

Indiana Election Commission
Minutes
November 18, 2011

Members Present: Daniel A. Dumezich, Chairman of the Indiana Election Commission (“Commission”); S. Anthony Long, Vice Chairman of the Commission; Sarah Steele Riordan, member; Bryce H. Bennett, Jr., member.

Members Absent: None

Staff Attending: Trent Deckard, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); J. Bradley King, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division

Also Attending: Dr. Jay Bagga; Ms. Michelle Fajman; Mr. Nick Gasparovic; The Honorable Earl Harris; Mr. Joe Hero; The Honorable Sue Landske; Ms. Sally LaSota; Dr. Joseph Losco; The Honorable Rick Niemeyer; The Honorable Mike Repay; The Honorable Earline Rogers; Dr. Raymond Scheele; Mr. Steve Shamo; Mr. Kenneth White

1. Call to Order

The Chair called the November 18, 2011 meeting of the Commission to order at 10:00 a.m. in Room 148 of the Anderson Building, Purdue University Calumet Campus, 2200 169th Street, Hammond, Indiana.

The Chair noted that proper notice of the meeting had been given, as required by state law. A copy of the meeting notice, agenda, and designations of proxy are incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division Office.]*

2. Transaction of Business

The Commission transacted the business set forth in the Transcript of Proceedings prepared by Ms. Drea Sasse of Connor+Associates Reporting. A copy of this document is incorporated by reference in these minutes.

The following corrections of scrivener’s errors in this document are approved by the Commission:

Page 6, line 17, replace “adopts” with “adopt”.

Page 13, line 13, replace “comprehensive” with “comprehensively”.

Page 14, line 7, replace "3-11-15-13.3B" with "3-11-15-13.3(b)".

Page 19, line 3, replace "one" with "ones".

Page 27, line 4, replace "Out" with "Our".

Page 32, line 16, replace "pre-primary" with "re-primary".

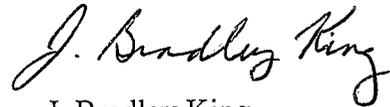
3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Mr. Long moved, seconded by Mr. Bennett, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Dumezich, Mr. Long, Ms. Riordan, and Mr. Bennett), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 11:16 a.m.

Respectfully submitted,



Trent DeCard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

November 18, 2011

Original

INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted On: Friday, November 18, 2011
Commencing 10:00 a.m. CST

Location: Purdue University Calumet Campus
Anderson Building - Room 148
Purdue University Calumet Campus
2200 - 169th Street, Hammond, Indiana 46323

A STENOGRAPHIC RECORD BY:
Drea Sasse, CSR, RPR
Notary Public
Stenographic Reporter

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A P P E A R A N C E S :

INDIANA ELECTION COMMISSION:

- MR. DANIEL A. DUMEZICH - Chairman
- MR. S. ANTHONY LONG - Vice Chairman
- MS. SARAH STEELE RIORDAN - Commission Member
- MR. BRYCE H. BENNETT - Commission Member

INDIANA ELECTION DIVISION STAFF:

- MR. DALE R. SIMMONS - Co-Legal Counsel
- MS. LESLIE A. BARNES - Co-Legal Counsel
- MR. J. BRADLEY KING - Co-Director
- MR. TRENT DECKARD - Co-Director

ALSO PRESENT:

- THE HONORABLE SUE LANDSKE
- THE HONORABLE EARLINE ROGERS
- THE HONORABLE EARL HARRIS

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1 **CHAIRMAN DUMEZICH:** Good morning. This is
2 the meeting of the Indiana Election Commission,
3 and it's called to order. The four members of
4 the commission are present. My name is Dan
5 Domezich. I am the chairman of the Indiana
6 Election Commission. To my left is Vice
7 Chairman Anthony Long. To his left is Member
8 Sarah Riordan. To my right, skipping Brad, is
9 Bryce Bennett, who is also a member of the
10 commission; the Indiana Election Division
11 staff, Co-Directors Trent Deckard and Brad
12 King, and Co-General Counsel, Leslie Barnes and
13 Dale Simmons. The court reporter is Drea
14 Sasse, and she is from O'Connor -- or, excuse
15 me, Connor & Associates.

16 A couple things, first of all, everybody
17 turn the ringers off on your cell phones since
18 I just heard mine. I would hate to think that
19 mine would interrupt someone. With that in
20 mind, I want to remind everyone on behalf of
21 the court reporter to, one, identify yourself
22 when beginning to speak, spell your name when
23 identifying yourself, speak clearly, and
24 whatever you do, do not speak at the same time
25 other people are speaking. That makes it

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1 almost impossible for the court reporter to get
2 an accurate record of these proceedings.

3 This meeting is being webcast courtesy of
4 Purdue University Calumet. Thank you for the
5 facility. I request Mr. Deckard and Mr. King
6 to confirm that the commission meeting has been
7 properly noticed as required by the Open Door
8 Law.

9 **MR. KING:** Mr. Chairman, members of the
10 commission, this meeting has been properly
11 noticed in accordance with Indiana Code
12 5-14-1.5 by posting and also by distribution to
13 the individuals who specifically received
14 notice of the Lake County Redistricting
15 Commission as directed at prior meetings.

16 **CHAIRMAN DUMEZICH:** Okay. I recognize
17 Mr. Deckard and Mr. King to present minutes of
18 the September 29, 2011 meeting and the June
19 10th, 2008 meeting to the commission.

20 **MR. KING:** Thank you, Mr. Chairman, the
21 members of the commission. The September 29th,
22 2011 minutes have been reviewed by Mr. Deckard
23 and myself and presented for your approval as
24 are the June 10th, 2008 commission minutes.
25 The members will recall at the last meeting

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1 Mr. Chairman had asked the election commission
2 staff to work on bringing forward minutes from
3 previous meetings that had not yet been
4 approved, and this will be the first of a long
5 procession.

6 CHAIRMAN DUMEZICH: Is there a motion to
7 approve the minutes as presented?

8 VICE CHAIRMAN LONG: So moved.

9 CHAIRMAN DUMEZICH: Is there a second?

10 COMMISSION MEMBER BENNETT: Second.

11 CHAIRMAN DUMEZICH: Is there any
12 discussion?

13 (No response)

14 CHAIRMAN DUMEZICH: Hearing none, all in
15 favor, say aye.

16 THE COMMISSION: Aye.

17 CHAIRMAN DUMEZICH: Opposed, nay.

18 (No response)

19 CHAIRMAN DUMEZICH: Ayes have it 4-0. The
20 motion to approve the minutes is adopted. Just
21 in terms of status, Mr. King or Mr. Deckard,
22 can you tell me if we will, in fact, complete
23 getting the old minutes approved or brought
24 forward by the end of the year?

25 MR. KING: Mr. Chairman, members of the

1 commission, at this point we're having a test
2 run with some of the minutes that were recorded
3 using a particular method to see how long it
4 will take to prepare those. So, no, I don't
5 think we will have the entirety of the minutes
6 prepared by the end of the year, but we will
7 have an estimate about the cost and the time
8 required.

9 **CHAIRMAN DUMEZICH:** And I take it at our
10 next meeting, can you make a report on that?

11 **MR. KING:** Yes.

12 **CHAIRMAN DUMEZICH:** Thank you. Okay. The
13 adoption of Campaign Finance Orders from
14 previous commission meetings. I recognize
15 Mr. King and Mr. Deckard to present the
16 information regarding Orders 2011-436 through
17 2011-446 which adopts Campaign Finance Orders
18 in accordance with the enforcement actions
19 approved at the September 29th, 2011 commission
20 meeting.

21 **MR. KING:** Mr. Chairman, members of the
22 commission, copies of these orders are not
23 included in your binders. These reflect the
24 actions taken by the commission at the
25 September 29th, 2011 hearing, and I'd be happy

1 to answer questions that anyone might have.

2 CHAIRMAN DUMEZICH: Is there a motion to
3 approve Order 2011-436 through 446 as
4 presented?

5 VICE CHAIRMAN LONG: I so move, and I
6 would add to that as far as signatures, they be
7 affixed with a stamp.

8 CHAIRMAN DUMEZICH: Is there a second?

9 COMMISSION MEMBER BENNETT: Second.

10 CHAIRMAN DUMEZICH: Any discussion?

11 (No response)

12 CHAIRMAN DUMEZICH: If there's no
13 discussion, all in favor, say aye.

14 THE COMMISSION: Aye.

15 CHAIRMAN DUMEZICH: All opposed, nay.

16 (No response)

17 CHAIRMAN DUMEZICH: 4-0, the ayes have it,
18 and the motion's adopted. We've already
19 incorporated that motion with the use of
20 signature stamps. I take it that was for the
21 remainder of the orders, Vice Chairman?

