

Indiana Election Commission Minutes June 29, 2016

Members Present: Bryce H. Bennett, Jr., Chairman of the Indiana Election Commission (“Commission”); Keith Clock, Proxy for S. Anthony Long, Vice Chairman of the Commission; Michael A. Claytor, Proxy for Suzannah Wilson Overholt, member; Zachary E. Klutz, member.

Members Absent: S. Anthony Long, Vice Chairman of the Commission; Suzannah Wilson Overholt, member.

Staff Attending: J. Bradley King, Co-Director of the Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Angela M. Nussmeyer, Co-Director of the Election Division; Matthew Kochevar, Co-General Counsel of the Election Division.

Others Attending: Dr. Jay Bagga; The Hon. Nicole Brown, Monroe County Circuit Court Clerk; Mr. Jeremy Burton; Mr. Kyle Conrad; The Hon. Wendy Hudson, Elkhart County Circuit Court Clerk; Mr. Tom John; The Hon. Mary Kilgore, Jennings County Circuit Court Clerk; The Hon. Beth Liming, Cass County Circuit Court Clerk; Dr. Joseph Losco; Mr. Keith McGinnis; The Hon. Marcia Moore, Hancock County Circuit Court Clerk; The Hon. Jim Morrow, Gibson County Circuit Court Clerk; Mr. Steve Pearson; Mr. Edward Perez; The Hon. Terri Rethlake, St. Joseph County Circuit Court Clerk; Mr. Kip Tew; The Hon. Kim Wilson, Howard County Circuit Court Clerk.

1. Call to Order:

The Chair called the June 29, 2016 meeting of the Commission to order at 1:00 p.m. EDT in State House Room 125, 200 West Washington Street, Indianapolis, Indiana.

2. Transaction of Commission Business:

The Commission proceeded to transact the business set forth in the Transcript of Proceedings for this meeting prepared by Susan Wollenweber Dezelan of Connor Reporting. This document is incorporated by reference into these minutes, with the following corrections of scrivener’s errors:

Page 4, line 2, replace “probably” with “properly”.

Page 11, line 6, replace “12.3.4” with “1.3.4”.

Page 48, line 9, replace “[unintelligible]” with “Dominion”.

Page 65, line 17, replace “Margie” with “Wendy”.

Page 69, line 10, replace “3-11-75” with “3-11-7-5”.

Page 78, line 13, replace “a” with “of a”.

Respectfully submitted,



J. Bradley King
Co-Director



Angela M. Nussmeyer
Co-Director

APPROVED:



Bryce H. Bennett, Jr.
Chairman

In the Matter Of:

Indiana Election Commission Public Session Agenda

TRANSCRIPT OF PROCEEDINGS

June 29, 2016



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Transcript of Proceedings
June 29, 2016

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TRANSCRIPT OF PROCEEDINGS

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INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

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JUNE 29, 2016

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1:00 P.M.

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LOCATION:

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STATE CAPITOL BUILDING
STATE ROOM 125
INDIANAPOLIS, IN 46204

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A STENOGRAPHIC RECORD BY:
SUSAN WOLLENWEBER DEZELAN, RDR, CRR, RCR
NOTARY PUBLIC
STENOGRAPHIC REPORTER

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A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

MR. BRYCE H. BENNETT
Chairperson

MR. KEITH CLOCK
Proxy for Vice Chairman Anthony Long

MR. MICHAEL A. CLAYTOR
Proxy for Commissioner Suzannah Wilson Overholt

MR. ZACHARY F. KLUTZ
Commissioner

INDIANA ELECTION DIVISION STAFF:

MR. BRAD KING
Co-Director

MS. ANGIE NUSSMEYER
Co-Director

MR. MATTHEW R. KOICHEVAR
Co-General Counsel

1 THE CHAIRPERSON: Welcome, Ladies and
2 Gentlemen. This meeting of the Indiana Election
3 Commission is called to order.

4 The following members of the Commission are
5 present: Myself, Bryce Bennett; we have Keith
6 Clock, proxy for Vice Chairman Anthony Long; and
7 we have Michael Claytor, proxy for member
8 Suzannah Overholt; and we have member Zachary
9 Klutz.

10 The Indiana Election Division staff here
11 today, we have Co-Directors Brad King and Angie
12 Nussmeyer. The Co-General Counsels are Dale
13 Simmons, who is not with us here today, and
14 Matthew Kochevar. The court reporter today is
15 Susan Dezelan from Connor & Associates.

16 And before we begin, I want to remind
17 everyone, on behalf of the court reporter, to
18 identify yourself when you begin speaking, spell
19 your name, and speak clearly. And do not speak
20 at the same time as others. The court reporter
21 can only record one at a time.

22 I would request Mr. King and Ms. Nussmeyer
23 to confirm that the Commission meeting has been
24 properly noticed, as required under the Open
25 Door Law.

1 CO-DIRECTOR KING: Mr. Chairman, members of
2 the Commission, this meeting was probably
3 noticed in compliance with the Open Door Law.

4 THE CHAIRPERSON: Thank you. At this time,
5 I would call for the ratification of campaign
6 finance settlement agreements and for a
7 presentation by Mr. King and Ms. Nussmeyer.

8 CO-DIRECTOR KING: Mr. Chairman and members
9 of the Commission, in the binder behind the
10 white tab entitled "CFA Settlements," you'll see
11 a sheet that lists a total of \$2,300 in campaign
12 finance settlement agreements. These were
13 submitted to the Commission for your
14 ratification and approval.

15 THE CHAIRPERSON: Is there a motion to
16 ratify the campaign finance settlement
17 agreements as presented?

18 MR. KLUTZ: So moved.

19 THE CHAIRPERSON: We have a motion. Is
20 there a second?

21 PROXY FOR VICE CHAIRPERSON: Second.

22 THE CHAIRPERSON: Motion and second. Any
23 discussion?

24 PROXY COMMISSIONER CLAYTOR: Mr. Chairman,
25 just would like to point out to the Commission

1 that I am one of the miscreants listed in the
2 settlement agreements there, and I don't know if
3 it is proper or improper for me to vote on the
4 motion. I'd be happy to recuse myself.

