question for all of the clerks who are in attendance here today.

Is there any clerk here that would disagree with the clerks that have testified about the ability to take over manual calculations, as described? Yes. State your name, please.

MS. HUDSON: My name's Wendy Hudson. I'm the Clerk of Elkhart County, and I'm the Chair of the Clerks Legislative Committee.

I want to say that, with a manual workaround that so far two vendors have said is possible, and I know that our vendor is GBS, we've examined the manual workaround. It will not be complicated for us. We had zero overvotes in the straight-ticket race in 2014 and two overvotes in the 2012 presidential election and a straight-ticket vote. So manual examination and discarding of those ballots will not be complicated for us.

I also want to apologize that I missed, during the legislative process, this portion of the bill, because it wasn't a change to the bill; it wasn't a bolded or underlined section, which is what we actually focus on when we look at the bills, we look at the changes. And we
didn't notice that this little portion that was already in the bill, which made sense before the decoupling, no longer makes sense. It does not make sense to tell the voter we are decoupling your at-large races from your straight-ticket vote, unless you overvote up here, and then we're recoupling it. That doesn't make sense.

COMMISSIONER KLUTZ: Ma'am, do you mind if I ask a question? MS. HUDSON: Yes.

COMMISSIONER KLUTZ: I had a question on your -- you said manual selection of ballots you found two overvotes at-large in '12 and none in '14?

MS. HUDSON: Right.

MR. KLUTZ: But to determine that, do you have to look at every ballot?

MS. HUDSON: No.

MR. KLUTZ: I mean, or do those two jump out --

MS. HUDSON: Those two jump out, and we can pull them out and examine them individually.

And we would, then, comply with the law and invalidate the whole ballot.
MR. KLUTZ: Right. But those two were
easily identifiable?

MS. HUDSON: Yes.

MR. CONRAD: May I add to that,

Mr. Chairman? First of all, what I did -- Kyle

Conrad, again, from GBS.

What I did not explain previously is that

we are only talking about the paper ballot for

[unintelligible] system. The DRE change that we
utilized doesn't allow for an overvote. So for

counties, such as Tippecanoe and Elkhart, that
are doing vote centers, have vote centers, and

the other counties that have vote centers for

primarily the touch screen machines, this

scenario cannot even happen because you cannot

overvote anything on a touch screen machine. So

we're just talking about the paper ballots.

The optical scan machine rejects any

overvotes. So that is your first clue that

there is a problem, whether it be any specific

race or a straight-party race. So that's your

first clue -- that's the first line of the

workaround is if a overvoted ballot is inserted

into the machine, it's rejected. If it's
determined to be a straight-party overvote, it
can be handled in a -- in a mechanism set forth

either by the Election Division or the County

Election Board, similar to a provisional ballot.

So I just wanted to clarify that.

THE CHAIRPERSON: Thank you.

Are there any clerks here who have a

contrary opinion about the workaround that's

been discussed by the three clerks so far?

I see none.

Okay. Thank you all for your testimony.

At this point I'll turn back to VSTOP,

Dr. Bagga and Dr. Losco, to proceed with your

presentation regarding the status of the efforts

taken by Hart Intercivic to comply with the SEA

61.

DR. LOSCO: Mr. Chairman and Commissioners,

Hart Intercivic's voting system's compliance

with SEA 61 was tested by SLI Global Compliance

Labs and the results reported to IDE on

June 15th, 2016. The report indicates that,

while the DRE component of the Hart voting

system 2.1 -- 6.2.1 complies with all sections

of SEA 61, the ballot card component fails to

automatically process ballots in accord with

IC 3-12-1-7(f).
Hart requested that it be permitted to use a manual process for this section of the code for the November 2016 general election while it performs necessary software modifications and testing to be completed at an undetermined later date.

THE CHAIRPERSON: Is there anyone here from Hart Intercivic that would like to be heard?

MR. PEREZ: Yes, Mr. Chairman. My name is Edward Perez, and I'm Director of Product Management with Hart Intercivic. Mr. Chairman and members of the Commission, I want to respectfully thank all of you for the opportunity to testify today.

I think I want to begin by just saying, as a level set, that Hart has collaborated closely and in good faith with IED and with the Clerks Association throughout the entire legislative session, when SEA was being discussed and amended.

