

Indiana Election Commission
Minutes
April 19, 2006

Members Present: Thomas E. Wheeler, II, Chairman of the Indiana Election Commission (“Commission”); S. Anthony Long, Vice Chairman of the Commission; Sarah Steele Riordan, proxy for Butch Morgan, member; Thomas A. John, member.

Members Absent: Butch Morgan.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Kristi Robertson, Co-Director of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Pamela Potesta, Campaign Finance staff, Election Division; Michelle Thompson, Campaign Finance staff, Election Division.

Also Attending: Mr. Michael Burnes, Voting Technologies International; Mr. Jim Ries, Jr., MicroVote General Corporation; Mr. Steve Shamo, MicroVote General Corporation.

1. Call to Order

The Chair called the April 19, 2006 meeting of the Commission to order at 11:00 a.m. in Indiana Government Center South Conference Center, Room 17, 402 West Washington Street, Indianapolis, 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. Rhonda J. Hobbs, RPR, of Connor Reporting, Inc. 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 2, delete lines 12 through 16, and replace with

“Mr. J. Bradley King, Co-Director
Ms. Kristi Robertson, Co-Director
Mr. Dale Simmons, Co-General Counsel
Ms. Pamela Potesta, Campaign Finance
Ms. Michelle Thompson, Campaign Finance”.

Page 15, line 21, replace "UNIDENTIFIED SPEAKER" with "COMMISSION MEMBER T. JOHN".

Page 15, line 22, replace "incorrect" with "incomplete".

3. Adjournment

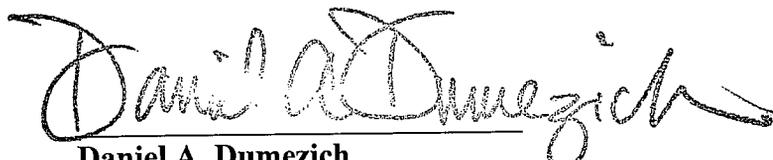
There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Ms. Riordan moved, seconded by Mr. Wheeler, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. John, Mr. Long, Ms. Riordan, and Mr. Wheeler), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 1:15 p.m.

Respectfully submitted,


Trent Deckard
Co-Director


J. Bradley King
Co-Director

APPROVED:


Daniel A. Dumezich
Chairman

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INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted On: Wednesday, April 19, 2006

Location: Indiana Government Center
South Conference Center, Room 17
402 West Washington Street
Indianapolis, Indiana 46204

A STENOGRAPHIC RECORD BY:
Rhonda J. Hobbs, RPR
Notary Public
Stenographic Reporter

CONNOR REPORTING, Inc.
1650 One American Square
Indianapolis, IN 46282
(317) 236-6022

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INDIANA ELECTION COMMISSION:

- Mr. Thomas Wheeler, II - Chairman
- Mr. Anthony Long - Vice Chairman
- Mr. Butch Morgan - (Ms. Sarah Riordan - Proxy)
- Mr. Thomas A. John - Commission Member

INDIANA ELECTION DIVISION STAFF:

- Mr. Dale Simmons - Co-Legal Counsel
- Ms. Kristie Robertson - Co-Legal Counsel
- Mr. Bradley King - Co-Director
- Ms. Pam Potesta - Co-Director
- Ms. Michelle Thompson - Campaign Finance

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1 CHAIRMAN T. WHEELER: All right. I'm going
2 to go ahead and call the meeting to order. This
3 is the meeting of the Indiana Election
4 Commission, on April 19th, 2006, at 11:00 a.m.,
5 pursuant to notification and agenda posted. The

INDIANAELECTIONCOMMISSION4-19-06.txt
6 Chairman recognizes that we have Miss Riordan
7 who is for, I guess for a month and a half, Mr.
8 Morgan's proxy, --

9 COMMISSION MEMBER S. RIORDAN: That's
10 right.

11 CHAIRMAN T. WHEELER: -- and you're on full
12 time. Mr. Long, Vice Chairman Long, and
13 Commissioner John. I would accept a -- we have
14 close to our agenda, but I would accept a
15 motion, a unanimous consent regarding the
16 agenda?

17 COMMISSION MEMBER T. JOHN: So moved.

18 VICE CHAIRMAN A. LONG: As I advised, Mr.
19 Chairman, I have a hearing, (indiscernible) this
20 issue with one of the boxes (indiscernible) by
21 12:30. If we can move down to -- I would move
22 that we begin with Item 8 on the agenda --

23 CHAIRMAN T. WHEELER: Yes, sir.

24 VICE CHAIRMAN A. LONG: -- and can go down
25 (indiscernible) for the voting machine.

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1 CHAIRMAN T. WHEELER: Do I have unanimous
2 consent to modify the agenda, (indiscernible) 8
3 to the top of the agenda -- anyone oppose it?

4 (No response.)

5 CHAIRMAN T. WHEELER: All right. For
6 purposes of this meeting, I will also note --
7 Mr. King, it's my understanding, Agenda Item 8A,
8 the ES&S application for Model 100 Optical Scan
9 Ballot Card Software Upgrade, that there's been

INDIANAELECTIONCOMMISSION4-19-06.txt
10 some activity on that since we listed that as an
11 agenda item?

12 MR. B. KING: Yes. Mr. Chairman, the
13 details are set forth on Page 2 of the
14 co-directors' memo, which is at the end of your
15 packets, but the short summary is that ES&S has
16 filed a formal request for withdraw of this
17 application.

18 CHAIRMAN T. WHEELER: For purposes of the
19 record, I would note that even as we speak, the
20 Secretary of State is holding a hearing
21 regarding ES&S's compliance with Indiana law
22 within his authority, and as a consequence of
23 that, I've also been advised that ES&S personnel
24 are not available to attend the hearing at this
25 point in time because I believe, even as we

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1 speak, they are on the stand testifying at the
2 Secretary of State's hearing. Therefore, I
3 would ask for a motion to remove Item 8A from
4 our agenda?

5 VICE CHAIRMAN A. LONG: So moved.

6 COMMISSION MEMBER T. JOHN: Second.

7 COMMISSION MEMBER S. RIORDAN: Seconded.

8 CHAIRMAN T. WHEELER: Motion seconded
9 and -- motion seconded, all in favor signify by
10 saying aye?

11 THE COMMISSION: Aye.

12 CHAIRMAN T. WHEELER: Opposed same sign?

13 (No response.)

INDIANAELECTIONCOMMISSION4-19-06.txt
CHAIRMAN T. WHEELER: Item 8A has been

14
15 removed from the agenda. Item 8B, MicroVote
16 application for direct record electronic voting
17 system upgrade, Infinity Model VP-1, Revision C
18 Firmware Version 3.04, Software Version 3.00.

19 As is our tradition with respect to the
20 commission, Dale, would you administer the oath to
21 all individuals giving testimony with respect to
22 Item 8B.

23 MR. D. SIMMONS: All those who will testify
24 before the commission today, please stand and
25 raise your right hand and say I do after the

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1 administration of the oath?

2 (Participants complied.)

3 MR. D. SIMMONS: Do you solemnly swear or
4 affirm under the penalties of perjury that the
5 testimony you are about to give to the
6 commission at today's meeting is the truth, the
7 whole truth, and nothing but the truth, say I
8 do?

9 THE PARTICIPANTS: I do.

10 CHAIRMAN T. WHEELER: Mr. King, who is
11 going to be handling the presentation of the
12 status of this particular application?

13 MR. B. KING: Mr. Chairman, I can start it
14 and I can defer to Kristi.

15 CHAIRMAN T. WHEELER: And where are you at?

16 MR. B. KING: The very last set of
17 documents concern MicroVote. There's a

INDIANAELECTIONCOMMISSION4-19-06.txt
18 co-directors' memo behind the voting systems
19 tab, and this is addressed on Page 3 at the top,
20 and just for the record, we have noted that
21 Indiana law states in part that when an
22 application does not include any of the
23 applicable requirements under state law, the
24 application, those requirements must be filed
25 with the Election Division before the

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1 application may be considered by the commission.

2 And in the opinion of myself and Dale, I would
3 ask if Kristi and Cody share this, that that would
4 certainly preclude a vote on application that fell
5 into this category, but not necessarily discussion
6 of the status of various components.

7 MS. K. ROBERTSON: And I agree.

8 CHAIRMAN T. WHEELER: All right. So as I
9 understand it, if the application is not
10 complete, we certainly couldn't vote on it but
11 we can still discuss the status of the
12 application?

13 MR. B. KING: Yes, that's my opinion.

14 CHAIRMAN T. WHEELER: Let me ask
15 a clarifying question just to get some
16 historical background with this -- right now,
17 this is Firmware Version 3.04; is that correct?

18 MR. B. KING: Yes, Mr. Chairman, that is
19 correct with each of two applications that we
20 have received from MicroVote.

21 CHAIRMAN T. WHEELER: And those are -- the

INDIANAELECTIONCOMMISSION4-19-06.txt
22 two applications are for Software Version 3.00
23 and then Software Version 3.1?