5 PROXY COMMISSIONER CLOCK: Or accuse
6 yourself.

7 PROXY COMMISSIONER CLAYTOR: That too.

8 THE CHAIRPERSON: If you feel most
9 comfortable, you may recuse yourself, but the
10 Commission does not deem that necessary.

11 PROXY COMMISSIONER CLAYTOR: Then I will
12 vote on the matter.

13 THE CHAIRPERSON: Okay. Any further
14 discussion?

15 We have a motion and second for
16 ratification.

17 All in favor say aye.

18 All opposed say the sign.

19 Motion carried. Ratification is complete.

20 At this time we will administer the oath
21 for everyone present who plans to testify before
22 the Election Commission. If you are planning to
23 testify, please stand for the administration of
24 the oath, and I'll recognize Mr. King to
25 administer the oath.

1 (Co-Director King administers the oath)

2 (Chorus of "I do" from the audience.)

3 THE CHAIRPERSON: I now recognize Dr. Jay
4 Bagga and Dr. Joseph Losco of Ball State
5 University which administers the Voting System
6 Technical Oversight Program, also known as
7 VSTOP, for a presentation concerning voting
8 systems.

9 However, before they begin their main
10 presentation concerning the voting systems, I
11 understand that VSTOP has submitted a report
12 concerning certain de minimus hardware
13 engineering change orders requested by Electric
14 Systems & Software. This report is included in
15 our binders.

16 Have the two of you been administered the
17 oath?

18 DR. LOSCO: Yes, we have.

19 DR. BAGGA: Yes, we have.

20 THE CHAIRPERSON: All right, then. At this
21 point you may proceed.

22 DR. LOSCO: Mr. Chairman, members of the
23 Commission, Election Systems & Software formally
24 requested the approval of engineering change
25 orders to their certified voting systems in

1 Indiana. Each of the ECOs on the list that you
2 have before you has been evaluated by VSTOP
3 according to the protocol approved by the
4 Indiana Election Commission. Members of the
5 team have researched the ECOs and the VSTL, or
6 the laboratory findings, showing them in
7 compliance with requirements for de minimus
8 changes to the hardware components that are
9 compatible with the Unity 3200, 3400, 3410,
10 EVS 5010 and EVS 5200 voting systems certified
11 for use in Indiana.

12 THE CHAIRPERSON: Do you have a
13 recommendation?

14 DR. LOSCO: We recommend the approval of
15 these ECOs by ES&S.

16 THE CHAIRPERSON: Is there a motion to
17 approve the engineering change orders as
18 presented?

19 PROXY COMMISSIONER CLAYTOR: So moved.

20 THE CHAIRPERSON: Motion.

21 Is there a second for purposes of
22 discussion?

23 COMMISSIONER KLUTZ: Second.

24 THE CHAIRPERSON: We have a second.

25 Is there any discussion?

1 Hearing none, all in favor say aye.

2 Opposed say nay.

3 The ayes have it. The engineering change
4 orders are approved. Thank you.

5 We'll now turn our attention to a general
6 review of compliance with the Senate Enrolled
7 Act 61, now Public Law 21-2016.

8 Dr. Bagga and Dr. Losco, please continue
9 your presentation regarding voter system
10 compliance with Senate Enrolled Act which has
11 been designated as Public Law 21-2016.

12 DR. LOSCO: Mr. Chairman --

13 THE CHAIRPERSON: I appreciate your
14 overview of VSTOP's work since it's been signed
15 earlier this year, including your communications
16 with all vendors, your work with testing
17 laboratories, and the schedule that you
18 communicated to the vendors to ensure that there
19 is adequate time for their systems to be brought
20 into compliance with Indiana law. We can hear
21 from you regarding specific vendors later in the
22 presentation.

23 DR. LOSCO: Okay, thank you, Mr. Chairman,
24 members of the Commission. VSTOP began
25 consulting with the Indiana Election Division

1 shortly after SEA 61 was signed into law by the
2 Governor on March 21st. We discussed time lines
3 and procedures for compliance testing and began
4 working on creating test scenarios or test
5 scripts for SEA 61 to be used by federally
6 approved testing labs.

7 The test scenarios were approved by the
8 Indiana Election Division on April 8th. VSTOP
9 communicated with all vendors and the three
10 federally accredited testing labs around the
11 country on April 8th, 2016, with -- and sent
12 the IED-approved test scenarios.

13 The following list of time lines for
14 compliance was also communicated to the vendors.
15 The vendors were informed that testing for
16 systems that vendors claimed to already be in
17 compliance should be completed by June 3rd.

18 Vendors were informed that the period for
19 which software development must be completed, if
20 software changes needed to be made, that that
21 date was July 15th.

22 The vendors were informed that the period
23 during which testing for these software
24 revisions must be completed by the federal labs
25 was August 1st, and VSTOP estimated that final

1 approval and implementation of any software
2 changes would have to be completed by
3 September 15th. These dates were communicated
4 to the vendors and to the testing labs.

5 I believe you have a copy of a color-coded
6 status report before you. And this shows the
7 current status of the five vendors with
8 certified systems in the state of Indiana.

9 THE CHAIRPERSON: Any questions from the
10 Commission members for VSTOP at this time
11 regarding the presentation?

12 COMMISSIONER KLUTZ: Can you direct your
13 attention to this? I'd like to walk through the
14 green vendor's list.

15 DR. LOSCO: Sure. The green vendor is one
16 that has fully already been tested to comply
17 with SEA 61.

18 The yellow is a vendor that is undergoing
19 tests right now that has software revisions in
20 testing with the federally approved lab.

21 The red are those that are not yet in
22 compliance. Some have been tested but -- but
23 none of them have been confirmed to comply with
24 SEA 61. In our specific presentations, we can
25 give more details about each vendor.

