Indiana Election Commission
Minutes
October 27, 2021

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

Members Absent: None.

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

Others Attending: Ms. Tabitha Arnett; Dr. Jay Bagga; Mr. Michael Biercz; Ms. Regan Bonderman; Dr. Bryan Byers; Mr. Ed Cooper; Ms. Denise Hall Hatch; Ms. Kristin Jones; Mr. Dan Leonard; Mr. Ryan Neumeister; Mr. Mathew Norris; Ms. Elizabeth Rowray; Mr. Kevin Warren; Ms. Samantha Waterman; Ms. Cynthia Wirth; Mr. Matt Zapf.

1. Call to Order:

The Chair called the October 27, 2021 meeting of the Commission to order at 1:30 p.m. EDT in State House Room 404, 200 West Washington Street, Indianapolis.

2. Transaction of Commission Business:

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

The Commission adjourned its meeting at 3:58 p.m. EDT.

Respectfully submitted,

J. Bradley King
Co-Director

[Signature]

Angela M. Nussmeyer
Co-Director

[Signature]

APPROVED:

[Signature]

Paul Okeson, Chairman
In the Matter Of:

INDIANA ELECTION COMMISSION PUBLIC SESSION

Transcript of Proceedings

October 27, 2021

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INDIANA ELECTION COMMISSION

PUBLIC SESSION

Conducted on: October 27, 2021

Conducted at: State House Room 404
200 West Washington Street
Indianapolis, Indiana

A Stenographic Record by:
Maria W. Collier, RPR, CRR

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APPEARANCES

INDIANA ELECTION COMMISSION:
Paul Okeson - Chairman
Stephanie Beckley - Proxy for Chairman Okeson
Suzannah Wilson Overholt - Vice Chairman
Litany Pyle - Member
Karen Celestino-Horseman - Member

INDIANA ELECTION DIVISION STAFF:
Angela M. Nussmeyer - Co-Director
J. Bradley King - Co-Director
Matthew Kochevar - Co-Counsel
Valerie Warycha - Co-Counsel
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CHAIRMAN OKESON: So with that, I call this meeting of the Indiana Election Commission to order for Wednesday, October 27, 2021, roughly 1:30 p.m. The following members are present: Chairman Paul Okeson, Vice Chairman Suzannah Wilson Overholt, member Karen Celestino-Horseman, and our newest member, Litany Pyle; our Election Division co-directors, Brad King and Angie Nussmeyer; co-general counsels, Matthew Kochevar and Valerie Warycha; our court reporter, Maria Collier, from Stewart Richardson Deposition Services over here.

I'd like to recognize too, as I said, our newest member, Litany Pyle. Welcome to the Commission. Our good friend Zach Klutz has chosen to step aside after how many years?

MR. KING: Seven.

CHAIRMAN OKESON: After seven years with the Commission. So we thank him for his service and really appreciate the dedication and volunteer commitment that he brought to the Commission and wish him well in his future endeavors.

If anyone else would like to comment on Zach.

VICE CHAIRMAN OVERHOLT: Well, sure, yes. We appreciated working with Zach, and we are looking forward to working with Litany.
CHAIRMAN OKESON: Thank you.

Litany, would you like to make an opening?

MS. PYLE: I don't think so, no.

VICE CHAIRMAN OVERHOLT: Wise woman.

CHAIRMAN OKESON: As I said, before we go on, if you're going to provide any testimony or speak or address the Commission in any way, press the speaker button so that the microphone is red at the top, and then please state your name and spell it for the court reporter so that we can get that on the record.

At this time, I'll move on to seek that we have complied with the Open Door Law. I'd seek input from the co-directors.

MR. KING: Mr. Chairman, members of the Commission, on behalf of myself and Co-Director Nussmeyer, I certify that proper notice was given in compliance with the Indiana Open Door Law for this meeting.

CHAIRMAN OKESON: Thank you.

Moving on, approval of the August 18, 2021, and September 30, 2021, Commission meeting minutes.

MR. KING: Mr. Chairman.

CHAIRMAN OKESON: Go ahead.

MR. KING: On behalf of myself and Co-Director
Nussmeyer, we have reviewed the August 18, 2021, and September 30, 2021, Commission meeting minutes and recommend them to you for approval.

CHAIRMAN OKESON: Is there a motion to approve the meeting minutes as presented?

VICE CHAIRMAN OVERHOLT: So moved.

CHAIRMAN OKESON: Thank you. Is there a second?

MS. PYLE: Second.

CHAIRMAN OKESON: Hearing a second, any discussion?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

With that, we move on to the administration of the oath. Any person who does want to provide any testimony at today's meeting on any campaign finance matters please respond with "I do" upon the reading of the oath. I recognize Matthew Kochevar, co-counsel, to administer the oath.

MR. KOCHEVAR: Thank you, Mr. Chairman.
All those who plan to testify before the Indiana Election Commission, please rise, raise your right hand, and say "I do" after administration of the oath.

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

ALL: I do.

CHAIRMAN OKESON: Thank you, Matthew.

MR. KOCHEVAR: Thank you.

CHAIRMAN OKESON: Ratification of campaign finance settlement agreements, I recognize the Election Division's finance staff, Ms. Taylor and Ms. Thompson, to present the information concerning several campaign finance agreements that were settled and entered into on behalf of the Commission.

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

CHAIRMAN OKESON: Do we need to read those off in the record for any reason?
MR. KING: No.

CHAIRMAN OKESON: Is there a motion to ratify the campaign finance settlements?

VICE CHAIRMAN OVERHOLT: So moved.

CHAIRMAN OKESON: Second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion?

MS. CELESTINO-HORSEMAN: If you can hear me, the settlement agreements, these were where they could come in and agree to a lesser amount?

VICE CHAIRMAN OVERHOLT: Hold on. There we go.

MS. CELESTINO-HORSEMAN: So these folks are paying the full amount?

MS. THOMPSON: Correct.

MS. CELESTINO-HORSEMAN: And to qualify for the lesser amount, how -- that's what they're offered today?

MS. THOMPSON: Right.

MS. CELESTINO-HORSEMAN: And that will be explained to all these folks out here, then?

MS. THOMPSON: Yes.

MS. CELESTINO-HORSEMAN: Okay. Thank you.

CHAIRMAN OKESON: Any further questions, comments, discussion?
Hearing none, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.
MS. CELESTINO-HORSEMAN: Aye.
MS. PYLE: Aye.
CHAIRMAN OKESON: The "ayes" have it. The motion is adopted.

Approval of campaign finance enforcement orders is next on the agenda. I recognize the Election Division staff once again, Ms. Taylor and Ms. Thompson, to present the information concerning Commission Orders 2021-5 through 2021-221, which documents the finding of the penalties assessed in the enforcement proceedings from the August 18, 2021, meeting.

MS. THOMPSON: Yes. Mr. Chairman, members of the Commission, Orders 2021-5 through 2021-221 have been prepared from the actions taken at the June 23rd meeting, and these orders are ready for adoption.

CHAIRMAN OKESON: Thank you. Is there a motion to adopt Orders 2021-5 through 2021-221 as presented?

VICE CHAIRMAN OVERHOLT: I have a question. This isn't -- well, I'll say it now before a
motion.

CHAIRMAN OKESON: Sure.

VICE CHAIRMAN OVERHOLT: Are those in our book somewhere?

MS. THOMPSON: No.

MS. TAYLOR: It's (indicating).

VICE CHAIRMAN OVERHOLT: All right. But it's from the last meeting. Yes, I remember that meeting.

CHAIRMAN OKESON: It's the Atlanta phone book.

VICE CHAIRMAN OVERHOLT: Yes. So moved.

CHAIRMAN OKESON: Thank you.

Is there a second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any other discussion? Hearing none, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: Aye.

The "ayes" have it. The orders are adopted.

Okay. Moving on, opportunity for committees with representatives — oh, can I get consent to use signature stamps?
VICE CHAIRMAN OVERHOLT: Yes.

MS. CELESTINO-HORSEMAN: Yes.

MS. PYLE: Yes.

CHAIRMAN OKESON: Yes. Thank you. Let the record reflect that Co-Director Nussmeyer caught that one.

Before proceeding with campaign finance enforcement actions, we have customarily given any committee present a final opportunity to pay a reduced civil penalty by waiving the right to present evidence and any arguments to the Commission. Of course, any committee is welcome to present evidence and arguments for the proposed penalty to be waived or reduced, but this has been an opportunity for those who want to waive any presentation and accept the reduced penalty without making any argument or presentation. You can just accept it and move on.

And I would want to go ahead and roll through this unless you want to.

MS. CELESTINO-HORSEMAN: Can I just say something?

CHAIRMAN OKESON: Sure.

MS. CELESTINO-HORSEMAN: All right. So the offer that's being made right now, as I understand
it, will not be offered to you again. If you step up and testify, you will not receive that offer.

And he referred -- our chairman referred to arguments. Let me just say that I didn't know what I was doing, I hit the wrong button, I didn't know the law, the dog ate my computer, none of that is an acceptable argument. And then you now face going up for the full amount of the penalty. So I just want to make sure that everyone understands that.

And you should also know that in the past, doesn't matter whether you're Democratic, doesn't matter whether you're Republican, doesn't matter whether you're an officeholder or not, we have consistently treated everyone the same, just to let you know. So there is not going to be any special treatment for anybody. So I've said my two cents.

CHAIRMAN OKESON: Thank you. I think it's well said. It should be well considered.

So with that in mind, I'm going to move to adopt the following arrangements.

If this is the committee's first violation, the arrangement is for the committee to agree to pay 25 percent of the proposed fine plus any mailing costs.
If this is the committee's second violation, it is the arrangement for the committee to pay 50 percent of the proposed fine plus any mailing costs.

And if this is the committee's third violation, the committee would agree to pay 75 percent of the proposed violation plus any mailing costs.

For purposes of this arrangement, a previous settlement agreement entered into by the committee will be counted as one violation. Likewise, if more than one alleged violation occurred on the same calendar day, that group of violations shall be counted as one violation.

With those arrangements in mind, can I have a second to this motion?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it, and those are the rules of the game.
Okay. With that, before I proceed any further, I will note that I will need to recuse myself from consideration of the enforcement actions concerning one committee -- that would be the Todd Rokita Election Committee -- and have designated Stephanie Beckley to act as my proxy in serving as chair and member regarding this matter.

I will now ask Stephanie to step forward and assume the chair and conduct the hearing on that matter. I will leave the room and then return when she is done.

(Chairman Okeson exits.)

MS. BECKLEY: All right. Thank you. First note, I would like to welcome Litany as well.

And then I would like to ask the Todd Rokita Committee to step forward. Please state your name and cause number for the record.

MS. BONDERMAN: Hi. My name is Regan Bonderman.

MS. CELESTINO-HORSEMAN: Point of order?

MS. BECKLEY: You may.

MS. CELESTINO-HORSEMAN: Mr. Rokita's campaign, are they taking a plea or are they presenting their evidence?

MS. BONDERMAN: Oh, no. I would like to take
the plea. But I have a question. I have three forms here. Do those all count as first time?

MS. THOMPSON: Yes.

MS. BONDERMAN: And I would like to take the plea, so do I need to read you the cause numbers?

MS. BECKLEY: No, you will not need to read the cause numbers. And you would like to take the plea?

MS. BONDERMAN: Yes, please.

MS. BECKLEY: And to confirm, that's the first-time violation so 25 percent?

MS. THOMPSON: That's correct.

VICE CHAIRMAN OVERHOLT: I'm sorry, but for our sakes, could we have the cause numbers so we can look it up?

MS. THOMPSON: I can give you that. This is the Todd Rokita Election Committee. This is found on pages 25 and 26. It's Cause Nos. 2021-4676-275, -276, and -277. And this committee has not been before the Commission before.

MS. BECKLEY: Cause No. -270 --

MS. THOMPSON: -275 on page 25.

MS. BECKLEY: All right. So if I am to understand, there are three cause numbers. And then to the committee over here, normally they
would all be treated as one?

MS. THOMPSON: Yes.

MS. BECKLEY: All right. So then to the
Commission, are you all comfortable with that being
the first offense?

VICE CHAIRMAN OVERHOLT: Yes.

MS. CELESTINO-HORSEMAN: Yes.

MS. PYLE: Yes.

MS. BECKLEY: In that case, we will accept
your plea.

VICE CHAIRMAN OVERHOLT: We have to --

MS. BECKLEY: Oh, I'm sorry. We have to vote
on it.

VICE CHAIRMAN OVERHOLT: Yeah. I think
normally what we have done is we have actually made
a motion to approve acceptance of the plea, and I
think the other thing is to have a clear statement
of what the -- so there will be -- it's 25 percent
plus mailing costs, but I think we generally read
into the record that it's 25 percent of X. Right?
And if I'm looking at this as 25 percent of $1,150
plus mailing costs, and my handy-dandy friend with
the calculator tells me that will be $312.50 plus
mailing costs, which I think are 55 cents. So the
motion would be to approve that.
MS. BECKLEY: So a motion to approve $312.50.

Do I have a motion?

VICE CHAIRMAN OVERHOLT: I thought I just made the motion.

MS. BECKLEY: Then do I have a second?

MS. PYLE: Second.

MS. BECKLEY: All in favor say "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

MS. BECKLEY: The "ayes" have it.

MS. BONDERMAN: How do I settle up?

MS. TAYLOR: We will mail you an order whenever they meet again. It could be a month; it could be six; it could be eight.

MS. BONDERMAN: So I'm all good?

MS. TAYLOR: You're good.

MS. BECKLEY: And with that, I will turn over the chair and shift back to Paul.

(Chairman Okeson re-enters.)

CHAIRMAN OKESON: I thanked Stephanie on her way out.

The Commission will begin with committees whose representatives are seated in the front row of the room and ask those who wish to accept these
arrangements that were stated earlier to please step forward and be recognized to confirm the committee's acceptance of the arrangement.

