

Indiana Election Commission Minutes June 29, 2016

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

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

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

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

1. Call to Order:

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

2. Transaction of Commission Business:

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

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

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

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

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

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

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

Respectfully submitted,



J. Bradley King
Co-Director



Angela M. Nussmeyer
Co-Director

APPROVED:



Bryce H. Bennett, Jr.
Chairman

In the Matter Of:

Indiana Election Commission Public Session Agenda

TRANSCRIPT OF PROCEEDINGS

June 29, 2016



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Transcript of Proceedings
June 29, 2016

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TRANSCRIPT OF PROCEEDINGS

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INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

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JUNE 29, 2016

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1:00 P.M.

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LOCATION:

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STATE CAPITOL BUILDING
STATE ROOM 125
INDIANAPOLIS, IN 46204

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

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A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

MR. BRYCE H. BENNETT
Chairperson

MR. KEITH CLOCK
Proxy for Vice Chairman Anthony Long

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

MR. ZACHARY F. KLUTZ
Commissioner

INDIANA ELECTION DIVISION STAFF:

MR. BRAD KING
Co-Director

MS. ANGIE NUSSMEYER
Co-Director

MR. MATTHEW R. KOICHEVAR
Co-General Counsel

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

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

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

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

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

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

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

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

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

18 MR. KLUTZ: So moved.

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

21 PROXY FOR VICE CHAIRPERSON: Second.

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

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

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

5 PROXY COMMISSIONER CLOCK: Or accuse
6 yourself.

7 PROXY COMMISSIONER CLAYTOR: That too.

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

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

13 THE CHAIRPERSON: Okay. Any further
14 discussion?

15 We have a motion and second for
16 ratification.

17 All in favor say aye.

18 All opposed say the sign.

19 Motion carried. Ratification is complete.

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

1 (Co-Director King administers the oath)

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

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

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

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

18 DR. LOSCO: Yes, we have.

19 DR. BAGGA: Yes, we have.

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

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

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

12 THE CHAIRPERSON: Do you have a
13 recommendation?

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

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

19 PROXY COMMISSIONER CLAYTOR: So moved.

20 THE CHAIRPERSON: Motion.

21 Is there a second for purposes of
22 discussion?

23 COMMISSIONER KLUTZ: Second.

24 THE CHAIRPERSON: We have a second.

25 Is there any discussion?

1 Hearing none, all in favor say aye.

2 Opposed say nay.

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

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

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

12 DR. LOSCO: Mr. Chairman --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 COMMISSIONER KLUTZ: Okay.

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

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

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

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

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

4 PROXY COMMISSIONER CLAYTOR: I'll so move.

5 THE CHAIRPERSON: Is there a second?

6 COMMISSIONER KLUTZ: Second.

7 THE CHAIRPERSON: A motion and a second.

8 Is there any discussion.

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

11 All opposed nay.

12 The ayes have it. Motion carried.

13 Engineering change orders are approved.

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

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

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

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

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

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

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

13 Are there any questions from the Commission
14 members?

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

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

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

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

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

4 THE CHAIRPERSON: Thank you.

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

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

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

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

1 [LAUGHTER]

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

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

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

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

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

25 THE CHAIRPERSON: Is it your testimony that

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

2 MR. CONRAD: We are working on that with

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

4 clear answer for that right now.

5 THE CHAIRPERSON: Is there time remaining,

6 sufficient time remaining for you to get in

7 compliance with the law before the election?

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

9 but, again, we are working with the

10 manufacturer.

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

13 MR. CONRAD: I cannot answer that.

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

16 MR. CONRAD: Yes. I am --

17 COMMISSIONER KLUTZ: So what --

18 MR. CONRAD: I am personally not.

19 COMMISSIONER KLUTZ: What are they telling
20 you?

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

23 COMMISSIONER KLUTZ: When?

24 MR. CONRAD: That I cannot answer.

25 COMMISSIONER KLUTZ: So they said they are

1 going to submit it to testing?