1 COMMISSIONER KLUTZ: Okay.

2 THE CHAIRPERSON: Let's proceed with your
3 presentation and start with Unisyn Voting
4 Solutions and their request for engineering
5 change orders to implement a software
6 modification for the Unisyn 12.3.4 voting
7 system.

8 DR. LOSCO: Mr. Chairman, members of the
9 Commission, as a result of SEA 61 changes in the
10 Indiana Election Code, Unisyn Voting Solutions
11 submitted a software modification to Indiana to
12 its certified OpenElec 1.3 voting system, and a
13 test plan was submitted as well and was approved
14 by the Indiana Election Division.

15 The test plan was reviewed by VSTOP,
16 approved by IED on June 2nd. The testing was
17 performed by NTS Labs. They are one of the
18 federally accredited labs.

19 A final test report, which I believe you
20 have in front of you, was received from NTS on
21 June 8th. NTS Labs indicates that the
22 modified Unisyn OpenElec, now called 1.34
23 modified voting system, complies with the
24 requirements of SEA 61. VSTOP supports this
25 finding.

1 THE CHAIRPERSON: For purposes of
2 discussion, is there a motion to approve the
3 Unisyn engineering change orders as presented?

4 PROXY COMMISSIONER CLAYTOR: I'll so move.

5 THE CHAIRPERSON: Is there a second?

6 COMMISSIONER KLUTZ: Second.

7 THE CHAIRPERSON: A motion and a second.

8 Is there any discussion.

9 Hearing none, all in favor of the motion
10 say aye.

11 All opposed nay.

12 The ayes have it. Motion carried.

13 Engineering change orders are approved.

14 Dr. Bagga and Dr. Losco, please proceed
15 with your presentation regarding the status of
16 the efforts taken by MicroVote to comply with
17 SEA 61.

18 DR. LOSCO: Mr. Chairman, members of the
19 Commission, MicroVote Infinity Systems 3.10 and
20 4.1 underwent compliance testing for SEA 61 by
21 Pro V&V Labs, another accredited federal lab, on
22 April 26th, 2016.

23 ~~The lab report reviewed by VSTOP on~~
24 June 7th, 2016, indicated that the DRE, or the
25 direct record electronic device, passed all

1 compliance measures for SEA 61, but the absentee
2 ballot card system did not pass compliance with
3 IC 3-12-1-7(f).

4 MicroVote then engineered software changes
5 to come into full compliance with SEA 61 and is
6 scheduled to undergo retesting by Pro V&V Labs
7 in July.

8 THE CHAIRPERSON: Is there any
9 representative of MicroVote present who wishes
10 to testify regarding this matter?

11 Is there anyone else other than the vendor
12 who wishes to testify regarding this matter?

13 Are there any questions from the Commission
14 members?

15 COMMISSIONER KLUTZ: This is simply a
16 status report. I anticipate another meeting,
17 then, in July or whenever the lab results come
18 back?

19 DR. LOSCO: Yes, Commissioner, we'll bring
20 those results as soon as they're available.

21 THE CHAIRPERSON: Do you have an opinion
22 whether the development in testing is proceeding
23 along a course which would allow MicroVote to be
24 in compliance in a timely manner with the law?

25 DR. LOSCO: We do believe it will. We've

1 been in touch with the testing lab, and they
2 indicated that testing was proceeding with --
3 with the time line being sometime in mid-July.

4 THE CHAIRPERSON: Thank you.

5 Would you now proceed with your
6 presentation regarding the status of the efforts
7 taken by Dominion Voting Systems and
8 Governmental Business Systems to comply with
9 SEA 61.

10 DR. LOSCO: Mr. Chairman, members of the
11 Commission, Dominion/GBS has indicated it
12 believes their systems will comply with all
13 sections of SEA 61 except for IC-3-12-1-7(f) for
14 which they provide manual procedures instead of
15 automated compliance. Dominion/GBS indicated
16 its equipment is facing end-of-life and does not
17 plan to provide software changes at this time.

18 THE CHAIRPERSON: Are there any
19 representatives of Dominion or GBS present who
20 wish to testify regarding this matter?

21 MR. CONRAD: Mr. Chairman, Kyle Conrad.
22 I'm a representative of Governmental Business
23 Systems. I would be happy to answer any of your
24 questions. I would be glad to come up for it,
25 but I don't know if I can.

1 [LAUGHTER]

2 THE CHAIRPERSON: Are there any questions
3 at this point for --

4 MR. CONRAD: I'd just like to clarify one
5 thing. Governmental Business Systems is a
6 dealer representative. We do not control the
7 source code; we do not control making any of the
8 changes; we are at the mercy of the

9 manufacturer. We're kind of like going into a
10 Ford dealer and wanting a safety recall, where
11 you actually need to go to the manufacturer for
12 that. That's kind of the position we're in.

13 We have done our own in-house testing. We
14 do believe we are in compliance with all but
15 that one provision. And our recommendation was
16 it's such a minute possibility of happening --
17 in fact, we had our counties pull data from the
18 2012 election to see how many overvoted
19 straight-party ballots there were, and in many
20 cases there were zero.

21 So our solution, if you will, or
22 recommendation, was to perform a manual
23 procedure to be able to get us through this
24 presidential election.

25 THE CHAIRPERSON: Is it your testimony that

1 you don't plan to be in compliance with the law?

2 MR. CONRAD: We are working on that with

3 Dominion at this time, but we do not have a

4 clear answer for that right now.

5 THE CHAIRPERSON: Is there time remaining,

6 sufficient time remaining for you to get in

7 compliance with the law before the election?

8 MR. CONRAD: We hope so. We would hope so,

9 but, again, we are working with the

10 manufacturer.