Remember, this is not a time at this point for anyone to make their case or ask for reduction or waiver of a proposed penalty. This is simply to take the penalty that we have outlined and passed as a motion to the rules of the game.

Simply state your name, your committee, your own name as its representative, your enforcement action cause number -- if you could read that off for the record, we'd appreciate that -- and confirm that you are accepting the proposed arrangement. If you do wish to make any other statement explaining regarding your case, please wait. So if you want to make a case, we'll get to that in a minute. This is just for those folks who want to accept the proposed arrangements for settlements and violations.

So anyone? Come on up.

MR. LEONARD: Thank you, Mr. Chairman. My name is Dan Leonard. I am here for the Committee to Elect Dan Leonard. I failed to file a supplemental report on one contribution that was given to me. Didn't actually find out about it
until I tried to report it after the deadline.

I've been in the General Assembly for 20 years.

This is my first violation. I have no excuse. It was a screwup.

CHAIRMAN OKESON: Those things happen, which is why we have the proposed arrangement. So you will accept?

MR. LEONARD: A question. Is this 25 percent of the proposed settlement?

MS. THOMPSON: Yes.

CHAIRMAN OKESON: Proposed fine, yes.

MR. LEONARD: I'm fine with that. And can I ask, is this me personally? Do I write the check or does it come from my committee or where does it come from?

MS. TAYLOR: You can write the check. Your committee can write the check. If you can get the guy you find on the street to write the check for you, that's fine with us too.

MR. LEONARD: Thank you.

CHAIRMAN OKESON: There you go. You might want to stay out of his way as he's leaving the room.

MS. TAYLOR: This is on page 27. This is Committee to Elect Dan Leonard, Cause
No. 2021-4753-279, a proposed civil penalty of $1,000 and mail costs of 55 cents.

CHAIRMAN OKESON: Thank you. Can I get a motion to accept?

VICE CHAIRMAN OVERHOLT: So moved. So do the 25 percent of the proposed finding of $1,000 plus mailing costs of 55 cents.

CHAIRMAN OKESON: Yeah. Is there a second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any further discussion? Hearing none, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: Aye.

The "ayes" have it. Thank you. You're all set.

Anyone else who wants to take the proposed arrangement? First come, first served.

MR. WARREN: Hi. My name is Kevin Warren. I'm with Pence Must Go.

CHAIRMAN OKESON: Could you spell your last name.

MR. WARREN: I'm sorry. My name is Kevin
Warren. I'm with Pence Must Go. What do you need, my last name? W-a-r-r-e-n.

MS. TAYLOR: This is on page 9, Pence Must Go, Cause No. 2021-6696-236. It's their third time before the Commission with a proposed civil penalty of $700 and mailing costs of 55 cents.

VICE CHAIRMAN OVERHOLT: So you understand that the deal is 75 percent?

MR. WARREN: Yes.

CHAIRMAN OKESON: Is there a motion to accept?

MS. CELESTINO-HORSEMAN: So moved.

CHAIRMAN OKESON: Is there a second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion, any questions?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: Aye.

The "ayes" have it. The motion carries.

MR. WARREN: Thank you.

MS. HATCH: Denise Hall Hatch, Denise for Indy is the committee.
CHAIRMAN OKESON: And state your name.

MS. HATCH: Denise Hall Hatch, H-a-t-c-h.

CHAIRMAN OKESON: It should be the last page, right?

MS. TAYLOR: Page 20 at the bottom, top of 21, it's Cause No. 2021-7383-264. It has a proposed civil penalty of $1,000, and this is their first violation.

CHAIRMAN OKESON: And you'd like to take the proposed arrangement?

MS. HATCH: Yes.

CHAIRMAN OKESON: Is there a motion to accept?

MS. CELESTINO-HORSEMAN: So moved.

CHAIRMAN OKESON: Second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any further discussion, questions?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

MS. HATCH: Thank you.
MR. NEUMEISTER: Ryan Neumeister, Liberty Developing.

MS. THOMPSON: Mr. Chairman, do you have a tab that's a yellow tab in the back of your binder there? It's at the bottom of the page here, Liberty Developing, Inc., Cause No. 2021-313. They have a proposed civil penalty of $1,500, and they have not been before the Commission before.

CHAIRMAN OKESON: You want to take the proposed arrangement?

MR. NEUMEISTER: Yes, sir.

CHAIRMAN OKESON: Can I get a motion?

VICE CHAIRMAN OVERHOLT: So moved.

CHAIRMAN OKESON: Second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion, questions? Hearing none, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

MR. NEUMEISTER: Thank you.

MS. JONES: Hello. Kristin Jones as a proxy
for David Niezgodski.

   MS. THOMPSON: Mr. Chairman, on page 23 and
the top of 24 there, David Niezgodski for State
Senate Committee. It has two, 2021-6815-271 and
-272. It has a proposed civil penalty on the first
one of $550.55, the second one for $550.55, and
this committee has not been before the Commission
before.

   CHAIRMAN OKESON: So both of those would be
wrapped up as one, first violation?

   MS. THOMPSON: One, yes.

   CHAIRMAN OKESON: You want to accept the
proposed arrangement?

   MS. JONES: I would, please. Thank you.

   CHAIRMAN OKESON: Is there a motion to
approve?

   MS. CELESTINO-HORSEMAN: So moved.

   CHAIRMAN OKESON: Second?

   MS. PYLE: Second.

   CHAIRMAN OKESON: Any discussion?

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

   VICE CHAIRMAN OVERHOLT: Aye.

   MS. CELESTINO-HORSEMAN: Aye.

   MS. PYLE: Aye.
CHAIRMAN OKESON: The "ayes" have it. The motion carries. Thank you.

MS. JONES: Thank you very much.

MR. ZAPFE: I'm Matt Zapfe, Z-a-p-f-e, here on behalf of Senator Ryan Mishler and Mishler for State Senate. I've got a few cause numbers. I don't know if you want me to read them all.

MS. TAYLOR: There are 21.

MS. THOMPSON: So I'm just going to read this. This is Mishler for State Senate, and I'm just going to read the cause numbers here:

2021-5034-287, -288, -289, -290, -291, -292, -293, -294, -295, -296, -297, -298, -299, -300, -301, -302, -303, -304, -305, -306, -307. Okay. This committee has -- this will be the third time before the Commission for Mishler for State Senate.

MS. PYLE: Which pages are those on?

MS. THOMPSON: I'm sorry. Page 30.

MS. PYLE: Thank you.

CHAIRMAN OKESON: And so this first one's for Mishler?

MS. THOMPSON: Yes. This is for Mishler. They've been before the Commission before. This will be their third offense.

VICE CHAIRMAN OVERHOLT: Sorry. So 21?
MS. THOMPSON: 21.

VICE CHAIRMAN OVERHOLT: So this is years of violations? Or I guess I'm --

MS. THOMPSON: I'm sorry. These were large supplemental reports that weren't filed in a timely manner.

VICE CHAIRMAN OVERHOLT: Oh, okay. I was trying to figure out how there could be so many.

MS. CELESTINO-HORSEMAN: So what's the amount of the total fines?

MS. THOMPSON: We didn't add that up.

MS. TAYLOR: I think they're all -- they're 850 each, I believe.

VICE CHAIRMAN OVERHOLT: No. I see some for 150 too toward the end.

MS. CELESTINO-HORSEMAN: So they would agree to pay 75 percent --

MS. THOMPSON: Of each one of these.

MS. CELESTINO-HORSEMAN: -- of each one. Just so you understand.

MR. ZAPFE: Yeah.

VICE CHAIRMAN OVERHOLT: Plus mailing costs. Sorry. For some reason we always have to emphasize that.

CHAIRMAN OKESON: And you want to accept the
proposed arrangement?

MR. ZAPFE: Yeah.

CHAIRMAN OKESON: Is there a motion to approve?

VICE CHAIRMAN OVERHOLT: So moved.

CHAIRMAN OKESON: Second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any further discussion or any other questions?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it, and the motion carries.

There's a second one? Was that it?

MS. TAYLOR: There were 21.

CHAIRMAN OKESON: No. I thought you said two committees.

MS. THOMPSON: Just Mishler.

CHAIRMAN OKESON: Thanks.

MS. ROWRAY: I'm Elizabeth Rowray, and I'm here for Elizabeth Rowray for Indiana, R-o-w-r-a-y.

That was a good act to follow.
MS. THOMPSON: Mr. Chairman, that's on page 30. Elizabeth Rowray for Indiana has a proposed civil penalty of $1,000.55, and she's not been before the Commission before.

CHAIRMAN OKESON: Okay. Do you want to accept the proposed arrangement?

MS. ROWRAY: Yes, please.

CHAIRMAN OKESON: Is there a motion to approve?

MS. CELESTINO-HORSEMAN: So moved.

CHAIRMAN OKESON: Second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion, questions?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

MS. ROWRAY: Thank you.

MS. WIRTH: I am Cynthia Wirth for Committee to Elect Cinde, and the cause number is --

CHAIRMAN OKESON: Could you spell your last name.
MS. WIRTH: W-i-r-t-h.

CHAIRMAN OKESON: Thank you.

MS. WIRTH: Cause No. 2021-7268-284.

MS. THOMPSON: Mr. Chairman, this is top of page 29. This is Committee to Elect Cinde, Cause No. 2021-7268-284, has a proposed civil penalty of $150.55, and she's not been before the Commission before.

CHAIRMAN OKESON: And you want to take the proposed arrangement?

MS. WIRTH: Yes, please.

CHAIRMAN OKESON: Thank you. Can I have a motion to accept?

VICE CHAIRMAN OVERHOLT: So moved.

MS. PYLE: Second.

CHAIRMAN OKESON: Hearing a second, any discussion or questions?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

MS. WATERMAN: Hi. Samantha Waterman,
W-a-t-e-r-m-a-n, with College Democrats at Indiana University.

MS. TAYLOR: It's at the bottom of page 21, top of 22, Cause No. 2021-7409-267. It's the first time they've been before the Commission and a proposed civil penalty of $1,000.

CHAIRMAN OKESON: And you want to accept the proposed arrangement?

MS. WATERMAN: Yes, please.

CHAIRMAN OKESON: Can I get a motion to approve?

MS. CELESTINO-HORSEMAN: So moved.

CHAIRMAN OKESON: Second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion or questions? Hearing none, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

MS. WATERMAN: Thank you.

MR. BIENZ: Hi. My name is Michael Bienz, last name spelled B-i-e-n-z. My cause number is
2021-7352-282, and I'm here on behalf of committee
Friends of Michael Bienz.

MS. THOMPSON: Mr. Chairman, this is on
page 27, Friends of Michael Bienz, Cause
No. 2021-7352-282. It has a proposed civil penalty
of $1,000.55, and he's not been before the
Commission before.

CHAIRMAN OKESON: You'd like to take the
proposed arrangement?

MR. BIENZ: Yes.

CHAIRMAN OKESON: Can I get a motion to
approve?

MS. CELESTINO-HORSEMAN: So moved.

CHAIRMAN OKESON: Second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any discussion or questions?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

No other takers?

Okay. So we'll move on to the adoption of the
procedures for campaign finance hearings next. The remaining committees will be called to permit the presentation of evidence in these matters. Before doing so, I want to note that in the past we have adopted the following procedures for conducting these hearings, and I move the Commission use the following procedures for today as well.

When each campaign finance matter is called, the hearing will begin with recognizing campaign finance staff to provide information about the documents in this matter provided to the Commission members, including letters from committees and notice given to the campaign committee. Unless there is objection, the documents provided to the Commission by the Election Division will be entered into the record of this meeting.

After campaign finance staff completes presentation, a representative of the committee will be recognized first and may present their case for no more than five minutes.

And we have a timer?

MR. KING: Yes.

CHAIRMAN OKESON: Commission members may ask questions during the presentation, and if they do so, that time spent answering the questions will
not be counted against your five minutes. The Election Division may signal the chair when the presenter's time is up.

If the presenter offers additional documents or other physical evidence not previously received by the Commission, then the original must be provided to the Election Division, and I would ask it be handed to Valerie Warycha over here to preserve for the record.

If the Commission finds that a committee has violated the campaign finance statute, state law requires the unanimous vote of all four commissioners to waive or reduce the amount of penalty set by state law.

If the Commission makes a decision at this meeting to either fine a committee or dismiss the case against the committee, then the Election Division will prepare a final order for the Commission to approve at a later meeting.

If the committee is fined today, the committee will receive a notice from the Election Division to pay the fine after the Commission adopts the final order, so keep in mind it may be some time after today before the committee will be required to pay its said fine.
The Commission will recognize committees to make presentation beginning with the committees seated in the front of the room. It's very helpful, again, if you can speak up, state your name, spell it for the court reporter, state any cause numbers would be helpful, and we can quickly look you up and get you underway.

You've taken an oath. Everyone has been in the room for the oath issued by Mr. Kochevar, correct? So I'll remind you that you are under oath.

Is there a second to this motion?

MS. PYLE: Second.

CHAIRMAN OKESON: Thank you.

Any other questions or objections from any of the Commission members to these procedures?

Hearing none, to adopt these procedures,

signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO–HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it and those are the rules.

Okay. Who is up first?

VICE CHAIRMAN OVERHOLT: Front row.
CHAIRMAN OKESON: Anyone? No other campaign finance?

MR. NORRIS: Thank you, Mr. Chairman, members of the Commission. Mathew Norris, M-a-t-h-e-w, N-o-r-r-i-s. I'm here on behalf of Retail Services & Systems, Inc. That's Cause No. 2021-311.

MS. THOMPSON: Mr. Chairman, that is on your yellow tab, and it's the first two, Retail Sales & Services, Cause No. 2021-311 and Cause 2021-312. And, again, this -- the corporation self-reported this to us.