24 MR. B. KING: That would be correct.

25 CHAIRMAN T. WHEELER: All right. Now what

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1 was previously certified by the Commission; what
2 firmware version?

3 MR. B. KING: 2.04 is my recollection.
4 There were applications for 2.13, but those
5 applications were -- that application was
6 withdrawn.

7 CHAIRMAN T. WHEELER: All right. And then
8 was the 2.04 Firmware Version, was that
9 recertified after October 1st, 2005?

10 MR. B. KING: No, it was not, Mr. Chairman.

11 CHAIRMAN T. WHEELER: And just for
12 clarification purposes as well, it's my
13 understanding that the Secretary of State is
14 also holding a hearing with respect to the sales
15 of Firmware Version 2.04; is that correct?

16 MR. B. KING: That is correct. The hearing
17 was conducted Monday.

18 CHAIRMAN T. WHEELER: On Monday, and I
19 believe you testified?

20 MR. B. KING: Yes, Mr. Chairman.

21 CHAIRMAN T. WHEELER: As well as several
22 MicroVote individuals as well; is that correct?

23 MR. B. KING: That is correct.

24 CHAIRMAN T. WHEELER: All right. With
25 that -- that background in mind, please describe

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1 for me the status of the application?

2 MR. B. KING: Briefly, Mr. Chairman, I've
3 referenced there was an application filed on
4 March 20th for Software Version 3.0. An
5 application was received yesterday, April the
6 18th, 2006 for Software Version 3.1.

7 In terms of the application and fee, MicroVote
8 did pay the fee for the March 20th application and
9 filed as I said an IEC-11 application form for that
10 version 3.1 system. The initial application
11 included user manuals, poll worker instructions
12 from MicroVote and also included, as I'll note,
13 below an independent testing authority report.

14 It did not, however, include information
15 regarding escrow that I've been able to -- to note.
16 The application that was filed yesterday on
17 April 18th included a letter certifying that
18 Version 3.04 of firmware and Software Version 3.1
19 had been sent to NCC Group of San Jose, but there
20 is no documentation from the vendor confirming, or
21 excuse me, there is no documentation provided by
22 the vendor confirming that the escrow agent has in
23 fact received -- processed this escrow.

24 There was an initial -- additional -- initial
25 demonstration of the hardware and firmware as part

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1 of the original certification 2002. And then
2 finally, with regard to the independent testing

3 authority, both the March 20th, 2006 and April
4 18th, 2006 contain a report from Wyle
5 Laboratories -- I won't read the -- the exact
6 language of the report that's set forth in the
7 memo.

8 But it indicates essentially that the hardware
9 qualification tests have met the 2002 FEC standards
10 but the testing of software for the system will be
11 performed by a software ITA which will issue the
12 results of that testing, and that at the hearing on
13 Monday, MicroVote officials testified that that is
14 being conducted by CIBER, another independent
15 testing authority that tests software.

16 CHAIRMAN T. WHEELER: And the CIBER
17 officials actually testified that they were in
18 the process of testing; correct?

19 MR. B. KING: That is correct.

20 CHAIRMAN T. WHEELER: And then did the
21 CIBER officials indicate how long that testing
22 would take?

23 MR. B. KING: As I understood their
24 testimony, it was like two to three days was a
25 best case scenario, but they could not provide a

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1 definite time period. As they said, I told
2 depends on what we encounter. It could be
3 weeks, it could be longer, is my recollection of
4 the testimony.

5 CHAIRMAN T. WHEELER: Did they indicate
6 which software version they were testing, 3.0 or
Page 9

7 3.1; were they testing -- I'm sorry, let me ask
8 the question, were they testing firmware and
9 software?

10 MR. B. KING: No. CIBER, to my knowledge
11 is only testing software. My recollection was
12 that they reference Version 3.0, but I don't
13 want to say that definitively.

14 CHAIRMAN T. WHEELER: Okay.

15 MR. B. KING: I'm not sure that they did
16 reference a specific version number.

17 CHAIRMAN T. WHEELER: All right. So
18 pending right now we actually have two
19 applications; correct? One is for firmware
20 Version 3.04 and Software Version 3.0?

21 MR. B. KING: Yes.

22 CHAIRMAN T. WHEELER: The second one is --
23 which was received yesterday?

24 MR. B. KING: That's correct.

25 CHAIRMAN T. WHEELER: Is 3.04 Software

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1 Version 3.1?

2 MR. B. KING: Yes, that's correct.

3 CHAIRMAN T. WHEELER: All right. Now since
4 that was received yesterday, are we in a
5 position to even decide that?

6 MR. B. KING: Again, Mr. Chairman, assuming
7 that consider means to discuss the status,
8 receive information, the advice of counsel would
9 be that yes, you could, you know, take
10 information regarding this application today but

11 could not take final application.

12 CHAIRMAN T. WHEELER: I got a note from our
13 co-counsel as well.

14 MR. D. SIMMONS: Correct.

15 CHAIRMAN T. WHEELER: All right. With
16 respect to these applications, there was an
17 issue, I believe, raised during the hearing on
18 Monday relating to the signature. Has that been
19 rectified?

20 MR. B. KING: The April 18th application is
21 signed.

22 CHAIRMAN T. WHEELER: What about the prior
23 application?

24 MR. B. KING: The prior application has not
25 been signed.

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1 CHAIRMAN T. WHEELER: So from what you said
2 before based upon the fact there's no signature
3 on the March 20th application, we're not in a
4 position to take any action on that application
5 as well; is that correct?

6 MR. B. KING: That application would be
7 incomplete as well.

8 CHAIRMAN T. WHEELER: All right. Just so
9 I'm clear with respect to the March 20th
10 application, what needs to be done -- we need a
11 signature, what else?

12 MR. B. KING: Mr. Chairman, the -- the
13 signature is required on the application form
14 that was filed, the escrow information does not

15 appear to be included in the March 20th, it is
16 in the April 18th, and would say staff have
17 not -- staff have not had the opportunity to
18 review the application other than to note there
19 are manuals here and I noted that the Wyle
20 report was included in the March 20th
21 submission, but beyond that, there's not been
22 time for staff review.

23 CHAIRMAN T. WHEELER: Of the March 20th?

24 MR. B. KING: The March 20th, yes, sir.

25 CHAIRMAN T. WHEELER: And I assume since

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1 the April 18th was submitted yesterday...

2 MR. B. KING: The same would hold true for
3 the -- it was received yesterday afternoon about
4 12:30, I believe.

5 VICE CHAIRMAN A. LONG: Was the April 18th
6 application supplemental or replaced with the
7 March 20th?

8 MR. B. KING: Mr. Vice Chair, it does not
9 indicate that it supplements or replaces it.
10 I've received no request that March 20th be
11 withdrawn.

12 VICE CHAIRMAN A. LONG: I don't see how --
13 my next question would be is if this required to
14 be signed and verified, I don't see that there's
15 an application pending.

16 CHAIRMAN T. WHEELER: With respect to the
17 March 20th?

18 VICE CHAIRMAN A. LONG: March 20th. I

19 mean, if I file a lawsuit, it requires me to
20 sign it and verify and (indiscernible), and it
21 would seem to me that we don't have a March 20th
22 application based upon (indiscernible) consider
23 it for filing, but until that application is in
24 proper form, I don't think there's anything for
25 us to do period. I don't even know why it's on

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1 the agenda. We should send it back to them, is
2 what I would suggest.

3 CHAIRMAN T. WHEELER: Let me check with
4 counsel. That's what I took you to say earlier,
5 Brad, but...

6 MR. D. SIMMONS: That the March 20 is
7 incomplete?

8 CHAIRMAN T. WHEELER: Yeah.

9 MR. D. SIMMONS: Yeah.

10 CHAIRMAN T. WHEELER: But it says if it
11 hasn't been filed and (indiscernible).

12 MR. D. SIMMONS: Yeah. We haven't got a
13 pending application. I mean, there's nothing
14 more we can do with an application that's not
15 signed and...

16 COMMISSION MEMBER T. JOHN: I would agree.
17 I mean, we can't take any further action besides
18 just discussing what we're doing now, is the
19 reason I think that Brad was alluding to.

20 MR. B. KING: Yes.

21 UNIDENTIFIED SPEAKER: He made a correct
22 statement, I think. No more than it's incorrect

23 and we can do anything else with it, I mean,
24 there's absolutely...

25 VICE CHAIRMAN A. LONG: But I didn't -- I

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1 just didn't know why we got an April 18th and
2 not -- as you say, that just came in yesterday.
3 I haven't had a chance to sit down and look at
4 it either, but the 18th is the same thing as the
5 20th, it seems that it's there to replace it.
6 They -- is this one they take the filing fees on
7 before they file these applications? Did they
8 pay another filing fee yesterday?

