Indiana Election Commission
Minutes
March 25, 2022

Members Present: Paul Okeson, Chairman of the Indiana Election Commission ("Commission"); Suzannah Wilson Overholt, Vice Chair of the Commission; Karen Celestino-Horseman, member; Litany A. Pyle, Member.

Members Absent: None.

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

Others Attending: Ms. Liz Beatrice; Dr. Bryan Byers; Mr. Marc Chatot; Mr. McDermott Coutts; Mr. Tyson Gosch; Mr. Keith McGinnis.

1. Call to Order:

The Chair called the March 25, 2022 meeting of the Commission to order at 1:30 p.m. EDT in Conference Room 19, Indiana Government Center South, 402 West Washington Street, Indianapolis.

2. Transaction of Commission Business:

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

The following scrivener's errors are corrected in this document:

Page 51, line 18, replace "SEA260" with "SEA 260".
Page 62, line 3, replace "SB260" with "SB 260".

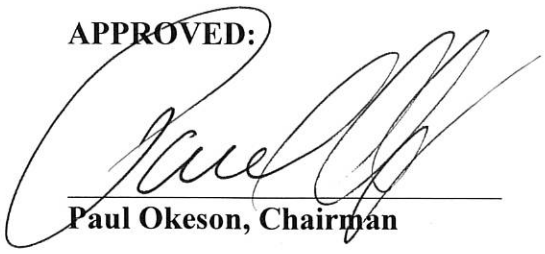
The Commission adjourned its meeting at 2:46 p.m. EDT.

Respectfully submitted,

J. Bradley King
Co-Director

Angela M. Nussmeyer
Co-Director

APPROVED:



Paul Okeson, Chairman

In the Matter Of:

INDIANA ELECTION COMMISSION PUBLIC SESSION

Transcript of Proceedings

March 25, 2022

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INDIANA ELECTION COMMISSION

PUBLIC SESSION

Conducted on: March 25, 2022

Conducted at: Indiana Government Center South
402 West Washington Street, Conference Room 19
Indianapolis, Indiana

A Stenographic Record by:

Maria W. Collier, RPR, CRR

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APPEARANCES

INDIANA ELECTION COMMISSION:

Paul Okeson - Chairman

Suzannah Wilson Overholt - Vice Chairman

Litany Pyle - Member

Karen Celestino-Horseman - Member

INDIANA ELECTION DIVISION STAFF:

Angela M. Nussmeyer - Co-Director

J. Bradley King - Co-Director

Matthew Kochevar - Co-Counsel

Valerie Warycha - Co-Counsel

Michelle Thompson - Campaign Finance Director

Abbey Taylor - Campaign Finance Director

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CHAIRMAN OKESON: I'm going to call the meeting of the Indiana Election Commission to order, public session, Friday, March 25, 2022, 1:30 p.m. Eastern Standard, Conference Room 19, Indiana Government Center South.

For purposes of the record, I'll note the following members of the Commission are present: Myself, Chairman Paul Okeson, Vice Chair Suzannah Wilson Overholt, Commission Member Karen Celestino-Horseman, and Commission Member Litany Pyle. Also in attendance are Indiana Election Division staff: Co-Director Brad King and Co-Director Angie Nussmeyer as well as Co-Counsels Matthew Kochevar and Valerie Warycha to my right. Also, our good friend and court reporter Maria Collier from Stewart Richardson Deposition Services is here as well.

VICE CHAIRMAN OVERHOLT: Thank you for coming back.

THE REPORTER: I can't get out of it now.

CHAIRMAN OKESON: Part of the family.

I'd like to seek out documentation of compliance with the Open Door Law. Request the co-directors confirm.

MR. KING: Mr. Chairman, members of the

Commission, on behalf of Co-Director Nussmeyer and myself, I certify that notice of this meeting was given in compliance with the Indiana Open Door Law.

CHAIRMAN OKESON: Thank you.

Moving on, we have the approval of the February 18 and February 24, 2022, Commission minutes. I recognize the co-directors to present the minutes for both meetings.

MR. KING: Mr. Chairman, members of the Commission, on behalf of myself and Co-Director Nussmeyer, we have reviewed the minutes of both of these meetings and recommend them to you for your approval.

CHAIRMAN OKESON: Is there a motion?

VICE CHAIRMAN OVERHOLT: So moved.

CHAIRMAN OKESON: Thank you. Is there a second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion or questions?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it.

Is there consent from the Commission members for the Election Division staff to use our signature stamps for any documents?

VICE CHAIRMAN OVERHOLT: Consent.

MS. CELESTINO-HORSEMAN: Consent.

MS. PYLE: Consent.

CHAIRMAN OKESON: Moving on, administration of the oath. Any person who plans to provide any testimony today on any matter, please stand and be recognized by Matthew Kochevar, who will administer the oath.

MR. KOCHEVAR: If you plan to testify before the Indiana Election Commission, please rise, raise your right hand, and say "I do" after recitation of the oath.

Do you solemnly swear or affirm under the penalties of perjury that the testimony you are about to give to the Indiana Election Commission is the truth, the whole truth, and nothing but the truth? Please say "I do."

ALL: I do.

CHAIRMAN OKESON: Before we move on to further business and considering applications for recertification and engineering change orders currently on our agenda today, I would note for the

record that the Commission offered the required public testimony and comment regarding recertification of these voting systems, provided an opportunity to the public to comment regarding those applications for certification of new voting systems.

We missed campaign finance. And before we go on to the voting systems report, we'll do a ratification of campaign finance settlement agreements. I'll recognize the staff.

MR. KING: Mr. Chairman, members of the Commission, the Indiana Campaign Finance staff, Abbey Taylor and Michelle Thompson, are here to present information regarding these agreements.

MS. THOMPSON: Mr. Chairman, members of the Commission, behind your Campaign Finance tab is a list of committees that are ready to ratify that have agreed to pay the settlement agreement and waive a hearing.

VICE CHAIRMAN OVERHOLT: I'd move that -- we just need to ratify the reports, right?

CHAIRMAN OKESON: Yeah. Is there a motion to ratify?

VICE CHAIRMAN OVERHOLT: I would move that we ratify the reports.

CHAIRMAN OKESON: Is there a second?
MS. PYLE: Second.
CHAIRMAN OKESON: Any discussion or questions?
Hearing none, all those in favor signify by saying "Aye."
VICE CHAIRMAN OVERHOLT: Aye.
MS. CELESTINO-HORSEMAN: Aye.
MS. PYLE: Aye.
CHAIRMAN OKESON: The "ayes" have it. The motion carries. Thank you. I would have kept you here the rest of the meeting.
Okay. Well, I was not here on the February 24th Commission meeting. Members asked for information from VSTOP regarding the capability of each voting system certified for use in Indiana to retract scanned absentee ballots from the voting system, and VSTOP has provided some written responses from each of the four vendors regarding these questions, which are in each of your binders.
On a related matter, Commissioner Celestino-Horseman asked for some additional information regarding the Unisyn OpenElect 2.2 voting system's compliance with state law requiring optical scan ballot cards to include party designations of each candidate on the ballot.

VSTOP has provided ballot card images with address -- that would address this issue as well. These are also in your binders under the Unisyn tab.

And with that, I will now recognize VSTOP to present an executive summary regarding the overall results of this inquiry and then open this topic up for discussion by the Commission. Good afternoon.