CHAIRMAN OKESON: Okay.

MS. CELESTINO-HORSEMAN: And if I understand this correctly, so they had two separate incidents.

MS. THOMPSON: Two separate violations, correct.

CHAIRMAN OKESON: Would you like to go ahead and present any --

MR. NORRIS: Yes, please. Thank you. We submitted a memorandum to the Commission earlier this year. Hopefully you have that in your packet.

CHAIRMAN OKESON: Hold on just a second. Is that after the yellow tab?

MS. THOMPSON: It's behind the yellow tab.

CHAIRMAN OKESON: Sorry. Go ahead.
MR. NORRIS: Sure. That's fine. I certainly don't want to re-present everything in that memo but just to hit some of the high points, if you would, please.

On or about October 7, 2020, RSSI issued two checks that exceeded the corporate contribution limitations outlined under IC 3-9-2-4. One was for the House Republican Campaign Committee in the amount of $3,500. The other was for the Todd Huston for State Representative campaign in the amount of $2,500.

RSSI discovered the error on October 9th, two days after those checks were issued, at which time we immediately contacted the HRCC and were told the checks in question had already been deposited. We asked each campaign to issue a refund, and both those refunds were received.

We also notified the Election Division on October 9th, the day that we realized the campaign checks being cut. These two checks, issued simultaneously, constitute the only violations committed by RSSI prior to or heretofore.

Since these checks were issued, RSSI has implemented a new internal review process to ensure that no future violations occur.
developed an internal document that outlines limitations on contributions for each state in which it operates. Further, the person responsible for issuing campaign contributions will coordinate with RSSI's comptroller and general counsel to ensure compliance with all appropriate contribution laws and limitations.

With me here today is Ed Cooper, vice president of public affairs and community relations for Retail Services & Systems, Inc. He'd be happy to answer any questions about those internally compliant procedures. But we're here today to ask the commission's consideration for waiving those penalties given the facts that we presented to you. We highlight in our memorandum certain other instances where, with similar fact patterns and self-reporting, those penalties were waived as well.

With that, we are happy to answer any questions that you might have.

CHAIRMAN OKESON: I know you're digesting information, but any questions?

VICE CHAIRMAN OVERHOLT: I'm reading.

CHAIRMAN OKESON: Yeah. Just give us a moment.
MR. NORRIS: Absolutely.

CHAIRMAN OKESON: I have a quick question. What was the catalyst for identifying that you had overpaid? How did you stumble across the fact that, oops, we made a mistake? It's not really noted in the -- what process --

MR. NORRIS: We realized that they were issued from a corporate account. The checks were supposed to be cut from an LLC, which there are no campaign contribution limitations. We noticed that they were cut from a corporate account.

CHAIRMAN OKESON: But was that through some routine audit that identified that or just a level of awareness by someone who appreciated the nuance of the corporation versus the LLC?

MR. COOPER: I'm Edward Cooper. I'm the vice president of public affairs.

CHAIRMAN OKESON: Would you spell your last name.

MR. COOPER: C-o-o-p-e-r, Edward. I realized shortly after sending the checks to our consultants that they had been cut on the wrong -- on the RSSI check stock.

CHAIRMAN OKESON: Thank you.

MS. CELESTINO-HORSEMAN: I just want to make
sure I'm understanding your argument. Your argument is that you made an error, and you seek relief on the basis that, in 2017, there were two cases where that happened, some cases in 2004 and in 2015. I feel for you. I really do. It's a stiff amount of money, no question about it.

But quite honestly, we stated at the beginning of this that failure to know the law is not an excuse. We appreciate the fact that you self-reported, which is why we offer the deals, so that you can -- you know, by recognizing that, you can take that and get some kind of relief from it.

It puts us in kind of a bind, quite honestly, confronting this. You know, I'm sorry it happened, but I just don't know that we can -- I don't know that I can vote to give you the relief that you need.

MR. NORRIS: I certainly -- if I may.

CHAIRMAN OKESON: Sure.

MR. NORRIS: I certainly respect that, and you highlighted the facts that we would ask you to consider, past precedence being probably chief among them. But there was a self-reporting. There was the fact that we did receive the refunds of those checks and that we have instituted internal
compliance procedures to ensure that it will not happen again.

But we wanted to provide you with those precedents that this Commission might recognize, different members of this Commission at that time, but there is a fairly significant history of this Commission waiving penalties altogether and, again, respectfully request that you consider that in this case as well.

VICE CHAIRMAN OVERHOLT: I guess I would note that I've been on the Commission for some of those votes and participated in some of those votes, and I think the distinction in this type of circumstance is the key criteria that we have looked at -- or the key factors, I should say, that we have looked at, the self-disclosure, the fact that these instances, situations where we have voted to waive the penalty altogether have been where the entity that made the violation or made the error, they discover it, disclose it to the division before the division has even had a chance to figure it out.

I think the other key factor has been timing too, you know, how much time has elapsed. And this is, like, it's a two-day turn around, which is
pretty fast. So, I mean, it's an oopsy, and the thing is obviously once you put a check in the mail, you know, to someone, the Postal Service would come after you if you tried to grab that check back out of the mailbox. And this looks like kind of the equivalent of having tried to do that. But the way our system is, you have to come here and talk to us about it instead of grabbing that check out of the mailbox.

So I guess I see it a little different. I do see this differently from other entities where they've violated the law and had to have been told that they violated the law and are all then here to explain themselves. It's a little bit different in my mind.

CHAIRMAN OKESON: Yeah. And maybe --

MS. CELESTINO-HORSEMAN: Can I ask a question?

CHAIRMAN OKESON: Sure.

MS. CELESTINO-HORSEMAN: So if we had a candidate who self-reported their error and then but was still late, would we still hold them to the same standard like we have been holding everyone? I'm trying to figure out what the distinction here is in backing the rule. I mean, maybe the reward is to go ahead and offer them again the opportunity
to pay a reduced fine after this or whatever. But like Suzanne said, the turnaround time, which I had not caught, was very quick.

VICE CHAIRMAN OVERHOLT: I think with campaign committees we have taken some more action. It was dependent on -- it is somewhat fact specific, but I think we have consistently paid attention to the fact where it is the committee, the corporation, whatever, who has identified -- they're the ones identifying the error, contacting the division, and trying to figure out -- or contacting the campaign in this case, contacting the campaign committee to get the money back, but anyway, notifying the division about the error and trying to correct it. And we hear things like that from campaign committees.

CHAIRMAN OKESON: Yeah. I mean, I tend to echo those sentiments. I'd be curious and looking to the staff. Of all the campaign finance cases we've heard today, how many have self-reported with this amount of diligence?

MS. TAYLOR: None. This is the only one that self-reported.

CHAIRMAN OKESON: I mean, while I respect, Karen, your comments and they're valid, I think
stepping into the bright light willingly should be noted.

MS. CELESTINO-HORSEMAN: You know, I would agree with that. Like I said, I didn't realize that they had turned around so quickly, and that does -- my concern is always the precedent that we set.

CHAIRMAN OKESON: Sure.

MS. CELESTINO-HORSEMAN: So if the precedent that we're setting is that if you very quickly, as soon as practicable, turn yourself in, then you can catch a break. And with that distinction, I can see it.

CHAIRMAN OKESON: Yeah. What do lawyers say, what did you know and when did you know it? I think they acted fairly urgently and really did all the right things to cure their error. I'm not sure that it makes much sense in imposing a penalty. That's my opinion. I believe I offer that before I put it out for a motion or a vote.

But do you have any questions, Litany?

MS. PYLE: Yes. So just because I'm new obviously, is there a way to waive the penalty and still say that this counts as a violation in front of the board so that next time, if it happens
again, it will be at the 50 percent level instead
of the 25?

    MS. THOMPSON: Yes. If they would ever come
back before the Commission, it would be noted that
they've been here once.

    MS. PYLE: All right. Perfect. Thank you.

    CHAIRMAN OKESON: Is there any other -- do you
have any other commentary or any other evidence?

    MR. NORRIS: No. We're fine. Thank you very
much.

    CHAIRMAN OKESON: Is there any further
discussion or would anyone like to offer a motion?

    MS. CELESTINO-HORSEMAN: I move that we go
ahead and waive the fee and mark this down as their
first violation, which means that if it happens
again you will have to pay something.

    CHAIRMAN OKESON: Do you understand that?

    MR. NORRIS: Absolutely. Certainly.

    CHAIRMAN OKESON: Is there a second?

    MS. PYLE: Second.

    CHAIRMAN OKESON: Any discussion on the
motion?

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

    VICE CHAIRMAN OVERHOLT: Aye.
MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

MR. NORRIS: Thank you very much. We appreciate your consideration.

CHAIRMAN OKESON: Anyone else that wants to come before the committee? Sorry. For campaign finance.

MS. ARNETT: Thank you, Chairman and members of the Commission. My name is Tabitha Arnett, T-a-b-i-t-h-a, Arnett, A-r-n-e-t-t. And this is for Cause No. 2021-4431-16, the Indiana Association of Osteopathic Physicians and Surgeons Political Action Committee, 4431-16.

MS. THOMPSON: Mr. Chairman, it's on the first page of your spreadsheet.

MS. ARNETT: Thank you.

CHAIRMAN OKESON: Okay.

MS. THOMPSON: Again, Mr. Chairman, this is the Indiana Osteopathic Association Political Action Committee, Cause No. 2021-4431-16. It has a proposed civil penalty of $350.55, and this is their ninth time before the Commission.

MS. ARNETT: So I would have loved to have
asked for -- I'm sorry, a -- I'm forgetting the
terminology, waiver.

CHAIRMAN OKESON: The prearranged penalty?

MS. ARNETT: Thank you, prearrangement. But I
knew coming into it that we would not have that
opportunity.

So I am the executive director of the
association as well. I am the treasurer of the PAC
for the last almost four years. This is my first
time before the Commission, but certainly with my
predecessor's previous history, it doesn't help me
much. So I will make this brief and keep within
your time limit.

Again, you give the opportunity to ask for a
waiver or exception or a decrease in penalty, which
I filed January of 2020. It was seven days late,
as I understand it. On Monday, January 20th, I
emailed the PAC report. Of course, you were closed
on Monday, the 20th. It was MLK Day, so it
technically was an additional day late.

What happened is, I was in Florida with my
mom, who had a heart procedure, heart surgery that
day. I had every intention of reviewing my report
and submitting it the next day. While she was
recovering after surgery, I had another family
member hospitalized there in Florida, and that family member had a service dog. And believe it or not, I talked to the ER physician, who told me on the phone that I needed to come and get the service dog from the hospital, from the ER room, that the EMTs apparently brought with my family member in the ambulance with a service dog to the ER, and they needed to admit that family member, who I don't have permission to share who. But anyway, I had to make arrangements to pick up the dog. I also had to continue to get my mom home and then continue to take care of the dog and my family member's home for that week.

So long story short, my entire week was spent helping another family member in Florida, taking care of the service dog. I've never been late with a state report in my almost four years. I had every intention of filing it on or before January 15th. Maybe I should have just submitted it the day that I got to Florida a couple days early and just worried about amendments later, but I wanted it to be correct.

When I did email the report on Monday, January 20th, I explained the circumstance and was told it would be a month before I could get a
settlement agreement and pay a fine or schedule a hearing, and then COVID hit and devastated our state. I did continue to check in with the campaign finance staff as to when the hearing would be. And just one other point. I know there was a hearing in June. That was scheduled -- in terms of why I'm here now, that was scheduled during our family's two-week vacation visiting national parks, which I knew I could not join virtually, as my Internet would have been very spotty.

So, again, I'm asking, begging, perhaps pleading for a waiver in this extenuating family medical circumstance twice in one week, both out of state. And I can assure you that, although we have had a history in my prior executives and treasurers that handle the reports, this is not something that I would ever expect to happen again unless I myself am hospitalized because this is just not acceptable, and I do apologize for that.

Thank you for your time. I'm happy to answer questions. I understand you'll do what you need to do, and I'll respect that, but I do hope you will consider my testimony. And perhaps staff can confirm if I've ever been before you myself, but this is obviously our tenth time now?
MS. THOMPSON: Ninth.


CHAIRMAN OKESON: I saw you nodding earlier that she had been in contact with you.

MS. TAYLOR: Yes.

CHAIRMAN OKESON: Okay. Any questions?

It's Ms. Arnett; correct?

MS. ARNETT: Correct, Arnett, A-r-n-e-t-t.

And I would have asked my family member, the other one, for an affidavit, but it's kind of a sensitive situation, what happened with the emergency room, so I could not get that, not that that would be useful. But nevertheless, I just found it really interesting that I talked to the ER physician myself because I didn't believe this family member, what's going on, and they actually said, "Yes, we have a black service dog, the lab is sitting on the gurney with your family member, and we can't admit him or move him or do anything with him until you come and get this dog." So the rest of that week he was in the hospital. He actually was discharged the day I flew back home and which I filed the report.

CHAIRMAN OKESON: We take you at your word.
Thank you.

Any questions?

VICE CHAIRMAN OVERHOLT: I guess I would -- I mean, I don't question what you've told us. I think, though, it is difficult when we're confronted with an entity, even if you weren't at the helm, that has had this many violations. I feel for the -- I mean, I understand what you were going through, but we also need to get people to follow the rules. So those are my thoughts and comments.

CHAIRMAN OKESON: Yeah. I tend to agree. It's not a reflection on you and your situation, and certainly I empathize deeply with those types of challenges. But unfortunately the sort of batting average that precedes you is not a good one, and this then becomes more about the political action committee and less about your situation personally. Those tend to be my thoughts.

Any other comments?

MS. ARNETT: Well, I appreciate that, and, you know, advice to future PAC treasurers is to look at the history, and if they've been late more than once, maybe get a new PAC, start fresh.