11 COMMISSIONER KLUTZ: What steps is the
12 manufacturer taking?

13 MR. CONRAD: I cannot answer that.

14 COMMISSIONER KLUTZ: And you're working
15 with them?

16 MR. CONRAD: Yes. I am --

17 COMMISSIONER KLUTZ: So what --

18 MR. CONRAD: I am personally not.

19 COMMISSIONER KLUTZ: What are they telling
20 you?

21 MR. CONRAD: That they would be prepared to
22 submit this to testing.

23 COMMISSIONER KLUTZ: When?

24 MR. CONRAD: That I cannot answer.

25 COMMISSIONER KLUTZ: So they said they are

1 going to submit it to testing?

2 MR. CONRAD: We're in discussions with them
3 for that. I cannot speak on their behalf.

4 COMMISSIONER KLUTZ: You're talking about
5 testing, or they said they are going to submit
6 it to testing?

7 MR. CONRAD: We're talking about it.

8 COMMISSIONER KLUTZ: How many counties are
9 your machines in?

10 MR. CONRAD: Twenty; several of whom are
11 here today.

12 THE CHAIRPERSON: Does anyone from those 20
13 counties or does anyone else have any more
14 questions for Mr. Conrad?

15 Any questions by any of the Commission
16 members for Mr. Conrad?

17 MR. CONRAD: I presume you don't want to
18 hear the philosophical issues that we have with
19 the law; you're just strictly sticking with the
20 technical standpoint --

21 THE CHAIRPERSON: Are you aware of any
22 legal defense for not complying with the law?

23 MR. CONRAD: I'm not an attorney, but I --
24 I have some philosophical and ethical issues
25 with the law.

1 [LAUGHTER]

2 THE CHAIRPERSON: Have you engaged counsel
3 to represent your company in this regard.

4 MR. KYLE CONRAD: No, no. I spent 25 years
5 in the election business. I was a circuit court
6 clerk for 10 years; I'm a vendor now; I'm an
7 elected official; I'm on the ballot. In reading
8 the law, I can determine on my own that there
9 are severe issues with it.

10 THE CHAIRPERSON: Do you have any intention
11 to challenge the law?

12 MR. CONRAD: I don't have that deep a
13 pocket, but I would sure encourage somebody that
14 does that we would assist, but I'm not
15 personally prepared to do that.

16 THE CHAIRPERSON: Are you aware of any
17 ongoing challenges to the law at this point in
18 time?

19 MR. CONRAD: I'm not aware. Honestly, I
20 believe that -- if I may -- part of the issue
21 might be in the definition of partisan offices
22 when it comes to voiding the vote for more than
23 one. We're asking the voter to -- who chooses
24 to vote a straight party, to manually go to a
25 vote for more than one, and in this case, in all

1 of these counties that are represented today,
2 that's the county council at large, vote for
3 more than one. We're asking them to go down to
4 that race specifically and manually vote those
5 candidates, because they're not considered part
6 of the straight-party ticket any longer.

7 We, by law, which this part of the law we
8 did comply with, decoupled those races from the
9 straight-party ticket. The problem comes in
10 when a voter, either intentionally or
11 inadvertently, overvotes that straight-party
12 ballot.

13 The definition or the interpretation, as we
14 understand it now, says that all partisan
15 offices shall be voided. So you have said in
16 one sentence, county council members, town
17 council members, township board members, you are
18 no longer good enough to be part of the
19 straight-party ballot, so we're kicking you off
20 to the side.

21 So voter intent is very clear. If those
22 ovals are -- are filled in on that ballot, voter
23 intent is very clear. Those are the three
24 candidates that that voter chose unless they
25 overvote the straight party, and then voter

1 intent means nothing because, we're required to
2 void those races, just like we do the rest of
3 the party offices.

4 And that's where I, as a county chairman,
5 as a candidate, I have -- as a vendor, as a
6 clerk, I would have strong reservations about
7 that. We're wanting it both ways in the same
8 law. We're wanting them to be separate from the
9 straight party, unless something happens here,
10 and now they've got to be part of the straight
11 party.

12 THE CHAIRPERSON: Will you allow your
13 philosophical reservations about compliance with
14 the law impact your compliance with the law?

15 MR. CONRAD: I'm not in a position to
16 comply with any law. I'm just an account
17 manager. So I can't speak for my ownership, I
18 can't speak for Dominion.

19 We are working to come to a resolution.
20 That resolution, however, is going to cost, it's
21 going to cost our counties, and it is going to
22 be a cost that is -- for a scenario that is very
23 unlikely to occur. And honestly, poorly written
24 legislation.

25 UNIDENTIFIED SPEAKER: Amen.

1 MR. CONRAD: This is kind of like a few
2 years ago, if you remember the Legislature
3 passed a law that took all unopposed candidates
4 off the ballot. And the next legislative
5 session we fixed it because the outcry was so
6 poor. I think we could possibly see that in
7 this scenario.

8 THE CHAIRPERSON: What is the resolution
9 that you are working towards? When I say "you,"
10 I mean the company's.

11 MR. CONRAD: Well, I'm here.

12 THE CHAIRPERSON: Anything else?

13 [LAUGHTER]

14 MR. CONRAD: Not that I can speak on
15 behalf -- because I know there's discussion
16 between my employer and Dominion.

17 THE CHAIRPERSON: Yes.

18 PROXY COMMISSIONER CLAYTOR: Did you raise
19 this issue in the Legislature when this was
20 going on?

21 MR. CONRAD: Yes.

22 PROXY COMMISSIONER CLAYTOR: Did you get a
23 response?

24 MR. CONRAD: "Passed." I -- you know, if
25 the interpretation or the definition of

1 "partisan offices" were changed, this problem
2 could go away. If you simply define "partisan
3 offices" as those offices that are cast a vote
4 through the straight-party ballot, then when you
5 void those offices, it still leaves those three
6 candidates or the vote for more than one offices
7 out of the -- out of the definition. And then I
8 think everybody's in full compliance.

9 THE CHAIRPERSON: Do you understand that's
10 a legislative solution; that's not anything we
11 can do through this Commission.