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

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

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

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

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

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

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

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

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

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

1 [LAUGHTER]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 UNIDENTIFIED SPEAKER: Amen.

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

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

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

12 THE CHAIRPERSON: Anything else?

13 [LAUGHTER]

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

17 THE CHAIRPERSON: Yes.

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

21 MR. CONRAD: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Tom John and I both were intimately

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

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

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

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

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

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

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

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

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

7 We have 20 counties we serve in this state.

8 THE CHAIRPERSON: What was that cite again,

9 Mr. John?

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

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

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

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

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

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

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

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

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

3 Section (f) is counterintuitive to that.

4 Because in that one particular case, to

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

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

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

8 ignore your vote. The interpretation of that is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 THE CHAIRPERSON: Yes.

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

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

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

3 MR. BURTON: 1800.

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

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

16 THE CHAIRPERSON: And you --

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

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

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

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

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

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

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

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

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

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

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

21 [LAUGHTER]

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

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

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

21 Kim Wilson and Mary Kilgore.

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

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

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

3 THE CHAIRPERSON: Identify yourself,
4 please.

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

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

24 THE CHAIRPERSON: All right, thank you.

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

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

3 THE CHAIRPERSON: Jennings?

4 MS. KILGORE: Jennings.

5 THE CHAIRPERSON: And your last name was?

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

7 THE CHAIRPERSON: Very well. Thank you.

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

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

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

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

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

4 THE CHAIRPERSON: Okay. Thank you.

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

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

14 THE CHAIRPERSON: Any questions from the
15 Commissioners?

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

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

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

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

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

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

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

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

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

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

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

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

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

20 MR. PEARSON: Yeah.

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

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

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

3 COMMISSIONER KLUTZ: Uh-huh.

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

8 DR. BAGGA: If I may answer that. Jay
9 Bagga, Co-Director of VSTOP. We see this part
10 of testing as a two-step process. There is
11 IED-approved test scenarios that all vendors
12 have, including ES&S, as was pointed out.

13 Those test scenarios are then put into a
14 plan by the lab and the vendor. And the plan is
15 then reviewed by VSTOP. Because the IED test
16 scenarios are for all the vendors; they are not
17 vendor-specific; whereas the test plan is
18 vendor-specific to their equipment. So IED and
19 VSTOP wants to -- we want to approve the
20 vendor-specific test plan which follows the
21 IED-approved guidelines.

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

24 DR. LOSCO: It could, Commissioner.

25 THE CHAIRPERSON: Does VSTOP have an

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

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

6 THE CHAIRPERSON: Yes, the required
7 changes.

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

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

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

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

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

25 Any final statements from ES&S?

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

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

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

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

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

20 I also want to apologize that I missed,
21 during the legislative process, this portion of
22 the bill, because it wasn't a change to the
23 bill; it wasn't a bolded or underlined section,
24 which is what we actually focus on when we look
25 at the bills, we look at the changes. And we

1 didn't notice that this little portion that was
2 already in the bill, which made sense before the
3 decoupling, no longer makes sense.

4 It does not make sense to tell the voter we
5 are decoupling your at-large races from your
6 straight-ticket vote, unless you overvote up
7 here, and then we're recoupling it. That
8 doesn't make sense.

9 COMMISSIONER KLUTZ: Ma'am, do you mind if
10 I ask a question?

11 MS. HUDSON: Yes.

12 COMMISSIONER KLUTZ: I had a question on
13 your -- you said manual selection of ballots you
14 found two overvotes at-large in '12 and none in
15 '14?