9 MR. B. KING: No, they did not.

10 VICE CHAIRMAN A. LONG: So
11 somebody -- we've got -- we've got a filing fee
12 with no application and we've got an application
13 with no filing fee. It seems that somebody
14 needs to get that whole thing (indiscernible).

15 CHAIRMAN T. WHEELER: And if I -- I could
16 speak up, let me make it -- make it clear that I
17 don't know that we're parsing technical issues.
18 I believe, correct me if I'm wrong, Mr. King,
19 that the -- this particular issue relating to
20 the signature of the application, the joint
21 application came up at the Secretary of State's
22 hearing on Monday; is that correct?

23 MR. B. KING: Yes, that is correct.

24 CHAIRMAN T. WHEELER: And I believe that
25 the president of MicroVote who is here,

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1 indicated that he was made aware of that failure
2 and that they haven't come in to sign it since
3 then?

4 MR. B. KING: I received a communication
5 with the April 18th application stating that the
6 president was willing to sign application and
7 provide another IEC form that was signed.
8 However, because of the difference in the
9 versions of the software, clarification is
10 needed from MicroVote as to what software
11 they're actually applying for.

12 CHAIRMAN T. WHEELER: Fair enough.
13 Anything further from the...

14 VICE CHAIRMAN A. LONG: Let me ask, so I'm
15 clear on this, the one that I assume is the
16 April 18th, which it is signed, is software
17 number Infinity, if I'm on the right one, 3.1
18 Revision C, and that's not on the earlier
19 firmware. It says 3.4 and the other one says
20 3.04 -- I assume that's the same. I mean, that
21 should -- and the Infinity Election Manual
22 software is different. So I still say that they
23 don't have an application for (indiscernible).

24 CHAIRMAN T. WHEELER: And we have in our
25 packet which is -- this is not an exhibit,

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1 they're not -- to our --

2 MR. B. KING: Yes.

3 CHAIRMAN T. WHEELER: Our packet, is that
4 part of the (indiscernible). Referring to -- I
5 think what Tony is referring to is the form,
6 IEC-11, March 20, 2006, consisting of two pages,
7 and the second page has a -- statements around
8 (indiscernible) which is why (indiscernible).

9 VICE CHAIRMAN A. LONG: Mr. Chairman, just
10 for the record, I think the date March 20th
11 because it's not dated. It's just stamped filed
12 and received.

13 CHAIRMAN T. WHEELER: You're right. That's
14 why I asked the...

15 VICE CHAIRMAN A. LONG: I mean, just so
16 that we're -- that was on the record, the
17 comments.

18 CHAIRMAN T. WHEELER: And that relates
19 to -- moreover, it's not just that part but the
20 application, it purports to summarize the
21 information included in the application. None
22 of the boxes are checked on the back of that
23 page.

24 VICE CHAIRMAN A. LONG: You're right.

25 CHAIRMAN T. WHEELER: And for purposes of

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1 the record and to clarify the members of the
2 public that are here today, the reason that the
3 commission requires these -- this affirmation
4 under oath and these notations, it's just not a
5 technical requirement, it is to certify, it's a
6 written certification under penalties of perjury

INDIANAELECTIONCOMMISSION4-19-06.txt
7 that the application is complete and contains
8 all of the documents within it and that those
9 are true and accurate, and that's why we have
10 significant concern with the fact that there is
11 no other affirmation with this, nor is there an
12 indication of what items came with that
13 particular product.

14 Now it's my understanding, in addition, we
15 also have in on our packet, an IEC Form 11 that is
16 dated April 18th, 2006, but it's file -- it was
17 filed stamped on that same date of (indiscernible)
18 which does indeed have the signature which I
19 believe that is Jim M. Ries, who's the president of
20 MicroVote Corporation providing that certification,
21 providing it, and it has all the boxes X'ed out,
22 but it is for Firmware Version 3.04, Software
23 Version 3.1 which is different than the prior march
24 20th application. Let me make sure those documents
25 are...

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1 VICE CHAIRMAN A. LONG: Right. And I think
2 you -- correctly, I agree with your, and that
3 one does have all the boxes checked because the
4 transmittal letter, I wasn't sure -- maybe it
5 was correcting an oversight and not signing the
6 previous one. It's different.

7 CHAIRMAN T. WHEELER: The problem is it's
8 different forms. It's a different form of
9 software through Item 1. Brad...

10 VICE CHAIRMAN A. LONG: I think it's

INDIANAELECTIONCOMMISSION4-19-06.txt
11 correctible.

12 CHAIRMAN T. WHEELER: I -- I agree.

13 VICE CHAIRMAN A. LONG: This is probably
14 over technical. I think they corrected it, but
15 (indiscernible) filing fee (indiscernible), and
16 if we get another \$5,000 for a new application,
17 maybe they owe us that.

18 CHAIRMAN T. WHEELER: I'll make sure that
19 (indiscernible) in Evansville.

20 VICE CHAIRMAN A. LONG: Okay. Well, as
21 long as we don't get it in Monroe County or
22 Perry Township, we're...

23 CHAIRMAN T. WHEELER: Brad, anything
24 further before I ask MicroVote to respond and
25 address some of these issues?

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1 MR. B. KING: No, Mr. Chairman. Just to
2 note for the record, and perhaps you did so,
3 that in between those two applications is a
4 letter that was sent to the election commission
5 in care of the co-directors, myself and Miss
6 Robertson, dated April 5, 2006 that discusses
7 the status of the application and independent
8 laboratory testing going on and certain concerns
9 with regard to version 2.04, which as I said
10 earlier, was the previously certified version.

11 I would just call the Commission's
12 attention -- this would be on the second page of
13 that letter because version numbers do often get
14 confusing. No. 6 in the letter from Mr. Ries

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15 states that the Wyle Laboratories' report has now
16 ultimately -- resulted in ultimately the upgraded
17 version submitted to Wyle as 3.07. So I apologize
18 for missing that, another version upgrade.

19 CHAIRMAN T. WHEELER: So as I -- as I
20 understand it, is there a Wyle report with the
21 March 20th application?

22 MR. B. KING: Yes, there is.

23 CHAIRMAN T. WHEELER: And is that for
24 Firmware 3.04 or Firmware 3.07?

25 MR. B. KING: I think it's 3.04. I'm

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1 double-check for you, but it is Firmware Version
2 3.04.

3 CHAIRMAN T. WHEELER: All right. Now is
4 this a (indiscernible) vehicle team application;
5 does that -- is that why -- is that why
6 (indiscernible)?

7 MR. B. KING: It is the same -- to the best
8 of my knowledge, the same that was included in
9 the March 20th.

10 CHAIRMAN T. WHEELER: The February report.

11 MR. B. KING: Which again is for the
12 version 3.04 firmware.

13 CHAIRMAN T. WHEELER: All right. So we
14 just need some -- we just need some
15 clarification on that firmware issue as well.
16 Kristi, do you...

17 MS. K. ROBERTSON: No. I think that maybe
18 who are here (indiscernible).

19
20 going to speak -- Mr. Ries -- yeah, if you come
21 up here, that might be helpful.

22 MR. J. RIES: All right.

23 CHAIRMAN T. WHEELER: Mr. Ries, for purpose
24 of the record, you understand you're under oath;
25 correct?

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1 MR. J. RIES: Yes, I do.

2 CHAIRMAN T. WHEELER: Now what I'd like to
3 do, and I recognize we're kind of under a little
4 bit of a short time frame -- jump straight in.
5 Discuss for me just briefly 2.04, 3.04, what
6 happened in that transition and how you ended up
7 with 3.04?

8 MR. J. RIES: As I testified on Monday to
9 the Secretary of State's office, version 2.04
10 had -- was a certified system dating back to
11 February 28, 2002. That was prior to the Help
12 America Vote Act being enacted by Congress.
13 there was one functionality that version 2.04
14 did not support, and that was provisions in the
15 section 301 of HAVA and that was the multiple
16 language feature and it required text to be at
17 least two languages.

18 We contacted Wyle Laboratories, who is the
19 hardware qualification testing authority, and in
20 about December of 2004, they informed us that no
21 revisions even if be minor could be subjected
22 with -- without being viewed in its entirety by the

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23 new standards, the Federal Election Standards in
24 2002.

25 So therefore, we could not modify and enhance 24

♀
1 or even do a mine or upgrade without the entire
2 product, both hardware and software to be subjected
3 to the new standards which I believe is doctored by
4 the -- this commission as well -- I believe in
5 2003. I'm not sure when that was a requirement
6 so...

7 CHAIRMAN T. WHEELER: Let me -- let me stop
8 you there and ask a couple of questions. 2.04
9 had previously been certified by this
10 commission; correct?

11 MR. J. RIES: Yes.

12 CHAIRMAN T. WHEELER: And you were aware of
13 the time, that on October 1st, by action of the
14 legislature, all certifications expired October
15 1st of 2005; correct?

16 MR. J. RIES: Yes, sir.

17 CHAIRMAN T. WHEELER: And I believe I -- I
18 was present for your testimony at the hearing on
19 Monday and I think that was discussed and the
20 Secretary of State's office went through that
21 with you.