CHAIRMAN OKESON: Yeah.
MS. ARNETT: I probably would have done that had I realized. When I emailed the staff, I was like, we've been how many late how many times? And I realized that there were no files in my files in my office that indicated that, so I guess I should have...

MS. CELESTINO-HORSEMAN: Mr. Chair, I would like to make a motion, in light of the personal disaster she was dealing with and the fact that there was a service dog, a black lab involved --

CHAIRMAN OKESON: I used to have a black lab too.

MS. CELESTINO-HORSEMAN: -- that we understand her situation but we also recognize the organization needs to be fully cognizant, and instead of imposing the full fine, give her a 25 percent discount, or pay 75 percent.

CHAIRMAN OKESON: You propose that as a motion?

MS. CELESTINO-HORSEMAN: Yes.

CHAIRMAN OKESON: Is there a second?

I'll second that.

Is there any discussion?

Hearing none, all those in favor signify by saying "Aye."
VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

MS. ARNETT: Thank you so much. I really appreciate the grace you've extended, and we'll be on time next time.

CHAIRMAN OKESON: Any others that wish to be heard on campaign finance?

Recognizing none, we'll move on to continuances. Would the campaign finance staff identify any matters for which a motion for continuance was received for today's meeting.

MS. TAYLOR: I'm going to read the cause numbers and the names of the committee. Do you want to know what pages they're on or do you just want the list? I can give you whatever you want.

CHAIRMAN OKESON: I mean, I don't know that I need to look them up if they've asked for a continuance. Right?

MS. TAYLOR: Yes.

CHAIRMAN OKESON: Go ahead.

MS. TAYLOR: The first is Indiana Black Legislative Caucus PAC, No. 2021-3908-233; Citizens

These committees have all asked for a continuance.

CHAIRMAN OKESON: Is this their second time asking for a continuance? Have they asked for one before this?

MS. TAYLOR: Elect Corinne Westerfield has asked for a continuance before. Her son is undergoing chemo, and it was scheduled for the hearing in June and again today.

CHAIRMAN OKESON: Which one was that?

MS. TAYLOR: Elect Corinne Westerfield.

CHAIRMAN OKESON: And outside of that particular one, this is the first request of continuance for all the others?

MS. TAYLOR: I believe so, but maybe Justus Corporation asked for a continuance before. We're double checking.

MS. THOMPSON: Yeah. I believe this is their second. Let me make sure. Yes, this is Justus's second.

CHAIRMAN OKESON: So before we go on, I have a
question. If the Commission votes to deny
continuance, what happens then?

(Discussion held off the record.)

CHAIRMAN OKESON: Okay. So the total of how
many? There was eight of them?

MS. TAYLOR: Eight, yes.

CHAIRMAN OKESON: Two of them are second-time
requests for continuance, and that was Elect
Westerfield and Justus?

MS. TAYLOR: Yes.

VICE CHAIRMAN OVERHOLT: May I ask, Justus,
what was the basis for their request for a
continuance?

MS. THOMPSON: I believe he was out of town
this week.

MS. CELESTINO-HORSEMAN: I am fairly new to
this committee too, but did the committee establish
a maximum number of times that a continuance can be
requested?

CHAIRMAN OKESON: No.

MS. NUSSMEYER: Mr. Chairman, I thought we had
maybe a year or two ago. We had a conversation
where someone had continued a matter three or four
or five times, and the Commission set a threshold
amount for continuances. Does that ring a bell?
CHAIRMAN OKESON: Can we look into that?

MS. TAYLOR: It was Wabash County Democrats, and I think we let them -- it was years. I don't remember what the limit was, but we gave them a final, like, you will appear at the next hearing or else.

VICE CHAIRMAN OVERHOLT: I think my recollection is that we talked about it, but then I think we decided that creating a hard and fast rule was not something we wanted to do because there could be circumstances in which -- you know, because you never know. Even the courts don't limit the number of continuances.

MS. CELESTINO-HORSEMAN: So this is not a request for ongoing continuance?

CHAIRMAN OKESON: No. The two in question are just seconds. The rest are all firsts. Right?

MS. TAYLOR: Yes.

CHAIRMAN OKESON: So six of the eight are first-time askers.

MS. CELESTINO-HORSEMAN: So if you want, we could say the six, grant their continuance, and then those two we could say we direct you to appear; no further continuance will be granted unless good cause is shown.
CHAIRMAN OKESON: That's certainly available for a motion.

MS. CELESTINO-HORSEMAN: Okay. All right. I move that we grant continuances to the six that have -- this is their first time in asking for a continuance, and then for the two, Justus and -- what was the second one?

MS. TAYLOR: Elect Corinne Westerfield.

MS. CELESTINO-HORSEMAN: -- Elect Corinne Westerfield, that we go ahead and grant their continuance for today with the stipulation that this is the final continuance -- or no further continuances will be granted unless good cause is shown.

CHAIRMAN OKESON: I have a motion. Do I have a second?

MS. PYLE: I would second.

CHAIRMAN OKESON: I have a second. Any further discussion or comments on the motion?

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: Aye.
The "ayes" have it and the motion carries.

Defaults?

MS. TAYLOR: We had some other cleanup first before you do the defaults if you wanted to do that now. There were three committees that we, in June, gave them the opportunity to continue and close their case to waive their fine. The first was Vote Roxanna Hanford, Cause 2021-6598-44 and 2021-6598-126. She was continued to close. She had two $1,000 penalties she did close.

CHAIRMAN OKESON: Where are these in the binder?

MS. TAYLOR: Page 1 and 4. Sorry.

VICE CHAIRMAN OVERHOLT: You said she did close?

MS. TAYLOR: She did close, yes.

VICE CHAIRMAN OVERHOLT: So she did what we told her to do in order to waive the fine?

MS. TAYLOR: Yes, yes.

VICE CHAIRMAN OVERHOLT: Okay. That's what I like to hear.

CHAIRMAN OKESON: Wasn't that already a motion, though? We have to vote on it again?

VICE CHAIRMAN OVERHOLT: I would move that we -- so we're now waiving the fines?
CHAIRMAN OKESON: Well, wasn't that the original motion, that if she --

MS. TAYLOR: Yes.

MS. CELESTINO-HORSEMAN: You could just waive her fines, right?

CHAIRMAN OKESON: Well, yeah, but I guess we have to --

VICE CHAIRMAN OVERHOLT: She satisfied the condition precedent. So I would move that we waive the fines and penalties for the Vote Roxanna Hanford matters because she did what we asked her to do.

CHAIRMAN OKESON: Is there a second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any further discussion or questions?

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

Vice CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it.

MS. TAYLOR: The next one is on page 2, Citizens for Dave Ring, Cause No. 2021-7082-66. He was told that if he closed his committee, it would
be waived at the June 2021 hearing. He did close his committee.

CHAIRMAN OKESON: Same?

VICE CHAIRMAN OVERHOLT: Yes. I would move that we waive the penalties because he followed our directions.

CHAIRMAN OKESON: Having a motion, do I have a second?

MS. PYLE: Second.

CHAIRMAN OKESON: Any further discussion? Hearing none, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it.

MS. TAYLOR: And then the third and final of these troublemakers is Friends of Sarah Stivers. She's on page 2 and 3, Cause No. 2021-7124-72. She was told in June that if she closed her committee, we would waive the fine; if she did not close her committee, we would reduce it to 25 percent. She has not closed her committee. I think she plans to. She just can't find the amendments to file.

CHAIRMAN OKESON: So before we go to a motion,
I would just offer, I think if we -- was there any
information given as to why? Was there any
outreach made from her to staff?

MS. THOMPSON: Yes. I actually talked to
Sarah Stivers, and before COVID she was in an
automobile accident. I don't even know if she
finished the election process when she ran, and
then COVID hit. And we were trying to talk to get
her to close her committee. She said she didn't
know mentally she had to sit down and do the
reports. And we kind of explained to her I would
help her, walk her through them. She was going to
try to get her bank statements and get back to me,
and I have not heard from her. I think I actually
talked to her maybe last week.

VICE CHAIRMAN OVERHOLT: She was at the June
hearing, right?

MS. THOMPSON: Yes.

MS. TAYLOR: I think she was. I know Roxanna
Hanford was.

MS. THOMPSON: Yeah. I don't remember if it
was by letter or she attended.

VICE CHAIRMAN OVERHOLT: I thought I remember
a conversation with someone who was having
difficulty with the process.
MS. TAYLOR: That was Roxanna Hanford -- I don't know -- who has brain cancer.

VICE CHAIRMAN OVERHOLT: So for this one had we said that if she -- we continued it to close it, but then if she --

MS. TAYLOR: If she did not close it --

VICE CHAIRMAN OVERHOLT: We were going to reduce it.

MS. TAYLOR: Reduce, yeah.

MS. CELESTINO-HORSEMAN: So I would move that we impose the fine of 25 percent, and if she gets her act together, she can come in and ask us to reconsider.

CHAIRMAN OKESON: So state your motion again, please.

MS. CELESTINO-HORSEMAN: I move that we go ahead and impose the fine of 25 percent since she failed to close the committee.

CHAIRMAN OKESON: Reduce the fine by 25 percent or --

MS. CELESTINO-HORSEMAN: No. Reduce it to 25 percent.

CHAIRMAN OKESON: So it would be 250. Is that what you -- 250. Okay. So there's a motion. Is there a second?
MS. PYLE: Second.

CHAIRMAN OKESON: Any other discussion, questions?

All those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

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

That was it, right?

MS. TAYLOR: Yes.

CHAIRMAN OKESON: Okay. Are we on defaults? Is there anyone present to testify on any of the remaining campaign finance hearing matters scheduled for today?

Seeing none, I declare the hearings on all remaining campaign finance matters scheduled for today closed. Is there now a motion to impose the entire amount of the proposed penalty plus mailing costs on all remaining campaign finance enforcement actions? Anyone want to offer a motion?

VICE CHAIRMAN OVERHOLT: So moved.

MS. PYLE: Second.

CHAIRMAN OKESON: Second. Thank you.

Any further discussion on the matter?
Hearing none, all those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.
MS. CELESTINO-HORSEMAN: Aye.
MS. PYLE: Aye.
CHAIRMAN OKESON: Aye.
The "ayes" have it. The motion carries.

Do we want to take a brief recess and kind of reset ourselves before we head to VSTOP? So 10 minutes. Let's try to be back here by 5 till.

(Recess taken from 2:47 p.m. to 2:57 p.m.)

CHAIRMAN OKESON: Moving on in the agenda, we have the Voting System Technical Oversight Program presentation of revised voting system testing protocols. The chair recognizes our representatives from VSTOP to present revised voting system testing protocols for consideration by the Commission.

I do not plan on entertaining a motion to approve these protocols at today's meeting, but instead provide an opportunity for VSTOP staff to explain the history of the current voting system testing protocols and provide an overview of the proposed changes and the role of both co-directors in previously reviewing these proposed changes.
Welcome. Remember to state your names for the court reporter.

DR. BAGGA: Hello. My name is Jay Bagga, J-a-y, B-a-g-g-a. I'm the co-director of the VSTOP program at Ball State University.

DR. BYERS: My name is Bryan Byers, B-r-y-a-n, B-y-e-r-s. I'm also co-director of the VSTOP program at Ball State University.

VICE CHAIRMAN OVERHOLT: Before we get going, so why are we not approving today?

CHAIRMAN OKESON: Why are we not voting on it?

VICE CHAIRMAN OVERHOLT: Yeah.

CHAIRMAN OKESON: Brad, do you want to comment on that?

MR. KING: Mr. Chairman, members of the Commission, in discussions with the chair, there was an opportunity to be provided for written comments to be submitted by members of the public and for members of the Commission who may not have had a chance to review the very lengthy document that's in the binders. Ms. Nussmeyer and myself have reviewed the material, but since the matter requires a vote of the Commission, the chair directed that there be a provision for written comment for a two-week period from today to gather
input from interested parties before voting on the final version of the protocols.

CHAIRMAN OKESON: Thanks, Brad. We had discussed this, and I know there's interest in public input, so we wanted to provide an opportunity for folks to hear the protocols being proposed and then offer some public testimony or written comment before we then proceeded to vote on it.

MS. CELESTINO-HORSEMAN: So wouldn't the Commission, though, as a whole have to take a vote on whether to allow written comment and testimony and such like that?

CHAIRMAN OKESON: Yeah, I believe we would.

MS. CELESTINO-HORSEMAN: Okay. So is there a motion then for us to do that?

CHAIRMAN OKESON: Well, not yet. We can make one. I was going to have them present the information, but if we want to do it that way, I think that's perfectly fine.

So to be clear, there would be testimony provided by the Voting System Technical Oversight Program staff before you. I know there has been voiced some interest to the Election Division staff for some public comment and commentary. My thought
was that we would hear the protocols being offered
today so that any comments or inquiries can be
informed and then we would bring that back for a
vote at a later time. I suppose I would make that
into a motion.

MS. CELESTINO-HORSEMAN: Okay. I can't ask my
question unless someone seconded it.

CHAIRMAN OKESON: Do you want to second it?
MS. CELESTINO-HORSEMAN: I'm not sure.
CHAIRMAN OKESON: That doesn't mean the vote
will carry.

MS. CELESTINO-HORSEMAN: Litany, do you want
to make a second?

MS. PYLE: Second.

VICE CHAIRMAN OVERHOLT: Who made the motion?
CHAIRMAN OKESON: The chair did.

MS. CELESTINO-HORSEMAN: So what's the
deadline of getting everything certified? When do
we have to have all this done?

CHAIRMAN OKESON: What is the date for that?
It would have to be before -- I'm going to seek
input from Brad and Val.

MR. KING: Mr. Chairman, the Indiana statutes
that govern the certification and subsequent
marketing and use of voting systems provide two
basic things. One is that, once a voting system is
certified, it is for a four-year term that expires
October 1 in the year following a presidential
election year, meaning October 1, 2021. A new
voting system is certified -- or would be certified
for a four-year term that would end October 1,
2025. Any revision to a previously certified
system would be certified again from the date of
the commission's vote to that October 1, 2025,
date.