MR. CHATOT: Good afternoon.

CHAIRMAN OKESON: And just as a reminder, if you would, state your name and spell it for the court reporter before you speak. That would be very helpful.

MR. CHATOT: Good afternoon, Commissioner and members of the Commission. For the record, I am Marc Chatot, M-a-r-c, C-h-a-t-o-t, election systems certification specialist for the Voting System Technical Oversight Program, also known as VSTOP.

On February 24, 2022, the Commission requested that VSTOP acquire further information from each Indiana voting system vendor on the capabilities of their systems to retract a ballot in compliance with state law. Specifically, the amended IC 3-11.5-4-6 was referenced, which states that a county election board may scan a voted absentee

ballot card using an optical scan ballot scanner not earlier than seven calendar days before Election Day with the requirement that they may not tabulate the ballots before Election Day and that they shall retract a previously scanned absentee ballot of a voter who is later found disqualified or whose ballot may not be counted for any other reason.

The amended law has two main assumptions. One, all ballot card voting systems should be capable of retracting a ballot of an absentee voter who has been found to be disqualified; and, two, scanned absentee ballots should not be tabulated by the optical scan voting system until Election Day.

Upon reviewing these assumptions, it was necessary for VSTOP to determine how tabulation is defined. Following the IED's recommendation, we would like to reference Section 1.1.8-A of Version 2.0 of the Voluntary Voting System Guidelines. According to VVSG 2.0, tabulation is defined as a function that involves extraction of the valid votes from the vote total, the creation and storage of a cast vote record which contains the selections of all valid votes, and an aggregation of contest results and ballot

statistics. In addition to these requirements, IC 3-11-7-3, which requires that a ballot card voting system must enable a voter to cast their vote in secrecy, remains in effect.

To fulfill the request of the Commission, VSTOP, in collaboration with the Indiana Election Division, developed a six-page testing document to gather further information on the capabilities of all four Indiana voting system vendors to retract a ballot on their systems. In this document, VSTOP asked vendors to respond to a scenario that pertains to their voting system, whether op scan or DRE, where vendors were expected to provide a general synopsis of their ballot retraction capabilities for in-person, mail-in, fax or email, and travel board absentee voters.

In addition to this, VSTOP asked ten questions asking for specific information pertaining to the extent of these ballot retraction capabilities. Specifically, VSTOP asked questions including: One, whether retraction IDs were randomly and automatically generated by the voting system or if manual retraction ID generation is required; two, whether voter information is used for the retraction ID; three, whether the retraction ID is

printed on the ballot card; four, how the retraction ID is stored after its generation; five, how the ballot is retracted on the election management software; six, whether the ballot is automatically tabulated when scanned; seven, how the scanned ballot image is stored; eight, whether the retracted ballot is removed from the vote total; nine, whether the voter secrecy is maintained throughout the ballot retraction process; and, ten, whether the vendor provides instruction on the use of retraction function to their clients.

VSTOP submitted all four vendor responses to the IED on March 23, 2022. VSTOP is prepared to provide a synopsis of each vendor's voting system retraction capabilities upon the request of the Commission.

CHAIRMAN OKESON: Does that conclude your --

MR. CHATOT: Yes.

CHAIRMAN OKESON: Any questions or comments?

VICE CHAIRMAN OVERHOLT: Well, I guess I'd like to have a synopsis of what was submitted so we know they asked the questions.

MR. CHATOT: Sure. Would you like all four vendors or just the two on the agenda today?

MS. CELESTINO-HORSEMAN: All four.

MR. CHATOT: All four? Okay. We will start with Hart InterCivic. Hart InterCivic offers two solutions for the retraction of ballots on their Verity 2.3 and 2.5 voting systems. The first solution relates solely to absentee ballots that are completed outside of the polling location. During the election coding process, a unique ID is activated on the Verity Build application. This unique ID is a randomly generated alphanumeric string of characters stored in a bar code for system capture and in a human readable format on the ballot card to support county process of tracking. Hart InterCivic verified that no direct voter information is used to generate the retraction ID.

After the ballot card has been scanned, an authorized county election official can retrieve and delete the ballot by locating the unique ID in the Verity Central application. Once this process has been completed, the valid votes can then be transferred to the Verity Count workstation for tabulation.

Hart InterCivic's second solution for retracting a disqualified voter's ballot relates to

in-person absentee voting on their voting system. Each printed ballot contains a retrieval code that was activated when the election was created on the Verity Build application. Similar to the unique ID, the retrieval code is a randomly generated alphanumeric string of characters stored in a bar code for system capture and in a human readable format on the ballot to support county process of tracking. No direct voter information is used to generate the retraction ID.

If the county needs to remove the ballot before it has been tabulated, an authorized county election official should access the ballot with the retrieval code. After doing so, the county should scan all valid ballots for preparation for tabulation in the Verity Count software. However, if the county needs to remove any valid ballot after it has been tabulated by Verity Count, the county would need to locate the retrieval code printed on the paper ballot, find the scanned image of the invalid ballot, and delete the ballot image that is saved on the scan device. Hart InterCivic does offer directions on the use of their retraction features in the Verity Build user guide.

And there's a Hart representative here if

further questions are needed.

CHAIRMAN OKESON: Yeah.

MR. CHATOT: Would you like me to -- would you like to address Hart now or just keep going through the other three vendors and ask them all at the end?

VICE CHAIRMAN OVERHOLT: I think I'd like to hear all of them -- well, I guess -- I'd like to hear all of them. I guess I don't -- or if we need to address just the general issue of retraction and how we're handling it, period.

CHAIRMAN OKESON: Well, I mean, reading the minutes but not having been at the last meeting, I'd give some deference to you all as to how you'd like to proceed and hear this. I mean, I don't want to get lost in the sequential nature of the reading without having someone to -- unless you are satisfied with that summary.

VICE CHAIRMAN OVERHOLT: Well, I guess I, quite frankly, was hoping we were going to get a little more guidance. I mean, I can read the information they've submitted. I don't know that I need to sit here and have you read what's in front of me. I was hoping for a little more analysis. I guess my thought, because I have read this

information, and I think getting back to what the issue -- the issue that arose at the last meeting -- my interpretation of the issue that arose at the last meeting was that, you know, this retraction issue and the ability to retract is actually based on kind of the new statute and that these systems, well, I mean, like Hart, for example, we're talking about recertification of, you know -- to the extent we're talking about recertification of systems that were previously approved, so that would be Hart would fall into that. My understanding is that the retraction module was not part of that initial --

CHAIRMAN OKESON: Certification.

VICE CHAIRMAN OVERHOLT: -- certification. And so I'm not sure -- because there are, in my mind, this whole issue of retraction and how to go about it and the whole issue of the absentee ballots.

CHAIRMAN OKESON: Is that correct, it wasn't part of the original certification?

MR. KING: Mr. Chairman, that's our understanding, that it was not part of what was submitted in, I believe, 2019, if my memory serves me.

CHAIRMAN OKESON: Okay.

VICE CHAIRMAN OVERHOLT: So my thought, I mean, this is -- well, for all of these, because this is the issue that kind of arose last time, we wanted to get an understanding of the recertification modules that they had and actually what impact they would have on the systems that were up for recertification before us now because we haven't offered VSTOP -- you know, there weren't the existing guidelines for what needed to be tested for those modules.