And I think the top-line thing that I want to mention is I'm here, we have affirmed in writing, and I want to affirm here verbally, that Hart is committing to bringing our systems in full compliance with state law. I don't want
there to be any question about that. I'll provide detail in a moment.

What we have expressed to both VSTOP and the Co-Directors of the Commission is that we do have questions about the timing or rapidity with which such a modified system could be implemented.

But having said all that, we provided written commentary to the Co-Directors throughout the legislative session and followed the committee proceedings, and we believed, in good faith, that we did understand the provisions of the new legislation.

The testing that was performed by SLI Global, which, again, is an EAC-accredited test lab, we did have that test plan approved in advance by VSTOP, and as they indicated, we do have confirmation from all the parties that that test report and our affirmation of willingness to bring our systems into compliance has been received.

I want to echo what Ms. Hudson mentioned with respect to the legislative session during our close and good-faith, transparent collaboration. From our perspective, virtually
all of the discussion in the legislative session was exclusively centered around main thrust, which our understanding was to clarify and solidify voter intent.

And so with that, in terms of the detail, there was an enormous amount of focus around Subsections (d) and (e) of 3-12-1-7, and during the many months that this was going on, the topic of Section (f), which is the one and only test case in which our current system has issues.

So there were a total of 16 test scenarios that the system was tested to, including, on the paper side, the system today, complies with 15 of those, and, in fact, not surprising with the behavior of those 15, is basically consistent with the preservation of voter intent.

I think the main thing that I want to clarify that -- it's to echo similar concerns that we've heard not only from clerks but some other manufacturers, what we expressed in our letter at the time that we delivered our test report to the Commission is we do have strong concerns with the limited time line that is the desired time line to not only complete the
development and the testing and the VSTL testing
and the implementation of changes.

We are certainly aware, obviously, that
there are other member -- vendors that have
modified their systems or are in the process of
doing so. I can't speak for their own process
or their level of testing. What I can speak to
is simply what Hart is accustomed to. We are
accustomed to testing our systems to the highest
level for EAC compliance. Our successor system,
the one that is not fielded in Indiana today but
is our latest system, we have already taken that
through two multiple iterations of testing with
the EAC.

And so based on our own experience of any
modification that is effectively going to be an
end-to-end system change, it does lead us to our
own sort of predictions of what we think is an
appropriate time for purely internal Hart
quality testing -- actually, let me take a step
back, because, of course, to field any
modification, there is the time to design and
actually code and implement the feature itself,
and then, based on our estimations, purely for
our internal testing, before we would even take
something to an EAC-accredited test lab, doing
internal testing for two months would not be
uncommon.

Now, you might ask why is that so,
particularly in this case, you might say we're
talking about noncompliance with just one -- one
little section; right? Well, just to make the
changes to bring into compliance with Subsection
(f), it requires touching every single
component, and effectively what we're talking
about is creating and then fielding an entirely
new voting system between now and November.

We would need to make changes to our ballot
definition software. We would need to make
changes to the mark recognition and the rules
adjudication of our precinct scanning system.
We would need to do the same thing to our
absentee ballot scanning system, which is a
separate component, and, of course, we would
need to do the same thing for tabulation.
And I do simply want to echo that anytime
that we are doing an end-to-end change like
that -- and obviously, even if it is prompted by
compliance with the law, narrowly speaking, we
take very seriously our commitment to the voters
of Indiana and to the counties of Indiana, and
in a manner that would echo what you've heard
from some of the other manufacturers, there's a
level of additional integration testing and
regression testing.

And also we generally -- the current
system, for example, complies with the 2002
voting system standards. We would want our test
lab to ensure that, again, from a regression
standpoint, nothing was altered there.

In terms of time lines of when do we
think -- so what are we doing now and when do we
think changes could be made and so forth? We
begin -- in light of what I said about our close
collaboration and following this issue very,
very closely right up until March, pretty much
the moment Hart Intercivic received the initial
communication from the Secretary of State
indicating that the Governor had signed the
law -- and it was in that initial communication,
some of you may recall, that that was actually
what highlighted some of the implications of
Subsection (f). And as many have indicated,
that was also the first time that we were really
thinking about it.
The moment that that happened, we sought clarification in March, and pretty much the moment that we were sort of aware that there was a different topic that had not been within the scope of discussions in the time leading up to that, we set about doing our design work.