22 At that time, as I recall, this commission
23 held meetings regarding recertification of
24 software, that MicroVote did have a recertification
25 petition pending for 2.04, but then at some point 25

1 determined to withdraw that petition; is that
2 correct?

3 MR. J. RIES: That's correct.

4 CHAIRMAN T. WHEELER: And I assume that's
5 for the reasons you just gave us, having to do
6 with the ability to get certification from wyle?

7 MR. J. RIES: That's correct.

8 CHAIRMAN T. WHEELER: All right. Brad,
9 could you address that as to whether that --
10 would we have been able to recertify 2.04 or
11 would they have to go through the retesting or
12 this language requirement, our requirement, if
13 you could expand on that?

14 MR. B. KING: Sure. Mr. Chairman,
15 Commission Members, a couple of points. As I
16 recall, Microvote actually had an application
17 pending for an upgrade to Version 2.13 which I
18 think is referenced on the first page on Mr.
19 Ries's letter. So there was not a pending
20 application for renewal of Version 2.04.

21 The legislature also adopted on July
22 1 -- effective July 1, 2003, the 2002 FEC standards
23 as a requirement for a voting system to be
24 certified in Indiana. And in my understanding,
25 from previous documents and commission meetings,

26

1 that Version 2.04 and perhaps Version 2.13 would
2 not in the view of MicroVote have met the 2003 FEC
3 Standards.

4 With regard to the specific Spanish language
5 or other language requirements, I testified on
6 Monday that there are no jurisdictions in Indiana
7 which are subject to that multi-language ballot
8 requirement. It's based on the number of language
9 speakers as identified in the 2000 decennial census
10 and went or if a state has a county with 5 percent
11 or more of those language speakers, then in that
12 case the Voting Rights Act requires the additional
13 language ballot feature.

14 And we can discuss the relationship between
15 the Voting Rights Act and HAVA, but as of -- as my
16 understanding that particular issue is not
17 immediately relevant to the conduct of elections in
18 Indiana because it's not required for any of our
19 jurisdictions.

20 CHAIRMAN T. WHEELER: All right. And as I
21 understand it, you took Firmware Version 3.04
22 and obtained certification for Firmware Version
23 3.04; correct.

24 MR. J. RIES: I think -- well, actually,
25 qualification test.

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1 CHAIRMAN T. WHEELER: Qualification test,
2 I'm sorry. And then that was the subject of
3 your March 20th, 2006 application; correct --
4 usually, you applied for certification?

5 MR. J. RIES: Yes, sir.

6 CHAIRMAN T. WHEELER: Now as I understand
7 it in the interim, you signed a number of

8 contracts with counties for additional
9 equipment; is that correct?

10 MR. J. RIES: Correct, around October.

11 CHAIRMAN T. WHEELER: After October --
12 after October 1st, I believe Knox and
13 Bartholomew were discussed with the Secretary of
14 State's Office, but in fact, at least the letter
15 I saw from your attorney had about seven
16 counties or so?

17 MR. J. RIES: Correct.

18 CHAIRMAN T. WHEELER: And my understanding
19 is that those were existing MicroVote counties
20 that you were selling additional hardware and
21 software to; correct?

22 MR. J. RIES: Correct.

23 CHAIRMAN T. WHEELER: Now with respect to
24 those counties, what firmware version were you
25 selling those counties?

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1 MR. J. RIES: Well, all the -- all the
2 products were still in Version 2.04. We don't
3 upgrade them until -- we actually program them
4 on site and so some of them were sold under the
5 same provisions as 2.04.

6 CHAIRMAN T. WHEELER: All right. So all
7 those contracts you were selling 2.04 software
8 or firmware; correct?

9 MR. J. RIES: (Indiscernible).

10 CHAIRMAN T. WHEELER: Okay. So those are
11 all 2.04?

12 MR. J. RIES: Correct.
13 CHAIRMAN T. WHEELER: Now it's my
14 understanding at some point since that time, all
15 of that has been upgraded to 3.04; is that
16 correct?
17 MR. J. RIES: Correct.
18 CHAIRMAN T. WHEELER: would that be every
19 county you service in the state?
20 MR. J. RIES: Correct.
21 CHAIRMAN T. WHEELER: That would be 47
22 counties, as I understand it?
23 MR. J. RIES: Correct.
24 CHAIRMAN T. WHEELER: And the 3.04 is not
25 certified; correct?

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1 MR. J. RIES: Correct.
2 CHAIRMAN T. WHEELER: All right. Did you
3 charge them for that or was that gratuitous
4 or...
5 MR. J. RIES: Yes, we charged them.
6 CHAIRMAN T. WHEELER: Was it part of the
7 contract that you would continue to provide them
8 upgrades as part of the contract?
9 MR. J. RIES: Yes.
10 CHAIRMAN T. WHEELER: Is there a service
11 fee they pay for those additional upgrades or is
12 that part of the original contract?
13 MR. J. RIES: That's part of the original
14 contract.
15 CHAIRMAN T. WHEELER: Okay. So those 7

16 contracts that you signed with the supplemental
17 equipment, those contracts were provided for
18 those upgrades, going from 2.04 to 3.0?

19 MR. J. RIES: Correct.

20 CHAIRMAN T. WHEELER: All right. Not only
21 firmware but would that also include software?

22 MR. J. RIES: Yes.

23 CHAIRMAN T. WHEELER: All right. So that
24 would include software going from 3.0 to 3.1?

25 MR. J. RIES: If you would like, I can

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1 address the technicalities on the ballot, on the
2 application as well is the (indiscernible).

3 CHAIRMAN T. WHEELER: Yeah, I'll do that in
4 just a minute. Let me -- I'm kind of seeing
5 where we are and then how we got there? All
6 right. So as I understand it, 47 counties in
7 Indiana right now have Firmware Version 3.04; is
8 that correct.

9 MR. J. RIES: Correct.

10 CHAIRMAN T. WHEELER: All right. So that's
11 all 47 counties, and all 47 counties were using
12 which software version?

13 MR. J. RIES: 3.1.

14 CHAIRMAN T. WHEELER: 3.1, all right. Now
15 we haven't even seen an application for 3.1
16 until yesterday; correct?

17 MR. J. RIES: And the technicality in that
18 is the version that the CIBER labs released when
19 they do a review, they do three phases. They do

20 a technical data review, they do a source code
21 review, and during the source code review, the
22 technical data package had to be amended so
23 that's the version -- the product that they're
24 reviewing is the same technical data package --
25 has referenced some changes within the

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1 documentation.

2 CHAIRMAN T. WHEELER: So would -- so would
3 the CIBER report reflect Software Version 3.0 or
4 3.1?

5 MR. J. RIES: (Indiscernible).

6 CHAIRMAN T. WHEELER: All right. So the
7 CIBER report that was attached to your
8 application of March 20th actually had 3.1 in
9 there as approved?

10 MR. J. RIES: We did not have a report from
11 CIBER at that point.

12 CHAIRMAN T. WHEELER: Okay. That does, and
13 we don't have a report on 3.1 at all?

14 MR. J. RIES: From CIBER.

15 CHAIRMAN T. WHEELER: From CIBER?

16 MR. J. RIES: Right.

17 CHAIRMAN T. WHEELER: Is that -- is that --
18 I know CIBER is on site based upon the testimony
19 from the CIBER individuals. Are they working on
20 that 3.1 certification right now?

21 MR. J. RIES: Yes, sir.

22 CHAIRMAN T. WHEELER: And that's --
23 that's -- that's the work that they testified

24 they were doing -- actually what they're doing
25 right now (indiscernible); correct?

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1 MR. J. RIES: Yes, sir.

2 CHAIRMAN T. WHEELER: All right. Now I
3 apologize to the members of the commission as --
4 I'm kind of monopolizing.

5 VICE CHAIRMAN A. LONG: You know, I always
6 do things pretty simple. Do I understand you
7 installed in 47 counties software that was not
8 ever been before this commission for
9 certification?

10 MR. J. RIES: Correct.

11 CHAIRMAN T. WHEELER: Firmware is what...

12 VICE CHAIRMAN A. LONG: And that was my
13 next question.

14 CHAIRMAN T. WHEELER: I'm sorry.

15 VICE CHAIRMAN A. LONG: Is firmware
16 (indiscernible) as well?

17 MR. J. RIES: Yes, sir.

18 VICE CHAIRMAN A. LONG: I guess my question
19 is why would you...

20 MR. J. RIES: Well, you know, basically the
21 situation that we were discussing on Monday was
22 we rent it to -- R&D certified this
23 (indiscernible). There have been delays both by
24 MicroVote as well as the ITAs as documented and
25 that's the situation that we're faced with.

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1 VICE CHAIRMAN A. LONG: So you're 47
2 counties out there that are supposed to do an
3 election in a couple of weeks on firmware and
4 software that's not been certified?