So I guess my thought is with Hart, for example, so retraction wasn't part of their initial certification, that why not consider the Hart system to the extent, if the recertification module can be turned off or if it's separate or whatever, to consider their application for recertification without regard to the recertification module, so pull that out. So I guess now I'm making kind of a weird motion, which is probably premature. But with all these, my suggested approach for considering these is, what was the system that was certified previously. That's the system that should be up for recertification. If retraction wasn't part of that previous system, it should not

be part of the recertification.

CHAIRMAN OKESON: So I guess where we are, though, is simply hearing an opinion, right, from VSTOP as to some of those questions. Then we have to go through and pick up, as I understand it, some tabled motions from the last meeting that deal with the certification and the change orders of all those.

VICE CHAIRMAN OVERHOLT: But I'm not hearing that. So I guess I didn't hear an opinion. Unless I missed it, I didn't hear an opinion.

CHAIRMAN OKESON: Well, I would agree with that.

VICE CHAIRMAN OVERHOLT: So that's why --

CHAIRMAN OKESON: So we'll suspend your reading of the information that's provided in the tabs.

MR. CHATOT: Sure.

CHAIRMAN OKESON: And, I guess, are you arriving at an opinion, as VSTOP, that the matter has been adequately addressed?

VICE CHAIRMAN OVERHOLT: Well, let me ask, has the -- so these questions were posed. Has there been any field-testing of these recertification modules?

MR. CHATOT: No, just the information gathered.

VICE CHAIRMAN OVERHOLT: Okay.

MS. CELESTINO-HORSEMAN: Okay. So do you -- have you looked into the fact of whether the retraction was not part of the original certification? Because when you had the original certification, you did all your field-testing and everything else then; correct?

MR. CHATOT: Correct.

MS. CELESTINO-HORSEMAN: So this is now trying to come in, the retraction, as part of the recertification, and it hasn't gone through the field-test. So the correct process would be a new certification overall?

MR. CHATOT: Or a new certification for the retraction portion.

MS. CELESTINO-HORSEMAN: Okay.

CHAIRMAN OKESON: Does that come as a change order, then, or as a separate certification?

MR. CHATOT: Change order?

DR. BAGGA: Yeah.

CHAIRMAN OKESON: Is it considered an enhancement or modification to an existing release?

MR. CHATOT: Right.

CHAIRMAN OKESON: But I guess what I heard in your earlier synopsis was that, without a definition for tabulation, right, that the issue is avoided by simply not scanning until Election Day. Am I reading between the lines there that --

MR. CHATOT: Yeah. That's.

CHAIRMAN OKESON: -- really the resolution here is to advise the counties that you're certifying software that simply can't scan ballots, because it can't be retracted successfully, until Election Day. Is that the gist of the one paragraph you read?

MR. CHATOT: Yeah. The definition of tabulation is what kind of what throws the wrench in it.

MS. CELESTINO-HORSEMAN: So, in other words, when they scan it in, at the same time it's scanned in it's also automatically tabulated?

MR. CHATOT: From our interpretation from the VVSG, yeah.

CHAIRMAN OKESON: Well, the definition provided in the -- yeah, which is what they're using.

MS. CELESTINO-HORSEMAN: No. I'm talking about, though, the way the systems work on all four

of these. The explanations that have been provided is that their systems automatically go ahead and take that information and put it in and it's also fed through the tabulator when it's scanned. Is that correct?

MR. CHATOT: It's specific to each vendor, but generally that's correct.

MS. CELESTINO-HORSEMAN: Okay. And under the -- and that's the part that is not allowed to happen, tabulation prior to Election Day.

MR. CHATOT: Correct.

MS. CELESTINO-HORSEMAN: So if they wait until Election Day, then when they scan it through and it tabulates, that's okay because it's Election Day.

CHAIRMAN OKESON: Right. And we're using the broader definition of tabulation under this guideline, which is any time you scan it in, no matter what the system does, you've started the tabulation process. I'm really simplifying it, but that's basically it, right?

DR. BYERS: That's the gist of it, yes.

VICE CHAIRMAN OVERHOLT: Okay.

CHAIRMAN OKESON: So hearing that and I guess to your point, I'm not sure we've heard an opinion, per se, but we could move that we adopt the summary

that they've provided, then move to the orders for each of the systems that were tabled from last meeting, pick those up, and then we'd amend them or -- is that a process? We'd amend those orders or provide a new order, vote on the tabled order.

MR. KING: Mr. Chairman, members of the Commission, at the February 24th meeting, with regard to each of the items on the agenda for today, a motion was made and then tabled with regard to approval of either a voting system or an engineering change order.

And so the parliamentary process is for the Commission, in each case, to take it up off the table. Then you have a live motion that the Commission can either adopt as it was originally made or can amend to include additional restrictions, qualifications, which the Commission has certainly done in the past with regard to voting system certifications.

MS. NUSSMEYER: And, Mr. Chairman, if I might.

CHAIRMAN OKESON: Yeah, sure.

MS. NUSSMEYER: And Matthew is my parliamentarian, and I know he and Brad probably share a similar view. But at the February -- the second meeting, was that the 24th?

CHAIRMAN OKESON: Yes.

MS. NUSSMEYER: The 24th meeting, Hart's application is for a recertification of their initial voting system. Commissioner Overholt had asked whether or not they had retraction, and the vendor said yes, but that was not part of the VSTOP report or under consideration at that moment, but the Commission still determined to table it.

So as I understood these documents that were sent out to the vendors and who provided us a response was to help inform decisions of the Commission to be able to move forward, not necessarily that we were contemplating Hart's retraction element in their voting system that is before you today because that is not part of the VSTOP report, nor is it their engineering change orders. This is just information for Hart.

Unisyn is a separate issue because they're asking for a new voting system to be approved for use in Indiana.

CHAIRMAN OKESON: So one is new certification versus --

MS. NUSSMEYER: Right. And they actually have a retraction piece that was mentioned in the VSTOP report, right. So at this moment in time, I think

we've pulled together the information from the vendors to gather information that, moving forward, we can use it to develop field-test protocols for VSTOP to be able to confirm or better clarify what the vendors have provided to the Division and to the Commission so that we can further explore what retraction means under Indiana state law, under the VVSG, and whether or not we need to approach the legislature about making further changes in our state's election laws to reconcile these differences that we have with the optical scan voting systems, right.

Direct-record electronic voting systems, which is the MicroVote unit, they have their own statutes. Optical scan systems, there's a lot of ambiguity or nothing that is explicitly stated about how to handle some of these issues.

MR. KING: Mr. Chairman, members of the Commission, I agree with Ms. Nussmeyer's analysis she's presented here with regard to the distinction between the different types of voting systems that, again, are detailed in the information that's provided in the Commission's binders. And so the question that can be before the Commission is one of sequence in that you may wish to consider

adoption of a policy that applies with regard to retraction by all vendors, noting the impact of the definition of tabulation.

CHAIRMAN OKESON: Which is what I kind of heard here; right?

MR. KING: You heard, yes --

CHAIRMAN OKESON: I don't know if that's an opinion or a recommendation or a statement.

MR. KING: I would say this was a presentation of information from VSTOP knowing the context of the Commission's inquiry at its last meeting.

So as I say, the Commission can either consider a general approach that applies to retraction with regard to all vendors or it can apply conditions to certifications for the different voting systems depending upon their unique features or it can do both.