12 MR. CONRAD: Is it not your responsibility
13 to interpret the law or to define what the
14 legislative -- what the legislators' intent was
15 to -- when it passed this law? Can you not
16 interpret the law and define what their intent
17 was for partisan offices?

18 THE CHAIRPERSON: We'll have some legal
19 discussion before this meeting is over on those
20 issues. Anything else you want to add?

21 MR. CONRAD: Not unless somebody has
22 questions for me.

23 THE CHAIRPERSON: Okay. Dr. Bagga and
24 Dr. Losco, please proceed with the presentation
25 regarding the status of efforts taken by

1 Election Systems & Software to comply with
2 SEA 61.

3 DR. LOSCO: Mr. Chairman, members of the
4 Commission, ES&S has indicated that it believes
5 its certified voting systems currently in use in
6 Indiana comply with all sections of SEA 61
7 except for IC 3-12-1-7(f). For Section (f) they
8 have provided manual procedures instead of the
9 required automated procedures.

10 ES&S has admitted this shortcoming and
11 requested that manual procedures be permitted
12 for the 2016 general election, and they propose
13 a modification in its software after the 2016
14 election for recertification in 2017.

15 THE CHAIRPERSON: Is there a representative
16 of ES&S present who wishes to testify regarding
17 this matter?

18 MR. TEW: Thank you, Mr. Chairman. My name
19 is Kip Tew with the law firm of Ice Miller here
20 on behalf of ES&S.

21 We have a couple people that we'd like to
22 speak, including me. I would like to first say,
23 on behalf of ES&S, that we apologize that we're
24 here today taking up your time.

25 Tom John and I both were intimately

1 involved in Senate Bill 61, negotiating with the
2 Secretary of State's office, negotiating with
3 legislators, speaking with Brad, speaking with
4 Angie and others about this bill. And our
5 apology is very heartfelt that we missed Section
6 (f)'s implications with respect to how this
7 might affect our ability to pull off this
8 election.

9 And so we come to you as a mea culpa saying
10 we told the legislators and we told everybody
11 that we could comply fully with Senate Bill 61,
12 and upon further review inside the company, one
13 person, I think, realized that there was an
14 issue, and that it was going to be impossible
15 for ES&S to comply with Senate Bill 61 fully by
16 this November election deadline for ES&S to
17 be -- to continue to provide the level of
18 security that we believe is necessary as a
19 company.

20 And I might just add, as an advertisement
21 for the company, the world's largest election
22 company; their reputation and why they're the
23 world's largest is because they do the testing
24 that is necessary over time. They have become a
25 company that is well regarded, who has the

1 highest integrity and the highest level of
2 service, and that is why we believe it's
3 impossible for us to have this system in place
4 in time, because once we start making those
5 changes, other changes happen because of those
6 changes, and they want to be fully tested. And
7 if we don't fully test, something could go
8 wrong.

9 We have proposed a manual workaround. As
10 the other gentleman testified, and I think John
11 or Tom will testify as well, this is -- I know
12 it's a -- not a very good crutch, but there is a
13 crutch; it's a very, very small problem for a
14 very, very few ballots that may or may not
15 impact this election. Hopefully it won't impact
16 the election at all. But the manual workaround
17 will correct any problems that may exist.

18 It will be a bit of an imposition on the
19 clerks out there if, indeed, we have this issue,
20 but it is better, we believe, as a company, than
21 circumventing or short-circuiting our security
22 systems in our testing.

23 ~~I'd like to turn it over to Tom John to~~
24 talk a little bit more.

25 MR. JOHN: So at the end of the day, our

1 request is pretty straightforward, which would
2 be that, under 3-11-7-14, the Commission invoke
3 its ability to issue supplementary instructions
4 and procedures for safe and efficient use of
5 ballots and voting systems pursuant to this
6 chapter, which is the use of our voting systems.

7 We have 20 counties we serve in this state.

8 THE CHAIRPERSON: What was that cite again,

9 Mr. John?

10 MR. JOHN: It's 3-11-7-14.

11 We have 20 counties that we support in this
12 state. We have 1800 machines in this state.
13 And we support four voting -- full voting
14 systems in this state, as opposed to, for
15 example, Unisyn only has one voting system.

16 Now, we support four voting systems because
17 we've continued to support systems that we put
18 out two decades-plus ago.

19 In making that commitment to our clerks and
20 to the voters that we would, in fact, continue
21 to support systems after others might have
22 sunsetted them, that means that it's much more
23 complex when our system has to be changed.

24 We have four different systems. We have
25 different iterations of those systems, where

1 different pieces have been added and subtracted.
2 So it's actually -- you start to break it down,
3 it could be as many as 12 or 18 different
4 permutations going across those different
5 counties.

6 We typically look at about an 11-month time
7 line to implement software changes to getting to
8 a certification. And as you look at that,
9 that's three to four months in development, it's
10 time of internal testing of three to four
11 months, it's going through VSTOP, going through
12 EAC. Ultimately, then, it takes -- when you
13 have 1800 pieces of equipment throughout the
14 state, it takes a month or two simply to update
15 the firmware and the software to make sure that
16 you're doing it and you have it right.

17 So we, as a company, have identified -- and
18 we truly apologize, because none of us are
19 happy. Kip and I wouldn't want to be here and
20 it wasn't our intent to be here. And, frankly,
21 we made a mistake. Permeating our election code
22 is the premise that you always look to count
23 whenever we can discern voter intent. And we go
24 to great lengths to do that. I've worked in
25 recounts where somebody's circled the rooster

1 and all sorts of different things that we count
2 them.

3 Section (f) is counterintuitive to that.

4 Because in that one particular case, to

5 Mr. Conrad's point, we say that if you do this,

6 i.e., mark the two party devices, regardless of

7 what discernable intent we have, we're going to

8 ignore your vote. The interpretation of that is

9 absolutely correct. We don't dispute what the
10 IED's interpretation is.