22 VICE CHAIRMAN LONG: Yes.

23 CHAIRMAN DUMEZICH: Approval of forms. I
24 recognize Mr. Deckard and Mr. King to present
25 Order 2011-447 for the approval of election

1 forms.

2 MR. KING: Mr. Chairman and members of the
3 commission, 2011-447 is in your packets behind
4 the white tab. It includes the last four forms
5 I believe it will ask the commission to approve
6 before the 2011 Election Administrators
7 Conference in December. Two of the forms are
8 updates of the Absentee Ballot Application by
9 Mail Only to incorporate the dates for 2012
10 that apply to mailed applications. One is the
11 English version, one is the Spanish version.

12 CAN-34 is an updating correction of the
13 petition used for candidates for school board
14 to file. And the final form is IEC-7 which is
15 our request for Indiana Election Division
16 publications. It's been updated to reflect the
17 2012 publications of the committee.

18 CHAIRMAN DUMEZICH: For purposes of the
19 discussion, is there a motion to approve the
20 forms as presented?

21 VICE CHAIRMAN LONG: I move to approve the
22 forms as presented.

23 CHAIRMAN DUMEZICH: Is there a second?

24 COMMISSION MEMBER BENNETT: Second.

25 CHAIRMAN DUMEZICH: Okay. Any discussion

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1 by the members with respect to the forms in
2 Order 2011-447?

3 (No response)

4 **CHAIRMAN DUMEZICH:** Hearing none, all in
5 favor of the motion, say aye.

6 **THE COMMISSION:** Aye.

7 **CHAIRMAN DUMEZICH:** All opposed, nay.

8 (No response)

9 **CHAIRMAN DUMEZICH:** 4-0, the ayes have it,
10 and the motion is adopted.

11 Okay. We're going to have the
12 administration of oath of individuals
13 testifying before the commission. Mr. Simmons
14 is going to handle this. Everyone who is
15 present today and plans to testify before the
16 Indiana Election Commission regarding any
17 matter today including voting systems matter,
18 please stand for the administration of the
19 oath. Just so you're aware, there's going to
20 be an oath for the Lake County Redistricting
21 Commission. So if you're going to testify
22 before the Lake County Redistricting
23 Commission, you'll have your opportunity then.
24 This is only for the election board meeting.
25 Mr. Simmons.

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1 **MR. SIMMONS:** Raise your right hand and
2 say "I do" after the administration of the
3 oath.

4 (Participants complied)

5 **MR. SIMMONS:** Do you solemnly swear or
6 affirm under the penalties of perjury that the
7 testimony you are about to give is the truth,
8 the whole truth and nothing but the truth? Say
9 "I do."

10 **THE PARTICIPANTS:** I do.

11 **CHAIRMAN DUMEZICH:** We will first turn to
12 the MicroVote inquiry. Members, you will find
13 correspondence in your binders from
14 Mr. William Bock representing MicroVote
15 Corporation. In his letter dated November 11,
16 Mr. Bock has posed a question regarding
17 MicroVote's proposed sale of Infinity voting
18 system panels or other components of the
19 MicroVote Infinity 3.1 voting system. I
20 recognize Mr. Bock to present his inquiry to
21 the commission.

22 Mr. Bock, are you here?

23 **MR. SHAMO:** No, he's not.

24 **CHAIRMAN DUMEZICH:** Okay. And you are?

25 **MR. SHAMO:** Steve Shamo.

1 **CHAIRMAN DUMEZICH:** Please identify
2 yourself when you come to the mic. And you
3 took the oath as well?

4 **MR. SHAMO:** Correct.

5 **CHAIRMAN DUMEZICH:** Very good.

6 **MR. SHAMO:** My name is Steve Shamo,
7 S-h-a-m-o, I'm with MicroVote Corporation.
8 Essentially what has transpired over the last
9 five months we contacted the Indiana Election
10 Division with an inquiry and kind of position
11 of sorts that additional sale of the simple
12 MicroVote Infinity panel does not constitute or
13 violate the Indiana election law regarding the
14 sale of an entire voting system. The
15 definition of which the voting system being the
16 total combination of electrical, mechanical,
17 software, firmware, all of that combined thus
18 in the voting system.

19 Our position simply is that we have
20 several counties out there in Indiana right now
21 that through the extension of advanced voting
22 and in some situations additional precincting
23 have requirements for additional Infinity
24 voting panels. And it's our belief that the
25 original intention of that law was not to

1 essentially prohibit MicroVote from servicing
2 and supporting the customers by adding
3 additional components to the system, but rather
4 to keep the proliferation of a non-certified
5 voting system from spreading throughout the
6 county to other counties throughout the state.

7 So essentially our position is, our
8 request is for affirmation from the board prior
9 to selling an Infinity voting panel under those
10 circumstances to a county to make certain that
11 we're all on the same page and essentially
12 we're not stepping over a line or not saying
13 something. We feel our position is correct
14 based on the fact that if we were to submit
15 that individual panel to the Election
16 Assistance Commission for certification, they
17 would not recognize that panel into itself as a
18 voting system, but merely a component of an
19 already sitting and existing voting frame.

20 **CHAIRMAN DUMEZICH:** Thank you. Any
21 questions? Do we have any questions?

22 (No response)

23 **CHAIRMAN DUMEZICH:** I'd ask Mr. King and
24 Mr. Deckard for their opinion regarding the
25 MicroVote -- MicroVote's question.

1 MR. KING: Mr. Chairman, members of the
2 commission, I'll begin by calling your
3 attention to a draft memo in the binder, the
4 last document behind the blue MicroVote tab
5 which is dated October 28, 2011, a final draft
6 addressed to William Bock, counsel for the
7 MicroVote Corporation. This draft represents
8 the analysis by myself with the able assistance
9 of Dale Simmons regarding MicroVote's request
10 and the statutes that are implicated in that.

11 To summarize it, voting systems are
12 defined in state and federal law in a way
13 that's comprehensive set forth on page 3 of
14 this draft in that it's a combination of parts
15 that are used to define ballots, cast and count
16 votes, report and display election results
17 among other things. The individual component,
18 the Infinity VP-1 panel, does not in my opinion
19 constitute a voting system because it in and of
20 itself is not able to define ballots or set up
21 an election, and therefore would not be
22 separately certified.

23 The other statute that's implicated in
24 this question is the grandfather statute which
25 permits counties that had purchased voting

1 equipment before October 1, 2009 to continue to
2 use that voting equipment even though that
3 certification had expired so long as the system
4 complies with the applicable provisions of the
5 Help America Vote Act and this article. The
6 particular issue with the grandfather clause,
7 Indiana Code 3-11-15-13.3B is that the voting
8 system vendor may not market, lease, sell or
9 install a voting system described in this
10 subsection. And the extent of that activity
11 was the focus of MicroVote's question. I
12 believe that the statute was intended -- I
13 believe that the statute was intended to both
14 allow county customers to continue to use a
15 voting system that had proved to be
16 satisfactory and was in compliance with the law
17 but also not to allow uncertified voting
18 systems to be marketed in counties that were
19 not using the system prior to its lapse of
20 certification.

21 So based on that analysis, the draft
22 letter of October 28th in response to
23 Mr. Bock's inquiry indicates that MicroVote
24 would be permitted under Indiana law to sell
25 components of voting systems, in particular the

1 Infinity VP-1 panel, under the conditions that
2 I've discussed. And I'll be happy to answer
3 questions.

4 CHAIRMAN DUMEZICH: Mr. Deckard, do you
5 have anything to add to that, sir?

6 MR. DECKARD: Thank you very much,
7 Mr. Chairman. I would say that, first of all,
8 we want to thank Mr. Shamo and the folks at
9 MicroVote as well as Mr. Bock for their
10 diligence with the Election Division in
11 securing an opinion on this. We at the
12 division have reviewed this. I appreciate also
13 the work of Mr. Simmons and Mr. King in coming
14 to this. I relied very heavily on counsel to
15 advise me on whether or not I could affix my
16 signature to this opinion. Because of the past
17 discussion that has taken place before this
18 commission, I relied on counsel so that we
19 would know, No. 1, if we're proceeding
20 lawfully, and, No. 2, if it's acting in
21 accordance with past commission action. And
22 for that, I am going to defer to counsel now to
23 recall some past events in commission meetings
24 as in regards to this particular system.

25 MS. BARNES: Thank you, Mr. Chairman, and

1 members of the commission. As Trent alluded
2 to, MicroVote had appeared before the
3 commission back in 2007 and 2008, and the
4 commission had issued an order addressing a
5 very similar issue regarding the sale of
6 uncertified voting system equipment. And we
7 wanted to make clear up front that MicroVote's
8 voting system, the certification expired
9 October 1st, 2009, and a vendor has an
10 opportunity to renew that certification, but
11 the vendor has not undertaken that option. So
12 right now in 2011, MicroVote does not have any
13 certified voting system equipment available for
14 sale in Indiana.

