISSIONER A. LONG: What does that mean
4 (indiscernible) that we can operate ourselves
5 without this server of the bank?

6 MR. B. KING: Mr. Vice Chair, I think it
7 means that we could have the ballot builder page
8 installed upon a server that we would provide to
9 the county so they can perform their -- their
10 election in building the ballot.

11 CHAIRMAN T. WHEELER: Or the counties
12 themselves could do that; correct?

13 MR. B. KING: Yes. Yes.

14 CHAIRMAN T. WHEELER: Do they -- do --
15 under those licenses, do we have to maintain
16 that or can we allow the counties to use that
17 escrowed software? You indicated that the
18 license will stay in -- I assume they just --

19 MR. D. SIMMONS: The license are.

20 CHAIRMAN T. WHEELER: They just made the
21 State of Indiana an extra licensee; right?

22 MR. D. SIMMONS: No, the counties have the
23 licenses. We get the software, but we have to
24 promise that it'll only be -- use the software
25 within the scope of the licenses that the

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1 counties have.

2 CHAIRMAN T. WHEELER: So do we -- so for
3 example, cutting in here, so we get -- we get

4 that stuff, they ship us, you know, three DVDs
5 or CDs loaded up with all the software, okay,
6 can we turn around and hand that to Boone County
7 and say here you go, knock yourselves out, have
8 a good time?

9 MR. B. KING: Yeah. I believe so, yes.

10 CHAIRMAN T. WHEELER: You think we could do
11 that on the ES&S programs?

12 MR. B. KING: Yeah --

13 CHAIRMAN T. WHEELER: All right.

14 MR. B. KING: -- I think we can.

15 COMMISSIONER A. LONG: It looks like the
16 counties --

17 CHAIRMAN T. WHEELER: whether -- whether we
18 will, and we'll get to that in just a minute,
19 but I'm just curious as to who's -- who's got
20 the legal right to use that? Our counties go to
21 ES&S, for example, and say here is this stuff,
22 can you then support this stuff or is that -- is
23 that the trickier question?

24 MR. D. SIMMONS: well, I think what we
25 would want to -- we share, since we're making

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1 the promise to keep it used within the scope of
2 the license and we would want the county to make
3 that promise to us and I don't think they could
4 shop it around as a commercial enterprise.

5 MR. B. KING: For other vendors.

6 MR. D. SIMMONS: For other vendors.

7 CHAIRMAN T. WHEELER: But could they bring

8 in another vendor to use that software, any ES&S
9 or --
10 MR. D. SIMMONS: I think so, absolutely.
11 COMMISSIONER A. LONG: As long as it was --
12 MR. D. SIMMONS: As long as it's used
13 within...
14 CHAIRMAN T. WHEELER: As long as they're
15 using it that for that purpose?
16 MR. D. SIMMONS: Yeah.
17 CHAIRMAN T. WHEELER: Tony?
18 COMMISSIONER A. LONG: No. I mean, I
19 just -- it's just a night --
20 CHAIRMAN T. WHEELER: Anything else from
21 the Commission?
22 COMMISSIONER A. LONG: The nightmares which
23 you worry about.
24 CHAIRMAN T. WHEELER: It may -- anything
25 else from the Division?

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1 (No response.)
2 CHAIRMAN T. WHEELER: I'm going to invite
3 public comment, and Penny and Andrew, come up
4 here, there's a mike up here, and just identify
5 yourselves and then we'll talk about this.
6 MS. P. BOGAN: I'm Penny Bogan. I'm the
7 Boone County clerk.
8 MR. A. WOOD: I'm Andrew Wood, Elections
9 Deputy of Boone County.
10 COMMISSIONER A. LONG: Penny, what was your
11 last name?

12 MS. P. BOGAN: Bogan.

13 COMMISSIONER A. LONG: Bogan?

14 MS. P. BOGAN: Uh-huh.

15 CHAIRMAN T. WHEELER: And we know each
16 other from a prior life on the Boone County
17 Council.

18 MS. P. BOGAN: Yes.

19 CHAIRMAN T. WHEELER: So this is my home
20 county. Boone has kind of taken the lead in
21 dealing with this situation, and as I understood
22 it from Brad right now, the ballot -- the
23 server's down right now?

24 MS. P. BOGAN: We tried to get on the
25 server last night about 4:30 and we could not

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1 get on. That's when we notified Eileen Sims to
2 let her know that we were unable to get on it.
3 I guess there is a reason for that we felt for
4 that or...