16 MS. HUDSON: Right.

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

19 MS. HUDSON: No.

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

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

24 And we would, then, comply with the law and
25 invalidate the whole ballot.

1 MR. KLUTZ: Right. But those two were
2 easily identifiable?

3 MS. HUDSON: Yes.

4 MR. CONRAD: May I add to that,
5 Mr. Chairman? First of all, what I did -- Kyle
6 Conrad, again, from GBS.

7 What I did not explain previously is that
8 we are only talking about the paper ballot for
9 [unintelligible] system. The DRE change that we
10 utilized doesn't allow for an overvote. So for
11 counties, such as Tippecanoe and Elkhart, that
12 are doing vote centers, have vote centers, and
13 the other counties that have vote centers for
14 primarily the touch screen machines, this
15 scenario cannot even happen because you cannot
16 overvote anything on a touch screen machine. So
17 we're just talking about the paper ballots.

18 The optical scan machine rejects any
19 overvotes. So that is your first clue that
20 there is a problem, whether it be any specific
21 race or a straight-party race. So that's your
22 first clue -- that's the first line of the
23 workaround is if a overvoted ballot is inserted
24 into the machine, it's rejected. If it's
25 determined to be a straight-party overvote, it

1 can be handled in a -- in a mechanism set forth
2 either by the Election Division or the County
3 Election Board, similar to a provisional ballot.
4 So I just wanted to clarify that.

5 THE CHAIRPERSON: Thank you.

6 Are there any clerks here who have a
7 contrary opinion about the workaround that's
8 been discussed by the three clerks so far?

9 I see none.

10 Okay. Thank you all for your testimony.

11 At this point I'll turn back to VSTOP,
12 Dr. Bagga and Dr. Losco, to proceed with your
13 presentation regarding the status of the efforts
14 taken by Hart Intercivic to comply with the SEA
15 61.

16 DR. LOSCO: Mr. Chairman and Commissioners,
17 Hart Intercivic's voting system's compliance
18 with SEA 61 was tested by SLI Global Compliance
19 Labs and the results reported to IED on
20 June 15th, 2016. The report indicates that,
21 while the DRE component of the Hart voting
22 system 2.1 -- 6.2.1 complies with all sections
23 of SEA 61, the ballot card component fails to
24 automatically process ballots in accord with
25 IC 3-12-1-7(f).

1 Hart requested that it be permitted to use
2 a manual process for this section of the code
3 for the November 2016 general election while it
4 performs necessary software modifications and
5 testing to be completed at an undetermined later
6 date.

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

9 MR. PEREZ: Yes, Mr. Chairman. My name is
10 Edward Perez, and I'm Director of Product
11 Management with Hart Intercivic.

12 Mr. Chairman and members of the Commission,
13 I want to respectfully thank all of you for the
14 opportunity to testify today.

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

21 And I think the top-line thing that I want
22 to mention is I'm here, we have affirmed in
23 writing, and I want to affirm here verbally,
24 that Hart is committing to bringing our systems
25 in full compliance with state law. I don't want

1 there to be any question about that. I'll
2 provide detail in a moment.

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

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

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

22 I want to echo what Ms. Hudson mentioned
23 with respect to the legislative session during
24 our close and good-faith, transparent
25 collaboration. From our perspective, virtually

1 all of the discussion in the legislative session
2 was exclusively centered around main thrust,
3 which our understanding was to clarify and
4 solidify voter intent.

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

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

18 I think the main thing that I want to
19 clarify that -- it's to echo similar concerns
20 that we've heard not only from clerks but some
21 other manufacturers, what we expressed in our
22 letter at the time that we delivered our test
23 report to the Commission is we do have strong
24 concerns with the limited time line that is the
25 desired time line to not only complete the

1 development and the testing and the VSTL testing
2 and the implementation of changes.

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

15 And so based on our own experience of any
16 modification that is effectively going to be an
17 end-to-end system change, it does lead us to our
18 own sort of predictions of what we think is an
19 appropriate time for purely internal Hart
20 quality testing -- actually, let me take a step
21 back, because, of course, to field any
22 modification, there is the time to design and
23 actually code and implement the feature itself,
24 and then, based on our estimations, purely for
25 our internal testing, before we would even take

1 something to an EAC-accredited test lab, doing
2 internal testing for two months would not be
3 uncommon.