However, that being said, the other component
is, for a voting system to be used in an Indiana
election, it may be grandfathered under the law.
If it was certified prior to October 1, 2021, it's
allowed to be used so long as it complies with
federal and state law. And so therefore, if there
are grandfathered voting systems out there -- and I
believe that there are in many counties -- those
may continue to be used indefinitely so long as
they meet those standards. But for a voting system
to be used in an election in 2022 that has not been
previously certified, that would have to occur
before the May 2022 primary and the events
preceding that next year.

MS. CELESTINO-HORSEMAN: So is this going to
be new stuff -- I mean, they have to be certified before a county can invest more money, update anything with the system, right? Am I understanding that correctly?

MR. KING: Yes, Commissioner, that would be correct.

MS. CELESTINO-HORSEMAN: So they need to get that as soon as they can, don't they, because this isn't like it's going to be quick turnarounds, right?

MR. KING: Well, Commissioner, I can't speak to the individual counties. There may be different situations where counties do not need additional equipment or an upgrade to equipment, but there may be other counties who are seriously considering a purchase and want to make it as soon as possible. So I think both can be true.

VICE CHAIRMAN OVERHOLT: I think the concern is that by -- so I -- in my years on the Commission, I don't remember us ever kind of looking at something and saying, oh, now we're going to allow a certain period of time for public comment. I don't remember that happening before.

I guess my concern is that -- and I don't mind the public comment. My concern is we're at a
hearing where this has been noticed, so I would
have thought the public comment could be now. If
you're proposing a rule that suddenly seeks written
comment, we don't even have a process that I'm
aware of for how the Commission addresses that, so
we need to create that process.

And my concern is that if we haven't done that
before and people would see this on the agenda
should be here today to discuss this, I'm not sure
what the expectation is that there would be some
other opportunity. And I'm concerned that we're
thwarting -- if there are systems that need to be
out there, need to be certified, if counties --
just because they've got a system doesn't mean they
need to keep using the system, so we're almost like
locking in place existing systems that may not be
the best. The others, they may want to shop
around, but, I mean, what other system is even
going to get certified at this point? Because it
seems like we're creating a lengthy process.

CHAIRMAN OKESON: So let me back up a step.
It would be my intent to call another meeting to do
so. I think while maybe not on Voting System
Technical Oversight protocol reviews, we have done
written testimony last year, I believe, as it
related to the absentee ballot by mail. We afforded, what, two weeks?

MS. WARYCHA: Something like that.

CHAIRMAN OKESON: And I believe we asked then the Secretary of State to publish any responses --

MS. WARYCHA: We put them in the record.

CHAIRMAN OKESON: -- for purposes of being in the record, so we do have some precedent there for taking written testimony.

My thinking was we would have the opportunity afforded the VSTOP staff to outline the proposed changes or updates or modifications in protocols, give the public and the Commission some opportunity to digest that, schedule a meeting before we adjourn today to consider that testimony along with the protocols, and vote on it then, so to the point of not delaying this unnecessarily but affording people the opportunity to provide written comment or testimony.

VICE CHAIRMAN OVERHOLT: If I could just say, I think we could have avoided this discussion if your side of the table had talked to our side, I mean, the staff, because our staff apparently had no idea that this process was going to be proposed today, which seems counterproductive to me. I
mean, I understand that we're from different political parties, but I think we try to work with the combined effort of making sure our elections and the process in Indiana run smoothly.

And this lack of communication, I mean, it's a logjam that doesn't have to exist. This could have all been worked out and we could have had a proposal in place. We could have had a meeting with staff. And don't worry, we don't talk behind closed doors because we aren't allowed to do that. But the staff is supposed to be working together and they're not, and, I mean, this is a problem, I think.

MS. CELESTINO-HORSEMAN: Mr. Chairman?

CHAIRMAN OKESON: Yes.

MS. CELESTINO-HORSEMAN: I agree totally with what Suzannah just said, and also, we did not announce, did we, at any time that people could come, listen to this testimony, go back, prepare written comments. We didn't announce this period or anything; correct? I mean, that was well-known in the absentee ballot thing. That was made known to everyone that you had this deadline by which to get your stuff in. Here, the people that are going to be responding to it probably aren't even here
because they don't even realize that they're going
to have that opportunity, which seems kind of self
defeating.

I also am concerned because of the stuff
that's already out in the field being tested and
all of that for the certification process. How is
that going to affect that for the certification,
other things? I mean, I think it's a wonderful
idea. I do love public comment. But I think this
needed to be thought out maybe a little bit more
about the mechanics and such because I have grave
concerns about the time line.

CHAIRMAN OKESON: So I believe you're correct
that we announced in advance public testimony,
which is what my intention was today, to afford
folks a few weeks, schedule the meeting, and move
forward.

I note your comment about communication. I'll
take responsibility for that. Certainly not
intentional. We were just trying to accommodate
the time line, the desire for public input, and to
maintain the highest standards possible. The VSTOP
folks can get the protocols out in the public
record. It can be considered. It can be responded
to by the public. There can be an opportunity to
afford them input. We'll take that into consideration. We'll make it part of the record moving forward. That's the intention.

So to the earlier comment, I believe we'll have to have a motion to accept any written or public input or testimony.

MS. CELESTINO-HORSEMAN: Before that, can I ask Mr. King a question?

Mr. King, so sitting here today, can you absolutely reassure us that by extending out the voting on this and the deadlines and everything else, it is in no way going to impact the certification of voting systems in such a way that clerks and staff cannot be able to timely make their plans, vendors may not be able to get supplies to people, all that? Because as I understand it, there are voting companies right now that want to be out there marketing and doing things but they're waiting for this certification.

MR. KING: Mr. Chairman, Commissioners, I cannot provide an absolute guarantee with regard to the effects of any number of aspects of the certification process on the supply chain, for one, of getting voting equipment to counties who choose to acquire it or the time line for making decisions
about purchasing in advance of the May 2022 primary. As I indicated earlier, I am certain the answer will vary considerably from county to county and from vendor to vendor. And so, no, I can't offer an ironclad, universal guarantee on that.

CHAIRMAN OKESON: I guess so what I'm hearing is, in the essence of time, you'd rather vote on it today.

MS. CELESTINO-HORSEMAN: Well, that's what we're trying to figure out. Can we ask Angie to address this, please?

CHAIRMAN OKESON: But I just want to clarify. I think that's -- I hear a couple of things there, but what I hear is the desire for the Commission to vote on these protocol changes today.

MS. CELESTINO-HORSEMAN: If it's necessary. That's what we're trying to figure out. Nobody seems to be able to say.

CHAIRMAN OKESON: And not afford adequate public input?

MS. CELESTINO-HORSEMAN: Well, no, that's not the question. That's not the issue.

CHAIRMAN OKESON: Well, if we vote on it, there won't be any.

MS. CELESTINO-HORSEMAN: That's why we should
have thought of this before. I mean, when you're going to do -- there's a whole process for doing public input and such.

CHAIRMAN OKESON: Sure.

MS. CELESTINO-HORSEMAN: And so you announce to people that here on this date will be the presentation, subsequent to that time your deadline will be two weeks after that so that you can then put forward any written comments.

CHAIRMAN OKESON: That's the intention of making this motion at this meeting is to do just that.

VICE CHAIRMAN OVERHOLT: I would like to hear from Angie.

CHAIRMAN OKESON: Sure. Go right ahead.

MS. NUSSMEYER: Thank you, Mr. Chairman. I guess my concern is that, even today, ES&S is at Ball State University having their voting systems tested against the draft protocol, and we've had other voting system vendors also -- and I think Dr. Byers and Dr. Bagga could affirm that -- who have had their systems tested against the draft protocol.

So what happens if there is an instance where the Commission decides to make changes to the
protocol? Would we be asking them, the voting systems vendors, to come back and be re-field-tested under the revised procedures? Because I know Matthew looked back at past Commission meeting minutes, and I don't recall the last time the Commission adopting a protocol for voting systems where there was an opportunity for public testimony. I think it's great that that is something that you want to do. As the commissioner has explained, it would have been nice to have been apprised of that ahead of this meeting today because the draft protocol has been in place now for four to six weeks in anticipation of a Commission meeting that has not yet been scheduled. So I have several concerns about the counties and the vendors being responsive to the counties. But what happens ultimately if we make a correction to the protocol? What happens to those vendors that have already been tested against the draft protocol? Should we ask them to come back and be retested? And that's fine if the Commission thinks that they should be. You have the ability to ask them to come back. It's just those are additional questions I think we need to think through as we're moving through this process and discussing it here
today.

MS. CELESTINO-HORSEMAN: Mr. Chair, I would guess that this has arisen out of some of the past meetings we have had where the public has been here wanted to speak. And I think their issues relating to voting machines dealt a lot with processes and security and that type of thing, and they want to be heard on that. And I do think we have an obligation to address those things, but I don't think it necessarily falls in under this.

So why couldn't we do something where we address that, have it addressed, and then ask for public input on their areas of concern so the people at least can get that, and we'd then know, going into the future, what their concerns are when we're dealing with these things.

MS. PYLE: I guess is this something that VSTOP can be recognized to speak on? Would you guys have that answer to the commissioner's question about whether this is going to hurt certain counties or not?

CHAIRMAN OKESON: I'm not sure that that's in their ability to answer other than what the -- go ahead.

DR. BYERS: If I may, Bryan Byers, co-director
of VSTOP. Commission members, I don't think we can speak to that either. We propose a protocol.

CHAIRMAN OKESON: Outside your parameter?

DR. BYERS: Yes, it's outside of our work.

Thank you.

CHAIRMAN OKESON: I understand.

MS. PYLE: I guess just changes to the protocol is not going to be something that vendors have to come back and do?

DR. BYERS: We would defer to the Commission with regard to that decision.

CHAIRMAN OKESON: So to recognize your comment and, I guess, in an effort to be efficient, right, to get this out into the record, have the protocols be heard by the Commission, allow for -- and, yes, it has, I think, arisen out of some outreach to the staff from both sides, the request for public comment. Not knowing whether that commentary would pertain to or impact these potential protocols, it seemed to me appropriate to allow for some public input, written testimony, concerns, questions, comments to be gathered and another meeting to be scheduled before adjourning today to protect the time line to make sure that these protocols are implemented and it doesn't disrupt the process for
the voting systems in the counties. Because we can vote on it, but then any public testimony or concern that might be relative or impact these protocols is after the fact.

MS. CELESTINO-HORSEMAN: Well, as I understand it, October 1st was the deadline, so it's already been impacted. If we can agree today that no more than two weeks, then --

CHAIRMAN OKESON: I'm perfectly fine with -- in fact, I think working around the schedule, work around a couple of significant dates relative to holidays and others, but, no, I think that was the game plan. And I'll admit it's not perfectly laid out but wanted to try to achieve multiple goals in one setting, knowing that our meetings can be infrequent.

MS. CELESTINO-HORSEMAN: Right. And I would also say that, when we come back in two weeks, the public comment, as I say, my sense, listening to the comments made and such, were that the concerns were about processes and security and not necessarily about what these gentlemen are prepared to address.

So that concerns me because, if they're not going to be addressing the things like, you know,
magnets affecting or whatever, then we've allowed
this testimony, but then we have to say we don't
have anybody to talk about that with you, so --

CHAIRMAN OKESON: But those are the comments
that we know about, right, and this is to capture
what we don't know, to truly afford the public to
weigh in and comment.

VICE CHAIRMAN OVERHOLT: I was going to say it
sounds like what we ought to -- I think that if
there are people who want to talk about this, yes,
we should let them talk about it. I would say
that -- so I think we, yes, hopefully will be able
to establish a very tight time line.

I hope the lesson we learn from this is that
if these protocols have been out there for four to
six weeks and vendors are relying on them for four
to six weeks, it seems like we're doing this
backwards. It seems like if the protocol --
because actually I'm sitting here thinking, well,
wait, if vendors are already relying on the
protocol, what is -- because I don't view myself as
a rubber stamp, so I'm wondering why it is that
vendors have been relying on protocols that haven't
even been presented, haven't been acted upon by the
Commission yet.
So I think we've got to fix that type of process. We've got to fix the process where we want public comment. The public comment needs to come before people start acting on whatever they're commenting on, right? So I think that just for future reference --

CHAIRMAN OKESON: Agreed.

VICE CHAIRMAN OVERHOLT: -- I think we need to reverse the way we're doing things because it seems like we're doing things backwards.

CHAIRMAN OKESON: Well, I agree with the first part of your comment. That, again, was the intention of today, right, was not to vote on this and then allow for public comment that couldn't change the course of action, rendering it moot as it were.

Okay. Where are we going from here? It is not my intention to vote on this today.

VICE CHAIRMAN OVERHOLT: Well, but we're hearing the presentation from VSTOP about it; right?

CHAIRMAN OKESON: I think they were wanting to get --

VICE CHAIRMAN OVERHOLT: Yeah. So we'll do that.
DR. BYERS: If you want us to present.

CHAIRMAN OKESON: Well, I think in the essence of time that's been noted here, it would be good to get it out in the record, so I would like to hear you present the information.

VICE CHAIRMAN OVERHOLT: Actually is there a motion pending or no?

CHAIRMAN OKESON: I don't even remember. Was there a motion?

VICE CHAIRMAN OVERHOLT: So if there's no motion, then it doesn't matter.

CHAIRMAN OKESON: Well, so I guess I would -- I think I made a motion --

MS. WARYCHA: You're right.

CHAIRMAN OKESON: -- to allow for a two-week period of time to allow for public written testimony based on, in part, the presentation by the staff from VSTOP with -- and I'll propose any public comment to be provided no later than November 10, 2021.