Right now the design work to make the changes, we have been doing that with our engineering team. They effectively need to determine the full scope, as I mentioned, for the reasons it does touch all the different parts of the system.

Given the fact that we do think that with probably a couple months from the time that the system -- that the features have actually been implemented, we think that one to two months of internal QA testing for us is appropriate, and then an additional, probably, two months with a test lab, and then when we start laying it against the November calendar, and particularly when we say -- even assuming that that could be done, what we're talking about, again, is a full reinstallation of all of the software on every PC and touching every voting device and reinstalling all of that, it does end up, again,
with a conflict in the normal election calendar

for our -- our users.

So we are very aware of -- the Co-Directors

have been very explicit throughout this process

that they -- you all do not want manual

procedures, and that is not the preferred method

you want to be getting compliance with

Subsection (f). We hear that; we understand

that.

What we want to do for the future is to
bring the system into full compliance through
changes in the system to natively and
automatically do everything. Until such time as
that can happen, as you've heard from some
others, we also have what we think are some
straightforward and palatable procedures for
both our precinct paper scanner and for the
high-speed scanning solution.

Those were originally -- we included them
within the scope of discussions with both
Dr. Bagga and Dr. Losco at the time of the test
plan. We heard them and we respected their

wishes to simply remove any mention of that from
the test plan and so forth. And so that is not
reflected in our test report. But we have
documented those and they exist as well.

In conclusion, I think what I would like to say is simply, again, we do want to reaffirm our commitment to bringing our systems into full compliance. We believe that doing it with software changes and the level of testing we have suggested can happen in 2017 and certainly before the big milestone for recertification of systems in October 2017.

And the last thing I would say, by conclusion, is we have, of course, been working with our customers both to answer their questions and educate them about our understanding of what the requirements would be for processing ballots in the manner required by Subsection (f), and we've also been answering questions and talking with them about what the implications of the time lines might be for their use of the system and so forth.

And they have indicated, based on that, some of them may want to talk today. Unless you all have immediate questions for me, which I'm happy to answer, I will yield the floor to any of them, and I understand they also have some commentary.
THE CHAIRPERSON: Let me just ask you this,

Mr. Perez: What is Hart Intercivic's proposed

workaround for this upcoming election?

MR. PEREZ: The shortest version -- so

given that it's only Subsection (f) that we're

currently not compliant with, and which, again,

is triggered by an overvote on the

straight-party election, and it only -- again,

it only impacts paper-ballot voting, so we do

have DRE users. We have paper users. This is

only paper ballots.

On the precinct scanner, what would be

required is simply to use the native

capabilities of the precinct scanner to -- when

it automatically rejects to the voter an

overvoted contest, if we are assuming that the

voter made an overvote in the straight-party

selection, and if the scanner was configured to

reject any overvote, the ballot would be

returned to the voter, the voter would get a

plain-language message identifying for them the

contest that is overvoted, and furthermore, the

precinct scanner can be configured to require

the intervention of a poll worker to actually

cast a ballot that has been flagged or alerted
in that way.

And so in an ideal circumstance, if the desire is to allow the voter to cast a ballot according to their intent and if they did have individual marks and so forth, then, when the ballot was rejected, they would be instructed to spoil that ballot and request a new one and mark it in accordance with their intent. That would be for the precinct scanner. And, again, just to summarize, set it to reject overvotes and set it to require poll worker intervention.

For our central scanning system, it would basically require just the identification, based on a hand audit, of any ballots that have an overvoted straight-party contest in advance.

Our absentee ballot card system is a digital system. And if those ballots are simply outstacked and scanned in a separate batch, you would simply confirm the overvote on the straight-party selection, and once that online adjudication step was taken, it would require the user to simply manually void any of the partisan contests that were also marked. And those -- those are the two documented manual processes.
THE CHAIRPERSON: Let me ask if any of the clerks in the room today have any questions or comments on the proposed workaround that Mr. Perez suggested.

MR. MORROW: My name is Jim Morrow. I'm the Gibson County Clerk. And we use Hart Intercivic equipment, and I don't have any problem with the manual workaround. I think that's the only solution, really.

THE CHAIRPERSON: Anyone else?

MS. LIMING: I'm Beth Liming, the Cass County Clerk, and we have no problem with the manual workaround also.

MS. BROWNE: Nicole Browne, Monroe County Clerk. We have no problem with the manual workaround.

THE CHAIRPERSON: All right, thank you. Does anyone else have any questions?