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

13 We would need to make changes to our ballot
14 definition software. We would need to make
15 changes to the mark recognition and the rules
16 adjudication of our precinct scanning system.
17 We would need to do the same thing to our
18 absentee ballot scanning system, which is a
19 separate component, and, of course, we would
20 need to do the same thing for tabulation.

21 And I do simply want to echo that anytime
22 that we are doing an end-to-end change like
23 that -- and obviously, even if it is prompted by
24 compliance with the law, narrowly speaking, we
25 take very seriously our commitment to the voters

1 of Indiana and to the counties of Indiana, and
2 in a manner that would echo what you've heard
3 from some of the other manufacturers, there's a
4 level of additional integration testing and
5 regression testing.

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

11 In terms of time lines of when do we
12 think -- so what are we doing now and when do we
13 think changes could be made and so forth? We
14 begin -- in light of what I said about our close
15 collaboration and following this issue very,
16 very closely right up until March, pretty much
17 the moment Hart Intercivic received the initial
18 communication from the Secretary of State
19 indicating that the Governor had signed the
20 law -- and it was in that initial communication,
21 some of you may recall, that that was actually
22 what highlighted some of the implications of
23 Subsection (f). And as many have indicated,
24 that was also the first time that we were really
25 thinking about it.

1 The moment that that happened, we sought
2 clarification in March, and pretty much the
3 moment that we were sort of aware that there was
4 a different topic that had not been within the
5 scope of discussions in the time leading up to
6 that, we set about doing our design work.

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

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

1 with a conflict in the normal election calendar
2 for our -- our users.

3 So we are very aware of -- the Co-Directors
4 have been very explicit throughout this process
5 that they -- you all do not want manual
6 procedures, and that is not the preferred method
7 you want to be getting compliance with
8 Subsection (f). We hear that; we understand
9 that.

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

19 Those were originally -- we included them
20 within the scope of discussions with both
21 Dr. Bagga and Dr. Losco at the time of the test
22 plan. We heard them and we respected their
23 wishes to simply remove any mention of that from
24 the test plan and so forth. And so that is not
25 reflected in our test report. But we have

1 documented those and they exist as well.

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

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

20 And they have indicated, based on that,
21 some of them may want to talk today. Unless you
22 all have immediate questions for me, which I'm
23 happy to answer, I will yield the floor to any
24 of them, and I understand they also have some
25 commentary.

1 THE CHAIRPERSON: Let me just ask you this,
2 Mr. Perez: What is Hart Intercivic's proposed
3 workaround for this upcoming election?

4 MR. PEREZ: The shortest version -- so
5 given that it's only Subsection (f) that we're
6 currently not compliant with, and which, again,
7 is triggered by an overvote on the
8 straight-party election, and it only -- again,
9 it only impacts paper-ballot voting, so we do
10 have DRE users. We have paper users. This is
11 only paper ballots.

12 On the precinct scanner, what would be
13 required is simply to use the native
14 capabilities of the precinct scanner to -- when
15 it automatically rejects to the voter an
16 overvoted contest, if we are assuming that the
17 voter made an overvote in the straight-party
18 selection, and if the scanner was configured to
19 reject any overvote, the ballot would be
20 returned to the voter, the voter would get a
21 plain-language message identifying for them the
22 contest that is overvoted, and furthermore, the
23 precinct scanner can be configured to require
24 the intervention of a poll worker to actually
25 cast a ballot that has been flagged or alerted

1 in that way.

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

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

16 Our absentee ballot card system is a
17 digital system. And if those ballots are simply
18 outstacked and scanned in a separate batch, you
19 would simply confirm the overvote on the
20 straight-party selection, and once that online
21 adjudication step was taken, it would require
22 the user to simply manually void any of the
23 partisan contests that were also marked. And
24 those -- those are the two documented manual
25 processes.