VICE CHAIRMAN OVERHOLT: So then does that mean we're having a meeting on November 10th?

CHAIRMAN OKESON: Well, we need to schedule a meeting. That doesn't mean it has to be on the 10th.
MS. CELESTINO-HORSEMAN: Wouldn't we have to have time to read that public comment since we won't be taking a vote?

CHAIRMAN OKESON: That seems like it would be nice. Like I said, it doesn't have to be on the 10th. So taking that into consideration, we'll look at calendars. What day is the 10th on?

VICE CHAIRMAN OVERHOLT: It's a Wednesday, so that means the 17th is the Wednesday after that.

CHAIRMAN OKESON: Monday's the 15th?

MS. WARYCHA: The 12th, you have a conference that day.

DR. BYERS: Yes. On the 12th we have -- in the afternoon we have an electronic poll book vendor conference.

CHAIRMAN OKESON: Okay. So the 12th is a no-go for you.

DR. BYERS: Yeah.

CHAIRMAN OKESON: The 15th?

DR. BYERS: One moment. Yes, the 15th is a go.

CHAIRMAN OKESON: I can make it work.

VICE CHAIRMAN OVERHOLT: The 15th works for us.

CHAIRMAN OKESON: Okay. So let's back up a
step. I'll offer a motion based upon, in part, the testimony provided by VSTOP, a two-week period of time to allow for any public commentary or input to be submitted no later than November 10, 2021, with a meeting to be set for Monday, November 15th, at 1:30 p.m. at a place to be determined, based on availability, to vote on the protocols with public commentary under consideration.

MS. CELESTINO-HORSEMAN: Mr. Chair, how are -- the requests for written comments, are they going to be received by email, by fax, do you want them by mail, where are we going to post that information, all of that?

CHAIRMAN OKESON: Send them to the Election Division, Secretary of State's office, both?

MR. KING: Mr. Chairman, speaking for myself, the Election Division routinely receives communications directed to the Commission, and so we could certainly do as we have with campaign finance matters and compile the documents, whether they're in email form or letter form, and provide those to the Commission members.

CHAIRMAN OKESON: So refer to the Commission website for mailing instructions, email addresses, and the like for communication?
MR. KING: Yes, Mr. Chairman.

MS. PYLE: I'd like to second the motion.

CHAIRMAN OKESON: Do you want me to restate the motion again?

VICE CHAIRMAN OVERHOLT: I think we've got the -- yeah, I'll second that.

CHAIRMAN OKESON: Okay. So we have a motion and a second. Any further conversation, questions?

All those in favor signify by saying "Aye."

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The "ayes" have it. The motion carries. That's how we'll proceed. With that, I will turn it over to our friends from VSTOP.

DR. BYERS: May we make a request before we give our formal presentation --

CHAIRMAN OKESON: Sure.

DR. BYERS: -- about the changes to the protocol? That is, in addition to public comment, we would like to see vendor comment as well, and we would very much like to do that during the same period of time.

CHAIRMAN OKESON: Absolutely. Do we need to
make a motion on that? I mean, it's considered public comment; correct? Brad, go ahead.

MR. KING: Excuse me. Mr. Chairman, as I understand the motion, it would be open to any entity, be they an individual, a vendor, anyone of any capacity who wished to provide comment.

DR. BYERS: Thank you.

MS. CELESTINO-HORSEMAN: Mr. Chair, it's my understanding -- how would this be different, because didn't the vendors already comment on the protocols that are now in place?

DR. BYERS: They've seen --

MS. CELESTINO-HORSEMAN: Yeah, and they were allowed the opportunity to comment as well.

CHAIRMAN OKESON: But to Brad's point about how the motion is created, if they want to offer comment, they certainly can. Thank you, though. Please proceed with your presentation. Thank you.

DR. BAGGA: Mr. Chairman, members of the Commission, we are pleased to present the updated Indiana voting system certification protocol for approval by the Commission. This protocol contains updates with the various legislative changes, recent Indiana election code changes, and also
recommendations and review by Indiana Election Division.

This protocol has been a work which is really a collaboration between VSTOP and Indiana Election Division. They have reviewed the entire protocol, and they have reviewed the changes we made. And the protocol is a list of guidelines that guide VSTOP in the certification process from the time a vendor submits an application, provides certification of a new system or renewal of a certified system which is expiring or has expired or an application for changes to a system. So those are the three categories in which an application can come in.

So then VSTOP reviews the application according to the protocol, looks at compliance with all of the Indiana election code mandates, including any federal mandates provided by the Voluntary Voting System Guidelines, which are included in Indiana Code. And VSTOP reviews the test reports from partner testing labs and reviews the technical data package submitted by the vendor. And then VSTOP conducts its own review and its own tests which test the various functionalities to ensure compliance with Indiana election code and
also conducts a mock election.

And after all these tests have been concluded and the review has been concluded and all of the documentation has been received, VSTOP then prepares a report, which it submits to IEC/IED.

Dr. Byers, would you like to add to that?

DR. BYERS: Yeah. Thank you, Dr. Bagga.

The only thing I would add is that during the testing process -- and this has always been the case -- there is also an ADA testing protocol that we follow in order to -- and we bring in folks to do that for us and report on the results of that, and that's included in the reports that we've provided.

VICE CHAIRMAN OVERHOLT: Can you highlight what the major changes or additions have been to the testing protocol versus what has been included in the past.

DR. BAGGA: Certainly. A few of the highlights, one new Indiana requirement is that the hash code verification of the system be made. A hash code verification is a system identification which shows that the software and the hardware that has been approved at the testing lab is exactly the same or is identical to the hardware and software
that would be marketed to counties. And the way to do that is to generate a hash verification code, and the code has to be identical. So that shows that the two versions are identical and there have been no changes in the approved system versus the test system.

Then some other highlights include we have added compliance requirements for different kinds of ballots that are tested. We also have the state party system mock election where all of the state party, the Indiana requirements are tested. That was changed in the last few years. So those are some of the highlights.

DR. BYERS: I would add to that list there's also some additional definitions that have been added to the protocol for clarity and organization of the protocol in terms of how it's laid out so it's easier to understand by those who may not be as familiar as we are with the protocol. So those are also included in this revision.

VICE CHAIRMAN OVERHOLT: I know that staff were pretty involved in this, to my understanding. Did staff want to make any comments about the protocol?

MS. NUSSMEYER: If I might, Mr. Chairman.
CHAIRMAN OKESON: Please go ahead.

MS. NUSSMEYER: One area that we really focused on in revising the protocols was to actually create elections and providing names of candidates and requiring vendors to follow our ballot layout standards that comport with statute. So every vendor now is tested against the same candidate, candidate names, variations, testing all the specific tabulating statutes within state law. The protocol now is very specific in that regard so that vendors are expected to have a ballot layout that comports with statute that VSTOP then can check against when the vendors file those ballots with them.

So Appendix D was heavily revised by myself and Matthew, of course, with Brad and Valerie's help as part of their review. So that's just an area that I'm particularly proud of, to hold vendors more accountable to create a ballot that is meant to look like what a voter sees on Election Day and, again, testing those variations of tabulation.

And we also included an Excel spreadsheet where VSTOP had started with specific information about Indiana law, but we expanded upon it so that
it would be an easy reference to the commissioners
to see whether or not the voting system vendors
pass or fail, not just on the electrical, the
hardware side, but also on the way that they lay
out their ballot and that the tabulation comports
with what we expect out of state law.

So that's all I wanted to add. It was a
really terrific collaborative process between VSTOP
and our office. We really improved upon what was
already here and available for vendors to follow,
but now there's more specificity with the
expectations laid forth in a much more direct way
than maybe it had been previously.

MR. KING: Mr. Chairman, if I can add, I
concur entirely with Angie's description with
regard to the improvements made to Appendix D.
This was certainly a collaborative effort where the
co-directors might not initially agree with regard
to particular components in an appendix and worked
through those to come up with a solution that's
being presented for consideration today.

I would also take the opportunity to address
one point with regard to the protocols and the
implementation. I had confirmed that my
recollection was correct that in the past, when the
voting system vendors visited Ball State to undergo
testing and there was some issue that was left
unresolved, either because the vendor could not
respond or because the issue did not arise when
they were there, that Ball State and the vendor
agreed to a virtual testing so that the compliance
of the system with the standard could be documented
without having the requirement for the physical
presence of the vendor at the Ball State campus.

So I think everybody involved has been working
very hard, including VSTOP, to bring the best
possible version of this document to you.

MS. NUSSMEYER: And, Mr. Chairman, if I could
just piggyback on Brad's comments. To be clear
about one part, even though the vendor may be
participating virtually, the equipment itself is on
the campus of Ball State University, and VSTOP
staff are the ones going through and testing every
ballot in a way that the system's tabulating it at
the expected route. So I didn't want anyone to get
the impression that VSTOP was sitting in a room
watching a vendor doing something elsewhere.
That's not, in fact, true. It is, in fact,
delivered and their team does a hands-on field
test.
MR. KING: And, Mr. Chairman, that is exactly correct.

CHAIRMAN OKESON: That's a great point. Thank you.

MS. CELESTINO-HORSEMAN: Mr. Chairman?

CHAIRMAN OKESON: Yes.

MS. CELESTINO-HORSEMAN: In the invitation for public comment, will this document be posted right there with it so they can access it since this is what we're asking them to comment on?

CHAIRMAN OKESON: Yes.

MS. CELESTINO-HORSEMAN: Thank you.

CHAIRMAN OKESON: Anything else for Mr. Byers and Mr. Bagga?

Thank you, gentlemen.

DR. BYERS: Thank you.

DR. BAGGA: Thank you.

CHAIRMAN OKESON: We'll see you on the 15th. You sat through all the campaign finance too?

DR. BYERS: It's okay. Thank you.

CHAIRMAN OKESON: Thank you.

MS. NUSSMEYER: And out before rush-hour traffic.

CHAIRMAN OKESON: One more matter to discuss before adjournment. It has been brought to the
commission's attention by our Election Division
staff of the gap that currently exists in state
law, Indiana Code 3-11-4-3, specifying the deadline
for a voter with print disabilities to file an
application for absentee ballot requesting the
ballot be sent to the voter by mail or fax
transmission.

I've expressed my concern that the Indiana
Election Commission may not have the authority to
fill this gap by setting a deadline in this case.
As a result, in my capacity as chair, I requested
an informal advisory opinion from the Office of the
Attorney General and received such a response,
which I would now ask our co-counsel, Valerie
Warycha, to read into the record. Valerie.

MS. WARYCHA: This opinion is from Attorney
General Todd Rokita's office to Chairman Okeson.

"You requested an opinion regarding whether
the Indiana Election Commission has the ability to
set an election law deadline when applicable state
law does not provide for one.

"Question: Where the Indiana General Assembly
enacts legislation to provide for a combined voter
registration and absentee ballot application
process for voters with print disabilities but does
not provide for a deadline to request such form, may the Indiana Election Commission set a deadline for emergency rule or other order?

"Brief answer: No; the Indiana Election Commission does not have the authority by statute to implement such a policy by rule or other order. Any such provision may come from the Indiana General Assembly through the legislative process."

And then there's "Background: During the First Session of the 122nd General Assembly (2021), the Indiana General Assembly passed Senate Enrolled Act No. 398, which made comprehensive updates to Indiana's election laws. As part of those updates, Indiana Code 3-11-4-5.8 was added to provide a new process for voters with print disabilities to request a voter registration application and an absentee ballot application. However, the Indiana General Assembly appears to have failed to set a deadline for a timely application for an absentee ballot by email or fax of a voter with print disabilities under either Indiana Code 3-11-4-3 or Indiana Code 3-11-4-6. Certain members of the Indiana Election Commission have requested the Commission to act to account for this void and issue an edict to inform county election boards of
the Commission's view as to what the deadline would be for a voter with print disabilities to submit an absentee ballot application to receive a ballot via fax or email. Effectively, the request is for the Commission to establish an election deadline where none exists by statute. This request, in turn, forms the basis of this memorandum.

"Analysis: Powers and Duties of the Indiana Election Commission. The Commission was established pursuant to Indiana Code 3-6-4.1-1. The Commission is comprised of four members appointed by the governor and each member must be a registered voter of Indiana and a member of a major political party of the state, with not more than two of the members from the same political party. Indiana Code 3-6-4.1-2. The Commission is delegated authority to administer Indiana election laws and to advise and exercise supervision over local election and registration officers. Indiana Code 3-6-4.1-14. Additionally, the Commission has authority to adopt rules, including emergency rules, to govern the fair, legal, and orderly conduct of elections, rules governing campaign finance, rules governing the establishment of precincts, and rules specifying the procedures and
fees for the processing of an application from a vendor for voting system approval and testing. The Commission may also hold hearings in accordance with the Administrative Orders and Procedures Act as well as issue advisory opinions.

"The Commission Lacks the Authority to Set Deadlines Absent Legislative Delegation.

Generally, the Indiana General Assembly is vested with responsibility and authority for providing state election laws designed to efficiently and fairly govern voting procedures. Horseman v. Keller. While such authority is vested with the legislature, some of the authority may be delegated: The Legislature may set up machinery for the conduct of elections, and delegate to ministerial or executive agencies the duty of conducting elections, and may prescribe the procedures by which elections may be contested, so long as they stay within their constitutional powers, and such procedure conforms to the law, such steps and procedures will be governed by the legislative rules prescribed.