VICE CHAIRMAN OVERHOLT: So my thought -- would you like to hear?

CHAIRMAN OKESON: Please.

VICE CHAIRMAN OVERHOLT: And I appreciate the fact that the vendors provided us with these, responded to these questions.

CHAIRMAN OKESON: Yeah.

VICE CHAIRMAN OVERHOLT: I appreciate that. I

think we need to make sure they're included in today's record.

CHAIRMAN OKESON: Absolutely.

VICE CHAIRMAN OVERHOLT: I think now having even more of an understanding of the issues here, I mean, I think that, since I feel like I kind of started this mess at the last meeting anyway, I mean, it seems to me that maybe the next step is I think we -- so I agree that we ought to adopt some guidance that would apply to everyone about this whole -- how to handle the absentee ballots. But I'm thinking that maybe we deal with take back up these individual applications.

CHAIRMAN OKESON: Yeah.

VICE CHAIRMAN OVERHOLT: And then I think -- I know through the magic of preplanning that there's a proposed advisory opinion that I think encapsulates what VSTOP has said, the observations that have been made regarding the ambiguities in the state law, and what should probably happen as a next step. So I think my suggestion is we move to the individual applications and then --

CHAIRMAN OKESON: Should we adopt the advisory opinion first?

VICE CHAIRMAN OVERHOLT: We can do that too

because that doesn't impact the --

CHAIRMAN OKESON: Why don't we do that so we create a blanket over all of it, if that makes sense.

VICE CHAIRMAN OVERHOLT: Okay. Yeah.

CHAIRMAN OKESON: So with that, I would make a motion that the Commission adopt the Advisory Opinion 2022-8, which is provided in your binders. Is there a second?

VICE CHAIRMAN OVERHOLT: Second.

CHAIRMAN OKESON: Any discussion?

VICE CHAIRMAN OVERHOLT: We should probably talk about what's in it.

CHAIRMAN OKESON: Should we read it into the record?

MS. CELESTINO-HORSEMAN: I don't think you need to read it.

CHAIRMAN OKESON: Well, for purposes -- I suppose we could make sure that the opinion is posted somewhere.

MR. KOCHEVAR: We've done it in the past.

CHAIRMAN OKESON: We've read it into the record?

MR. KOCHEVAR: Yes.

CHAIRMAN OKESON: Does anybody want to

volunteer?

MR. KOCHEVAR: I'll volunteer unless Valerie wants to do it.

MS. WARYCHA: It doesn't matter.

CHAIRMAN OKESON: Can we just last person to touch their nose?

MR. KOCHEVAR: I can read it. I would just ask the court reporter, if I'm reading it too fast for you to capture everything, just tell me to slow down.

MS. CELESTINO-HORSEMAN: We can supply her a copy.

MS. WARYCHA: She has a copy.

VICE CHAIRMAN OVERHOLT: The magic of everything.

CHAIRMAN OKESON: Well, short straw is yours.

MR. KOCHEVAR: "Advisory Opinion 2022-8, Indiana Election Commission, In Re: Inquiry Concerning Retraction of Scanned Absentee Ballot Before Election Day Without Tabulation.

"Whereas, pursuant to Indiana Code ('IC') 3-6-4.1-14, the Indiana Election Commission ('Commission') is required to administer the election laws of the State of Indiana;

"Whereas, pursuant to IC 3-6-4.1-25, the

Commission is authorized to issue advisory opinions;

"Whereas, pursuant to IC 3-11-7-1 and IC 3-11-7.5-1, the Commission is required to approve a ballot card voting system and an electronic voting system before it can be used in an election conducted in Indiana;

"Whereas, pursuant to IC 3-11-7-2, the Commission may approve a ballot card voting system for use in an election conducted in Indiana only if the Commission determines that the system meets the standards in IC 3-11-7 and IC 3-11-15;

"Whereas, pursuant to IC 3-11-7.5-3, the Commission may approve an electronic voting system for use in an election conducted in Indiana only if the Commission determines that the system meets the standards in IC 3-11-7.5 and IC 3-11-15;

"Whereas, pursuant to IC 3-11-7-16 and IC 3-11-7.5-7, the Commission may not approve the marketing, sale, lease, installation, or implementation of a ballot card voting system or electronic voting system by a vendor if the Commission finds that the voting system fails to meet all statutory requirements provided in Title 3 of the Indiana Code;

"Whereas, pursuant to IC 3-11-7-19 and IC 3-11-7.5-28, an approval of a ballot card voting system or electronic voting system expires on October 1 in the year immediately after a presidential election year and can only be renewed by the Commission according to IC 3-11-7-19(b) through (e) and IC 3-11-7.5-28(b) through (e);

"Whereas, IC 3-11.5-4-6(b) allows for a county election board to scan a voted absentee ballot card using an optical scan ballot scanner not earlier than seven calendar days before Election Day so long as the county election board: (1) cannot tabulate the ballots before Election Day; and (2) is able to retract a previously scanned absentee ballot card of a voter who is later found disqualified or whose ballot may not be counted for any other reason under Title 3 of the Indiana Code;

"Whereas, IC 3-11-10-26.2(c)(3) and (4) and IC 3-11.5-8 requires a county election board to develop a procedure for how and when to reject and void an absentee ballot" card -- "an absentee ballot cast on an electronic voting system required to be rejected under IC 3-11.5-4-13 before the absentee ballots cast on the electronic voting system is tabulated on Election Day;

"Whereas, lacking a standard definition for tabulation for absentee ballots under Title 3 of the Indiana Code, the definition of tabulation in the Voluntary Voting System Guidelines 2.0 adopted by the United States Election Assistance Commission on February 10, 2021, is used by the Commission to evaluate retraction methods for absentee ballots cast on a ballot card voting system;

"Whereas, '1.1.8-A - Tabulation' in the Voluntary Voting System Guidelines 2.0 provides that the voting system must support the tabulation function for all voting variations indicated in the implantation statement and that the tabulation function includes: (1) extracting the valid votes" cast -- I'm going to go back. "(1) extracting the valid votes from each ballot cast according to the defined rules; (2) creating and storing a CVR that contains the disposition of each contest selection as well as the disposition of each contest choice that is eligible to be cast; and (3) accumulation and aggregation of contest results and ballot statistics;

"Whereas, the Commission, during its review of voting systems seeking to be approved for use in Indiana or renewal of a previous approval, has

considered the type of ballot retraction capacity a voting system may contain to comply with applicable Indiana law and can be used in an Indiana election;

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

"Now, therefore, the Indiana Election Commission issues the following advisory opinion:

"Section 1: For a ballot card voting system certified for use in Indiana to contain a retraction method to retract an absentee ballot that was scanned by an optical scan ballot scanner the retraction method must be approved for use by the Commission. The Commission will only approve the use of a retraction method for a ballot card voting system if the retraction method is found to be comply with IC 3-11.5-4-6(b).

"Section 2: A vendor of a ballot card voting system or an electronic voting system certified for use in Indiana may not market, sell, lease, install, or implement a ballot retraction method with a voting system used in Indiana unless the Commission specifically approves the use of the

retraction method to be part of the voting system.