1 THE CHAIRPERSON: Let me ask if any of the
2 clerks in the room today have any questions or
3 comments on the proposed workaround that
4 Mr. Perez suggested.

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

10 THE CHAIRPERSON: Anyone else?

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

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

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

19 MR. MCGINNIS: Keith McGinnis, RBM
20 consultant, perveyor of the Unisyn product.
21 Thank you for the certification. We're glad we
22 were able to follow the rules that were put out
23 by the legislative -- and we are looking not
24 only at a state election, here, folks, but a
25 federal election. That's going to come into

1 play somewhere along the line.

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

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

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

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

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

19 THE CHAIRPERSON: Yes, go ahead.

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

24 One thing I do just want to say for the
25 record, that, yes, it's correct that our manual

1 procedures weren't tested. I did want to say by
2 way of clarification and not in a
3 finger-pointing way, I want to remind, we did
4 offer the manual adjudication procedures during
5 the testing process, and we fully accept and
6 understand that they simply did not want to deal
7 with it at that time.

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

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

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

22 THE CHAIRPERSON: Anything else?

23 MR. PEREZ: Thank you.

24 THE CHAIRPERSON: Thank you.

25 COMMISSIONER KLUTZ: I have a question for

1 VSTOP. So have any of the manual procedures
2 been tested by VSTOP?

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

5 COMMISSIONER KLUTZ: Full compliance?

6 DR. LOSCO: Full compliance.

7 MR. PEARSON: Could I --

8 THE CHAIRPERSON: Yes.

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

12 THE CHAIRPERSON: They did test?

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

17 THE CHAIRPERSON: Was that testing plan
18 approved by VSTOP?

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

23 [LAUGHTER]

24 PROXY FOR VICE CHAIRPERSON: Good job.

25 THE CHAIRPERSON: Yes?

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

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

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

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

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

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

25 We will close the evidentiary testimony

1 portion and move on to recognize Election
2 Division counsel for a presentation regarding
3 the requirements for compliance with -- thank
4 you, Dr. Bagga and Dr. Losco.

5 Recognize the Election Division's
6 presentation regarding the requirements of
7 compliance with Senate Enrolled Act 61.

8 CO-DIRECTOR KING: Thank you, Mr. Chairman,
9 and members of the Commission. In your binders
10 there's a memorandum from Co-director Nussmeyer
11 and myself. I should begin by recognizing the
12 valuable work that our counsels, Dale Simmons,
13 who is absent today, and Matthew Kochevar have
14 done in working to prepare a response to the
15 Chair's inquiry regarding the legal issues that
16 are before the Commission.

17 The memo, which I will give a brief
18 overview of, certainly does not address policy
19 considerations that are the province of the
20 General Assembly. When the General Assembly
21 passes an election law, we administer it the
22 best we can.

23 And in the case we have before us, we're
24 dealing with Senate Enrolled Act 61, which we've
25 noted is now Public Law 21-2016, and I think the

1 contents have been described adequately by those
2 who have testified regarding it today.

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

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

14 That argument does not recognize the basic
15 principle in Indiana law, in Indiana Code
16 1-1-4-1 which states that whenever statutes are
17 enacted by the General Assembly that use the
18 singular, they must be construed, unless it's
19 repugnant to the legislation, to mean both
20 singular and plural.

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

25 The larger question is must a voting

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

4 We've heard several vendors here today
5 indicate that, instead, a manual tabulation of
6 ballots could be performed. That may be
7 correct. The question the Election Division is
8 addressing in this memo is whether or not that
9 manual tabulation would comply with the law.

10 The argument for a manual tabulation is
11 contrary to the requirements for optical scan
12 ballot card systems that are set forth in the
13 basic definitions that apply throughout the
14 entire election code. I mentioned several
15 specifically in the memo.