5 CHAIRMAN T. WHEELER: We don't know if the
6 bank took it down or -- the bank -- the last we
7 heard from the bank they were not going to take
8 down the server; right, or is that incorrect?

9 MR. D. SIMMONS: They -- they sort of
10 negotiated a temporary agreement to take
11 possession back. I do not know if they've
12 actually done that.

13 MR. B. KING: But not to take the server
14 down in the sense of (indiscernible).

15 CHAIRMAN T. WHEELER: They were just going
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16 to physically take the server down?

17 MR. D. SIMMONS: No, just physically take
18 the server in and then...

19 CHAIRMAN T. WHEELER: The impression I got
20 from the correspondence that I saw at least was
21 that the bank was going to continue to allow it
22 to operate; in fact, they had concerns about
23 liability if they let it go down?

24 MR. D. SIMMONS: Right. I think that all
25 indications are they want to cooperate with us

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1 so we can maintain access. They're just saying
2 you may have to own part of this -- you, county
3 or state.

4 CHAIRMAN T. WHEELER: So -- so are you guys
5 in negotiations -- is Eileen in negotiations
6 with them about...

7 MS. P. BOGAN: Yes.

8 CHAIRMAN T. WHEELER: During -- we had a
9 long conference call where we talked about maybe
10 the individual counties could get together and
11 either purchase a portion of the assets of VTI,
12 work with like -- I don't know his name, who's
13 their guy?

14 MS. P. BOGAN: Mike Burns.

15 CHAIRMAN T. WHEELER: Mike Burns. It's a
16 situation where -- I know it went down before,
17 and Mike said all we need to do is reboot the
18 server, you think maybe that's what's going on,
19 or do you know?

20 MR. A. WOOD: I talked to Mike yesterday.
21 He thought -- he thought that -- well, he heard
22 that they had seized the server and he was
23 trying to confirm it.

24 CHAIRMAN T. WHEELER: So it may be just to
25 transition. While they physically seize the

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1 server, they moving it and plugging it back in
2 and getting it up again?

3 MS. P. BOGAN: That's what we're hoping.

4 CHAIRMAN T. WHEELER: We don't know right
5 now?

6 MR. A. WOOD: No.

7 CHAIRMAN T. WHEELER: Is Eileen probably --
8 Eileen Sims is your county attorney; correct?

9 MS. P. BOGAN: Correct.

10 CHAIRMAN T. WHEELER: Is she following up
11 on that?

12 MS. P. BOGAN: Yes.

13 CHAIRMAN T. WHEELER: Okay. All right.
14 From the Commission's standpoint, what I said
15 before, I think in the conference call, I know
16 Sarah was on the conference call, is we're
17 committed to helping you guys, but some of
18 its -- it's really self-help contractual with
19 you guys. Let me ask, why were you guys in
20 ballot order -- I thought you guys had finished?

21 MS. P. BOGAN: We do. We have our ballots,
22 the order they will go.

23 CHAIRMAN T. WHEELER: If the town council
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24 in Zionsville flips and you can't get into
25 ballot builder, then you go to paper ballots?

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1 MS. P. BOGAN: We actually have two CDs.
2 We have one with Mr. Price that we rented out.

3 CHAIRMAN T. WHEELER: All right. So you
4 rented both, so you can go either way?

5 MS. P. BOGAN: Well, yes.

6 CHAIRMAN T. WHEELER: So you're ready for
7 the primary regardless of the server coming back
8 up; right?

9 MS. P. BOGAN: Yes.

10 CHAIRMAN T. WHEELER: All right. So this
11 is more of a long-term general election then?

12 MS. P. BOGAN: Right. I think once we
13 found out the server was down, we were -- you
14 know, we were thinking that everything was going
15 to be okay, and then we panicked maybe when we
16 realized that the server was not working, to
17 what our next step would be to get ready for the
18 November election?

19 COMMISSIONER A. LONG: There's something
20 that needs to be done, a short-term notice of
21 the situation. We will do everything we can to
22 help you through this.

23 MS. P. BOGAN: I appreciate that. I guess
24 we were trying to see if there was any extra
25 funding for Boone County, it was one of our

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1 concerns?