11 And so we say it in the way of explanation,
12 not excuse, that, frankly, when we look at
13 things, we look at it through that lens of
14 always counting votes, and I think that's how
15 our people missed it when we were looking at 61,
16 that this does operate somewhat differently than
17 our codes historically -- or that our election
18 code historically does, where we always
19 emphasize counting the votes.

20 That being said, we want to ensure that we
21 have an excellent election in 2016, which is a
22 presidential, which obviously is the highest
23 turnout and most complicated. And we want to
24 make sure that when we come back for
25 certification, as all vendors have to next year,

1 that we'll be fully certified and fully in
2 compliance with the Indiana Election Code.

3 So we are seeking that you use special
4 dispensation in this particular case with
5 respect to this particular issue, and that we
6 actually, then, next year, will come back in
7 full electronic certification.

8 With that, I'd like to have just a little
9 more detail for you and have Steve Pearson from
10 ES&S talk about what the process is for us to
11 actually implement this sort of change, what our
12 time lines are on that, and why the complexity
13 is more significant for us than it is often
14 probably other vendors who only have maybe a
15 single system and a single set of equipment with
16 that. Okay.

17 MR. PEARSON: Thank you. I'm Steve
18 Pearson. I am Vice President of Voting Systems
19 for ES&S. My primary responsibilities in the
20 company for the last 12 years have been to
21 oversee the federal certification process as
22 well as the state certification process.

23 As Tom mentioned, you know, our situation's
24 a little bit different. We have a -- with the
25 four separate voting system suites of software

1 and tabulators that are in the field, as well as
2 ballot marking devices, there are 16 different
3 firmware versions running on that -- that set of
4 equipment.

5 We have eight different pieces of -- types
6 of equipment that make up that -- all of these
7 suites, as well as the election reporting
8 modules for -- all the ERM modules are different
9 which collect and tabulate and report -- report
10 the votes as well.

11 One thing I would like to add is -- just to
12 reiterate on what Tom mentioned, you know,
13 our -- our -- our testing process is extremely
14 stringent. We -- we've looked at every one of
15 these changes, and we've estimated, as Tom
16 mentioned, about an 11-month period of time from
17 the time that we've performed the modifications,
18 we complete our internal testing, we go through
19 a full regression with a -- with an
20 EAC-accredited voting system test lab. Not just
21 to verify that we meet Senate Bill 61. If we
22 make modifications to a voting system, I think
23 we -- we insist on a full integration test, full
24 regression test of the entire system just to
25 ensure that nothing else got unhinged. To test

1 just that one feature to ensure that we comply
2 with SB 61 and to not comply with other aspects
3 of the law or to have a system that is not
4 accurate on election day, particularly in a --
5 or any- -- anytime, is something that we just
6 don't feel comfortable, for -- for our
7 customers' sake and our county's sake, even if
8 the calendar allowed us to do this, we just --
9 we just wouldn't feel right in moving forward
10 and skipping steps in the -- in the development
11 and testing verification and rollout process.

12 So that's really the biggest concern, from
13 our standpoint, is the risk of trying to rush
14 through, cut corners, and -- and get a system
15 deployed in a hasty manner. And that's really
16 it. We -- we are 100 percent committed to
17 bringing all of our systems, all four of these
18 software suites, into -- system suites into full
19 compliance. And we're committed to bringing
20 them in for recertification in 2017.

21 I think that's -- I think those are the key
22 points. And we did go back and we did look
23 at -- we looked at at least four of the counties
24 to go back into 2012 and 2014. And what we
25 found were, in -- in some instances, there were

1 no straight-party overvotes. So we think this
2 is a very minimal -- the worst case was .3 of
3 1 percent, was the highest that we found. But
4 generally, it's a handful of ballots that have
5 been historically where the straight party has
6 been overvoted.

7 We entered into testing with Pro V&V, the
8 EAC-accredited lab. They completed all of their
9 testing yesterday for all four of the systems,
10 with all 16 of the tabulators and brought all
11 the results in with 100 percent accuracy as of
12 completion at end of day yesterday.

13 They're in the process of writing their
14 report now. They -- they utilize the written
15 procedures that we prescribed, using the
16 features of the current system, to be able to
17 adjust the vote totals to bring it into full
18 accuracy. So --

19 THE CHAIRPERSON: When did ES&S begin its
20 effort to comply with the law?

21 MR. PEARSON: Begin its effort to comply
22 with the law?

23 THE CHAIRPERSON: Yes.

24 MR. PEARSON: As soon as the bill was
25 signed, we -- our development team first of all,

1 made sure that we understood what they -- the
2 law meant, the Senate Bill 61 meant. But it
3 wasn't until -- we missed it, too. And it
4 wasn't until the voting system test lab produced
5 the detailed test cases, and then we started to
6 apply the test cases to these four releases that
7 we have in the state is when we also identified,
8 like many of the -- all of the other
9 manufacturers, to my knowledge, and the
10 laboratories, and I'm not sure about the others,
11 that Section (f) is the one that really -- it
12 was one everybody was going to have difficulty
13 with in bringing -- be -- having full
14 compliance, to automatically tabulate those.
15 So -- so at that point, once we understood
16 that, 'cause we believed our systems met SB 61
17 until that discovery. And that discovery was
18 probably in the early April time frame.
19 And then we -- then we performed -- that's
20 when we dove into all of the systems and came up
21 with the estimates for the modifications and
22 the -- and the testing that was required, as
23 well as rolling it out. And that would be
24 implementing it in each of the counties,
25 upgrading all of their systems, touching every

1 piece of equipment which -- how many do we have,
2 Jeremy?

3 MR. BURTON: 1800.

4 MR. PEARSON: About 1800 pieces of
5 equipment in the field. And we just felt, well,
6 the calendar didn't allow it, under our testing
7 protocols.