"(Citing Nicely v. Wildey). Indeed, the Constitution provides that state legislates have primary responsibility for setting election rules.
Article 1, Section 4, clause 1. Accordingly, unless the Indiana General Assembly specifically delegates its authority to the Commission to set election-related deadlines, then such power is non-existent. Tyus v. Indianapolis Power & Light Co. Here, no such delegation exists. The Commission possesses the general duties and powers to administer election laws. It cannot, however, create laws. There are many instances throughout Indiana election law where the legislature has clearly spoken on election-related deadlines. Indiana Codes 3-11-4-3, 3-7-13-10, and 3-11.5-4-10. From those examples, it is apparent the General Assembly did not mean to set standards and delegate such authority to the Commission. See Gunderson v. State, Indiana Department of Natural Resources. ('The legislature may only delegate rule-making powers to an administrative agency if that delegation is accompanied by sufficient standards to guide the agency in the exercise of its statutory authority.')

"While it is true the Commission is granted the authority to supervise local election and registration offices as well as issue advisory opinions, such actions certainly do not entail the
ability to make or prescribe law. This would be unconstitutional. See Tyus, ('legislature cannot delegate the power to make a law.' [citing Gunderson]). The Commission has previously utilized its authority to extend deadlines pursuant to orders issued under Indiana Code 3-6-4.1-17, which are powers derived by public health crisis or natural disaster declared by the governor, not by exercising the grant of a unilateral power. Likewise, the Commission has previously issued advisory opinions interpreting election laws under Indiana Code 3-6-4.1-25. However, such opinions only apply to enacted laws, not prescribing its own set of laws.

"Here, the legislature has not spoken or set deadlines for application submission, and any guidance or advisory opinion issued to set a deadline for application submission would be de facto lawmaking. That, the Commission clearly cannot do as a branch of the executive. While it is an unfortunate oversight by the Indiana General Assembly to not include proper application deadlines for voters with print disabilities to request absentee ballots, such errors may only be corrected through the legislative process, not by a
body of unelected officials. To provide otherwise would run contrary to the separation of powers and general constitutional principles.

"Conclusion: Where the General Assembly does not provide for a deadline under existing Indiana laws, the Commission is prohibited from doing so under its existing powers and duties. To do otherwise would be engaging in the prescription of election laws, a uniquely legislative function, in contravention of constitutional principles. Any such change must come as a result of the legislative process.

"Sincerely, Todd Rokita."

CHAIRMAN OKESON: Thank you. I would open it up for any discussion amongst the Commission members.

VICE CHAIRMAN OVERHOLT: I guess in response to that and, I think, for clarification of the whole record, I would like to -- there's a letter that Commissioner Celestino-Horseman and I sent to Chairman Okeson that, I think, looks like maybe precipitated the request to the Attorney General's Office. So I guess I would read that in. Sorry to bore everyone with these lessons in reading aloud, but if I might, Mr. Chairman.
Dear Chairman Okeson: It has been brought to our attention by the Democratic staff of the Indiana Election Division that there is an issue regarding the deadline for a county to receive an application from a voter with print disabilities for an absentee ballot to be sent by fax or email. Given that there are special elections scheduled in two counties this November, we believe the Indiana Election Commission should address this matter.

"This year the Indiana General Assembly enacted Senate Enrolled Act 398 (P.L.109-2021) which, among other things, allows a voter with print disabilities to apply to receive an absentee ballot by fax or email, similar to the method that military and overseas voters can use to receive an absentee ballot. The legislature has defined 'voters with print disabilities' to mean an 'individual who is unable to independently mark a paper ballot or ballot card due do blindness, low vision, or a physical disability that impairs manual dexterity.' (IC 3-5-2-50.3).

"After SEA 398 was signed into law, the
Democratic staff realized that the General Assembly did not amend IC 3-11-4-3, which is the absentee ballot application deadline statute, to include a deadline for when a voter with print disabilities must submit an application to receive an absentee ballot by fax or email as allowed under IC 3-11-4-6. Our review of the statute confirms this omission.

"Section 3(a)(2)(B) only provides that an absent uniformed services voter (military) or overseas voter who requests an absentee ballot be transmitted by fax or email must submit the application by the end of the day before the election. There is no reference to voters with print disabilities. No other subsection in Section 3, especially subsection (a)(4), would apply as those deadlines pertain to requesting an absentee ballot to be provided by other methods, such as by mail or travel board.

"While in the end it will be left to the General Assembly to amend the law to provide a definitive deadline for voters with print disabilities to apply for absentee ballot to be sent by fax or email, this change would not take place until 2022. However, there are special
elections scheduled in precincts in Elkhart and
Porter County for November of this year where this
could become an issue. Because of this we believe
the Election Commission should use its powers and
responsibility to administer Indiana election law
to advise these counties what the deadline is for
these applications.

"According to IC 3-6-4.1-14(a)(1), the Indiana
Election Commission shall administer Indiana
election laws. Subsections (a)(3) and (b) of the
same statute provide the Commission shall advise
and exercise supervision over local election and
registration officers, while not divesting a county
election board of any powers and duties imposed on
the board under IC 3-6-5, except when the board is
deadlocked on a question that is later submitted to
the Commission for final determination.

Additionally, IC 3-6-4.1-25(2) provides the
Commission may, to administer Indiana election law,
issue advisory opinions. In this case, as the
Indiana Code fails to expressly provide a deadline
by which print disabled voters must submit a
request by fax or email to vote by fax or email,
the Commission's taking action will not divest the
local election boards of any authority delegated by
"The Commission has used its powers under Sections 14 and 25 in the past. Most recently, in 2020, the Commission adopted Orders 2020-37 and 2020-40, through which, in part, the Commission advised county election boards and circuit court clerks on how to execute certain election duties and responsibilities during the COVID-19 pandemic when local and state public health mandates were in effect.

"Additionaly, the Commission used the same power in 2015 to issue Advisory Opinion 2015-1 to opine that IC 3-9-3-5, which prohibits candidates for elected office from stating in political communications that they are the incumbent in an office when they do not hold the office, is not violated when certain words or phrases are not used in the communication.

"Consistent with the procedure the Commission followed in 2015, we request that you call a meeting of the Commission to discuss this matter and work toward issuing an advisory opinion that would inform county election boards of the Commission's view of when the deadline would be for a voter with print disabilities to submit an
application to receive an absentee ballot by fax or email. We also suggest that the Commission recommend to the General Assembly that what is advised in the opinion be codified through legislation.

"We hope that we can work together to resolve this issue so that the law is applied in a uniform fashion by the counties holding special elections in 2021.


MS. CELESTINO-HORSEMAN: Mr. Chairman?
CHAIRMAN OKESON: Thank you.
Yes. Go ahead.

MS. CELESTINO-HORSEMAN: First of all, I want to clarify, Valerie did not write this letter. The primary signatory on this letter that she read was Todd Rokita. And, quite honestly, I find his letter so disingenuous because he's trying to cast this Commission as if it were trying to issue rules, he calls it, making legislation, enacting laws. That is not what's happening. We are talking about an advisory opinion, that the counties can or cannot choose to follow. It's up to them. All it is is a piece of advice.
And so for him to sit there and say we're doing all those things, after saying on page 2 of his letter that we have the authority to do advisory opinions, I find rather disingenuous. And I don't think it's a well-reasoned legal opinion, and, quite honestly, I would not have signed it.

So having said that, I think by issuing advisory opinion, what we do do is provide these two counties that are going through the special election without a law in place some cover. Because we already know we have print disability litigation going on, so if we advise them and say you can take this up to the absolute last day and we know that there's nothing in place, they are now protected because, if they can be sued, what are they going to sue them for, that you failed, you cut it off too soon, you should have gone and done it the same way as they do in the military or whatever? But, again, it's advice. If they don't want to do it, they don't have to do it.

So I am rather puzzled as to why Mr. Rokita would not want to provide assistance to these counties and not want to make it so they don't want to be sued, and the only reason I can think that he might want to do that is because of our letter from
the two Democratic members. I am totally stymied on this, in case you couldn't tell.

CHAIRMAN OKESON: No. Thank you. Correct me if I'm wrong. There are county election boards; right? Each county has an election board; right?

So --

MR. KING: Mr. Chairman, if I could just respond --

CHAIRMAN OKESON: Sure.

MR. KING: -- just with a nuanced answer.

Porter County has a combined board of elections and registration that is essentially the same as the Elkhart County Election Board, but yes in both cases.

CHAIRMAN OKESON: Of course, you would know that little detail.

I guess I appreciate your comments. I don't find any fault with Attorney General Rokita's letter obviously because I asked him to write one and give his opinion and he has done that. And I am not in a position to question what I've asked for. Whether I agree with it or not is irrelevant.

I think that I can understand your comments and take them as you stated them, but I think if the counties are at all ambiguous about this, they
have their own governance structure in the form of a county election board to deal with it until the General Assembly takes action to provide further clarification in the statute.

VICE CHAIRMAN OVERHOLT: I guess I think that you -- I mean, we submitted a proposed advisory opinion, which I think you have, and I think the --

CHAIRMAN OKESON: Yes.

VICE CHAIRMAN OVERHOLT: So the proposed -- our proposed advisory opinion, I think, makes pretty clear in the language that we are simply -- we're not creating something new; we are pointing out what exists in statute, which I think would be helpful to the counties that have the misfortune, I guess, of having to conduct special elections this year when everyone else gets to take a bye here. I can remember working elections, and it was always nice to have those off years.

Anyway, and I think my concern is that to suggest that each county election board or whatever, board of elections or whatever, that they do their own thing is problematic. I think part of what we try to do is make sure that there is some consistency across the state, so by leaving it to the election boards -- I mean, I'm sure that if
these special elections were involving a matter of what we considered to be more statewide significance, we maybe wouldn't take that approach. And if we wouldn't take that approach for what we consider to be a more significant election, we certainly shouldn't take it for what isn't necessarily going to impact the rest of the state.

So I think it's important to offer guidance. As the attorney general did recognize in his opinion, we actually have the authority to issue advisory opinions, and I think this is advising the counties as to what state law indicates with respect to these guidelines.

CHAIRMAN OKESON: To me, that's where you cross the line. To me, that's where you start acting as if, right? What should it be? And we're not elected officials on this Commission; we're appointed. None of these people voted for us. I'm not -- I don't disagree with the fact that there might be some ambiguity there. There clearly is. I'm just stating this is not -- we don't make that call in this room with 12 people. That's not how this should be done, in my opinion, and I think the attorney general's opinion reflects that same sentiment.
MS. CELESTINO-HORSEMAN: Attorney general says we have the authority to issue advisory opinions. I agree with him on that one point. This advisory opinion states in Section 1 "shall serve as guidance" and that, in Section 2, it states that there's nothing that establishes the deadline. Section 3, it simply states "the absentee ballot return deadline is 6:00 p.m., local prevailing time" for people other than absentee voters and such. Section 4 says that we ask the legislature to take action on this. Section 5 directs the Election Division to forward a copy of this advisory opinion to each county election board.

That's all it says is that you've got a problem here and you need to address it; if we were addressing it, we would do this, but it's up to you. Now --

CHAIRMAN OKESON: So I would say, in the essence of time and with real respect -- I mean that -- I've read it and I appreciate it. I would say offer a motion.

VICE CHAIRMAN OVERHOLT: I would move that the Commission issue the advisory opinion that has been tendered today that is in re concerning the deadline for a voter with print disabilities to
request an absentee ballot by fax or email under Indiana Code 3-11-4, which looks like it was formally filed and received by the Election Division today at 11:49 a.m.

MS. CELESTINO-HORSEMAN: I'll second.

CHAIRMAN OKESON: So having a motion and a second, is there any further discussion on the matter?

Let's do an individual vote, then, please, on the motion.

Karen?

MS. CELESTINO-HORSEMAN: Aye.

VICE CHAIRMAN OVERHOLT: Aye.

CHAIRMAN OKESON: Nay.

MS. PYLE: Nay.

CHAIRMAN OKESON: There is not unanimity, so the motion does not carry.

MS. CELESTINO-HORSEMAN: Your Honor --

CHAIRMAN OKESON: I wish.

MS. CELESTINO-HORSEMAN: You are an honorable man, but...

I would like to ask that a copy of this advisory opinion be posted on the website. I don't know -- being new, I don't know what the protocols are, but I would assume that we do make this stuff
available on there, on the website, so that
people -- I mean, we want public interest, so that
they can see what we've considered and what we've
discussed and all.

CHAIRMAN OKESON: Well, I think both have been
entered into the record today, correct, and that
will be made public as a matter of meeting minutes
and the court reporter's report, so your request
will be granted.

MS. CELESTINO-HORSEMAN: Thank you.

VICE CHAIRMAN OVERHOLT: And, sorry, I would
offer our letter as part of the record too since I
read it so we can post the letter, not just the
transcription.

CHAIRMAN OKESON: Done. Well, thank you.
This was, believe it or not, one of our more brief
meetings. I'm just kidding. But we got through a
lot today and I appreciate it.

MS. CELESTINO-HORSEMAN: Litany talked too
much.

CHAIRMAN OKESON: With that, I believe we've
finished our business for the day. Is there a
motion to adjourn?

MS. CELESTINO-HORSEMAN: So moved.

CHAIRMAN OKESON: Second?
VICE CHAIRMAN OVERHOLT: Second.

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

VICE CHAIRMAN OVERHOLT: Aye.

MS. CELESTINO-HORSEMAN: Aye.

MS. PYLE: Aye.

CHAIRMAN OKESON: The meeting is adjourned.

Thank you.

(The Indiana Election Commission Public Session was adjourned at 3:58 p.m.)
STATE OF INDIANA

COUNTY OF HAMILTON

I, Maria W. Collier, a Notary Public in and for said county and state, do hereby certify that the foregoing public session was taken at the time and place heretofore mentioned between 1:35 p.m. and 3:58 p.m.;

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 9th day of November, 2021.

[Signature]

My Commission expires: December 5, 2024

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September 1, 2021

VIA EMAIL ONLY

Hon. Paul Okeson
Chair, Indiana Election Commission

Dear Chairman Okeson:

It has been brought to our attention by the Democratic staff of the Indiana Election Division that there is an issue regarding the deadline for a county to receive an application from a voter with print disabilities for an absentee ballot to be sent by fax or email. Given that there are special elections scheduled in two (2) counties this November, we believe the Indiana Election Commission should address this matter.