15 And as Mr. Shamo brought up, there are two
16 components to this argument; whether or not the
17 VP-1 voting panel constitutes a voting system,
18 or whether it's only a component of a voting
19 system.

20 And then the second component of the
21 argument, as Mr. King talked about, is whether
22 the grandfather provision permits a vendor to
23 sell uncertified voting equipment to existing
24 customers, previously certified voting
25 equipment whose certification had expired.

1 And Mr. Deckard and I are mindful of the
2 situation that the counties are in. A number
3 of counties have had to expand the number of
4 precincts that they have, and with that they
5 will need either additional equipment, or they
6 will need to combine and consolidate polling
7 places. So we're mindful of that, but we're
8 also constrained by state statute.

9 The first argument that Mr. Shamo raised
10 is that the VP-1 voting panel is simply a
11 component of a voting system and not an entire
12 voting system. Both Mr. Simmons and I agreed
13 that that argument falls short on in that if
14 that were true, if a vendor could sell
15 components individually that could then later
16 be assembled in total to create a voting
17 system, then vendors would not need to come to
18 the state to the Election Commission for
19 certification of their equipment. There are
20 off the -- off the shelf pieces of equipment
21 that can be assembled to create a voting
22 system, but our general assembly, our
23 legislators, four of whom are sitting here
24 today, have told our vendors and told us and
25 the commission that they require that a vendor

1 come to the commission and prove that the
2 equipment tallies the votes properly and
3 tabulates the votes according to state and
4 federal law and also complies with the Help
5 America Vote Act.

6 So our concern was that even though the
7 VP-1 voting panel may not be all that it takes
8 to run an election, that it still is part of a
9 voting system that must be certified in order
10 to be sold and marketed and installed and used
11 in a county.

12 And then the other argument that -- the
13 grandfather provision would allow existing
14 customers to buy additional equipment. That
15 was what Mr. King referred to. And if you take
16 a look at the statute, it says that a voting
17 system vendor may not market, sell, lease or
18 install a voting system that has been sold to a
19 county, purchased by a county while it was
20 certified and whose certification has since
21 expired.

22 And so our concern is that in 2008, the
23 Indiana Election Commission issued a final
24 order to MicroVote, and in it a very detailed
25 factfinding by an administrative law judge that

1 this commission approved. It cited MicroVote
2 for selling and installing and allowing to be
3 used over 150 different one of these VP-1
4 voting panels. It's the panel that the voter
5 touches and casts their ballot on. They record
6 their results -- or the voter -- it's the panel
7 that the voter touches to record which
8 candidates they want to vote for, and this
9 panel tallies the votes at the end of the
10 night. The only thing the panel, to my
11 understanding, cannot do is program the ballot.
12 It takes a separate piece of equipment to
13 program the ballot.

14 And so our concern was that this
15 commission has addressed this issue before, and
16 that they during an administrative action had
17 sanctioned MicroVote for the sale of
18 uncertified VP-1 voting panels. There was a
19 second component to that for uncertified
20 software, for installing uncertified software.
21 That's not at issue before the commission
22 today. It's just the sale of these VP-1 voting
23 panels.

24 Mr. Deckard and I were concerned that the
25 division didn't have the authority to grant

1 permission to MicroVote; that we felt the
2 proper entity to grant authority was the
3 commission, and so we deferred on that to the
4 commission to make that determination.

5 CHAIRMAN DUMEZICH: May I ask you a few
6 questions --

7 MS. BARNES: Sure.

8 CHAIRMAN DUMEZICH: -- just so I understand
9 this. Right now Lake County has MicroVote,
10 correct?

11 MS. BARNES: Yes.

12 CHAIRMAN DUMEZICH: How many -- how many
13 machines does Lake County have?

14 MR. SHAMO: I believe 1,050, right in that
15 range.

16 CHAIRMAN DUMEZICH: Okay. And what is the
17 price of one of -- one of those machines?

18 MR. SHAMO: If it's a new one, it would be
19 \$3,150.

20 CHAIRMAN DUMEZICH: Quick math tells me
21 that's, what, \$3.2 million.

22 MR. SHAMO: Yes, sir.

23 CHAIRMAN DUMEZICH: So we have
24 approximately \$3.2 million worth of equipment
25 that continue to be used if no changes are made

1 to the machine, if there's no new panel, if
2 there's nothing required on that machine.

3 **MS. BARNES:** Correct.

4 **CHAIRMAN DUMEZICH:** And they continue to
5 be in place.

6 **MS. BARNES:** Yes, yes, and the county has
7 continued to use it and is permitted, legally
8 permitted to use it.

9 **CHAIRMAN DUMEZICH:** Okay. And if we would
10 find that this constituted a new voting system,
11 then at that point in time Lake County would
12 have to start replacing the machines, correct?

13 **MS. BARNES:** No, the county could
14 continue -- Mr. Chairman, the county could
15 continue to use the 1,000 and how many --

16 **CHAIRMAN DUMEZICH:** Until they -- until
17 they failed for the panels and things like
18 that, they would not be able to go in and
19 replace a panel on an existing machine that
20 would continue to be in use had it not been for
21 the failure of this panel.

22 **MS. BARNES:** The county could continue to
23 purchase equipment if the vendor had certified
24 equipment, and that was our opinion is that the
25 vendor has not applied for recertification.

1 **CHAIRMAN DUMEZICH:** So if -- if -- okay.
2 Any response?

3 **VICE CHAIRMAN LONG:** Could I ask a
4 question?

5 **CHAIRMAN DUMEZICH:** Certainly, sir.

6 **VICE CHAIRMAN LONG:** Why have they not
7 applied to be recertified if they want to sell
8 them?

9 **CHAIRMAN DUMEZICH:** Yeah, sure. Give your
10 testimony.

11 **VICE CHAIRMAN LONG:** That would be a
12 refreshing deviation from MicroVote's standard
13 operating procedure.

14 **MR. SHAMO:** This has been an ongoing
15 discussion, I think, for several years now, and
16 to kind of recap the past history of it,
17 essentially, recertification of this current
18 version, doing so from a business standpoint
19 and for a customer standpoint, the
20 certification of -- recertification of this
21 current version essentially would require
22 several hundred thousand dollars to go forward;
23 however, it still would not be recognized by
24 the Election Assistance Commission on the
25 federal level to meet the highest standards of

1 testing. Essentially, Indiana Election
2 Division would accept a standard subpar to the
3 federal division if we certified on that
4 platform.

5 The other option is to certify it at the
6 higher level. The higher level certification
7 has already been achieved. That certification
8 is 4.0B, whatever the term is, essentially has
9 been achieved as the first one in the nation to
10 exceed that standard. However, the requirement
11 of putting that into place falls back as a
12 financial responsibility of each and every
13 county in Indiana because it's not just a
14 simple matter of going in and putting in more
15 software. Each and every panel will need to be
16 physically upgraded at a cost of about \$150 per
17 panel plus additional software costs.

18 So essentially a county like Lake County
19 would be mandated through this process to pay
20 us about 180,000 to \$200,000 to upgrade their
21 voting system if we reapplied with the
22 new higher current standard. The other
23 standard, which in my opinion is irrelevant
24 because it doesn't meet any federal standard,
25 which is why you're having this discussion,

1 that you adopt the federal testing standards as
2 your highest platform.

3 VICE CHAIRMAN LONG: Isn't this part of
4 the same system that you all are under sanction
5 for at the present time for selling that was
6 not certified?

7 MR. SHAMO: The version, yes.

8 CHAIRMAN DUMEZICH: Okay. Mr. King, any
9 comment?

10 MR. KING: Mr. Chairman, members of the
11 commission, just to add briefly, we do
12 appreciate hearing the more specific thoughts
13 of our counterparts. We had not received those
14 prior to the meeting. I think the issue
15 involves a bigger policy question regarding
16 MicroVote's enforcement action which is ongoing
17 in its application until June 30th, 2013. The
18 statutory question involves the definition of
19 voting system, and as I think I indicated
20 earlier, both of us appear to agree on staff
21 level that the Infinity panel by itself is not
22 a voting system and therefore not specifically
23 addressed in the grandfather statute that was
24 quoted earlier.

25 CHAIRMAN DUMEZICH: Okay. You know, I see

1 Co-Directors of the Lake County Election Board,
2 Sally LaSota and Nick Gasparovic. Do you guys
3 have any comment on this? Would you like to
4 give any testimony or opinion on what you think
5 should be done in light of the fact that this
6 is a thousand pieces of equipment that reside
7 under your jurisdiction?