8 MR. JOHN: So, yeah, we're looking at
9 basically five months, you know, because once
10 you get to the middle of September, you have
11 ballots going out, you know, you're locked into
12 the system. And under any scenario, we were not
13 even going to be able, through coding or
14 internal stage of testing, much less other
15 testing by the time you got there.

16 THE CHAIRPERSON: And you --

17 MR. JOHN: So that's why we really have
18 focused, on this election, coming up with the
19 best possible system that we know we can trust
20 within looking forward to other --

21 THE CHAIRPERSON: Has ES&S been in
22 communication with VSTOP to keep them informed
23 of your efforts and progress towards compliance?

24 MR. PEARSON: We've remained in continual
25 contact with them. We've responded to every

1 request that they've made to us, yeah. And we
2 had informed that -- that the testing from
3 Pro V&V was planned for the latter part of this
4 month, June.

5 MR. JOHN: And one note I'll make is Steve
6 referred to .3 of 1 -- of a percent. That's
7 Marion County. There were 52 of these double
8 straight-ticket votes in Marion County. It's
9 the biggest county we serve, it's the biggest
10 county in the state. However, it actually does
11 not have a situation anymore, where there are
12 any more at-large races on the ballot.

13 And so this is only an issue when you have
14 somebody who votes both straight-party Democrat,
15 straight-party Republican, and you have a race
16 where there is an at-large candidate that is
17 there.

18 And it, in fact, only would affect the vote
19 outcomes when, in addition to marking
20 straight-ticket Democrat, straight-ticket
21 Republican, the person, then, went down and
22 filled out circles.

23 For the proxies here, SB 61, I'm not sure
24 how familiar, but it essentially unhinged the
25 straight-ticket votes from at-large multi-seat

1 races. And so that in this case you no longer
2 can vote straight-ticket Republican or Democrat
3 and have that count in a multi-party race -- or
4 multi-member district.

5 So in this case, you now have to go down
6 and fill out each of the circles. When -- I
7 think, as near as I can see from all of the
8 different election vendors, up until then, they
9 had relied on -- if you vote two straight-party
10 tickets, you inherently have an overvote. And
11 so in that case, it automatically disqualified
12 the ballot and everything was going on. It
13 wasn't until then in the system you went and you
14 delinked these at-large races from the straight
15 party that now essentially what happens is they
16 get left there in the open and not canceled out
17 by the overvote associated with the straight
18 party.

19 That sounds -- okay, it may not even sound
20 simple, but I tried to make it sound simple.

21 [LAUGHTER]

22 MR. JOHN: But the fact is, when you get
23 into this from a complexity of multiple systems,
24 multiple -- that's why it gets so difficult.
25 Because there was this way that had worked in

1 the way the statutes were connected, that now we
2 essentially have again unhinged and we pulled
3 one piece and unknowingly, when you're talking
4 about these sophisticated software systems, it
5 affects a lot of other things, which is why the
6 full regression testing is so important, from
7 our perspective. Because when you pull one
8 piece out, do you know how -- somehow you
9 undermine the integrity of the whole system
10 otherwise. Our response to that is we wanted to
11 do the fullest testing possible. Coming into a
12 presidential year, the timing just simply wasn't
13 there for us.

14 We have two clerks here who both work with
15 ES&S, who we've had review these systems, the
16 manual system, and we'd like to have them come
17 and comment both on the review of the
18 possibility and how to do it and whether it's
19 realistic to do in their process and how they
20 feel about that, if that would be okay.

21 Kim Wilson and Mary Kilgore.

22 MR. TEW: Is it okay if we -- I think we'll
23 be able to hear you.

24 THE CHAIRPERSON: If you speak up, I think
25 we'll be able to hear you.

1 MS. WILSON: I have three kids; I can talk
2 loud.

3 THE CHAIRPERSON: Identify yourself,
4 please.

5 MS. WILSON: My name is Kim Wilson, and I'm
6 the Clerk of Howard County. And I reviewed a
7 manual workaround that ES&S has provided, and I
8 don't -- I already have to go into my system to
9 work on provisional ballots, so I find that the
10 report that I already print on election night
11 will give me the information I need about the
12 ballots I need to -- to look at and have the
13 Election Board review.

14 And I don't personally feel that it's a
15 very time-consuming procedure. We'd all like to
16 have everything go as fast as possible, but I
17 don't see that as a problem at all. And I --
18 but I do feel a concern about trying to rush
19 something through in a presidential election and
20 then not -- and find out down the road or in the
21 middle of an election that something else,
22 because of the changes they had to make -- had
23 to make, didn't occur.

24 THE CHAIRPERSON: All right, thank you.

25 MS. KILGORE: I'm Mary Kilgore, the Clerk

1 of Jennings County. I also have a small child
2 and can speak up.

3 THE CHAIRPERSON: Jennings?

4 MS. KILGORE: Jennings.

5 THE CHAIRPERSON: And your last name was?

6 MS. KILGORE: Kilgore, K-I-L-G-O-R-E.

7 THE CHAIRPERSON: Very well. Thank you.

8 MS. KILGORE: I'd like to tell a little

9 history about our involvement with our election
10 company. I'm the third clerk, and both parties
11 have retained ES&S and been satisfied with the
12 services.

13 And I discussed this dilemma. And it was
14 very easy for me to say that it might not even
15 be a dilemma. It's a possibility there may even
16 be no ballots that are overvoted. Most of us in
17 the room know that "overvoted" means that you
18 voted for too many in a particular election; in
19 this case we're talking about the presidential
20 election, and you might choose both Republican
21 and Democratic straight-party tickets.

22 And as Kim was telling about the
23 ~~provisional meeting we have in 10 days to assess~~
24 the provisional ballots, that's a manual process
25 that the County Election Board meets, and in the

1 event we did have any, it would be just a few
2 and not a cumbersome process at all to include
3 during that meeting.

4 THE CHAIRPERSON: Okay. Thank you.

5 MR. JOHN: So with that, I'd, once again,
6 just reiterate that we're seeking that the
7 Commission certify our software for operation,
8 and under 3-11-7-14, authorize the manual
9 procedure to supplement that for the 2016
10 election, and then we'll gladly be back in 2017
11 for a full certification.