5 CHAIRMAN T. WHEELER: In fact -- and the
6 testing that's been taking place -- we have
7 state mandated testing; do you recall, and I
8 believe you discussed that during your testimony
9 at the Secretary of State's office or someone
10 actually entered into evidence, I believe, one
11 or two counties that completed their testing on
12 your (indiscernible); correct.

13 MR. J. RIES: That's correct.

14 CHAIRMAN T. WHEELER: An indication was
15 that testing went just fine; correct?

16 MR. J. RIES: Correct.

17 CHAIRMAN T. WHEELER: What are they
18 testing?

19 MR. J. RIES: They are testing 3.04 and the
20 3.14.

21 CHAIRMAN T. WHEELER: So they're testifying
22 on not only noncertified software, stuff that we
23 haven't even seen an application for until
24 yesterday?

25 MR. J. RIES: Correct.

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1 VICE CHAIRMAN A. LONG: I assume all 47
2 counties (indiscernible) have not been certified
3 or software or firmware that's not been

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4 certified (indiscernible)?

5 MR. J. RIES: Yes, sir.

6 VICE CHAIRMAN A. LONG: They know it when
7 you put it?

8 MR. J. RIES: I believe so, yes.

9 VICE CHAIRMAN A. LONG: We're going to find
10 out.

11 COMMISSION MEMBER T. JOHN: Upon what do
12 you base your belief that they do that?

13 MR. J. RIES: well, they're -- they're
14 aware of our process of certification and
15 (indiscernible) databases.

16 VICE CHAIRMAN A. LONG: You're telling us
17 that (indiscernible) every one of these 47
18 counties, the clerks, the election board, the
19 commissioners or their purchasing agents, the
20 folks that -- whoever said okay, you may come
21 and do things to our hardware and install this
22 stuff were told this was not -- what we're
23 selling you or putting in here is not certified
24 and you can't even put -- it's not certified,
25 let's start with one -- with one question at a

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1 time?

2 MR. J. RIES: Personally, yeah,
3 (indiscernible) just fine. Mr. Chairman, as far
4 as that goes, with several counties I have been
5 in personally and it's (indiscernible) our
6 situation.

7 VICE CHAIRMAN A. LONG: And they -- and

8 they've been knowing they're going forward -- as
9 far as your company is concerned, I mean, that's
10 an elections with equipment with firmware and
11 software that has not been certified and
12 approved?

13 MR. J. RIES: Yes, sir.

14 CHAIRMAN T. WHEELER: Let me -- let me -- I
15 apologize for interrupting you.

16 VICE CHAIRMAN A. LONG: No, that's fine. I
17 needed a little while to recover from
18 (indiscernible).

19 CHAIRMAN T. WHEELER: Mr. King, when did --
20 ballot has actually taken place in counties;
21 correct, the absentee ballot?

22 MR. B. KING: Yes, Mr. Chairman. Absentee
23 ballot voting in-office began on April 3rd,
24 2006.

25 CHAIRMAN T. WHEELER: All right. So

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1 individuals are actually voting, I assume in
2 these 47 counties, on uncertified software;
3 would that be an assumption?

4 MR. B. KING: There's a distinction I need
5 to draw with regard to -- voting absentee is in
6 most counties done on optical scan ballots as
7 opposed to directly on the direct record
8 electronic system.

9 There is a procedure, and Dale has spoken to a
10 number of counties and may know, if any, any of
11 those counties are still going to use direct record

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12 electronic voting systems for in-office absentee
13 voting, but I think the point to be made is that
14 the optical scan ballots that are marked today, if
15 someone is voting in-office in a county, will
16 eventually be processed by using --

17 CHAIRMAN T. WHEELER: The software or the
18 firmware?

19 MR. B. KING: -- software and firmware
20 provided by the vendor.

21 CHAIRMAN T. WHEELER: And as I understand
22 your testimony, the clerks in all 47 counties
23 are aware they are using uncertified software;
24 correct?

25 MR. S. SHAMO: I can't -- I can't confirm

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1 all 47 counties. I can only tell you the
2 counties that I have personally...

3 CHAIRMAN T. WHEELER: Which counties?

4 MR. S. SHAMO: Clark County, Hamilton
5 County (indiscernible) I -- I would have to say
6 that they're all aware that it -- it was a
7 pending version. I can't...

8 CHAIRMAN T. WHEELER: Well, it wasn't -- it
9 wasn't pending until April 18th; right?

10 VICE CHAIRMAN A. LONG: Yesterday.

11 CHAIRMAN T. WHEELER: Prior to that, it was
12 not a pending version.

13 MR. S. SHAMO: I don't -- (indiscernible)
14 on the corrected or clarified between the two
15 applications.

16
17 application was 3.4 -- 3.04 Software Version
18 3.0; right?

19 VICE CHAIRMAN A. LONG: Mr. Chairman
20 (indiscernible).

21 CHAIRMAN T. WHEELER: I apologize.

22 VICE CHAIRMAN A. LONG: Let's get the
23 record identified who's speaking here.

24 CHAIRMAN T. WHEELER: Absolutely.

25 VICE CHAIRMAN A. LONG: what are your names

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1 or (indiscernible)?

2 CHAIRMAN T. WHEELER: Can you identify
3 yourself, please?

4 MR. S. SHAMO: Steve Shamo.

5 CHAIRMAN T. WHEELER: And as I understand
6 it, you're employed by MicroVote?

7 MR. S. SHAMO: Yes, sir.

8 CHAIRMAN T. WHEELER: And what is your
9 title with MicroVote?

10 MR. S. SHAMO: Sales.

11 VICE CHAIRMAN A. LONG: And you took the
12 oath?

13 CHAIRMAN T. WHEELER: And you took the
14 oath; correct?

15 MR. S. SHAMO: Yes.

16 CHAIRMAN T. WHEELER: Now as I understand
17 it, between the two of you, the -- all 47
18 counties are aware that Firmware Version 3.04
19 and Software Version 3.1 are not yet certified

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20 by this commission; correct?

21 MR. S. SHAMO: Yes. I would -- I would
22 say --

23 CHAIRMAN T. WHEELER: How did you make them
24 aware of it?

25 MR. S. SHAMO: They've been -- I believe

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1 they've been aware of it ever since October 1st.

2 CHAIRMAN T. WHEELER: How? How do they --
3 how do they know?

4 MR. S. SHAMO: When they -- when they knew
5 that any previous versions were decertified.

6 CHAIRMAN T. WHEELER: Did you tell them
7 that?

8 MR. S. SHAMO: Yes. I mean, I think
9 (indiscernible) yes, i.e. verbally or through
10 email. I mean, they're all aware that they --
11 they're not -- I mean, (indiscernible).

12 CHAIRMAN T. WHEELER: So by -- by some
13 form, either orally or on paper, you've advised
14 all 47 counties that the software and the
15 hardware that you're shipping and selling to
16 them is not certified; correct?

17 MR. S. SHAMO: Correct.

18 CHAIRMAN T. WHEELER: And they -- and
19 they -- they went ahead and signed those
20 contracts and paid you for that equipment?

21 MR. J. RIES: Well, most of those contracts
22 were executed before October 1st.

23 CHAIRMAN T. WHEELER: Because one of them I

24 saw are the seven contracts executed after
25 October 1st. Did you make them aware that that

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1 was uncertified software?

2 MR. S. SHAMO: After October 1st?

3 CHAIRMAN T. WHEELER: Yeah. As I
4 understand there were seven. I can pull Mr.
5 Price's letter. I believe you're familiar with
6 it.

7 MR. S. SHAMO: Yeah, there's actually...

8 CHAIRMAN T. WHEELER: It may be more than
9 that.

10 MR. S. SHAMO: Okay.

11 CHAIRMAN T. WHEELER: More than that,
12 between seven and nine.

13 MR. S. SHAMO: Yeah. Well, the stuff after
14 October 1st, I think -- you know, I can't speak
15 for the counties -- I mean, I can speak for
16 ourselves, but the purchases were made at that
17 point was I believe deemed as their
18 understanding as supporting the existing
19 contract that they -- they purchased before
20 October 1st. There wasn't a single contract
21 after October 1st that was -- or any sale after
22 October 1st that was not --

23 MR. J. RIES: To a county.

24 MR. S. SHAMO: It wasn't to a county that
25 wasn't previously (indiscernible) any system.

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1 CHAIRMAN T. WHEELER: All right.

2 MR. S. SHAMO: All those -- anything
3 (indiscernible) supplemental equipment that they
4 requested from the state to find out how much
5 funds they had available remaining in the...

6 CHAIRMAN T. WHEELER: Now with respect
7 to -- I'm going to refer to Mr. Price's letter
8 of March 30, 2006, which I believe was used
9 during the hearing on Monday. As I understand
10 it, the counties that we've been talking about
11 that executed, according to Mr. Price's letter,
12 Indiana contracts since October 1st, 2005
13 include Shelby County, Morgan County, Polaski
14 County, Fayette County, Bartholomew, Knox,
15 Brown, DeKalb, Grant, Hamilton and Washington
16 County; does that sound correct?