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

25 Finally, with regard to optical scan

1 ballots, the particular method under discussion
2 at the Commission's meeting today, 3-5-2-33.9,
3 Subsection (b), requires tabulation of an
4 optical-scanned ballot by an optical system that
5 reads marks on the card or paper.

6 Optical-scanned voting systems are required
7 to meet standards that are set forth in Indiana
8 Code 3-11-7, which include being required to be
9 safe, efficient, and accurate in the counting of
10 the ballots. That's 3-11-75. The key provision
11 here, in 3-11-7-6, is a ballot-card voting
12 system must count a ballot in accordance with IC
13 3-12-1-7, which would include all subsections,
14 Subsections (d), (e), and (f), when a voter
15 casts a straight-ticket vote and votes for
16 individual candidates. So, again, it complies
17 with both the Subsection (f) scenario and the
18 Subsection (d) and (e) scenario.

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

1 declared write-in candidate. That manual
2 tabulation is authorized under Indiana Code
3 3-12-4-4, which requires the County Election
4 Board to appoint write-in teams of
5 representatives of both major political parties
6 necessary to examine and count write-in votes
7 cast on the ballot-card voting system.

8 So the analysis of the law that Co-Director
9 Nussmeyer and myself and our staffs have agreed
10 on would indicate the answer to the question is,
11 no, state law does not authorize a manual
12 procedure, but, instead, requires that a
13 ballot-card voting system complied with the law
14 by tabulating votes automatically and correctly.

15 I'll be happy to answer questions that
16 Commission members may have.

17 THE CHAIRPERSON: So it would appear that
18 the work-arounds that have been suggested which
19 require or which permit a manual procedure would
20 not be in compliance with the state law.

21 CO-DIRECTOR KING: That is the opinion of
22 the Election Division. I'll defer to
23 Co-Director Nussmeyer if she has anything to
24 add.

25 CO-DIRECTOR NUSSMEYER: I don't. I agree

1 with Co-Director King.

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

3 THE CHAIRPERSON: Yes.

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

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

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

24 So we're talking about a system where we
25 aren't -- we aren't hand-counting these per se.

1 We're using the actual tabulations from the
2 machines, certified parts of these tabulating
3 machines, just not in a way where they pop up an
4 answer. You have to work it through. But it is
5 using the systems.

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

17 At the end of the day, the systems are more
18 than just that computer, more than just the
19 mechanics of it. When we're talking about
20 voting system, it's the clerks that are working
21 on it, it's the instructions that go into it.
22 And so I think it's well within given
23 circumstances that were really beyond anybody's
24 intent or control, to be in the situation where
25 we are.

1 If we had had a year to the election, we
2 wouldn't be having this discussion at all. But
3 given exigent circumstances, given the clear
4 authorization and statute for this Commission to
5 make, essentially, regulations and exceptions to
6 ensure that we have a safe and secure election,
7 and considering the fact that the system does
8 include all the documentation procedures that go
9 along with it, I'd argue that it's not -- it is
10 at least within this Commission's interpretation
11 to find that there is legal compliance for this.

12 THE CHAIRPERSON: Mr. John, do you have a
13 position as to whether 3-11-7-14, the
14 supplementary instructions, permit the
15 Commissioners to instruct in a manner that is
16 inconsistent with the interpretation of the law?

17 MR. JOHN: Well, what I just articulated is
18 I think you can argue that these extra
19 documentation essentially become part of the
20 system. And so for you to make that -- that
21 suggestion and to place those requirements in
22 for this election is consistent with law. You
23 aren't actually moving outside of what the law
24 is. You're simply interpreting where there's a
25 gray area in the law.