12 And with that, we'd answer any questions
13 you might have.

14 THE CHAIRPERSON: Any questions from the
15 Commissioners?

16 I have a question for VSTOP. You've heard
17 the testimony of ES&S. Are there any questions
18 that you have of ES&S or any comments you'd like
19 to make based on that testimony?

20 DR. LOSCO: Mr. Chairman, the -- the one
21 comment I'd like to make is that we requested
22 from ES&S and from the testing labs that we
23 approve a testing plan before the test actually
24 take place. I've heard just now that a test is
25 taking place without us looking at the plan and

1 approving it. That's not the way we've been
2 approaching this with all the vendors.

3 THE CHAIRPERSON: Do you know of any
4 distinctions between the ES&S situation and the
5 Unisyn situation that would explain why Unisyn
6 was able to timely comply with the law and ES&S
7 was not?

8 DR. LOSCO: The one thing I think we can
9 say is that the testing lab, NTS, used the
10 modification protocol that's approved by the
11 U.S. Election Assistance Commission to make sure
12 that none of the changes adversely affected any
13 other part of the voting system or any of its
14 tabulations.

15 And so those things, we believe, that kind
16 of testing, can be done fully and completely and
17 quickly, as the Unisyn case showed.

18 We also note that EAC certification and the
19 EAC certification process is not required under
20 Indiana law.

21 THE CHAIRPERSON: Any response from ES&S
22 with regard to VSTOP's statement that the
23 testing has taken place before approval?

24 MR. PEARSON: Yes. This is Steve Pearson
25 again. We were not under the understanding that

1 Pro V&V had not submitted and gotten approval
2 for the test plan. We were informed that
3 they -- they created a test plan, I believe it
4 was in compliance with the testing that they
5 had -- or similar to the testing that they had
6 performed previously or were undergoing testing.

7 What we're required to do, asked to do, is
8 engage the lab, request the lab, and we
9 requested the lab to do the testing, and they
10 provided the test plan and executed the tests
11 which we believed were in accordance with the
12 test protocol that was approved by the Election
13 Division as well as VSTOP.

14 So this -- this is the first that I had
15 heard that this is not -- was not an approved
16 protocol by the accredited test lab that
17 performed the service.

18 MR. JOHN: However, we'll certainly follow
19 up with them and find out.

20 MR. PEARSON: Yeah.

21 COMMISSIONER KLUTZ: VSTOP, what does that
22 mean, when you get the national report? How
23 does that affect your review of the report if
24 you hadn't previously reviewed the testing plan?

25 DR. LOSCO: Frankly, Commissioner, I'm not

1 quite sure, but we would have put in place,
2 perhaps, a slightly different test and checks.

3 COMMISSIONER KLUTZ: Uh-huh.

4 DR. LOSCO: Not having seen what has -- how
5 things have currently been tested, I can't -- we
6 can't say it with any more precision I don't
7 think.

8 DR. BAGGA: If I may answer that. Jay
9 Bagga, Co-Director of VSTOP. We see this part
10 of testing as a two-step process. There is
11 IED-approved test scenarios that all vendors
12 have, including ES&S, as was pointed out.
13 Those test scenarios are then put into a
14 plan by the lab and the vendor. And the plan is
15 then reviewed by VSTOP. Because the IED test
16 scenarios are for all the vendors; they are not
17 vendor-specific; whereas the test plan is
18 vendor-specific to their equipment. So IED and
19 VSTOP wants to -- we want to approve the
20 vendor-specific test plan which follows the
21 IED-approved guidelines.

22 COMMISSIONER KLUTZ: It could affect your
23 ability to make a recommendation to us?

24 DR. LOSCO: It could, Commissioner.

25 THE CHAIRPERSON: Does VSTOP have an

1 opinion whether due diligence on the part of
2 ES&S towards compliance with the law wouldn't be
3 possible in time for the 2016 election?

4 DR. LOSCO: Full compliance with software
5 changes, Commissioner?

6 THE CHAIRPERSON: Yes, the required
7 changes.

8 DR. LOSCO: We -- we can't say that, we --
9 we don't know one way or another. We -- we can
10 say that -- that one -- one company, Unisyn, has
11 done that and another claims it has done it and
12 it is in testing to -- to demonstrate that.
13 Those -- those are -- are the facts, as we know
14 them now, but it's probably as far as we can go.

15 THE CHAIRPERSON: Does VSTOP believe there
16 was any resistance or noncompliance on the part
17 of ES&S which contributed to the situation that
18 we're in today?

19 DR. LOSCO: I don't think we can -- we can
20 say one way or another, Commissioner.

21 THE CHAIRPERSON: Any other questions from
22 the Commission?

23 Any questions from anyone else in the room
24 today?

25 Any final statements from ES&S?

1 MR. TEW: Just, once again, we'd like to
2 reiterate that we apologize to the Commission,
3 we apologize to the legislature that we missed
4 the error. The only thing I would say, in
5 conclusion, is we don't want the human error to,
6 then, compound the systems that are supposed to
7 be in place so that human error's avoided in --
8 in the compilation of votes. And we believe
9 that, as ES&S has said, we want to make sure
10 that the computer systems, the automatic and
11 manual, fully -- give us the full report that we
12 need so that the election results are -- can be
13 done correctly and can be -- can be used by the
14 voters and used by the citizens to make sure
15 that the integrity of the vote was -- was taken.
16 So we just apologize that we missed it, and
17 we do believe we have a solution for you that is
18 workable, that has -- that has the minimum
19 amount of clerks' time added to it. And we --
20 we wish we weren't in this situation, I think
21 everyone wishes we weren't in this situation,
22 but we just ask you to be as reasonable as you
23 think you can be under the circumstances. Thank
24 you.

25 THE CHAIRPERSON: Thank you. So I have a