"Section 3: As used in Section 4, 'identifiable information' means any direct voter information, including but not limited to a voter's: (1) Name; (2) Voter identification number assigned under IC 3-7-13-13; (3) Residence or mailing address; (4) Phone number; (5) Email address; (6) Full or partial Social Security number; (7) Date of birth; (8) Precinct name or designation; (9) The date of registration; (10) Driver's license or state identification number assigned by the Bureau of Motor Vehicles; and (11) Unique identification number assigned to the voter's record in the Statewide Voter Registration System ('SVRS') that is not otherwise mentioned in this Section.

"Section 4: If a ballot retraction method approved for use with a ballot card voting system or electronic voting system by the Commission includes the assignment of a unique identifier" to which -- "to each absentee ballot that is: (1) an optical scan ballot card scanned by the county election board using an optical scan ballot scanner before Election Day under IC 3-11.5-4-6; or (2) cast on an electronic voting system by a voter

according to the procedure established by the county election board under IC 3-11-10-26.2; then the unique identifier assigned to the absentee ballot may not include any identifiable information of the voter.

"Section 5: The Commission advises each county election board that a procedure must be developed and implemented to maintain and keep secure from unauthorized access each unique identifier assigned to each absentee ballot as described in Section 4.

"Section 6: The Commission advises each county election board that a unique identifier assigned to an absentee ballot as described in Section 4 and any listing containing those unique identifiers may be a record exempt from being available to the public for inspection and copying under IC 5-14-3-4(b)(10).

"Section 7: The Commission advises each county election board that until the Indiana General Assembly amends IC 3-11.5-4-6 or otherwise amends Title 3 of the Indiana Code to authorize the scanning of optical scan absentee ballot cards before Election Day when the scanning of the ballot card automatically results in tabulation before

Election Day, which is prohibited by IC 3-11.5-4-6, optical scan absentee ballot cards" may not be scanned before Election Day.

"Section 8" -- what did I say? I meant to say "shall not be scanned before Election Day." Thank you.

"Section 8: The Commission respectfully recommends to the Indiana General Assembly that the policy set forth in this Advisory Opinion be codified by enacting appropriate remedial legislation.

"Section 9: The Commission directs that the Election Division promptly forward a copy of this Advisory Opinion to each county election board.

"Section 10: The Commission directs VSTOP to promptly forward a copy of this Advisory Opinion to each voting system vendor that has a voting system in use in Indiana and to each electronic poll book vendor that has an electronic poll book in use in Indiana."

CHAIRMAN OKESON: Well done. Like an old-school filibuster.

VICE CHAIRMAN OVERHOLT: In the proposed order that we have -- or advisory opinion that we have, on Section 2 on page 3, and Matthew read it, but it

says "sale," it should be "sell." And Matthew read it as "sell," but that's what it should be.

MR. KOCHEVAR: Yeah.

CHAIRMAN OKESON: So under the third whereas on page 2, No. 2, creating and storing a CVR, does CVR need to be spelled out?

MS. BEATRICE: If I may. Liz Beatrice, L-i-z, B-e-a-t-r-i-c-e. CVR is the cast vote record as defined in the VVSG 2.0.

MS. NUSSMEYER: The VVSG definition, however, uses the acronym CVR, so it would be at the Commission's discretion if you want to spell that out.

MS. CELESTINO-HORSEMAN: You can spell it out then put parens and a quote.

CHAIRMAN OKESON: That's what I was thinking, it should have been listed.

VICE CHAIRMAN OVERHOLT: That would be good.

CHAIRMAN OKESON: Can we do that?

MR. KING: Mr. Chairman?

CHAIRMAN OKESON: Yeah.

MR. KING: You have a motion pending to adopt the order.

CHAIRMAN OKESON: That's correct.

MR. KING: You can make an amendment to the

order by consent to make the two changes that have been identified by Commission members.

CHAIRMAN OKESON: I do that inside the pending motion?

MR. KING: Yes.

CHAIRMAN OKESON: Can I get a motion by consent to approve the two changes?

VICE CHAIRMAN OVERHOLT: Consent.

MS. CELESTINO-HORSEMAN: Consent.

MS. PYLE: Consent.

CHAIRMAN OKESON: Consent.

So we have a motion to adopt this order. Is there a second?

VICE CHAIRMAN OVERHOLT: I think we already did that.

MR. KING: You've already done that.

CHAIRMAN OKESON: We haven't seconded it, right? Oh, we did and then read it in for discussion. So we have a motion and a second. Any further discussion?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

MS. CELESTINO-HORSEMAN: I do want to ask a question.

CHAIRMAN OKESON: Sure.

MS. CELESTINO-HORSEMAN: This will be distributed to all the county clerks; correct?

CHAIRMAN OKESON: Uh-huh.

MS. CELESTINO-HORSEMAN: And will it also be distributed to all the voting machine companies?

CHAIRMAN OKESON: The vendors and the General Assembly.

VICE CHAIRMAN OVERHOLT: Yeah, please, the General Assembly.

CHAIRMAN OKESON: Okay. With that, moving on, as has been noted a few times here, at the February 24th Commission meeting, a motion to approve the application submitted by Hart InterCivic for recertification of the Verity Voting System 2.3 for marketing and use in Indiana for a term expiring October 1, 2025, subject to any restrictions set forth in the report from VSTOP. So for purposes of the discussion today, I move that this motion be taken up off the table and further considered by the Commission. Is there a

second?

VICE CHAIRMAN OVERHOLT: Second.

CHAIRMAN OKESON: Any discussion?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it. The motion is picked up.

I will now recognize any person representing Hart InterCivic to provide an opportunity to make any statements of not more than 3 minutes regarding this application. Is there anyone present from Hart InterCivic?

MR. CHATOT: Tyson, would you like to say anything?

MR. GOSCH: I don't have anything to add.

CHAIRMAN OKESON: Would you say your name.

MR. GOSCH: Tyson Gosch, T-y-s-o-n, G-o-s-c-h.

CHAIRMAN OKESON: So do we need to amend the motion, then, based on the opinion we just adopted?

MR. KING: Mr. Chairman, members of the Commission, yes, it's appropriate for the Commission to amend the motion to include any

restrictions based on compliance with Advisory Opinion 2022-8.

CHAIRMAN OKESON: We do that by consent?

MR. KING: You can.

CHAIRMAN OKESON: Is that fair?

VICE CHAIRMAN OVERHOLT: Well, how are --

CHAIRMAN OKESON: We're considering the order that was tabled and is now picked back up, which was to approve the application for the Verity Voting System 2.3. We would amend that motion, then, by consent to include or stipulate --

VICE CHAIRMAN OVERHOLT: I guess could I just --

CHAIRMAN OKESON: Sure.

VICE CHAIRMAN OVERHOLT: Because I think it will make the record clear. So I would move --

CHAIRMAN OKESON: It's pretty muddy.

VICE CHAIRMAN OVERHOLT: I would move to amend the motion to recertify the Verity Voting 2.3, so to approve the recertification, with the stipulation that the retraction feature, to the extent there is one, be turned off and that it being not be used by Indiana county election administrators until such time as the vendor obtains approval of that new feature to ensure its

compliance with Indiana law.

CHAIRMAN OKESON: Is there a second?

MS. CELESTINO-HORSEMAN: Second.

CHAIRMAN OKESON: Okay. Any discussion?

So I have a question. Are we achieving the goal by asking them to turn it off or are we achieving the goal by saying just don't put the ballots in the machine until Election Day?