1 MR. CONRAD: Mr. Chairman?

2 THE CHAIRPERSON: Yes.

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

5 THE CHAIRPERSON: For the record, you
6 are --

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

16 UNIDENTIFIED SPEAKER: There you go.

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

25 The machine will reject it, and it will be

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

8 MR. PEREZ: Mr. Chairman?

9 THE CHAIRPERSON: Yes.

10 MR. PEREZ: One -- one thought I have that
11 I'll just offer that sort of triangulates off of
12 what I've heard here, and fully understanding
13 Mr. King's point about the need in law to
14 automatically tabulate, one thing that I think
15 that is helpful, and the finer point -- some
16 might think it's hair-splitting, but I think
17 it's actually at the crux of the matter of --
18 what we're talking about in manual procedures, I
19 believe, can reasonably be thought of as -- to
20 this gentleman's point, again, we're not --
21 manual does not equal manual counting.

22 The manual intervention, whether it's
23 happening for a provisional or whether it's
24 happening in the case of an overvoted straight
25 party, the manual intervention is for the

1 purpose of managing how a voter's intent, in
2 that moment, or their marks, are getting
3 recorded in the system. And the recording of
4 the cast vote record is a distinct question from
5 the use of the system's native automatic
6 tabulation capability.

7 And so the way I would sum that up is our
8 proposal, and in -- and in other instances,
9 whether it's for provisional ballots or for
10 anything else, if there is a manual intervention
11 prior to recording a cast vote record that is in
12 some way is adjudicating, how are these voter
13 marks to become part of the records that the
14 automated tabulation system is then going to do
15 its work upon, that, I think, is the critical
16 issue, or at least that's the way I see it.

17 I don't know if others have that fine a
18 distinction between recording the cast vote
19 record and tabulating it, which are obviously
20 related, but they are, strictly speaking,
21 different things that we have suggested is
22 predicated on the assumption that you are using
23 an automated tabulation function in the system.

24 THE CHAIRPERSON: Any discussion by the
25 Commission? Any thoughts, comments,

1 suggestions, proposals, concerns, criticisms?

2 MR. CONRAD: May I ask a question? What is
3 the Election Division's definition of a
4 straight-party ballot?

5 THE CHAIRPERSON: I don't know if anyone
6 wants to answer that. If not --

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

8 THE CHAIRPERSON: Yes.

9 CO-DIRECTOR KING: As Mr. Conrad knows
10 better than anyone else in this room, the
11 opinion of the Election Division requires
12 agreement by the two Co-Directors.

13 [LAUGHTER]

14 MR. CONRAD: I think I was involved in a
15 situation where that came into play.

16 CO-DIRECTOR KING: There was a situation,
17 yes. But I would be happy to attempt to address
18 the question and then see if Co-Director
19 Nussmeyer concurs.

20 A straight-party ticket, I don't believe,
21 is defined in 3-5-2, but it's described in the
22 various voting system chapters as making a mark
23 indicating that the person is voting for the
24 candidates nominated by a political party.

25 The General Assembly has amended the effect

1 of that statute to say that, notwithstanding the
2 definition, votes cast for a straight ticket
3 will not be counted for the candidates of that
4 party for certain local at-large offices, county
5 council being the most common one this year.

6 MR. CONRAD: Can I stop you right there?

7 So we have now excluded those races as a
8 partisan -- theoretically, as a partisan office?

9 CO-DIRECTOR KING: No, I disagree. They
10 are on the ballot as Democrats or Republicans.
11 They are clearly nominated by their political
12 parties, and several might be a bit offended if
13 you said they were not a political party.

14 MR. CONRAD: Well, they should be offended,
15 but they can't take advantage of the
16 straight-party vote.

17 CO-DIRECTOR KING: And that's a decision
18 that's addressed not by the Indiana Election
19 Commission and not by the Indiana Election
20 Division; that's, instead, addressed by the
21 people who enact legislation in this building.

22 MR. CONRAD: I understand.

23 MR. PEREZ: Mr. Chairman?

24 THE CHAIRPERSON: Yes.

25 MR. PEREZ: If I might make one other

1 comment that I think is relevant is, in light of
2 the discussion around adjudication and the
3 between what gets recorded versus what gets
4 tabulated, from our perspective -- and this is
5 just for what it's worth, and I respectfully --
6 I've had -- I've posed this question both to
7 Mr. King and Ms. Nussmeyer, so they have heard
8 it before.