MR. McGINNIS: Keith McGinnis, RBM consultant, perveyor of the Unisyn product. Thank you for the certification. We're glad we were able to follow the rules that were put out by the legislative -- and we are looking not only at a state election, here, folks, but a federal election. That's going to come into
play somewhere along the line.

I support Unisyn customers, but we also support other customers. Is it up to me to walk in and say, "You're using an uncertified system"? Thank you.

THE CHAIRPERSON: Any comments from VSTOP with regard to the Hart Intercivic testimony?

DR. LOSCO: Mr. Chairman, I think our main comment would be that the manual procedures have -- have not been tested by us, so we can't comment on those.

I would also just note that Hart has one system in seven counties. MicroVote, which -- which will -- which claims it has solved the software problem and can comply in time for the election, has 47 counties and two systems.

MR. PEREZ: Mr. Chairman, may I just have one -- two quick comments on that?

THE CHAIRPERSON: Yes, go ahead.

MR. PEREZ: I just want to say sort of for the record, and with full respect for Dr. Bagga and Dr. Losco, they both know we've worked closely and collaboratively always.

One thing I do just want to say for the record, that, yes, it's correct that our manual
procedures weren't tested. I did want to say by way of clarification and not in a finger-pointing way, I want to remind, we did offer the manual adjudication procedures during the testing process, and we fully accept and understand that they simply did not want to deal with it at that time.

But I did want to note that we were simply trying to be transparent in sharing that, and if it turns out that there are additional steps, and if -- obviously, in a mutually agreeable way and in a way that you require, we can do that testing, we would be happy to do that.

THE CHAIRPERSON: How long would it take to complete the testing, from your perspective?

MR. PEREZ: To do the -- to do the testing and to allow a EAC -- allow our VSTL to basically confirm that, based on that testing, that the results are turning out in accordance with the scenario, that's a matter of weeks. I mean, that, I think, is -- is doable.

THE CHAIRPERSON: Anything else?

MR. PEREZ: Thank you.

THE CHAIRPERSON: Thank you.

COMMISSIONER KLUTZ: I have a question for
VSTOP. So have any of the manual procedures been tested by VSTOP?

DR. LOSCO: No, the test scenarios that we put together and were approved by IED assume --

COMMISSIONER KLUTZ: Full compliance?

DR. LOSCO: Full compliance.

MR. PEARSON: Could I --

THE CHAIRPERSON: Yes.

MR. PEARSON: Steve Pearson with ES&S. We requested Pro V&V test our manual procedures as well, and they did.

THE CHAIRPERSON: They did test?

MR. PEARSON: They did use the manual procedures that we have written in their testing. That was performed and completed yesterday.

THE CHAIRPERSON: Was that testing plan approved by VSTOP?

MR. PEARSON: As they'd indicated, apparently it had not been, and it was not to -- to my knowledge, I'm surprised. I've already reached out to them via text.

[LAUGHTER]

PROXY FOR VICE CHAIRPERSON: Good job.

THE CHAIRPERSON: Yes?
MS. RETHLAKE: Terri Rethlake, St. Joseph County Clerk. And we are an all paper ballot in St. Joseph County with ES&S and 100s (phonetic).

My biggest concern, even though I don't believe, as of now, that I don't have anything to worry about this year, since our council runs district-wide and not at large, my biggest concern is the fact that this is a federal presidential election. And for us, as election clerks, to run a presidential election with noncertified equipment just concerns me. I don't want my state or my county to be another Florida.

THE CHAIRPERSON: Any further comments before we close the testimony here today? Yes?

MS. HUDSON: I'd just like to point out -- Margie Hudson from Elkhart County again.

I believe there are 45 county clerks affected by this, with equipment that could be possibly decertified. That's a large number of counties, so please consider that.

THE CHAIRPERSON: All right. I think we've -- any other questions by the Commissioners?

We will close the evidentiary testimony
portion and move on to recognize Election

Division counsel for a presentation regarding

the requirements for compliance with -- thank

you, Dr. Bagga and Dr. Losco.

Recognize the Election Division's

presentation regarding the requirements of

compliance with Senate Enrolled Act 61.