VICE CHAIRMAN OVERHOLT: Well, I feel like this is -- so not putting the ballots in the machine, that's a directive to county election officials. Right? This is a directive to the vendor. I mean, the vendor has to -- but they aren't the ones, hopefully, putting the ballots in the machine on Election Day.

CHAIRMAN OKESON: Well, yeah. No, right. Would there be any reason you would need to have the retraction piece turned on after Election Day?

MR. KING: Mr. Chairman, members of the Commission, in the case of an absentee ballot, a determination is made before it is tabulated that the vote it contains is cast by a qualified voter, and therefore there would be no reason subsequently to retract it. If the absentee ballot is challenged and becomes a provisional ballot, the

county election board, within ten days, makes the ultimate decision, and if it decides that the ballot has been cast by a qualified voter, then the --

CHAIRMAN OKESON: So no ballot goes into the system until it's --

MR. KING: Until there's been a determination of validity.

CHAIRMAN OKESON: Okay. So we have a motion and a second. I'm not going to reread it.

MR. KING: A motion to amend.

CHAIRMAN OKESON: A motion to amend and a second. So then we'll have to re-vote on the motion after this.

MR. KING: Yes.

CHAIRMAN OKESON: So all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: So that motion carries. So now we have the motion as amended with -- we have a motion and a second on that, so now we have a motion and a second as amended. Is that right?

MS. CELESTINO-HORSEMAN: Yes.

MR. KING: Yes.
CHAIRMAN OKESON: Any discussion?
VICE CHAIRMAN OVERHOLT: No.
CHAIRMAN OKESON: All those in favor signify by saying "Aye."
VICE CHAIRMAN OVERHOLT: Aye.
MS. CELESTINO-HORSEMAN: Aye.
MS. PYLE: Aye.
CHAIRMAN OKESON: The "ayes" have it. The motion carries. So the Hart InterCivic Verity Voting System 2.3 recertification, as amended, motion has passed.
Okay. Hart InterCivic Verity Voting System 2.5, same thing happened at the last meeting, that motion for approval was tabled. So for purposes of discussion, I move this motion be taken up off the table for further discussion and consideration by the Commission.
VICE CHAIRMAN OVERHOLT: Second.
CHAIRMAN OKESON: Any discussion?
Hearing none, all those in favor signify by saying "Aye."
VICE CHAIRMAN OVERHOLT: Aye.
MS. CELESTINO-HORSEMAN: Aye.
MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it.

I assume -- yeah, just wanted to make sure. So, again, we'll have to amend it.

VICE CHAIRMAN OVERHOLT: Yes. So I would move that we amend the motion to recertify Verity Voting System 2.5 to state that the system be recertified with the stipulation that the retraction feature be turned off and not be used by Indiana county election administrators until such time as that feature is approved.

CHAIRMAN OKESON: The amendment is moved. Is there a second?

Second.

Any discussion?

All those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it. The motion is amended.

So now we have to consider -- so the original motion has already been first and seconded or made and seconded; right? As amended. So now we need to vote on --

VICE CHAIRMAN OVERHOLT: The actual motion.

CHAIRMAN OKESON: Okay. So voting on the motion as amended, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it. The motion carries as amended.

Moving on, the Hart InterCivic Verity Voting System engineering change orders for Verity 2.3 and 2.5 reference Change Orders 1447 and 1449, 1492, 1496, and 1500. Again, at the February 24th Commission meeting, the motion to approve those orders was tabled. For purposes of today's discussion, I move that we pick that motion up.

VICE CHAIRMAN OVERHOLT: Second.

CHAIRMAN OKESON: Second. Any discussion?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it. The motion carries to pick it back up.

No comment from Hart InterCivic?

MR. GOSCH: No.

CHAIRMAN OKESON: We don't have to amend this one, correct, because these are the change orders. So we have the motion and the second to pick it up off the table. Do we have to move to -- we can vote on it; right?

MS. CELESTINO-HORSEMAN: Can we have -- because I know you weren't here. Apparently we didn't discuss these at the last meeting.

CHAIRMAN OKESON: Oh, okay.

MS. CELESTINO-HORSEMAN: So maybe we want to have VSTOP do a short synopsis.

CHAIRMAN OKESON: I didn't realize that. Did we not discuss these, Brad?

MR. KING: Mr. Chairman, there was a brief discussion in the minutes, as I recall, but it was not in --

CHAIRMAN OKESON: You tabled the motion, so I assume there was some.

MR. KING: The question, as I recall, Mr. Chairman, was that since the underlying system had not been recertified, it was premature to adopt the change orders.

VICE CHAIRMAN OVERHOLT: Right, right.

CHAIRMAN OKESON: All right. So they were

tabled without any -- do you mind?

MR. CHATOT: No, not a problem. Okay. So ECO -- I'm going to start with 1447 and 1494, which were bundled together. They are improvements to the ballot box and make mechanical improvements to components of the ballot box in response to feedback received from customers and manufacturing. There are no electrical changes associated with this ECO. All proposed changes are mechanical improvements to the equivalent components of the ballot box.

Unused rivets are removed from the bill of material. An unnecessary bumper is removed from the top center of the ballot box and replaced with a panel plug to improve the cable insertion experience when the Verity scan is mounted. And approved manufacturer list for panel plugs used on the rear of the ballot box is updated to add a part with more market availability.

ECO-1492 adds additional orderable part numbers for the approved manufacturing list for Hart part No. 1005808, a power controller used on the Verity Duo series devices. The added orderable part numbers are from the same existing approved manufacturer's part and vary only by component

package shape. An interposer is used to fit the component package on the existing Duo PCBA baseboard with no changes needed to the board.

ECO-1496 modifies a power regulator circuit on the Verity Touch Writer Duo series baseboards to move away from the Linear Tech LT8711 power controller and instead use the more widely available Texas Instruments TPS552882 series part. This modification described on the ECO is intended to mitigate the effects of global electronic component shortages.

Finally, ECO-1500 describes a configuration modification to allow for optional tabletop deployment of standard Verity Touch Writer Duo and Touch Writer Duo Standalone devices, rather than only on a Verity standard booth. There are no changes to the voting device hardware or software to support this change. This change is driven by supply chain challenges with raw materials required to manufacture Hart's standard voting booths. The modification described on this ECO affects deployments of Verity Touch Writer Duo and Touch Writer Duo Standalone devices only in a standard configuration only. Hart will continue to require Verity accessible booths for all accessible

configurations. There are no changes to the voting devices or voting device software to support this change.

CHAIRMAN OKESON: So in any of these change orders, none of them were software related?

MR. CHATOT: Correct.

CHAIRMAN OKESON: They're all hardware?

MR. CHATOT: Yes. They were all de minimis changes.

CHAIRMAN OKESON: Okay.

VICE CHAIRMAN OVERHOLT: I'd move approval of the change orders.

CHAIRMAN OKESON: Is there a second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it.

Next we have the Unisyn OpenElect 2.2 Voting System. Again, at the February 24th Commission meeting, a motion to approve the application submitted by Unisyn for certification of the Unisyn

OpenElect 2.2 for marketing and use in Indiana for a term expiring October 1, 2025, was tabled. For purposes of discussion, I move that this motion be taken up off the table for further consideration by the Commission. Is there a second?

VICE CHAIRMAN OVERHOLT: Second.