This year the Indiana General Assembly enacted Senate Enrolled Act 398 (P.L.109-2021) which, among other things, allows a voter with print disabilities to apply to receive an absentee ballot by fax or email, similar to the method that military and overseas voters can use to receive an absentee ballot. The legislature has defined “voters with print disabilities” to mean an “individual who is unable to independently mark a paper ballot or ballot card due to blindness, low vision, or a physical disability that impairs manual dexterity.” (IC 3-5-2-50.3)

After SEA 398 was signed into law, the Democratic staff realized that the General Assembly did not amend IC 3-11-4-3, which is the absentee ballot application deadline statute, to include a deadline for when a voter with print disabilities must submit an application to receive an absentee ballot by fax or email as allowed under IC 3-11-4-6. Our review of the statute confirms this omission.

Section 3(a)(2)(B) only provides that an absent uniformed services voter (military) or overseas voter who requests an absentee ballot be transmitted by fax or email must submit the application by noon the day before the election. There is no reference to voters with print disabilities. No other subsection in Section 3, especially subsection (a)(4), would apply as those deadlines pertain to requesting an absentee ballot to be provided by other methods, such as by mail or travel board.

While in the end it will be left to the General Assembly to amend the law to provide a definitive deadline for voters with print disabilities to apply for absentee ballot to be sent by fax or email, this change would not take place until 2022. However, there are special elections scheduled in precincts in Elkhart and Porter County for November of this year where this could become an issue. Because of this we believe the Election Commission should use its powers and
responsibility to administer Indiana election law to advise these counties what the deadline is for these applications.

According to IC 3-6-4.1-14(a)(1), the Indiana Election Commission shall administer Indiana election laws. Subsections (a)(3) and (b) of the same statute provide the Commission shall advise and exercise supervision over local election and registration officers, while not divesting a county election board of any powers and duties imposed on the board under IC 3-6-5, except when the board is deadlocked on a question that is later submitted to the Commission for final determination. Additionally, IC 3-6-4.1-25(2) provides the commission may, to administer Indiana election law, issue advisory opinions. In this case, as the Indiana Code fails to expressly provide a deadline by which print disabled voters must submit a request by fax or email to vote by fax or email, the Commission’s taking action will not divest the local election boards of any authority delegated by statute.

The Commission has used its powers under Sections 14 and 25 in the past. Most recently, in 2020, the Commission adopted Orders 2020-37 and 2020-40, through which, in part, the Commission advised county election boards and circuit court clerks on how to execute certain election duties and responsibilities during the COVID-19 pandemic when local and state public health mandates were in effect.

Additionally, the Commission used the same power in 2015 to issue Advisory Opinion 2015-1 to opine that IC 3-9-3-5, which prohibits candidates for elected office from stating in political communications that they are the incumbent in an office when they do not hold the office, is not violated when certain words or phrases are not used in the communication.

Consistent with the procedure the Commission followed in 2015, we request that you call a meeting of the Commission to discuss this matter and work toward issuing an advisory opinion that would inform county election boards of the Commission’s view of when the deadline would be for a voter with print disabilities to submit an application to receive an absentee ballot by fax or email. We also suggest that the Commission recommend to the General Assembly that what is advised in the opinion be codified through legislation.

We hope that we can work together to resolve this issue so that the law is applied in a uniform fashion by the counties holding special elections in 2021.

Sincerely,

[Signature]

Suzannah Wilson Overholt
Vice Chair

[Signature]

Karen Celestino-Horseman
Commission Member

cc: Zachary Klutz, Member, Indiana Election Commission
MEMORANDUM OF LEGAL GUIDANCE
PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

October 15, 2021

The Honorable Paul Okeson
Chair, Indiana Election Commission
200 W. Washington Street, Room E204
Indianapolis, Indiana 46204

RE: Ability of the Indiana Election Commission to Establish Deadline

OUR FILE: 21-MLG-13

Dear Chairman Okeson:

You requested an opinion regarding whether the Indiana Election Commission has the ability to set an election law deadline when applicable state law does not provide for one.

QUESTION

Where the Indiana General Assembly enacts legislation to provide for a combined voter registration and absentee ballot application process for voters with print disabilities, but does not provide for a deadline to request such form, may the Indiana Election Commission set a deadline by emergency rule or other order?

BRIEF ANSWER

No; the Indiana Election Commission does not have the authority by statute to implement such a policy by rule or other order. Any such provision must come from the Indiana General Assembly through the legislative process.

BACKGROUND

During the First Regular Session of the 122nd General Assembly (2021), the Indiana General Assembly passed Senate Enrolled Act No. 398, which made comprehensive updates to Indiana’s election laws. As part of those updates, Ind. Code § 3-11-4-5.8 was added to provide a
new process for voters with print disabilities\(^1\) to request a voter registration application and an absentee ballot application. However, the General Assembly appears to have failed to set a deadline for a timely application for an absentee ballot by email or fax of a voter with print disabilities under either Ind. Code § 3-11-4-3 or Ind. Code § 3-11-4-6. Certain members of the Indiana Election Commission (the “Commission”) have requested the Commission to act to account for this void and issue an edict to inform county election boards of the Commission’s view as to what the deadline would be for a voter with print disabilities to submit an absentee ballot application to receive a ballot via fax or email.\(^2\) Effectively, the request is for the Commission to establish an election deadline where none exists by statute. This request, in turn, forms the basis of this memorandum.

**ANALYSIS**

*Powers and Duties of the Indiana Election Commission*

The Commission was established pursuant to Ind. Code § 3-6-4.1-1. The Commission is comprised of four (4) members appointed by the governor and each member must be a registered voter of Indiana and a member of a major political party of the state, with not more than two (2) of the members from the same political party. Ind. Code § 3-6-4.1-2. The Commission is delegated authority to administer Indiana election laws and to advise and exercise supervision over local election and registration officers. Ind. Code § 3-6-4.1-14. Additionally, the Commission has authority to adopt rules, including emergency rules, to govern the fair, legal, and orderly conduct of elections, rules governing campaign finance, rules governing the establishment of precincts, and rules specifying the procedures and fees for the processing of an application from a vendor for voting systems approval and testing. *Id.* The Commission may also hold hearings in accordance with the Administrative Orders and Procedures Act as well as issue advisory opinions. Ind. Code § 3-6-4.1-25.

*The Commission Lacks the Authority to Set Deadlines Absent Legislative Delegation*

Generally, the Indiana General Assembly is vested with the responsibility and authority for providing state election laws designed to efficiently and fairly govern voting procedures. *Horsemann v. Keller*, 841 N.E.2d 164, 170 (Ind. 2006). While such authority is vested with the legislature, some of the authority may be delegated:

The Legislature may set up machinery for the conduct of elections, and delegate to ministerial or executive agencies the duty of conducting elections, and may prescribe the procedure by which elections may be contested, so long as they stay

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\(^1\) A “voter with print disabilities” is “... an individual who is unable to independently mark a paper ballot or ballot card due to blindness, low vision, or a physical disability that impairs manual dexterity.” Ind. Code § 3-5-2-50.3.

\(^2\) The Commission has issued advisory opinions (e.g., Advisory Opinion 2015-1, available at: https://www.in.gov/sos.elections/files/CFA_Advisory_Opinion_2015-1_Officeholder_Impersonation.pdf) and other orders (e.g., Order No. 2020-40, available at: https://bloximages.chicago2.vip.townnews.com/nwitimes.com/content/tncms/assets/v3/editorial/7/22/722f97d4-0e59-588d-8704-2d8bd349eb5b-5e9a21be3f7d1.pdf.pdf).
within their constitutional powers, and such procedure conforms to the law, such steps and procedure will be governed by the legislative rules prescribed.

Id. (citing State ex rel. Nicely v. Wildey, 197 N.E. 844, 847 (Ind. 1935)). Indeed, the Constitution provides that state legislatures have primary responsibility for setting election rules. Art. 1, § 4. cl. 1. Accordingly, unless the Indiana General Assembly specifically delegates its authority to the Commission to set election-related deadlines, then such power is non-existent. See Tyus v. Indianapolis Power & Light Co., 134 N.E.3d 389 (Ind. Ct. App. 2019). Here, no such delegation exists. The Commission possesses the general duties and powers to administer election laws. It cannot, however, create laws. There are many instances throughout Indiana election law where the legislature has clearly spoken on election-related deadlines. See, e.g., Ind. Code §§ 3-11-4-3, 3-7-13-10, and 3-11.5-4-10. From those examples, it is apparent the General Assembly did not mean to set standards and delegate such authority to the Commission. See Gunderson v. State, Indiana Department of Natural Resources, 90 N.E.3d. 1171, 1186 (Ind. 2018) (“The legislature may only delegate rule-making powers to an administrative agency if that delegation is accompanied by sufficient standards to guide the agency in the exercise of its statutory authority.”).

While it is true the Commission is granted the authority to supervise local election and registration offices as well as issue advisory opinions, such actions certainly do not entail the ability to make or prescribe law. This would be unconstitutional. See Tyus, 134 N.E.3d at 405 (“[The] ‘legislature cannot delegate the power to make a law.’ [citing Gunderson, 90 N.E.3d at 1186]). The Commission has previously utilized its authority to extend deadlines pursuant to orders issued under Ind. Code § 3-6-4.1-17, which are powers derived by public health crisis or natural disaster declared by the governor, not by exercising the grant of a unilateral power. Likewise, the Commission has previously issued advisory opinions interpreting election laws under Ind. Code § 3-6-4.1-25. However, such opinions only apply to enacted laws, not prescribing its own set of laws.

Here, the legislature has not spoken or set deadlines for application submission, and any guidance or advisory opinion issued to set a deadline for application submission would be de facto lawmaking. That, the Commission clearly cannot do as a branch of the executive. While it is an unfortunate oversight by the Indiana General Assembly to not include proper application deadlines for voters with print disabilities to request absentee ballots, such error may only be corrected through the legislative process, not by a body of unelected officials. To provide otherwise would run contrary to separation of powers and general constitutional principles.

CONCLUSION

Where the General Assembly does not provide for a deadline under existing Indiana election laws, the Commission is prohibited from doing so under its existing powers and duties.

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3 The Indiana General Assembly is technically still in session until November 15, 2021. Given that special elections may be scheduled in counties before the legislature reconvenes and can correct this oversight, the Commission may want to consider engaging with legislative leadership to have these corrections implemented.
To do otherwise would be engaging in the prescription of election laws, a uniquely legislative function, in contravention of constitutional principles. Any such change must come as a result of the legislative process.

Sincerely,

Todd Rokita
Attorney General of Indiana

John Walls, Chief Counsel, Advisory
William H. Anthony, Asst. Chief Counsel, Advisory
Philip Gordon, Section Chief, Advisory
Hilari A. Sautbine, Senior Deputy Attorney General
WHEREAS, pursuant to Indiana Code 3-6-4.1-14, the Indiana Election Commission is required to administer the election laws of the State of Indiana;

WHEREAS, pursuant to Indiana Code 3-6-4.1-25, the Commission is authorized to issue advisory opinions;

WHEREAS, the Indiana General Assembly enacted Senate Enrolled Act 398-2021 (P.L. 109-2021) which authorized a voter with print disabilities to request from their county election board an absentee ballot to be sent by fax or email;

WHEREAS, Indiana Code 3-11-4-3 establishes deadlines for when a voter must submit an absentee ballot application to the voter’s county circuit court clerk to receive an absentee ballot to cast at an election;

WHEREAS, neither Senate Enrolled Act 398-2021 nor any other act of the Indiana General Assembly amended Indiana Code 3-11-4-3 to provide a deadline for when a voter with print disabilities must submit an application to receive an absentee ballot by fax or email before an election;

WHEREAS, Indiana Code 3-11.5-4-10 provides that the deadline for a voter, other than a military or overseas voter who votes an absentee ballot by mail, to return an absentee ballot so that it may be counted is 6:00 pm, local prevailing time, on election day;

WHEREAS, a special election has been called in various precincts in Elkhart and Porter County where a voter with print disabilities may request an absentee ballot by fax or email;

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

NOW, THEREFORE, THE INDIANA ELECTION COMMISSION ISSUES THE FOLLOWING ADVISORY OPINION:
Section 1: This Advisory Opinion shall serve as guidance to each county election board and the voters of each county regarding the Commission's view of Indiana Code 3-11-4-3 with respect to the deadline for a voter with print disabilities to request an absentee ballot by fax or email for an election and may not be construed as the Commission establishing a deadline or otherwise committing a legislative act.

Section 2: There is nothing in Indiana Code 3-11-4-3 can be read as establishing a deadline for when a voter with print disabilities must submit an application to the voter's circuit court clerk to receive an absentee ballot by fax or email before an election.

Section 3: Pursuant to Indiana Code 3-11.5-4-10, the absentee ballot return deadline is 6:00 pm, local prevailing time, on election day for all voters other than military and overseas voters who vote an absentee ballot by mail. A voter with print disabilities may not apply to receive an absentee ballot by fax or email for an election at anytime after the deadline established in Indiana Code 3-11.5-4-10 has passed for the election.

Section 4: The Commission respectfully recommends to the Indiana General Assembly that Indiana Code 3-11-4-3 be amended to establish a deadline for when a voter with print disabilities must submit an application to receive an absentee ballot by fax or email to the circuit court clerk by enacting appropriate legislation.

Section 5: The Commission directs that the Election Division promptly forward a copy of this Advisory Opinion to each county election board.

Section 6:

Issued the ___ of ____________, 2021,

By the Indiana Election Commission:

Paul Okeson, Chairman

Suzannah Wilson Overholt, Vice Chairman

________________________, Member

Karen Celestino Horseman, Member