CO-DIRECTOR KING: Thank you, Mr. Chairman,

and members of the Commission. In your binders

there's a memorandum from Co-director Nussmeyer

and myself. I should begin by recognizing the

valuable work that our counsels, Dale Simmons,

who is absent today, and Matthew Kochevar have

done in working to prepare a response to the

Chair's inquiry regarding the legal issues that

are before the Commission.

The memo, which I will give a brief

overview of, certainly does not address policy

considerations that are the province of the

General Assembly. When the General Assembly

passes an election law, we administer it the

best we can.

And in the case we have before us, we're

dealing with Senate Enrolled Act 61, which we've

noted is now Public Law 21-2016, and I think the
contents have been described adequately by those
who have testified regarding it today.

After it was signed into law, VSTOP and the
Election Division received two questions. I'll
address the second question first because ES&S
has not raised it today, and I don't know if
it's still an argument they would make.

But at one point in the process ES&S had
brought forward the view that the statute did
not require implementation of Subsection (f)
where only a -- where multiple straight-party
tickets were cast because the law in 3-11-7 only
referred to casting a straight-party vote.

That argument does not recognize the basic
principle in Indiana law, in Indiana Code
1-1-4-1 which states that whenever statutes are
enacted by the General Assembly that use the
singular, they must be construed, unless it's
repugnant to the legislation, to mean both
singular and plural.

And, again, I didn't hear ES&S make that
argument today, and so I don't know that it's an
ongoing discussion, but to say that I think the
issue on that point is resolved.

The larger question is must a voting
system, in particular, a ballot card (optical
scan) voting system tabulate votes automatically
to comply with Indiana Code 3-12-1-7(f).

We've heard several vendors here today
indicate that, instead, a manual tabulation of
ballots could be performed. That may be
correct. The question the Election Division is
addressing in this memo is whether or not that
manual tabulation would comply with the law.
The argument for a manual tabulation is
contrary to the requirements for optical scan
ballot card systems that are set forth in the
basic definitions that apply throughout the
entire election code. I mentioned several
specifically in the memo.

Indiana Code 3-5-2-53, the basic definition
of voting system, includes a reference to
mechanical, electromechanical or electronic
equipment, including software, firmware,
et cetera, to cast and count votes. The
definition of automatic tabulating machine,
which is in 3-5-2-2, describes that machine as
an apparatus necessary to automatically examine

Finally, with regard to optical scan
ballots, the particular method under discussion

at the Commission's meeting today, 3-5-2-33.9,

Subsection (b), requires tabulation of an

optical-scanned ballot by an optical system that

reads marks on the card or paper.

Optical-scanned voting systems are required
to meet standards that are set forth in Indiana

Code 3-11-7, which include being required to be

safe, efficient, and accurate in the counting of
the ballots. That's 3-11-75. The key provision
here, in 3-11-7-6, is a ballot-card voting
system must count a ballot in accordance with IC
3-12-1-7, which would include all subsections,

Subsections (d), (e), and (f), when a voter
casts a straight-ticket vote and votes for
individual candidates. So, again, it complies
with both the Subsection (f) scenario and the
Subsection (d) and (e) scenario.

The General Assembly has specifically
authorized the manual tabulation of votes in
only one case, and that's where it's impossible
for the voting system to do so automatically.
That's in determining whether a write-in vote
has been cast or declared write-in candidate for
an office or for an individual who is not a
declared write-in candidate. That manual

tabulation is authorized under Indiana Code

3-12-4-4, which requires the County Election

Board to appoint write-in teams of

representatives of both major political parties

necessary to examine and count write-in votes

cast on the ballot-card voting system.

So the analysis of the law that Co-Director

Nussmeyer and myself and our staffs have agreed

on would indicate the answer to the question is,

no, state law does not authorize a manual

procedure, but, instead, requires that a

ballot-card voting system complied with the law

by tabulating votes automatically and correctly.

I'll be happy to answer questions that

Commission members may have.

THE CHAIRPERSON: So it would appear that

the work-arounds that have been suggested which

require or which permit a manual procedure would

not be in compliance with the state law.

CO-DIRECTOR KING: That is the opinion of

the Election Division. I'll defer to

Co-Director Nussmeyer if she has anything to

add.

CO-DIRECTOR NUSSMEYER: I don't. I agree
with Co-Director King.

MR. JOHN: Mr. Chairman, if I might.

THE CHAIRPERSON: Yes.

MR. JOHN: One of the things that I think is important here is we are operating in a situation where everybody is striving to the automatic tabulation. And that's the ideal.