8 MS. LASOTA: I'm Sally LaSota, the
9 director. We've always had good results with
10 the MicroVote machines with tallying at night.
11 I don't know if the state knows, but we've had
12 good results, and we have not had very many
13 issues that I'm aware of from our inspectors or
14 any of the voters with the system.

15 CHAIRMAN DUMEZICH: Mr. Gasparovic.

16 MR. GASPAROVIC: Yeah, Nick Gasparovic
17 with the Board of Elections. We've had very
18 good results with MicroVote. The equipment has
19 held up as long as we've had it, and it's been
20 performing very well. We do need some
21 additional machines as well, and we're looking
22 at purchasing some in the future so --

23 CHAIRMAN DUMEZICH: You realize you can't
24 purchase these machines anymore.

25 MR. GASPAROVIC: We understand, yes.

1 **CHAIRMAN DUMEZICH:** Okay. Is there anyone
2 else in the audience that would like to comment
3 on MicroVote?

4 **VICE CHAIRMAN LONG:** Can I ask a question
5 again?

6 **CHAIRMAN DUMEZICH:** Certainly.

7 **VICE CHAIRMAN LONG:** I'm the least
8 technical of everybody. That's why if I can
9 understand it, I'm sure everybody does. Is
10 this like a SIM card in a phone? I mean is
11 this a panel? What is it? What is it? What's
12 it do, or why do they need one? Why do they
13 need to buy some? Are the others broke or wore
14 out, or are you expanding the number of
15 operational voting stations? What's going on
16 that requires you to come in here to ask for an
17 opinion that you can sell something that's a
18 part of a system that's uncertified?

19 **MR. SHAMO:** The panel itself, albeit it is
20 a major component of the voting system, it's
21 the interface that the voter uses to vote on.
22 Personally, I don't feel that --

23 **CHAIRMAN DUMEZICH:** It's a touch pad,
24 right.

25 **MR. SHAMO:** Yeah, it's the actual voting

1 machine itself. Personally, with my experience
2 in elections, I don't feel it's the primary
3 component in that -- that's not what MicroVote
4 hangs their hat on. Out hat's hung on our
5 software and our firmware that tells that
6 machine how to behave in an election situation.

7 To answer Mr. Long's question, again, the
8 need for additional equipment through the
9 expansion of the walk-in absentee voting being
10 the primary reason, what happened was that many
11 of these counties had bought this system prior
12 to that law being allowed -- or that process
13 being allowed; therefore, they have since
14 pirated precinct level machines to accommodate
15 that service, thus leaving the precinct level
16 voting a little bit lax in terms of number of
17 machines that's needed such is the case in this
18 county and several others.

19 I do want to add, however, the reason why
20 we came to this position in terms of my
21 position that this is merely a component of
22 expansion of the system within the county's
23 parameters is our old voting machine, blue
24 MV-464, I could not make this argument before
25 because it was a standalone voting system. I

1 could walk up to that and manually program it
2 and conduct an election on site with that unit.
3 This unit unto itself is a paperweight until
4 the firmware, software and all the other
5 elements tell it what to do.

6 **CHAIRMAN DUMEZICH:** Okay. Just to further
7 complicate this, I ask that representatives of
8 Voting System Technical Oversight Program,
9 VSTOP, come and address any issue they have
10 regarding the question and give us any input
11 that we may find helpful.

12 **DR. SCHEELE:** Sure. Thank you,
13 Mr. Chairman, Commissioners, my name is Ray
14 Scheele, S-c-h-e-e-l-e, and I'm with the Voting
15 System Technical Oversight Program, VSTOP, as
16 we call it, at Ball State University. The
17 history that you have been given is the same
18 history, and I won't repeat that. When VSTOP
19 came on board back in 2007, or actually 2008,
20 late 2008, one of the -- I think it was the
21 second system we evaluated was this system,
22 and, of course, we did not have the VSTL
23 reports, the lab reports, because one lab had
24 gone out of business and it had only provided
25 fragmentary information, so we simply were not

1 in a position and we still are not in a
2 position to make a recommendation on that
3 system because we have no test results.

4 With respect directly to the panels that
5 are under discussion today, we have an ECO
6 provision that the commission has adopted, an
7 engineering change order, as it's called, which
8 is a modification to a voting system. The
9 definition of an ECO, it can be either
10 de minimus, meaning that it has no real core
11 functioning to the system, or it can be a major
12 modification at which point we should test it.

13 We have not seen these panels, so we do
14 not -- we have no evidence of this, but if it
15 is a major modification that goes to the core
16 functioning of a voting system, then it should
17 fall underneath the ECO provision, and it
18 should be tested in a testing lab that's
19 certified by the federal government, and
20 likewise it may have to be tested by VSTOP as
21 well, according to the state provisions. But
22 since we have not seen the panel and the other
23 components that have been discussed today,
24 that's all we can say.

25 CHAIRMAN DUMEZICH: Do you believe the --

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1 the -- well, let me think of a nice way to
2 phrase this. Certain things were said with
3 respect to whether or not this operates as an
4 independent unit whether or not the software is
5 included. Would you agree with Mr. Shamo's
6 analysis that this particular component could,
7 in fact, be considered almost like a spherical
8 piece of equipment that doesn't -- doesn't
9 affect the voting?

10 **DR. SCHEELE:** I'm really not in a position
11 to answer that since we haven't seen the panel;
12 however, it is the touch screen that the voter
13 must touch in order for the vote then to be
14 recorded by the software interface so...

15 **CHAIRMAN DUMEZICH:** For me, I mean, if
16 it's the touch screen and if it just picks up
17 the finger giving the depression, it's one
18 thing. If it actually does something past
19 that, it seems to me it becomes more a part of
20 the system. And what you're saying is since
21 you've not seen this piece of equipment, you
22 can't say it's merely a receptor for the touch.

23 **MR. STEELE:** Correct. Correct. And I
24 think my two colleagues are with me, Dr. Jay
25 Bagga, who's the Co-Director of VSTOP, as well

1 as Joe Losco. And if you have anything, Jay
2 may have just a quick addition to this.

3 DR. BAGGA: Thank you. Jay Bagga,
4 B-a-g-g-a. I'm co-director of VSTOP, professor
5 of computer science at Ball State University.
6 Yes, we agree that the DRE is a receptor, but
7 there is software behind it, and so we haven't
8 seen the version of the software that's in
9 there.

10 CHAIRMAN DUMEZICH: Okay. Thank you.

11 MR. SHAMO: May I add something, sir?

12 CHAIRMAN DUMEZICH: Certainly.

13 MR. SHAMO: I believe that last testimony
14 kind of sidestepped what we're actually talking
15 about. We're not making a change to the voting
16 system. We're simply adding additional units
17 that are already in place to the overall voting
18 system. There hasn't been any sort of change
19 done to the certification. The reason why the
20 system is even used at this point is that, yes,
21 it did, in fact, pass federal certification.
22 It had passed federal certification at a point,
23 and it's the same version that had been passed
24 at that time.

25 CHAIRMAN DUMEZICH: And so this piece that

1 you're putting in is physically identical to
2 the broken piece that you are removing?

3 **MR. SHAMO:** Yes, yes. It is the exact
4 same component.

5 **VICE CHAIRMAN LONG:** I didn't gather that.
6 I thought we're putting on more voting stations
7 and not replacing broken parts. Now which is
8 it? Are you buying new voting stations, or are
9 you replacing something that's broken?

10 **MS. LASOTA:** It's not broken. We're just
11 getting a lot of additional ones so voters can
12 go vote at more places, especially next year.

13 **VICE CHAIRMAN LONG:** And that's a big
14 difference in my mind, you know, and I'd
15 like to -- I haven't seen Sally and Rick since
16 we came up here for the infamous pre-primary
17 and how impressed I was with your all's
18 operation. And I will say as a point of
19 personal privilege, I'm honored and very happy
20 to be back in Lake County, and hopefully the
21 Chair will call meetings up here periodically
22 in the future because we like coming up here.

23 **CHAIRMAN DUMEZICH:** Well, we'll do the
24 next one up here then.

25 **VICE CHAIRMAN LONG:** Therein lies my

1 problem. If it were -- if you got a piece or a
2 segment that's broke and they're repairing it
3 and replacing it because of, I mean, it's just
4 worn out, broken, whatever, I don't have as
5 much problem with that. But this is they're
6 coming in selling to you new voting stations
7 that have software, hardware implications, and
8 that causes me grief. I just think it needs to
9 be certified.