CHAIRMAN OKESON: Second. Is there any discussion?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it.

Is there anyone from Unisyn that would like to provide any testimony or speak?

MR. McGINNIS: Keith McGinnis from RBM also representing Unisyn.

CHAIRMAN OKESON: Will you spell your name.

MR. McGINNIS: McDermot Coutts is from Unisyn as well. After sitting here listening --

UNIDENTIFIED SPEAKER: Keith, you need to spell your name.

MR. McGINNIS: Oh, excuse me. I'm sorry. McGinnis, M-c-G-i-n-n-i-s, first name Keith.

MR. COUTTS: McDermot Coutts, M-c-D-e-r-m-o-t, C-o-u-t-t-s.

CHAIRMAN OKESON: Go ahead.

MR. McGINNIS: May I start with where we are today after hearing the discussion with the retraction, the history of the retraction, via Unisyn first of all. We started this in Version 2.0, the retraction model. It was tested by the federal lab and then also sent to VSTOP. No action was taken at that time, but we went in for our 2.1 certification. Retraction was certified. We couldn't figure out a way how to use it, but it was primarily certified for twofold, two reasons: One, it was for deceased voter retraction only; second thing was ballot security.

And we then had to find out through a legislative change this past summer, in 2021, in SEA260, legislation was passed and signed by the governor into law that we could use retraction. It identified ways of using retraction in terms of what days you could use it, how far in advance you could use it, counting but not tabulating by allowing the ballot to scan through. All right?

In order to do that, we had to have a way to retract a deceased voter because what I'm making

reference to next is what Marc started out with. There were four points in the discussion when you asked the vendors. The four points were early voting in person, right? That's one. The other three, vote by mail. This doesn't apply to the vote by mail for us. Travel board doesn't apply. And also email and/or fax, which doesn't apply.

Our version of this only applies to the early voting side of it, to be able to retract that ballot under the deceased voter law. Other applications which were mentioned briefly, provisional, nothing changes in the RBM Unisyn world when it comes to provisional ballots or any other type of ballot that needs to be retracted.

Because if you think about it, when come in as an early voter, you're walking in, you're signing it, that is you. Right? You're then assigned a little ID number that the last six digits of the voter registration works best. 999,000, there wouldn't be a repetitive one in there. You go activate the machine. That ID goes in. Still your name or nothing else identifiable there. It's only in the electronic poll book on the SER side of it. You go vote your ballot, you walk over, get it initialed, then deposit it through the scanner,

counted but not tabulated.

That's the process for the early voting side of it. Nothing else changes until possibly we get a recall on a ballot by a deceased voter. What do we do? Well, the election board bipartisan team can then look up the individual that had passed. It would then have a retraction ID attached to it, not named. They would go into the system, pull it up by the retraction number, they do not see the ballot, and they either say accept or reject.

CHAIRMAN OKESON: So what was the retraction ID again?

MR. McGINNIS: Pardon?

CHAIRMAN OKESON: You stated the retraction ID. I thought you listed that you said --

MR. McGINNIS: You do put the retraction ID through to activate the ballot.

CHAIRMAN OKESON: But what is the retraction ID?

VICE CHAIRMAN OVERHOLT: What's the ID? What information is used?

MR. McGINNIS: Oh, last six numbers of voter registration.

VICE CHAIRMAN OVERHOLT: So it's individually identifiable.

MR. COUTTS: If I may, that is a manual process. We do not generate those. We don't have that information as part of the Unisyn system. That is basically determined by the county, and it is then manually put into the system as part of the initialization process on the device. So it can be absolutely anything. There is nothing -- there is no rule or software that imposes that structure upon the number. So that's a procedural --

MR. McGINNIS: It's captured from the electronic poll book through the SVRS system.

CHAIRMAN OKESON: But that would be what we just discussed in the opinion, right, is that you cannot use that type of information as an ID.

MR. COUTTS: And that is purely optional as how the system is designed.

MS. CELESTINO-HORSEMAN: So how else would it be generated? You said enter it manually. You leave it up to the clerks to just come up with a system?

MR. COUTTS: Yeah.

CHAIRMAN OKESON: That's what some counties do; correct?

MS. CELESTINO-HORSEMAN: On generating a voter ID?

CHAIRMAN OKESON: No. Well, she said how else would these voter IDs be generated.

MR. McGINNIS: The poll books.

CHAIRMAN OKESON: That's what you would do; right?

MS. CELESTINO-HORSEMAN: The computer software does it; right?

VICE CHAIRMAN OVERHOLT: Well, I guess I would have a question for VSTOP. So when the Unisyn system was evaluated, I know that -- and I don't really want to end up going down a rabbit hole as we did in the last meeting, but I know that part of what we got into at the last meeting, there was discussion about the system, or I think it was Unisyn. Where we got confused was the retraction method that was discussed was talking about deceased voters, I believe, and talking about -- that was one of the categories. But it wasn't this concept of retraction related to early voting -- or tabulation and early voting; right? I mean, they're two different.

So I guess the question is that, in terms of the issues we've been raising at the meeting before this and this one and the issues that we raised in the advisory opinion that we just passed, was the

Unisyn system evaluated for those types of measures?

MR. CHATOT: It was evaluated for deceased candidates --

VICE CHAIRMAN OVERHOLT: Deceased candidates.

MR. CHATOT: -- but didn't address retracted voter ballots.

VICE CHAIRMAN OVERHOLT: Okay. I knew deceased caught my attention. I knew we were talking about someone was deceased, so the candidates. So it wasn't -- so that system was not assessed for the retraction that we're talking about in terms of voters.

MR. CHATOT: Correct.

CHAIRMAN OKESON: I guess I have a question. You said it could be scanned to begin counting but not tabulated.

MR. McGINNIS: We can't actually turn the key until the closing of polls on Election Day.

MS. NUSSMEYER: Mr. Chairman, I believe, though, as we discussed with the VVSG, when the ballot is scanned, the image and the individual voter's choices are stored on that media card, right, and that is what we, as a division, have viewed, at least in terms of our analysis for

today's discussion, as being tabulated.

I would also note that, up until last year, there was a statute that made it very clear that no absentee ballot, no optical scan ballot card could be scanned before Election Day. So during in-person early voting, for example, it was not legally permissible for any ballot card voting system to allow a voter to feed the voter's tabulated -- marked ballot through the optical scan tabulator, right. That is not a legal procedure.

Instead, what state law contemplates is that an optical scan ballot card, whether it be printed by a ballot marking device or premarked by the voter themselves, it has to go immediately into an ABS-7 security envelope, which is then attested to by the voter and the absentee voter board before them. So there would be no mechanism by which to retract a person's ballot if they had passed away because all absentee ballots should be stored in an envelope that is contemplated on Election Day by the bipartisan teams during the central count of absentee ballots.

MR. KING: Mr. Chairman, I would add my agreement with Ms. Nussmeyer on her points. And to add further, the statute that was amended in 2021

does not specifically reference deceased voters. It references voters who are disqualified, which can be for any number of reasons, such as moving out of Indiana or losing their voting rights upon being sent to prison following conviction of a crime. And so it's a little bit broader than the issue that was initially discussed with regard to deceased candidates.

CHAIRMAN OKESON: Okay.