That being said, I understand the analysis of Mr. King and generally probably agree with it.

However, I would also refer to the fact that our manual system does use certified tabulations from our system. You're looking at a certified tabulation as to how many overvotes there are in the straight-party elections. You're looking at the actual ballot, as you've imaged it or are pulling the ballot out, as to whether or not -- because it's the only circumstance that matters -- as to whether or not there are individually marked races, in multi-member races, in a condition where you've had both the Republican party and the Democrat straight-party-marked.

So we're talking about a system where we aren't -- we aren't hand-counting these per se.
We're using the actual tabulations from the machines, certified parts of these tabulating machines, just not in a way where they pop up an answer. You have to work it through. But it is using the systems.

And I'd also refer you to -- when you're looking at the definition of voting system, it is much broader than just simply -- yes, it says total combination, mechanical, electromechanical, and electronic equipment, but it also includes documentation required to program, control, and support that equipment. It also includes the practices, associated documentation used to identify components, maintain records of system errors and defects that determine specific system changes.

At the end of the day, the systems are more than just that computer, more than just the mechanics of it. When we're talking about voting system, it's the clerks that are working on it, it's the instructions that go into it. And so I think it's well within given circumstances that were really beyond anybody's intent or control, to be in the situation where we are.
If we had had a year to the election, we wouldn't be having this discussion at all. But given exigent circumstances, given the clear authorization and statute for this Commission to make, essentially, regulations and exceptions to ensure that we have a safe and secure election, and considering the fact that the system does include all the documentation procedures that go along with it, I'd argue that it's not -- it is at least within this Commission's interpretation to find that there is legal compliance for this. THE CHAIRPERSON: Mr. John, do you have a position as to whether 3-11-7-14, the supplementary instructions, permit the Commissioners to instruct in a manner that is inconsistent with the interpretation of the law? MR. JOHN: Well, what I just articulated is I think you can argue that these extra documentation essentially become part of the system. And so for you to make that -- that suggestion and to place those requirements in for this election is consistent with law. You aren't actually moving outside of what the law is. You're simply interpreting where there's a gray area in the law.
MR. CONRAD: Mr. Chairman?

THE CHAIRPERSON: Yes.

MR. CONRAD: The definition or description that Mr. King just outlined.

THE CHAIRPERSON: For the record, you are --

MR. CONRAD: I'm Kyle Conrad, GBS. And we proposed a manual workaround early on in this process, it is included in our report to VSTOP. But everything that I heard Mr. King just mention that could not be done or should not be allowable is the exact process that I believe that most, if not all, of my counties, and maybe every county in the state, performs for provisional ballots.

UNIDENTIFIED SPEAKER: There you go.

MR. CONRAD: So how can you differentiate -- and maybe the law specifically does; I'm sure Brad can correct me if I'm wrong, and he's just ready to. But a provisional ballot is handled in the exact way we are working -- we are suggesting this manual workaround be performed in our -- in our situation.

The machine will reject it, and it will be
handled, and -- and -- and the voter intent or
the validity of that ballot will be handled at a
later time. Preferably that night, at the
tabulation center, whereas a provisional ballot
is given 10 days. But it's still a -- a ballot
that's not run through the optical scanning
machine at the polling place and it does later.

MR. PEREZ: Mr. Chairman?

THE CHAIRPERSON: Yes.

MR. PEREZ: One -- one thought I have that
I'll just offer that sort of triangulates off of
what I've heard here, and fully understanding
Mr. King's point about the need in law to
automatically tabulate, one thing that I think
that is helpful, and the finer point -- some
might think it's hair-splitting, but I think
it's actually at the crux of the matter of --
what we're talking about in manual procedures, I
believe, can reasonably be thought of as -- to
this gentleman's point, again, we're not --
manual does not equal manual counting.
The manual intervention, whether it's
happening for a provisional or whether it's
happening in the case of an overvoted straight
party, the manual intervention is for the
purpose of managing how a voter's intent, in that moment, or their marks, are getting recorded in the system. And the recording of the cast vote record is a distinct question from the use of the system's native automatic tabulation capability.