17 MR. S. SHAMO: Yes.

18 CHAIRMAN T. WHEELER: The total contract
19 amount, it looked like about half a million
20 dollars. Do you have a copy of that letter?

21 MR. S. SHAMO: No, I don't, but I think
22 that the -- that was actually amended also with
23 respect to a noncontractual that was just
24 basically an internet purchase where they would
25 post an order to our website or they can call

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1 one our employees and just place an order.

2 CHAIRMAN T. WHEELER: Okay. And what I
3 want to understand is if I -- if I bring in a
4 Morgan County Clerk or the Hamilton County

5 clerk, all right, and put them in the same seat
6 that Mr. Ries is sitting in, you're telling me
7 they will under oath state that they knew that
8 the hardware and software that you were selling
9 and delivering to them was uncertified?

10 MR. S. SHAMO: Where the hardware -- see,
11 that's where the clarification that came up
12 today was basically (indiscernible) on
13 October 1st, that the equipment that was
14 delivered to those counties was the same
15 firmware version, 3.04, same hardware version
16 (indiscernible).

17 VICE CHAIRMAN A. LONG: Which certification
18 is expired on October 1st?

19 MR. S. SHAMO: On October 1st, that -- I
20 believe it's...

21 VICE CHAIRMAN A. LONG: So it was no longer
22 certified?

23 MR. S. SHAMO: It was no longer certified.

24 VICE CHAIRMAN A. LONG: (Indiscernible)?

25 MR. S. SHAMO: Well, I think that's still

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1 pending on the hearing as to whether or not it's
2 going to be deemed (indiscernible) to purchase
3 the equipment.

4 CHAIRMAN T. WHEELER: But you're delivering
5 it? You're permitting it to be used?

6 MR. S. SHAMO: Right.

7 CHAIRMAN T. WHEELER: You delivered it and
8 you know they're using it; right?

9

MR. S. SHAMO: Yes.

10

CHAIRMAN T. WHEELER: Okay.

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MR. S. SHAMO: And all this happened. All
this happened.

13

VICE CHAIRMAN A. LONG: Did any -- did
anybody -- I ask both of you this: Did
anybody -- in any of this transaction, any of
these versions have say after -- post October 1
of 2.04 and any of these 3.04 Firmware and 3.1
Software, your delivery is on whatever term you
all choose to describe to that, is anybody at
the Election Division, were they notified or
give any okay for this type of activity; did
anybody up here from the Division know that you
were doing that?

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MR. S. SHAMO: No, sir.

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VICE CHAIRMAN A. LONG: So nobody's given

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you from the Election Division any preliminary
okay, or yeah, this is okay you can do this
pending our -- the Commission's approval? You
did this all on your own?

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CHAIRMAN T. WHEELER: Mr. King, can you
read for me one much the statutes governing the
commission's jurisdiction, and I'm specifically
referring to IC 3-11-7.5-28(f)?

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VICE CHAIRMAN A. LONG: What page?

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CHAIRMAN T. WHEELER: It's Page 347 in

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your...

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VICE CHAIRMAN A. LONG: 347. I was
Page 38

13 thinking you all on 34_ -- I can remember that.

14 MR. D. SIMMONS: First column, bottom left.

15 CHAIRMAN T. WHEELER: (Indiscernible) the
16 Commission. You ready, Tony?

17 VICE CHAIRMAN A. LONG: Yes.

18 CHAIRMAN T. WHEELER: All right. Could you
19 read that for me?

20 MR. B. KING: Yes, Mr. Chairman.

21 Subsection F reads if the commission finds that
22 a vendor has marketed, sold, leased, installed,
23 implemented or permitted the use of a voting
24 system in Indiana, that one, has not been
25 certified by the commission for use in Indiana

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1 or two, includes hardware, firmware or software
2 and a version that has not been approved for use
3 in Indiana, then the top of the next column, the
4 commission may revoke the approval granted under
5 this section and prohibit the vendor from
6 marketing, leasing or selling any voting -- any
7 voting system in Indiana for a specific period
8 not to exceed five years.

9 VICE CHAIRMAN A. LONG: Mr. Chairman, as
10 far as revoking it, they wouldn't have anything
11 to prove now at all.

12 CHAIRMAN T. WHEELER: There's nothing to
13 revoke, I agree.

14 VICE CHAIRMAN A. LONG: So I guess the
15 issue is -- I mean, I think it needs to be clear
16 for the record that this company has nothing

17 certified, that they did any of those things --
18 marketed, sold, leased, installed, implemented
19 or permitted for use in Indiana, and I think
20 that's No. 1.

21 And I think No. 2 would be to move forward to
22 conduct an investigation and determine if we're
23 going to move into (f)2 of the -- well, I guess
24 it's just (f), the final part of it, whether or not
25 their activity warrants the prohibition from them

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1 marketing in Indiana for a specified period.

2 As I can imagine, if it's true, then I think
3 they're entitled to a hearing before us on that and
4 I think clearly they need notice in advance that
5 that's what we're -- I think, anyway. I'm a lawyer
6 on the commission, but I want to -- (indiscernible)
7 if they get notice and I think that we need to move
8 forward and conduct an hearing on this issue.

9 CHAIRMAN T. WHEELER: And I'll address this
10 question about -- the co-directors and the
11 co-counsels, as I understand it, we have the
12 ability under the -- this statute to convene a
13 hearing under the Administrative Orders and
14 Procedures Act a judicial hearing relating to
15 these issues and MicroVote has its right under
16 AOPA that would be granted; is that correct?

17 MR. D. SIMMONS: Correct.

18 MR. B. KING: That's correct.

19 MS. K. ROBERTSON: That's correct.

20 CHAIRMAN T. WHEELER: But as I understand
Page 40

21 the motion from the Vice Chair -- I don't know
22 if that was actually a motion.

23 VICE CHAIRMAN A. LONG: Consider that as a
24 motion.

25 CHAIRMAN T. WHEELER: I understand I have a

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1 motion from the Vice Chair to the Commission,
2 ask the Commission to direct its staff to begin
3 the preparations to convene an AOPA into whether
4 there's been a violation of IC 3-11-7.5-28(f)
5 based upon the information received today.

6 COMMISSION MEMBER T. JOHN: Second.

7 CHAIRMAN T. WHEELER: Motion is made and
8 seconded, any further discussion from the
9 commission members?

10 (No response.)

11 CHAIRMAN T. WHEELER: Hearing none, all in
12 favor, signify by saying aye?

13 THE COMMISSION: Aye.

14 CHAIRMAN T. WHEELER: Opposed, same sign?

15 (No response.)

16 CHAIRMAN T. WHEELER: All right. The
17 motion's been made and carried that the
18 commission staff will undertake the
19 investigation necessary. I think it may make
20 some sense also for the board to consider
21 holding an executive session to discuss the
22 preparations for the hearing with the staff and
23 I will work with Mr. King to set an executive
24 session for that purpose here in the future.

25

VICE CHAIRMAN A. LONG: I would agree that

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1 we at least establish a format and a procedure
2 and then publish it just to -- the procedure
3 that we're following and extend an investigation
4 that there's lots of questions that I think we
5 need to address. I can think of 47 people I'd
6 like to have interviewed before -- in some form
7 and fashion before we...

8 CHAIRMAN T. WHEELER: Let me ask -- I'm
9 sorry.

10 COMMISSION MEMBER T. JOHN: Mr. Chairman, a
11 couple of questions -- well, actually, I'll just
12 say this, looking forward to that, I'm going to
13 want to hear from 2002 forward when you decided
14 to actually create new software and every mile
15 marker between there and how we got here because
16 I think it's inexcusable.

17 It wasn't like we didn't see these points
18 coming, and I don't know all the facts yet as to
19 what was the ITA's fault and what was your fault,
20 but it seems like a lot of other vendors have
21 managed to get their equipment in a position where
22 it's certified and yours isn't and you've continued
23 to market it.

24 And I think it's also important that the
25 provisions that Mr. King wrote that I don't care

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1 just about the contract because it talks and
2 installation. And clearly, there has been you know
3 approved software installed in 47 counties. So
4 there's a good deal to talk about there, and I'm to
5 some extent reiterating what my fell commissioners
6 have said already.

7 Also, I would move, Mr. Chairman, that the
8 Chair send a letter to all of those 47 counties
9 making clear that every -- that 3-11-7.5-1 states
10 explicitly the commission must approve any form of
11 electronic voting system before it may be used in
12 an election, and in 47 counties we have electronic
13 voting systems that are not approved.

14 They -- the old approval under 2.4 has lapsed
15 and there is no application that has been approved
16 or I think will be approved before the election in
17 those 47 counties; thus, those systems cannot be
18 used and the clerks will actually be violating the
19 Indiana statute if they do so. I think they should
20 be advised of that, and I think as a commission
21 we'd be remiss if we don't advise them of that.