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

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

1 subsection states so explicitly.

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

11 THE CHAIRPERSON: Very well. Somebody over
12 here. Yes.

13 MS. MOORE: Marcia Moore, Hancock County.
14 Hancock County is a vote center county and a
15 completely paper ballot county.

16 To be honest, it does appear that this
17 issue does primarily affect a huge amount of
18 paper issue. And from what I am hearing, it
19 does appear to me that the manual system being
20 proposed is using the automated system to
21 identify, and then allowing the Election Board
22 to manually intervene to -- to identify those
23 ballots, so to speak. Because the alternative,
24 then, is to say our system is not certified.
25 And as you've heard testimony, that's

1 approximately 45 clerks -- or counties.

2 So then what you're saying is 45 counties
3 have noncertified equipment, which then says I
4 have to go and either try to find equipment
5 to -- around a presidential election, which
6 would mean that I would go to Commissioners and
7 say, hey, can I have a couple million dollars?
8 And I don't think that's likely to happen. And

9 that is what you're, in essence, in the
10 narrowness of time -- this is nearly July 1st.

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

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

25 And so I would ask, if possible, for this

1 Commission to allow those systems -- to allow
2 their automated system to just help us to
3 identify those very rare occasions for an
4 overvote, that we can then manually intervene
5 and count that. Thank you.

6 [APPLAUSE]

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

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

20 I'm disappointed that there weren't
21 stronger efforts on behalf of the other
22 companies that are here today, particularly when
23 any resistance is based on philosophical belief,
24 I don't think that's appropriate in this
25 situation, to compromise the compliance with the

1 law with personal beliefs.

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

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

15 So we need to consider this, and I don't
16 know that any decision needs to be made today.
17 I would encourage every vendor in the room to
18 work diligently with VSTOP to make all the
19 progress that is humanly possible towards
20 certification of your equipment prior to the
21 2016 election.

22 We have another meeting of the Commission
23 in July that we will have an opportunity to
24 address this again, and we may ask for your
25 participation there as well.

1 But unless there's a motion by any of the
2 Commissioners at this point in time, I think I
3 would suggest that we give a lot of thought to
4 what we've heard, that we seek whatever legal
5 counsel we need to justify whatever decision we
6 might make.

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

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

15 Does any Commissioner want to add anything
16 at this point?

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

21 In my reading of the code, I find it hard
22 for the Commission to certify anything that does
23 not meet each section of the law. I think if
24 the Commission is able to come to that, it's
25 going to be with a strain and perhaps with one

1 eye closed. But I would certainly hope the
2 vendors can do everything possible to get us to
3 that point.

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

9 THE CHAIRPERSON: Good. Thank you.
10 Anything else?

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

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

16 PROXY COMMISSIONER CLAYTOR: So moved.

17 THE CHAIRPERSON: We have a motion.

18 Do we have a second?

19 PROXY FOR VICE CHAIRPERSON: Second.

20 THE CHAIRPERSON: Motion and second.

21 All in favor say aye.

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

23 (The hearing adjourned at 2:40 p.m.)

24

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2 STATE OF INDIANA)

) SS:

3 COUNTY OF MARION)

4 I, Susan Wollenweber Dezelan, RDR, CRR, RCR, a

5 Notary Public in and for the County of Marion,

6 State of Indiana at large, do hereby certify that

7 the foregoing hearing was taken at the State

8 Capitol Building, State Room 125, Indianapolis,

9 Marion County, Indiana, on the 29th day of June,

10 2016, commencing at the hour of 1:00 p.m.

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

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

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

Susan Wollenweber Dezelan

23

24

25

NOTARY PUBLIC

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My Commission Expires:

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March 24, 2024

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County of Residence:

Marion

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