10 **CHAIRMAN DUMEZICH:** Yeah, I -- exactly the
11 same thing. In other words, if we are
12 replacing an interface because that interface
13 has been damaged because of transportation, I
14 don't have any problem with that. But the
15 actual sale of a new system, a new standalone
16 system that comes in, even though it's
17 identical to the existing system --

18 **MR. SHAMO:** It's not a system, though.
19 It's a component of a system. I mean I think
20 it's -- it sounds like a technicality, but if
21 another person sat at this table here, and they
22 needed an election code book, I would give them
23 an exact copy of that Indiana election code
24 book to expand the discussion and the
25 utilization of that book. I wouldn't give them

1 two years ago version of it. See what I mean?
2 That's --

3 **VICE CHAIRMAN LONG:** My problem, as candid
4 as I can be, Steve, and we've known each other
5 for a long time.

6 **MR. SHAMO:** 20 years, I think, it is at
7 this point.

8 **VICE CHAIRMAN LONG:** I've been on this
9 commission probably longer than I'll admit.
10 The reality is your company is quite loose with
11 the rules that we operate and we have. We're
12 honored and fortunate to have the Ball State
13 team here that have given us great guidance,
14 and unless and until they sign off on this that
15 this would be something that I would have no
16 concern of, there's no way I could ever vote
17 for the position you --

18 **MR. SHAMO:** I personally feel it's a
19 separate issue, though. This is not a
20 certification issue. This is a component issue
21 that clearly passes both hurdles of the
22 grandfather clause and the other. Now, Ms.
23 Barnes, your argument of whether or not if I
24 came into a county and sold -- if that's the
25 only hurdle on this is that if I came in and

1 sold them 50 components and then gave them a
2 manual and let them operate, if that's the only
3 hurdle and you need validation from us that
4 that is not essentially what we're doing in the
5 process nor would we take it to another county,
6 that can be had. To me that sounds like the
7 only hurdle in your discussion is that the
8 grandfather clause still allows us to support
9 our customers by -- I mean let's say they lose
10 a power cord. Do I throw that voting panel
11 away, or can I sell them a power cord? If the
12 screen goes out on a panel, can I sell them the
13 screen?

14 **CHAIRMAN DUMEZICH:** Absolutely.

15 **MR. SHAMO:** Under this discussion, we
16 can't. You know what I mean by that? That
17 would be a component. I could sell them the
18 screen, the motherboard, the panel, the cord,
19 and let them assemble the voting machine, and
20 we're right where we're at with your
21 discussion. See what I mean? So we're saying
22 the same thing differently. But I believe, and
23 I firmly believe that this is merely a
24 component expansion, and I don't believe that
25 the intent of the court order or the law was to

1 prohibit a county from being able to keep using
2 their voting systems, which is essentially why
3 it was put into place with the Optech readers
4 down in Brown County and various other counties
5 to let the vendor -- to let another vendor step
6 in and support and maintain a system.

7 **CHAIRMAN DUMEZICH:** We have quite a few
8 elected officials -- oh, I'm sorry, Sarah, do
9 you have...

10 **COMMISSION MEMBER RIORDAN:** I just have a
11 couple questions.

12 **CHAIRMAN DUMEZICH:** Sure.

13 **COMMISSION MEMBER RIORDAN:** I mean if you
14 want to sell power cords, I don't think anybody
15 here is going to stop you, and with all due
16 respect, I think the actual equivalent of a
17 ballot, if you will, for a voter who comes to
18 cast his or her vote, the screen that they
19 touch, I mean, I understand that you have a
20 position on whether that constitutes a system
21 or not, but our job is to make sure that
22 everything that a voter comes in contact with
23 with electronic voting systems is fair and has
24 passed muster under the applicable statutes.
25 And so this one is not as simple as a power

1 cord.

2 MR. SHAMO: However --

3 COMMITTEE MEMBER RIORDAN: That being
4 said, what happens if we do not let them sell
5 you these new pieces of equipment? What
6 happens if we say no? Where does that leave
7 the counties, particularly Lake because you're
8 here.

9 MS. LASOTA: When they go down, they go
10 down, and you use what you have. And what
11 happens if they all burn out, then what do you
12 do?

13 COMMISSION MEMBER RIORDAN: What is going
14 to happen in May? What happens in May if you
15 don't get this? I mean the way I'm sort of
16 looking at this, the technical stuff aside,
17 this is like I have a set of 8 dinner plates,
18 but I'm going to have 15 people for
19 Thanksgiving, so I need 15 dinner plates,
20 right? Do you have to have 15 dinner plates
21 for May?

22 MS. LASOTA: Yes. We have over 300,000
23 registered voters, and they're all going to be
24 coming out.

25 COMMISSION MEMBER RIORDAN: And did you

1 not have enough last week?

2 MS. LASOTA: No, we had plenty last week,
3 but only 22 percent came out to vote.

4 COMMISSION MEMBER RIORDAN: Okay. So
5 you're just not going to have enough equipment
6 in May, so you've got to have this new
7 equipment.

8 MS. LASOTA: Right. If we're going to do
9 early voting at the sites we want to do it at,
10 if something happens, if something goes to
11 court, you have to pull all these machines back
12 and you can't reuse those, and they have to sit
13 in our ballot room until they get tallied on
14 election night. So you have to have enough
15 equipment on reserve to do new ballots like we
16 did in the primary with the mayoral race, but
17 they had to be replaced in all six sites that
18 we had.

19 COMMISSION MEMBER RIORDAN: Okay. And
20 what's the timeline? When do you have to have
21 that stuff?

22 MS. LASOTA: As soon as we open for early
23 voting, 29 days before election, so we're
24 looking maybe at March.

25 COMMISSION MEMBER RIORDAN: March. Okay.

1 So here's my next question: Do you agree with
2 that, you've got to have this stuff by March;
3 do you agree with that?

4 MR. GASPAROVIC: I agree we need more
5 equipment for the presidential primary in
6 general for next year, yes.

7 COMMISSION MEMBER RIORDAN: Okay. So you
8 mentioned before that if we require that it
9 goes through certification, it's going to cost
10 hundreds of thousands of dollars. It's not
11 entirely clear to me where that money has to
12 come from, so can you explain that one more
13 time.

14 MR. SHAMO: Well, ultimately, it would
15 come from the customers. I mean that's where
16 our money comes from.

17 COMMISSION MEMBER RIORDAN: Is that
18 because you pay the cost of it, and then you
19 pass it on?

20 MR. SHAMO: Well, that's how we pay our
21 bills, yeah. We have customer --

22 COMMISSION MEMBER RIORDAN: I understand.

23 MR. SHAMO: But now let's make one thing
24 clear. This is a certified voting system in
25 the State of Indiana. It has been certified.

1 That's why it applies under the thing --

2 CHAIRMAN DUMEZICH: The grandfather
3 clause.

4 MR. SHAMO: Yeah, it's been grandfathered.
5 Many people have spoken as if we're coming to
6 you with a certification that they have not
7 met. And remember that the only reason that
8 VSTOP hasn't been able to pass, and the reason
9 why they haven't sent a recertification, not a
10 certification, a recertification of the system,
11 is the lack of the federal report, which
12 Dr. Scheele addressed, briefly addressed.
13 Again, that report is not a requirement of the
14 State of Indiana. The State of Indiana does
15 not require the report. They prefer the report
16 and refer the recommendation of VSTOP. VSTOP
17 does not certify a voting system, this
18 commission does. There's nothing prohibiting
19 this board from certifying the system as it
20 stands today with the exception of the
21 preferred opinion of VSTOP.

22 That said, I'm going to back up one
23 second. This is a certified voting system
24 that's currently been in use since the early
25 '90s by 47 counties that are merely looking to

1 add additional pieces of equipment to an
2 existing system, not the reapplication of
3 certification, not a new certification and not
4 a different system in any way, shape or form,
5 that has been used successfully for nearly 20
6 years.

7 VICE CHAIRMAN LONG: I'm prepared to make
8 a motion on --

9 CHAIRMAN DUMEZICH: Let's hear from Mr.
10 Scheele, and I want to make sure everybody that
11 wants to make a comment has an opportunity.

12 MR. LOSCO: My name is Joe Losco,
13 L-o-s-c-o, from VSTOP at Ball State. Mr.
14 Chair, commissioners, just two additional
15 points I wanted to make. One is that under the
16 policies adopted by this commission, even
17 things that are really quite minor have had to
18 undergo scrutiny by VSTOP and sometimes labs.
19 Even things as simple as a change in the
20 markings on the equipment themselves, a change
21 in the color of a wire, all of these are
22 considered changes to the system and have to
23 undergo scrutiny to make sure that they
24 conform.

25 The second point I would make is that the

1 last time when we looked at the system for
2 recertification, there was a question about the
3 lab reports. It was my recollection, and I may
4 be wrong here, that the commission certified
5 the system with a requirement that that lab
6 report be forthcoming. I'm not sure if that
7 lab report is available now. We certainly
8 would entertain looking at it and making sure
9 that the new panels are identical to those that
10 have gone before.