22 CHAIRMAN T. WHEELER: I certainly agree,
23 and I think we also need to communicate -- have
24 their attorneys communicate with our staff to
25 discuss those allegations and figure out how

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1 we're going to move forward from this.

2 I -- I've got to confess that I was surprised
3 to hear the -- I assumed based upon the testimony
4 Monday that 2.04 had been passed and the testimony

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5 all been coming back on 2.0 (indiscernible), at
6 least 2.04 on -- I think the Secretary of State
7 assumed that, too, and I believe the questions
8 you've related is to 2.04; is that correct -- let
9 me clarify. Let me help you.

10 In your letter of April 5th, 2006, one of the
11 things you noted in your letter and I'll read that,
12 "as a matter of full disclosure we would say that
13 the certified version is not an application capable
14 of guaranteeing a primary election on May 7th, 2006
15 without many problems." I assume that's in
16 reference to Version 2.04, although as of April
17 5th, that was a concern Friday; correct, what
18 you're referring to as a previous certified
19 version; correct?

20 This is because of a potential vote volatility
21 issue; do you recall having that conversation with
22 the Secretary of State regarding what you meant?
23 Could you reiterate what you meant by vote
24 volatility issues?

25 MR. J. RIES: well, looking on Page 1 under

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1 Section 1, there may be a proper term --

2 CHAIRMAN T. WHEELER: Do you want a copy of
3 the letter or do you need...

4 MR. J. RIES: I have it. The volatility
5 issue was explained in a -- in a crisis we had
6 in (indiscernible) in 2004, and it was basically
7 a procedural process where a panel became
8 inoperable and it's never been serially

INDIANAELECTIONCOMMISSION4-19-06.txt
9 connected in receiving those results, it
10 actually (indiscernible) rid of (indiscernible).

11 CHAIRMAN T. WHEELER: So as I understand
12 it, it was a physical component issue? It's not
13 a question of dropping votes, failing to count
14 votes or anything like that? So I understood
15 your letter of April 5th, and I believe your
16 testimony before the Secretary of State that
17 2.04 would actually work; is that correct?

18 MR. J. RIES: Correct.

19 CHAIRMAN T. WHEELER: It just was a lot
20 harder in case you had to actually physically
21 remove it rather than just -- just hook to a
22 cable like a digital camera example that I
23 believe you used?

24 MR. J. RIES: And it was also incapable of
25 being modified.

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1 CHAIRMAN T. WHEELER: All right.

2 VICE CHAIRMAN A. LONG: Well, Mr. Chairman,
3 my hearing -- I'm really worried, the ones they
4 sold after October 1st, that's in a category by
5 themselves. The ones that existed before
6 October 1st, they were put back to the 2.04 that
7 was certified, and I guess I would ask staff
8 here would that not be a possible solution to
9 these four counties that they can conduct their
10 elections on those machines in counting their
11 votes with degree of certainty, or at least
12 they're not in violation of the law. In fact,

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13 as I understand, once the certification expires,
14 they (indiscernible).

15 CHAIRMAN T. WHEELER: They just couldn't
16 sell new ones.

17 VICE CHAIRMAN A. LONG: Just couldn't sell
18 new ones or market or install or do any of these
19 other things, but if somehow they were put back
20 to the way they were before the change, the
21 update, wouldn't -- and then agree -- perhaps
22 Mr. King, maybe a declaratory judgment
23 proceeding maybe we might suggest immediate
24 review as to whether or not we might approve a
25 retesting to verify that the previously, without

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1 everybody having to run their courts, running a
2 risk of perhaps differing decisions around the
3 state, that somehow those could be retested to
4 the previously certified version and there's a
5 combination of those counties that have been
6 victims here, apparently, and be able to conduct
7 their election in conformity.

8 CHAIRMAN T. WHEELER: And Mr. King's
9 pointed out to me there is a grandfather clause
10 which is on Page 394 and 395. Could you address
11 the grandfather clause, please?

12 MR. B. KING: Yes. Mr. Chairman and
13 Members of the Commission, this is on the bottom
14 of Page 394. It's Indiana Code 3-11-15-13.3.
15 That's 3-11-15-13.3. This was amended in 2006
16 and so what I will read will be a little bit

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17 different than the text in front of you.

18 Subsection A is stricken. The grandfather
19 clause, as it's been referred to, it's the top of
20 Page 395, a county may continue to use an optical
21 scan ballot card voting system or an electronic
22 voting system, which would be the DREs, whose
23 approval or certification expired on or about
24 October 1, 2005, if the system 1) was approved by
25 the commission for use in elections in Indiana, and 54

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1 this now reads before October 1, 2005; and B)
2 purchased by the county before October 1, 2005, and
3 otherwise complies with the applicable provisions
4 of HAVA and this article. However, a voting system
5 vendor may not market, sell, lease or install a
6 voting system described in this subsection.

7 CHAIRMAN T. WHEELER: All right. Let
8 me -- let me ask a couple of questions about
9 that. No. 1, if, for example, MicroVote was to
10 go back in, leaving aside that last sentence you
11 just read, if MicroVote was to go back in and
12 reinstall, remove Firmware 3.0 or reinstall
13 Firmware 2.04 for any approved software version,
14 but I'm not sure what the previous software
15 version was prior to October 1st, but if they
16 were to go back and reinstall that in those
17 systems, then -- leaving aside the issue of the
18 install work down there, that would bring them
19 into compliance with -- that would bring the
20 counties into compliance with the grandfather

INDIANAELECTIONCOMMISSION4-19-06.txt
21 clause; correct?

22 MR. B. KING: Yes.

23 CHAIRMAN T. WHEELER: Okay. And I -- I
24 would assume although -- however, that this --
25 it would be illegal for them to install those

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1 versions now; correct, under this statute?

2 COMMISSION MEMBER T. JOHN: Unless we
3 define install not to include reinstallation of
4 a previous -- previously installed product.

5 CHAIRMAN T. WHEELER: I think I'd want that
6 declaratory judgment that Tony was talking
7 about. I'm -- I'm -- I'm just -- what I'm
8 concerned with is the same thing, I think Tony
9 is concerned with, is we've got 47 counties that
10 are going to have to vote on May 2nd, and I want
11 to try to get them on certified equipment on
12 May 2nd. That's what I'm struggling with here.

13 Let me ask, Mr. Ries, is that -- is that a
14 possibility; can you go back and reinstall 2.04?

15 MR. J. RIES: Well, the possibility of
16 doing that is the time would be a major
17 hindrance.

18 COMMISSION MEMBER T. JOHN: Can you do it
19 or not?

20 MR. S. SHAMO: I would say no. I'll answer
21 that. The time frame indicates -- to do the
22 databases that would be created aren't simply
23 something -- everything has to be on the same
24 platform, databases are created on a different

1 seven days a week, 12 hours a day since
2 February 28th, ever since the -- the deadline
3 closed so (indiscernible).

4 CHAIRMAN T. WHEELER: If the issue were,
5 for example -- I mean, the penalties that this
6 commission can impose is probably a moratorium
7 on the sale and leasing any equipment in
8 Indiana. As I understand it, you're an Indiana
9 based corporation; correct? I assume the
10 majority of your business is here in Indiana?

11 MR. J. RIES: Yes, sir.

12 CHAIRMAN T. WHEELER: All right. If your
13 business depended on it, could you do it?

14 MR. J. RIES: I would say no, sir.

15 CHAIRMAN T. WHEELER: Then I guess the
16 implication is your business does
17 (indiscernible)?

18 MR. J. RIES: Yes, sir.

19 CHAIRMAN T. WHEELER: And what you're
20 telling me is even knowing that, you don't think
21 that you could do it?

22 MR. J. RIES: No, I don't think it would be
23 even possible at this point.

24 CHAIRMAN T. WHEELER: All right. So what's
25 the solution?

1 MR. J. RIES: I don't have a reasonable...
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2 VICE CHAIRMAN A. LONG: Kristi, is there a
3 possible solution?

4 MS. K. ROBERTSON: The only possible
5 solution I can think of is I think that they're
6 close to getting just software and firmware
7 version through the last piece of qualification
8 (indiscernible).

9 CHAIRMAN T. WHEELER: That being 3.04 and
10 3.1?

11 MS. K. ROBERTSON: And that is what the
12 counties have actually run their public tests
13 on. Also, many pieces would be if CIBER that
14 the new software has met all the qualifications
15 and then everything's in place and it would be
16 all certified, might be more practical,
17 (indiscernible) possible solution. The counties
18 actually have done their public tests on this
19 software.

20 COMMISSION MEMBER S. RIORDAN: So that
21 would mean that we would have to waive whatever
22 requirements go along with mandating the
23 software and then correcting applications that
24 are in right now, basically considering they too
25 have applied the software that the counties are

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1 using right now are doing the most appropriate
2 and expeditious fashion that we can and then
3 just certify it and then move forward and then
4 think later on, when we schedule our hearing,
5 about how we deal with the fact that they

6 haven't been certified (indiscernible).