MR. KING: The other point to make is -- and to some extent I'm repeating what Ms. Nussmeyer has said -- in our understanding of the definition of tabulation in VVSG 2.0, it is a three-step process. And tabulation begins when the image of a scanned absentee ballot optical scan card is captured and the voter's choices are captured separately from the scanned image. Tabulation is not completed, but tabulation has begun, and the statute prohibits tabulation, period.

CHAIRMAN OKESON: So this would fall under the same umbrella, sort of, as the Hart InterCivic that we amended.

VICE CHAIRMAN OVERHOLT: Right.

CHAIRMAN OKESON: So we approved it subject to amending it to turn off the -- you said it best.

VICE CHAIRMAN OVERHOLT: Yeah. Although before we do that, I have --

CHAIRMAN OKESON: But that's essentially where we are.

VICE CHAIRMAN OVERHOLT: Yes.

CHAIRMAN OKESON: Okay. Go ahead.

VICE CHAIRMAN OVERHOLT: But I do have a question, though. I mean, so has Unisyn or its representatives marketed the ballot retraction component to Indiana counties before IC 3-11.5-4-6 was passed?

CHAIRMAN OKESON: Well, so what road are you going down here?

VICE CHAIRMAN OVERHOLT: Well, I guess I'm curious about whether -- well, you're right. It's not really relevant to the motion. I think it is significant --

CHAIRMAN OKESON: We haven't given notice for any proceedings that would go down this road, which I'm not a lawyer, but --

VICE CHAIRMAN OVERHOLT: Well, I'm just asking a question.

MS. WARYCHA: Mr. Chairman, I think what he's trying to clarify for you is that if we were to -- this would classify as an enforcement proceeding.

VICE CHAIRMAN OVERHOLT: Oh, I see.
MS. WARYCHA: And under AOPA, you would have to give notice if you were going to have an enforcement proceeding.
VICE CHAIRMAN OVERHOLT: Okay. I understand. All right. So you want me to make a motion?
MS. CELESTINO-HORSEMAN: Can I ask a question before we --
CHAIRMAN OKESON: Sure.
MS. CELESTINO-HORSEMAN: So in your dealings in the past with the county clerks and stuff and in marketing your system, has it been represented to them that they can scan in the absentee ballots before Election Day?
CHAIRMAN OKESON: I don't think we can go down that road.
MS. CELESTINO-HORSEMAN: Well, if they've done it, then I'd just like to make sure that our --
CHAIRMAN OKESON: Then we'll have to give them notice --
MS. CELESTINO-HORSEMAN: I don't want to enforce against them. All I want to say is, if you have, then go back --
CHAIRMAN OKESON: But then they're on record.
MS. CELESTINO-HORSEMAN: Okay. I won't ask

them. If they have, we don't need to know. But I would like to put in the order, if you have done that, then you need to go back to those counties and inform them that the Election Commission has advised you that no scanning before Election Day and --

VICE CHAIRMAN OVERHOLT: Well, that's in the advisory opinion.

MS. CELESTINO-HORSEMAN: Is it? Yeah. So you can blame it on us.

CHAIRMAN OKESON: Okay. So we need a motion to amend.

VICE CHAIRMAN OVERHOLT: So I would move to amend the previous motion to certify. But this is slightly -- okay. So I'd move to amend the motion to certify the Unisyn -- recertify the Unisyn system so that the system would be --

CHAIRMAN OKESON: This isn't a recertification, is it?

MR. KING: No.

VICE CHAIRMAN OVERHOLT: Oh, okay. So to certify the Unisyn system with the stipulation that the retraction feature be turned off and cannot be used by any Indiana county election administrators until Unisyn obtains approval of that feature to

ensure its compliance with Indiana law and that the VSTOP report that initially stated that the FVT is capable of ballot retraction as allowed in SB260 be amended so that that statement is actually deleted from the report because, from what we've heard, that is not an accurate statement.

CHAIRMAN OKESON: So we have a motion to amend. Is there a second?

MS. CELESTINO-HORSEMAN: Second.

CHAIRMAN OKESON: Is there any discussion, questions?

All those in favor signify by saying "Aye."

MS. CELESTINO-HORSEMAN: For the amendment?

CHAIRMAN OKESON: This is for the amendment.

MS. CELESTINO-HORSEMAN: Okay. Sorry.

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: Aye. The "ayes" have it. The motion is amended.

Now we need a motion to approve certification -- the order as amended.

MS. CELESTINO-HORSEMAN: I would -- I'm trying

to think whether we should -- to put in there something that says that if it has been -- clerks have been advised by Unisyn to scan absentee ballots before Election Day, that they make a point of going back and telling them that that cannot be done. I realize they're going to have our advisory opinion, but we also know that sometimes people don't read as closely as they should.

CHAIRMAN OKESON: Brad, do you have a thought about this?

MR. KING: Mr. Chairman, it's the option of the Commission to amend the motion in the way it's just done, and if Commissioner Celestino-Horseman proposes specific language as an amendment, it's certainly germane, I think, clearly to the motion.

CHAIRMAN OKESON: Do you want to amend the amended motion?

MS. CELESTINO-HORSEMAN: Yes. I move to amend the amended motion by saying that this certification also includes the Commission's --

CHAIRMAN OKESON: Certification as amended.

MS. CELESTINO-HORSEMAN: Certification as amended also includes -- also requires Unisyn to go back to any clerk that it had previously advised they could scan absentee ballots prior to Election

Day and clarify that position, and they can use our advisory opinion to make sure they understand that that cannot be done. Not as elegant as Suzannah.

VICE CHAIRMAN OVERHOLT: Well, I had mine in writing. I'll second that.

CHAIRMAN OKESON: Any discussion?

Brad, do you have any thoughts?

MR. KING: No, Mr. Chairman.

CHAIRMAN OKESON: Litany?

MS. PYLE: No.

CHAIRMAN OKESON: So we have an amended amended motion and a second. Hearing no further discussion, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it. The amended amended motion carries.

And now we have to vote on the final motion as amended twice. Is there a motion to approve?

MS. CELESTINO-HORSEMAN: So moved.

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.
MS. PYLE: Aye.
CHAIRMAN OKESON: The "ayes" have it. The motion as amended twice carries.
I believe that concludes our business for the day. Can I get a motion to adjourn?
VICE CHAIRMAN OVERHOLT: So moved.
CHAIRMAN OKESON: Second. All those in favor signify by saying "Aye."
VICE CHAIRMAN OVERHOLT: Aye.
MS. CELESTINO-HORSEMAN: Aye.
MS. PYLE: Aye.
CHAIRMAN OKESON: We're out. Thanks for coming.
(The Indiana Election Commission Public Session was adjourned at 2:46 p.m.)

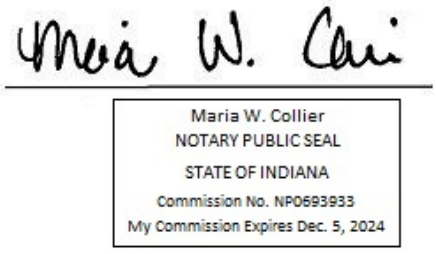
STATE OF INDIANA

COUNTY OF HAMILTON

I, Maria W. Collier, a Notary Public in and for said county and state, do hereby certify that the foregoing public session was taken at the time and place heretofore mentioned between 1:30 p.m. and 2:46 p.m.;

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 11th day of April, 2022.



My Commission expires:
December 5, 2024

Job No. 170767

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