11 **MR. SHAMO:** So what change are you
12 referring to? We're not applying for a change
13 to the system in your first -- in the first
14 thing mentioned. You're saying that you look
15 and scrutinize even the most de minimis change
16 where this is not a change in any way, shape or
17 form.

18 **MR. LOSCO:** Again, this commission has
19 looked at any component transfer to a voting
20 system as something that undergoes scrutiny.

21 **MR. SHAMO:** This is not a transfer. This
22 is --

23 **CHAIRMAN DUMEZICH:** I think he's
24 discussing --

25 **MR. SHAMO:** This is not any of this.

1 **CHAIRMAN DUMEZICH:** Excuse me. What I
2 think he was doing was he was -- he was
3 explaining the degree that they review the
4 equipment to give us a feeling on this. You
5 know what, we've got a lot of elected people
6 here, and there are a lot of people that want
7 to talk. So first of all, is there any elected
8 official that has an opinion on this that
9 they'd like to share with us.

10 Okay. Fine. Mr. Hero.

11 **MR. HERO:** Joe Hero, St. John, Precinct
12 Committeeman. The November 2010 election in
13 Lake County, there was massive vote suppression
14 because of a lack of adequate voting machines.
15 If you looked at Munster 24, the lines were out
16 the door. If you calculate how many people can
17 vote on one voting machine in the 12-hour
18 period, it was physically impossible for them
19 to vote. Many people left. If you put a
20 constraint on not being able to repair the
21 machines, you take further machines away. And
22 one of the causes in Lake County, because
23 they've expanded to satellite voting, those
24 consumed machines were then out of the picture.
25 Candidates who we supported suffered from this,

1 didn't get votes, because it happened in many
2 areas. You can blame the size of the building
3 and other things. But basically if you do a
4 calculation on how many people can vote on one
5 machine, you'll find out there wasn't enough
6 voting machines in Lake County because they
7 took the ten spares, I think it was ten, and
8 they put them in the early voting centers. And
9 the way the statute read, they could not bring
10 in provisional ballots for that because all the
11 individual machines were functioning.

12 So I would be against any constraint in
13 being able to repair the existing machines. I
14 think the county has to have the ability to buy
15 new machines, whether it be that machine or
16 another machine, because this was a township
17 election -- or this was a municipal election;
18 the townships weren't included. So you didn't
19 see the impact in these municipal elections.
20 But in the last county elections, you saw it,
21 and in the presidential elections where you'll
22 have a bigger turnout, it will be more severe
23 because we've opened the early voter centers.
24 So I urge you, Commissioner --

25 CHAIRMAN DUMEZICH: Thank you for your

1 comment. Thank you. Anyone else? Okay.

2 MS. FAJMAN: I am Michelle Fajman. I am
3 the Lake County Recorder, and I am a past
4 election administrator for over 20 years. In
5 the presidential election, we had lines whereas
6 voters would come into our Gary office at 4:00
7 o'clock and be in the building before 4:00 and
8 not be able to finish casting their vote until
9 after 10:00 o'clock at night. There was
10 extremely long lines in the government center.
11 If you've ever been in our Lake County
12 Government Center, the line went all through
13 the building, up the stairs, down the hallway
14 and almost out to Main Street. We had
15 thousands of people who waited hours and hours
16 and hours to vote. Lake County is in dire need
17 of more voting machines. Next year we will
18 have a larger turnout, so I do not want to see
19 us hindered by not being able to purchase
20 additional voting machines.

21 CHAIRMAN DUMEZICH: Okay. Thank you. I'd
22 entertain a motion from --

23 VICE CHAIRMAN LONG: Yes, sir. In
24 preference to it, you know, my feeling is this
25 commission has always gone the extra mile, they

1 had the extra meetings to do what we need to
2 protect the counties and the voters in the
3 conducting of elections. We're faced here with
4 a situation that you have a vendor that has
5 chosen not to seek a renewal of the
6 certification of the equipment that they sold
7 you, and if you need to buy new machines and go
8 bigger system, you know, you need to take that
9 up with your vendor.

10 My feeling is on this particular issue --
11 and this has nothing to do with repair of
12 broken equipment. I mean that's not the issue
13 in this case. They can fix, if you break
14 something, you can replace that.

15 My motion is is that this whole issue be
16 submitted to VSTOP. That's what for years I've
17 argued that we needed professional people to
18 advise us on these issues. They have never
19 seen this equipment. It is a very simple de
20 minimis fee of \$1500 to go through that
21 process. And this isn't a several hundred
22 thousand dollar recertification. This is a
23 referral to VSTOP for an opinion and guidance
24 to the commission. And my motion is that we
25 refer it to them in the normal course of

1 business for them to review and report back to
2 us their position with regard to this
3 particular transaction.

4 **CHAIRMAN DUMEZICH:** Do I hear a second to
5 the motion to direct MicroVote to submit this
6 particular -- I don't want to say piece of
7 equipment --

8 **VICE CHAIRMAN LONG:** Equipment.

9 **CHAIRMAN DUMEZICH:** Yeah, request to VSTOP
10 for equipment. Do I hear a second to that
11 motion?

12 **COMMISSION MEMBER RIORDAN:** I'm going to
13 second for purposes of discussion.

14 **CHAIRMAN DUMEZICH:** Hearing a second, any
15 discussion?

16 **COMMISSION MEMBER RIORDAN:** So we're not
17 requiring this system to be recertified. What
18 we are basically saying is that we want the
19 folks at VSTOP, who we trust, to take a look at
20 it, and we want MicroVote to cooperate with
21 them so that we feel comfortable.

22 **MR. SHAMO:** To look at the system, or the
23 statute?

24 **CHAIRMAN DUMEZICH:** No, they're not going
25 to look at the statute.

1 **COMMISSION MEMBER RIORDAN:** What do you
2 mean by that exactly?

3 **MR. SHAMO:** It's a statute issue, not a
4 machine issue.

5 **CHAIRMAN DUMEZICH:** Well, with every
6 statute issue, one has to be aware of the
7 facts, and right now we don't have a clear -- a
8 clear indication of the facts. And what I'd
9 like to do is get somebody that's a
10 professional. I agree with Tony in the second
11 on this. I agree with Tony that what we need
12 to do is have factual development of this so we
13 can actually understand the issue in a
14 meaningful way to apply the statute to it.

15 **COMMISSION MEMBER BENNETT:** I guess my
16 question would be how quickly can VSTOP look at
17 this and get an answer to us and will that
18 delay the resolution of the matter beyond
19 what's practically appropriate based on the
20 upcoming election.

21 **VICE CHAIRMAN LONG:** I think we'd have to
22 defer to --

23 **CHAIRMAN DUMEZICH:** VSTOP, how long will
24 it take you if MicroVote comes to you with
25 this?

1 DR. SCHEELE: It just depends on whenever
2 we can get the equipment and then the
3 performance to be scrutinized, and then we can
4 move pretty rapidly.

5 CHAIRMAN DUMEZICH: You understand that we
6 are not -- we have no problem with replacing
7 broken equipment on existing machines. That's
8 not an issue.

9 DR. SCHEELE: We understand that.

10 CHAIRMAN DUMEZICH: And certainly we don't
11 want to have any voter disenfranchised. We
12 always want to make sure that there's enough
13 equipment to go around, but I think that's a
14 second question that we're going to have to
15 deal with as well.

16 I mean from my standpoint, I see that Lake
17 County is approximately 485,000. It's been at
18 485,000 people for quite a while. I think the
19 addition of the vote centers does cause an
20 additional use of resources, but at the end of
21 the day, we should be able to deal with the
22 machines that we have if they are all repaired
23 and all in good shape. So let's see if we can
24 get to that level first and then make a
25 determination on whether sales past that would

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1 be appropriate in light of the situation.

2 VICE CHAIRMAN LONG: I mean it seems to me
3 as a part of the discussion that we're dealing
4 with, a big issue here that the vending -- a
5 vendor could allow certification just by
6 operation of time to expire without going
7 through the process of renewing it and then
8 continue to sell that system in Indiana to
9 existing customers notwithstanding its
10 non-certification, and I don't think that's in
11 compliance with the law, period.