2 CHAIRMAN T. WHEELER: And let me tell you,
3 I know the Secretary of State, who I've spoken
4 with personally about this and I know you've
5 raised it with Secretary Rokita as well, and the
6 Division are looking at alternative balance to
7 funding order to support all four counties that
8 regardless of what's going to happen, at some
9 point that VTI stuff is not going to be
10 operational so -- and I gave Brad a heads up
11 that this was going to be an agenda item so we
12 could give you at least an idea of what he was
13 thinking.

14 MR. B. KING: Sure. Thank you, Mr.
15 Chairman, and Members of the Commission. The
16 funding that was used to purchase voting system
17 upgrades over the last couple of years is
18 federal money under the Help America Vote Act.
19 As part of that federal law, Indiana was
20 required to adopt a plan that allocated up to
21 \$4,000 -- in some cases, up to \$8,000 per
22 precinct/per county.

23 That money has been largely used up because
24 counties have purchased their equipment. That
25 being said, the plan also contained provisions

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1 for other sources for compensation for counties,
2 which I think included Boone --

3 MS. P. BOGAN: Uh-huh.

4 MR. B. KING: -- who had purchased voting
5 system upgrades between 1998 and 2001, before
6 the requirements went into effect.

7 CHAIRMAN T. WHEELER: Kind of the early...

8 MR. B. KING: The early -- yeah, the early
9 birds or the super responsible counties, as
10 they're sometimes called. The process involved
11 is reasonably straight forward, considering that
12 it's a federal program, and that is in the
13 summer typically a group called the Vote Indiana
14 Team meets to review the state plan to see if it
15 needs to be updated or amended, and this would
16 be a situation where funds were previously
17 budgeted, whether for super response to counties
18 or other HAVA programs could be reallocated to
19 help Voting Technology International counties
20 deal with this unfortunate situation.

21 CHAIRMAN T. WHEELER: Would you be
22 comfortable or the Division be comfortable in
23 preparing some kind of just a -- a heads-up
24 sheet? I know you're looking at some of these
25 options that could be disseminated in the

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1 counties or maybe setting up a meeting with the
2 counties to take -- to give them an idea of
3 where the revenue sources are to look at to deal
4 with this situation?

5 MR. B. KING: Yeah, I'd certainly be happy
6 to do that.

7 CHAIRMAN T. WHEELER: And in particular --

8 that's what you're looking for; correct?

9 MS. P. BOGAN: That's exactly what we want.

10 CHAIRMAN T. WHEELER: All right. As I've
11 said, I think Tony just said the same thing,
12 which is to the extent we can do anything, let
13 us know, and this is an unfortunate situation
14 through nobody's fault --

15 MS. P. BOGAN: It is.

16 CHAIRMAN T. WHEELER: -- other than VTI.
17 So we'll do everything we can, and that's --
18 we'll be here, and I suspect we'll be meeting
19 again fairly frequently. That's just the nature
20 of your...

21 MS. P. BOGAN: Yes, I would imagine.

22 CHAIRMAN T. WHEELER: And then you'd have
23 to listen to something else before. Anything
24 else from your side, any -- I know you guys sat
25 through (indiscernible) -- Brad?

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1 MR. B. KING: Nothing further.

2 MS. P. BOGAN: Nothing.

3 CHAIRMAN T. WHEELER: I believe that
4 completes the agenda items. Anything else for
5 the good of the cause?

6 COMMISSIONER A. LONG: Adjourn.

7 CHAIRMAN T. WHEELER: Motion's been made,
8 do I have a second?

9 MR. R. VANE: Second.

10 CHAIRMAN T. WHEELER: Motion's been made
11 and seconded, all in favor, signify by saying

12 Aye?

13 THE COMMISSION: Aye.

14 CHAIRMAN T. WHEELER: Those opposed, same
15 sign?

16 (No response from the Commission.)

17 CHAIRMAN T. WHEELER: Motion carries.

18 Thank you, guys.

19 (At this time the proceedings were
20 adjourned.)

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1 STATE OF INDIANA)
2 COUNTY OF HENDRICKS) SS:

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4 I, Rhonda J. Hobbs, RPR, and a Notary Public
5 and Stenographic Reporter within and for the County
6 of Hendricks, State of Indiana at large, do hereby
7 certify that the transcript is a full, true and
8 correct transcript made from my stenograph notes.

9 IN WITNESS WHEREOF, I have hereunto set
10 my hand and affixed my notarial seal this _____
11 day of October, 2008.

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NOTARY PUBLIC

16 My Commission Expires:
17 Septemer 12, 2009
18 County of Residence:
19 Hendricks County

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