And so the way I would sum that up is our proposal, and in -- and in other instances, whether it's for provisional ballots or for anything else, if there is a manual intervention prior to recording a cast vote record that is in some way is adjudicating, how are these voter marks to become part of the records that the automated tabulation system is then going to do its work upon, that, I think, is the critical issue, or at least that's the way I see it. I don't know if others have that fine a distinction between recording the cast vote record and tabulating it, which are obviously related, but they are, strictly speaking, different things that we have suggested is predicated on the assumption that you are using an automated tabulation function in the system.

THE CHAIRPERSON: Any discussion by the Commission? Any thoughts, comments,
suggestions, proposals, concerns, criticisms?

MR. CONRAD: May I ask a question? What is

the Election Division's definition of a

straight-party ballot?

THE CHAIRPERSON: I don't know if anyone

wants to answer that. If not --

CO-DIRECTOR KING: As Mr. -- Mr. Chairman.

THE CHAIRPERSON: Yes.

CO-DIRECTOR KING: As Mr. Conrad knows

better than anyone else in this room, the

opinion of the Election Division requires

agreement by the two Co-Directors.

[LAUGHTER]

MR. CONRAD: I think I was involved in a

situation where that came into play.

CO-DIRECTOR KING: There was a situation,

yes. But I would be happy to attempt to address

the question and then see if Co-Director

Nussmeyer concurs.

A straight-party ticket, I don't believe,

is defined in 3-5-2, but it's described in the

various voting system chapters as making a mark

indicating that the person is voting for the

candidates nominated by a political party.

The General Assembly has amended the effect
of that statute to say that, notwithstanding the

definition, votes cast for a straight ticket

will not be counted for the candidates of that

party for certain local at-large offices, county

council being the most common one this year.

MR. CONRAD: Can I stop you right there?

So we have now excluded those races as a

partisan -- theoretically, as a partisan office?

CO-DIRECTOR KING: No, I disagree. They

are on the ballot as Democrats or Republicans.

They are clearly nominated by their political

parties, and several might be a bit offended if

you said they were not a political party.

MR. CONRAD: Well, they should be offended,

but they can't take advantage of the

straight-party vote.

CO-DIRECTOR KING: And that's a decision

that's addressed not by the Indiana Election

Commission and not by the Indiana Election

Division; that's, instead, addressed by the

people who enact legislation in this building.

MR. CONRAD: I understand.

MR. PEREZ: Mr. Chairman?

THE CHAIRPERSON: Yes.

MR. PEREZ: If I might make one other
comment that I think is relevant is, in light of
the discussion around adjudication and the
between what gets recorded versus what gets
tabulated, from our perspective -- and this is
just for what it's worth, and I respectfully --
I've had -- I've posed this question both to
Mr. King and Ms. Nussmeyer, so they have heard
it before.

For what it's worth from our perspective,
at Hart, when we were reading the question, the
question of adjudication or the need to
adjudicate versus the need to automatically
allow the system to record marks the way that it
sees them, what's really at heart in Section (f)
is the critical question of whether there are
individual marks on those partisan races in
addition to the overvoted straight-party
contest.

And when Hart Intercivic read Subsection
(f), what was striking to us is that, unlike
virtually every other section in 3-12-1-7, which
includes (a) through (e), all of those other
subsections are very explicit if there is a
combination of a straight-party mark or
individual marks on partisan races, the
subsection states so explicitly.

And the language conventions of Subsection (f) are different, and they don't read the same way. And from our perspective, when we read it, it was not necessarily clear whether that overvoted straight-party mark is being made in conjunction with additional individual marks in the partisan contests or not. And that, to us, seemed to be what was particularly important in this use case.


MS. MOORE: Marcia Moore, Hancock County. Hancock County is a vote center county and a completely paper ballot county. To be honest, it does appear that this issue does primarily affect a huge amount of paper issue. And from what I am hearing, it does appear to me that the manual system being proposed is using the automated system to identify, and then allowing the Election Board to manually intervene to -- to identify those ballots, so to speak. Because the alternative, then, is to say our system is not certified. And as you've heard testimony, that's
approximately 45 clerks -- or counties.

So then what you're saying is 45 counties have noncertified equipment, which then says I have to go and either try to find equipment to -- around a presidential election, which would mean that I would go to Commissioners and say, hey, can I have a couple million dollars?

And I don't think that's likely to happen. And that is what you're, in essence, in the narrowness of time -- this is nearly July 1st.