12 MR. SHAMO: It's not with a system, sir.

13 VICE CHAIRMAN LONG: And I don't care what
14 you say. You know, we used to operate -- we
15 used to operate, Mr. Shamo, based pretty much
16 on the representations of the vendors, and we
17 had operated for years, just basically that's
18 what it was. And I have learned in the years
19 that I'm not comfortable doing that anymore.
20 So that's why we have, and I applauded -- and
21 as a Democrat, I'm applauding Todd and to all
22 repeated efforts that he did along with members
23 of the Election Division to get VSTOP in
24 operation here because this was something we
25 needed, and until they -- I want to hear them

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1 because I am really concerned that as Lake
2 County grows, you may want to sell another 200
3 machines up here with all the tabulable -- this
4 is just the same thing, and as long as I've got
5 a vote, that isn't going to happen. So if
6 you're going to sell a lot of these things
7 here, my advice is to get your system certified
8 and sell certified equipment in Indiana. Your
9 certification has expired, period.

10 (Applause)

11 **MR. SHAMO:** So to make that -- if that --
12 I won't even comment on that. My question is
13 so we are to submit to VSTOP the letter before
14 you, and the question to them is merely can we
15 add an additional machine in the county?

16 **CHAIRMAN DUMEZICH:** No.

17 **VICE CHAIRMAN LONG:** No. The motion is --
18 excuse me. The motion is to let them look at
19 your -- you give them the -- whatever they ask
20 you for, you -- you count on my vote, you'd
21 better give it to them.

22 **MR. SHAMO:** They have reviewed this
23 equipment before, just for the record.

24 **VICE CHAIRMAN LONG:** Well, they say --
25 they must have forgotten it, because they say

1 they haven't.

2 **MR. SHAMO:** We spent a day at Ball State
3 with them, and they reviewed the equipment.

4 **CHAIRMAN DUMEZICH:** Lets spend another day
5 at Ball State.

6 **MR. SHAMO:** To simply ask again, I want to
7 know what I'm taking to them. Am I asking them
8 the simple question, does the addition of an
9 additional machine to an existing system --

10 **CHAIRMAN DUMEZICH:** Component.

11 **MR. SHAMO:** Does an additional component
12 to an existing system change the system; is
13 that all I'm asking?

14 **CHAIRMAN DUMEZICH:** Yes.

15 **VICE CHAIRMAN LONG:** No, you're asking --

16 **COMMISSION MEMBER RIORDAN:** Why don't
17 you -- why don't you take up to them what you
18 would take to your new customer or what you
19 would take to me if you wanted to show me how
20 it works.

21 **MR. SHAMO:** Yes, but the question I'm
22 asking is, again --

23 **COMMISSION MEMBER RIORDAN:** And just
24 demonstrate it.

25 **MR. SHAMO:** -- what are they reporting

1 back to you? Yes, I can add one more machine
2 to the system, and it doesn't change --

3 **VICE CHAIRMAN LONG:** Let them worry about
4 what they report back. My advice to you is
5 whatever they ask for, you give it to them.
6 And if you want to wait until another meeting
7 to debate that with us, that's okay with me. I
8 mean you're the one that's apparently on the
9 bubble, and you got a customer here. I'd do
10 what VSTOP wanted the most and fastest.

11 **MR. SHAMO:** And I apologize if I sound
12 disrespectful, Tony. We go back a long ways.
13 And I wanted this so you can get to the reason
14 why all the people are here. We did get on
15 this agenda so --

16 **CHAIRMAN DUMEZICH:** Well, that was because
17 we thought it was appropriate to put you on the
18 agenda because Lake County is one of the
19 largest users of this machine. I mean, you
20 know, that's what it comes down to. So what do
21 you got, 43 counties using this?

22 **MS. FAJMAN:** '7.

23 **CHAIRMAN DUMEZICH:** 47 counties. So, I
24 mean, you know, this is a very, very
25 significant statewide issue. One of the things

1 that we have worked very hard is to make sure
2 that people have the opportunity to come before
3 us and get things like this done so we don't
4 have disenfranchised voters. It's critical to
5 us.

6 Yes, sir.

7 **MR. REPAY:** Mr. Chairman, County
8 Councilman Mike Repay. It occurred to me if
9 there's 47 counties using this system, how come
10 these guys have never looked at it before?

11 **CHAIRMAN DUMEZICH:** They have looked at it
12 before, but the question is in the current
13 iteration have they looked at it.

14 **VICE CHAIRMAN LONG:** VSTOP was not a part
15 of the system when this system was originally
16 certified. That's why the system, the voting
17 system -- too many systems here. The voting
18 system that you all use was certified back in
19 the day before VSTOP scrutinized them. And
20 that's one of the issues that I really
21 am puzzled with, and I've been on here for 13,
22 14 years. I always said I'm voting to approve
23 systems that I don't understand. I had asked
24 what this panel was. These folks know what
25 they are, how they work, and they can tell us

1 the technical expertise that we lacked for many
2 years, and I, for one, am going to stay with
3 them.

4 **CHAIRMAN DUMEZICH:** And Councilman Repay,
5 this machine has been at VSTOP before, to
6 answer your question.

7 **COMMISSION MEMBER BENNETT:** I do think
8 it's important that we help VSTOP understand
9 what the question is that we want to be
10 answered. Is that question whether this
11 component panel constitutes a voting system?

12 **CHAIRMAN DUMEZICH:** What I would like them
13 to hear -- give us are the facts with respect
14 to what they propose to sell to counties,
15 whether they're looking at panels, is it simply
16 a touch screen, is it something behind the
17 touch screen, at what point would -- in their
18 mind, at what point -- how many components does
19 it take to be a new machine, a new voting
20 station. See, I see a voting station as a
21 system. That's the semantics that are being
22 played here. See, they sell a machine, okay,
23 that cost \$3,000. I see that as a voting
24 system. Okay. They would argue that the
25 system is the thousand machines. Okay.

1 **VICE CHAIRMAN LONG:** And all the counters
2 and all the printers and everything.

3 **CHAIRMAN DUMEZICH:** Yeah. But in terms of
4 interpreting the Indiana statute, okay, I'm not
5 bound by that, and I want to be able so that I
6 understand the facts to make a determination
7 with respect to the Indiana statute.

8 Senator?

9 **SENATOR ROGERS:** I'm Earline Rogers.
10 That's the question I was going to ask. It
11 sounded as though there was some difference of
12 opinion in regards to the interpretation of the
13 statute, and I was wondering, I know Sue was
14 saying she chairs our election committee in the
15 senate, whether or not we, as legislators, need
16 to take a look at that and maybe get some
17 clarifications back to you, or is there a need
18 for us to revisit that statute and make it
19 easy?

20 **VICE CHAIRMAN LONG:** Maybe.

21 **CHAIRMAN DUMEZICH:** Maybe.

22 **COMMISSION MEMBER RIORDAN:** And maybe even
23 the whole election code, actually.

24 **CHAIRMAN DUMEZICH:** That's not going to
25 happen.

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1 **SENATOR ROGERS:** Sue, you can step in now.

2 **CHAIRMAN DUMEZICH:** After Senator Rogers
3 got you close to the bus, somebody pushed you
4 underneath.

5 Yes, sir.

6 **MR. WHITE:** My name is Kenneth White. I
7 have two questions or concerns. One is, is it
8 possible to take the existing -- using
9 machines to -- machine, and I won't get on
10 semantics, because I know we talked about
11 technology and semantics here as a challenge,
12 but what's being used now to what they're
13 proposing if they were to send a new one and
14 let -- is it VSTOP?

15 **CHAIRMAN DUMEZICH:** Yeah.

16 **MR. WHITE:** -- contrast any difference in
17 those machines to see is there a deviation or a
18 difference that's severe enough to warrant
19 continued discussion, or is it just a minor
20 modification? The other question I have is is
21 it possible, since we see this dilemma
22 approaching, if we can't reach that March
23 deadline, is it possible to expand the early
24 voting window and begin to educate the voting
25 populace. Now, I'm a neophyte in this room

1 here so...

2 VICE CHAIRMAN LONG: Those are legitimate
3 questions, very legitimate questions. We can't
4 expand the early voting times. Locally is when
5 the education process takes place. But the
6 biggest problem I have is somebody -- and we're
7 going to have to know. We're going to have to
8 figure out what a system is, and maybe we do
9 need some legislative help here to say that
10 there is a point that adding a new voting
11 station as a part of the system needs to be
12 certified. It troubles me a whole lot because
13 we've had uncertified, truly uncertified
14 equipment sold in Indiana and -- and by this
15 vendor. And there was -- we had a full blown
16 hearing, the Court through the Secretary of
17 State, a full blown hearing, there were
18 penalties assessed and sanctions imposed. And
19 I want to make sure that what we're doing here
20 is right down the line within the law that we
21 have, and that we don't take a little wedge and
22 say, well, we're going to put 150 new voting
23 stations in Lake County, which would be the
24 equivalent in my mind of putting a -- of
25 selling a new system here. And I'm not -- you

1 know, I don't want you to spend 3 million
2 dollars to replace anything. I don't want that
3 to happen. But I think if they're selling you
4 stuff, they need to be, as a vendor, wanting to
5 sell you something to enlarge your system, they
6 ought to be thinking about maybe, well, we can
7 make some money on this, we ought to get it
8 certified, and we wouldn't have to be going
9 through this, and we could have already had
10 them set up and in place for you.

11 **CHAIRMAN DUMEZICH:** Councilman Niemeyer.

12 **COUNCILMAN NIEMEYER:** Council Member
13 Niemeyer. Being on the council, we're probably
14 going to have to ask for money to fund some of
15 this stuff we're talking about today. And the
16 delay in voting, I think, is probably going to
17 get worse because there's so many things on the
18 ballot anymore. Like the last time we had
19 contribution caps, the referendum, bond issues,
20 things that are going on out there, I noticed
21 in my precinct it's taking 5 to 10 minutes
22 inside that voting booth to vote because of the
23 questions on there. And I don't see that
24 changing much, you know, with the caps and
25 stuff, especially in our area. So I don't

1 know. I guess the early voting stuff makes
2 more sense to me trying to get more people
3 voting before that deadline of that day. We're
4 going to have to keep buying more and more
5 equipment, because it's going to take longer, I
6 think, as time goes in voting if we keep having
7 these questions on the ballots, and they're
8 probably going to stay for a while. Thank you.

9 **VICE CHAIRMAN LONG:** Thank you.

10 **CHAIRMAN DUMEZICH:** Well, with that in
11 mind, we have a motion on the floor, and we
12 have a second, and we've had discussion. Do I
13 have any more discussion from the commission?

14 (No response)

15 **CHAIRMAN DUMEZICH:** Hearing none, all in
16 favor of the motion to refer MicroVote to VSTOP
17 indicate by saying aye.

18 **THE COMMISSION:** Aye.

19 **CHAIRMAN DUMEZICH:** All opposed?

20 (No response)

21 **CHAIRMAN DUMEZICH:** 4-0, ayes have it.

22 Attorney General Issue No. 8. At our
23 September 29th meeting, the commission adopted
24 a motion to instruct the division to work with
25 the attorney general to come up with the

1 recommendation regarding the two-year statute
2 of limitations -- and this is something that we
3 may need help with from the legislature -- and
4 whether the statute applies to campaign finance
5 enforcement actions. The members will recall
6 that the staff had previously asked for an
7 advisory opinion from the attorney general's
8 office regarding several issues relating to the
9 tolling of the statute of limitations in these
10 matters, but we have not yet received an
11 answer. Very responsive.

12 Also at our September 29th meeting, I
13 noted that since we would be making a request
14 for the attorney general on this matter, I also
15 asked that we would make a request for an
16 interpretation of Indiana Code 3-9-4-15, the
17 law concerning the ability of an individual
18 commission member to conduct a hearing or
19 investigation of campaign finance violation
20 without first being authorized to do so by a
21 majority of the commission; and, finally, if an
22 individual member did so, whether such member
23 would be committing a violation of state law by
24 knowingly failing to perform the duty of first
25 obtaining this authorization. The minutes do

1 not show that any member objected to my
2 request.

3 The first part of this is -- is -- has to
4 do with the legislature and the statute of
5 limitations. We cannot find anywhere in the
6 Indiana Election Code where a statute of
7 limitations applies to campaign finance
8 enforcement. So in other words, if we found a
9 campaign finance violation from 1980, could we
10 bring that before us. Obviously, it's a very
11 extreme position. We were in a position where
12 we were looking at something that was about
13 three years out. The person before the
14 commission said, you know, we think the
15 two-year statute of limitation applies. It so
16 happened that that was the second time this
17 issue had come up within a relatively short
18 period of time, so that's why we requested
19 guidance from the attorney general. We have
20 received none to date. Having said that, this
21 is something the legislature could speak on, we
22 would be very grateful, because we want to make
23 sure that we are correctly applying the law as
24 required by the legislature.

25 I asked Mr. King to prepare a draft letter

1 from the election commission to the attorney
2 general requesting an advisory opinion on these
3 questions. A draft of this letter is included
4 in your binders. For the purpose of beginning
5 our discussion, I move that we approve this
6 draft and direct the co-directors to send this
7 letter to the attorney general.

8 **COMMISSION MEMBER BENNETT:** Second.

9 **CHAIRMAN DUMEZICH:** We've got a second.
10 Do we have any discussion?

11 **VICE CHAIRMAN LONG:** I think, as I
12 understand the issue, what we voted on in the
13 first question is that we -- are we correct
14 here, and the other two questions were ones
15 that you had raised that nobody raised an
16 objection to; is that what I understand the
17 issue?

18 **CHAIRMAN DUMEZICH:** I just want to get the
19 letter to the attorney general so we can get an
20 answer.

21 **VICE CHAIRMAN LONG:** I understand. I
22 think we already voted on what statute of
23 limitations apply that had formally asked for a
24 question, and when I saw this on the agenda, I
25 was making some inquiry, and I think our

1 co-director had a question in the way it was
2 worded that the commission had not directed the
3 inquiry as a whole, but I'm not saying I have
4 any personal problem with it. I'd like to hear
5 anybody else's observations. But I think it
6 was more of a technical issue, and if anybody
7 else wants to weigh in on it, but I mean it
8 wasn't, as I understand from our co-director's
9 situation, he was being disrespectful to you.
10 It was just that he didn't think the commission
11 had formally directed an inquiry to the
12 attorney general based on the minutes. I
13 believe that's my understanding of the
14 situation, and -- but I mean I'm not taking
15 exception to your request, so I would defer to
16 other commission members for their input.

17 **CHAIRMAN DUMEZICH:** Okay. Any further
18 discussion?

19 **COMMISSION MEMBER RIORDAN:** I don't know
20 that the attorney general's issuance of an
21 advisory opinion on any one of these questions
22 would necessarily be binding to us.

23 **CHAIRMAN DUMEZICH:** Nope.

24 **COMMISSION MEMBER RIORDAN:** I think with
25 respect to the first question, which is how

1 long can -- how long do you have to bring a
2 campaign finance enforcement action, I think
3 that an argument's been made that the civil
4 forfeiture statute of limitations applies or
5 the penalty statute of limitations applies, and
6 we should go ahead and make the decision
7 without referring the question to the attorney
8 general, and then if there's -- and then the
9 next process would be judicial review of our
10 decision, right?

11 **CHAIRMAN DUMEZICH:** Mm-hmm.

12 **COMMISSION MEMBER RIORDAN:** With respect
13 to the second and the third questions, I
14 don't -- you know, just so the people in this
15 room know what we're talking about, and that is
16 whether -- can an individual member of the
17 commission institute a campaign finance
18 investigation by himself or herself without the
19 approval of the full commission, and we
20 think -- I think, personally, that that's clear
21 under the statute, and so I don't think that
22 the attorney general's opinion on that one way
23 or another is really going to make a
24 difference. And so I don't think it's really
25 necessary to refer these questions over there

1 for an advisory opinion, but if you want to
2 send the letter, you can.

3 CHAIRMAN DUMEZICH: Okay. Well, motion on
4 the floor. All in favor, say aye.

5 THE COMMISSION: Aye.

6 CHAIRMAN DUMEZICH: All opposed?

7 (No response)

8 CHAIRMAN DUMEZICH: Hearing none, 4-0,
9 motion carries.

10 Adjournment. Although the Lake County
11 Redistricting Commission will begin its work
12 shortly after this meeting, the Indiana
13 Election Commission has finished its business
14 for today.

15 Is there a motion for the Indiana Election
16 Commission to adjourn?

17 VICE CHAIRMAN LONG: So moved.

18 CHAIRMAN DUMEZICH: All in favor, say
19 aye -- do I hear a second?

20 COMMISSION MEMBER BENNETT: Second.

21 CHAIRMAN DUMEZICH: All in favor, say aye.

22 THE COMMISSION: Aye.

23 CHAIRMAN DUMEZICH: The ayes have it 4-0.

24 (Time noted: 11:16 a.m.)

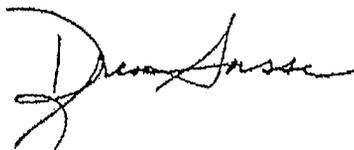
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C E R T I F I C A T E

I, DREA SASSE, CSR, RPR, and Notary Public within and for the County of Porter, State of Indiana, do hereby certify that I did report in machine shorthand the foregoing proceedings and that my shorthand notes so taken at said time and place were thereafter transcribed under my personal direction;

I further certify that the foregoing transcript constitutes a complete record of the said proceeding taken at said time and place so ordered to be transcribed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 21st day of November, 2011.



DREA SASSE
CSR# 084-002379
My Commission Expires: 3/14/17
County of Residence: Porter