We will begin coding our ballots very soon so that we can be getting our military and overseas ballots out, so that we can get our absentee ballots out. I mean, we already have absentee applications in the mail. I mean, I got some -- I got handed one at the fair yesterday. This is a matter of time, to be quite frank.

County election boards have been intervening for years in a bipartisan way because our duty is to uphold the law, to the best of our ability, to run free and fair elections for our state. And I do believe that is our intent to continue to do.

And so I would ask, if possible, for this
Commission to allow those systems -- to allow
their automated system to just help us to
identify those very rare occasions for an
overvote, that we can then manually intervene
and count that. Thank you.

[APPLAUSE]

THE CHAIRPERSON: I'm just going to offer
my thoughts at this point in time based on
everything that we've heard.

This is obviously a very serious issue. I
don't think anyone in this room is happy with
the way that it -- it came to us; that there
aren't any easy answers when the law conflicts
with practical realities. I have to say that
I'm personally proud of the company that was
able to comply with this law. I think that the
fact that Unisyn was able to do what needed to
be done to comply with the law and get that done
is to be commended.

I'm disappointed that there weren't
stronger efforts on behalf of the other
companies that are here today, particularly when
any resistance is based on philosophical belief,
I don't think that's appropriate in this
situation, to compromise the compliance with the
law with personal beliefs.

I'm very sensitive and sympathetic and respectful of the clerks' opinions about where we are and what can be done. I think decertification of equipment at this point in time is a very unfortunate option; that I would hope there's appropriate work-arounds.

There are some legal issues involved that need to be considered. We certainly, as Commissioners, don't want to be a part of any disregard for the Indiana law that's been passed by the Legislature. It's our duty to comply with that law and uphold that law, as it is for everyone in this room.

So we need to consider this, and I don't know that any decision needs to be made today. I would encourage every vendor in the room to work diligently with VSTOP to make all the progress that is humanly possible towards certification of your equipment prior to the 2016 election.

We have another meeting of the Commission in July that we will have an opportunity to address this again, and we may ask for your participation there as well.
But unless there's a motion by any of the Commissioners at this point in time, I think I would suggest that we give a lot of thought to what we've heard, that we seek whatever legal counsel we need to justify whatever decision we might make.

But I want to thank everyone who came here today to offer their opinions and testimony.

It's been very helpful to us. And I know this is a difficult, but very important, issue, so we thank you for your input, for your participation, for your patience as we sort through the facts that we have and the testimony we've heard and the law that may apply.

Does any Commissioner want to add anything at this point?

PROXY COMMISSIONER CLAYTOR: I always have to add something, Mr. Chairman, just to -- just to try. I -- I agree with absolutely everything you've said.

In my reading of the code, I find it hard for the Commission to certify anything that does not meet each section of the law. I think if the Commission is able to come to that, it's going to be with a strain and perhaps with one
eye closed. But I would certainly hope the
vendors can do everything possible to get us to
that point.

I agree with you, we certainly do not want
to have that decertification scenario hanging
over us. So I believe I'll see you again in
July, and hopefully we'll know a little more
then.

THE CHAIRPERSON: Good. Thank you.

Anything else?

Well, with that, I would ask for a motion
to adjourn. I think our business for today is
concluded.

And is there a motion for the Indiana
Election Commission to adjourn?

PROXY COMMISSIONER CLAYTOR: So moved.

THE CHAIRPERSON: We have a motion.

Do we have a second?

PROXY FOR VICE CHAIRPERSON: Second.

THE CHAIRPERSON: Motion and second.

All in favor say aye.

Ayes have it. We're adjourned. Thank you.

(The hearing adjourned at 2:40 p.m.)
STATE OF INDIANA  
)  
) SS:  
COUNTY OF MARION  
)  

I, Susan Wollenweber Dezelan, RDR, CRR, RCR, a Notary Public in and for the County of Marion,

State of Indiana at large, do hereby certify that

the foregoing hearing was taken at the State Capitol Building, State Room 125, Indianapolis,

Marion County, Indiana, on the 29th day of June, 2016, commencing at the hour of 1:00 p.m.

That said hearing was taken down in stenograph notes and afterwards reduced to an English transcript under my direction, and that transcript is a true record of the hearing;

I do further certify that I am a disinterested person in this cause of action; that I am not a relative or attorney of either party, or otherwise interested in the event of this action, and am not in the employ of the attorneys for either party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this _____ day of __________________, 2016.

[Signature]

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March 24, 2024

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