7 So the potential for the Commission to find a
8 violation under the election code and issue an
9 appropriate form (indiscernible), what it wanted to
10 do would still be on the table where we can make
11 the election happen until we get an expedited
12 certification of what's out there now.

13 CHAIRMAN T. WHEELER: And let me ask, and
14 this is from my history in the notes, and
15 (indiscernible) to differentiate the situation
16 and the situation last year with ES&S and their
17 uncertified software, and I'm not -- I'm sorry,
18 I'm going to have to ask the staff describe the
19 ES&S situation, as I understand it, in contrast
20 to certifying the software, ES&S was permitted
21 to go forward with uncertified and posting a
22 bond; is that correct?

23 MR. B. KING: Mr. Chairman, that is
24 correct. I would add that I believe that
25 occurred in 2004.

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1 COMMISSION MEMBER T. JOHN: 2003.

2 MR. B. KING: Oh.

3 COMMISSION MEMBER T. JOHN: The municipal
4 election is in 2003.

5 MR. B. KING: May 2004, then --

6 MS. K. ROBERTSON: I think -- and the
7 difference may be that ES&S was not close at
8 that point to getting certification or getting
9 qualification from the ITA. They knew it would

10 take longer than when we have the May primary.

11 So at that point (indiscernible) having
12 equipment but continues to the primary being
13 certified. They weren't even close to getting the
14 ITA qualification for the May Primary 2004, is my
15 recollection.

16 MR. B. KING: And that's my recollection as
17 well, Mr. Chairman. I would add that the reason
18 I call attention to 2004 is that there were
19 extensive amendments to the certification
20 chapter in 2005 following that experience with
21 the voting system vendor who was referenced,
22 that for example, included the requirement that
23 we presented at the beginning of this subject
24 matter, and so...

25 CHAIRMAN T. WHEELER: which would preclude

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1 us, as I understand it, from allowing them to go
2 forward with uncertified software and posting a
3 bond; correct?

4 MR. B. KING: That's how I would read this
5 thing.

6 CHAIRMAN T. WHEELER: All right. Now, so
7 then the issue is can they get the certification
8 in time and the application fully executed in
9 time? As I understood the CIBER testing, they
10 said it could be Friday, could be a couple of
11 weeks, and here we are two days later.

12 MR. J. RIES: We're -- we're extremely
13 confident they will provide that by the end of

14 the week, by Friday. They've finished all
15 components of testing. Essentially, what
16 they're doing right now is actually running
17 through the test cases. There's four. They
18 started the first two today.

19 CHAIRMAN T. WHEELER: And again, that's --
20 that's 3.04 and Software Version 3.1; correct?

21 MR. J. RIES: Correct.

22 CHAIRMAN T. WHEELER: All right. Let me
23 ask a couple of questions. Are you intending to
24 withdraw the application for 3.04 -- well, I
25 guess there's nothing to withdraw; correct, the

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1 application's been filed?

2 MR. J. RIES: Correct.

3 CHAIRMAN T. WHEELER: All right. So the
4 only application currently pending is the one we
5 just received on April 18th; correct?

6 MR. B. KING: That's correct.

7 CHAIRMAN T. WHEELER: And --

8 VICE CHAIRMAN A. LONG: Actually,
9 (indiscernible).

10 CHAIRMAN T. WHEELER: It's not -- it's
11 not...

12 COMMISSION MEMBER T. JOHN: It's unsigned
13 or...

14 CHAIRMAN T. WHEELER: It has been filed,
15 though -- strike that. I'm asking about the
16 filing fee. You indicate there was no filing
17 fee with the April 18th filing?

18 MR. B. KING: Correct.

19 MR. J. RIES: Without being able to talk
20 with Mr. King on this (indiscernible), he wanted
21 to know where that check was with the original
22 application.

23 VICE CHAIRMAN A. LONG: I believe it was
24 deposited personally.

25 CHAIRMAN T. WHEELER: I suspect the answer

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1 is going to be we need them to come up with a
2 check. I think that's (indiscernible).

3 VICE CHAIRMAN A. LONG: I mean, how do you
4 file an application if it was -- if it was just
5 the signature, I'd say sign the darn thing and
6 go on down the road, but this is a different
7 application on a different level that -- you
8 know, we've had this before. We're going to
9 somewhere sometime come up with a procedure that
10 at least ought to be only good for 90 days or so
11 and people won't come in until they're ready,
12 but I don't -- the first application I don't
13 think is -- nobody's asked to amend the first
14 application. All we've got is somebody's new
15 application. That's where I say we are
16 procedurally.

17 MR. S. SHAMO: And Jim can correct me, but
18 I think the problem with that is clerical on our
19 end, that filed an application pending the final
20 report from CIBER, and the final
21 (indiscernible), we failed to sign that.

22 VICE CHAIRMAN A. LONG: You filed an
23 application for another version.

24 MR. S. SHAMO: Yes, sir. On that end -- I
25 think it was clerical on our end as to when. We

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1 brought that down yesterday to try to, I don't
2 want to say conserve, but use that as the
3 signature page from the previous application.

4 We failed to go back to the previous one and
5 address the fact that under the technical data
6 package, (indiscernible) already changed the
7 version of it because of the technical data package
8 variations.

9 So again, it's clerical on our end, but we did
10 go back to that previous application, essentially
11 withdraw it, and then resubmit it as a new version,
12 if that makes sense.

13 CHAIRMAN T. WHEELER: All right. Let's --
14 let me clarify. Brad, go through -- in order
15 for the April 18th application, and I realize
16 you just got it, in order for the commission to
17 consider that application, what needs to be done
18 either by them or by us?

19 MR. B. KING: Mr. Chairman, Members of the
20 Commission, at a minimum based on past
21 commission practice that's been applied to other
22 vendors, if a different version of software is
23 in fact being applied for, the commission has
24 required a separate application fee.

25 CHAIRMAN T. WHEELER: All right. So No. 1
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1 is they've got to come up with another \$5,000;
2 correct?

3 MR. B. KING: That's correct.

4 CHAIRMAN T. WHEELER: All right. No. 2.

5 MR. B. KING: No. 2.

6 COMMISSION MEMBER T. JOHN: 1,500.

7 MR. B. KING: 1,500.

8 CHAIRMAN T. WHEELER: I'm sorry, I was
9 raising the price.

10 MR. J. RIES: That's for your other
11 version.

12 MR. B. KING: The second point has been
13 raised with regard to escrow. The application
14 of April 18th does provide a certification by
15 Mr. Ries that escrow had -- material has been
16 escrowed with an entity that frankly I'm not
17 familiar with. I don't think we've had this
18 particular escrow agent before. It's NCC Group
19 from San Diego.

20 In the past, I think the Commission has
21 required either communication from the escrow agent
22 confirming that the material has in fact been
23 escrowed and has not relied simply upon
24 certification.

25 CHAIRMAN T. WHEELER: All right. So No. 2, 65

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1 we need a letter from the escrow agent, which is

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2 NCC of San Diego?

3 MR. B. KING: Yes, is my understanding.

4 CHAIRMAN T. WHEELER: Confirming --

5 MR. J. RIES: If I could add to that, that
6 is the same -- it was our previously escrow
7 agent that's required, and they were
8 (indiscernible).

9 CHAIRMAN T. WHEELER: But what you
10 need -- you will get us, and I assume this will
11 be expeditious, I would like to see it by the
12 end of the day.

13 MR. J. RIES: Okay.

14 CHAIRMAN T. WHEELER: A check for 1,500 and
15 a letter from the escrow agent immediately.
16 What else?

17 MR. B. KING: The third and I would say
18 critical component is communication from CIBER
19 that indicates the software version designated
20 as 3.1 has been fully tested and the results of
21 that test or the tests indicate that the system
22 complies with 2002 FEC Standards.

23 It's been the commission's practice in the
24 past to act based upon a letter to that effect and
25 permit the vendor to supply the full report within ⁶⁶

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1 a reasonable time after that report is generated.

2 CHAIRMAN T. WHEELER: So Point No. 4, we're
3 waiting, or I guess it's 3, we're waiting on a
4 letter from CIBER, which is, I assume,
5 contingent upon them completing it, which you

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6 indicate you think will be by Friday?

7 MR. J. RIES: Yes.

8 MR. B. KING: And then finally, as a
9 technical point, Mr. Chairman, in its March 20th
10 filing MicroVote provided poll worker manuals
11 Infinity firmware functional specs and a user's
12 manual for EMS 3.0, and it's not clear to me,
13 just knowing what I have in front of me, whether
14 or not those are still applicable to Version 3.1
15 or not?

16 CHAIRMAN T. WHEELER: All right. I will
17 direct Mr. Shamo or ask Mr. Shamo, I will direct
18 our staff to meet with you at the completion of
19 the meeting to discuss that particular issue as
20 well as -- it's my understanding you haven't had
21 an opportunity to go through this in detail?

22 MR. B. KING: That would be correct.

23 CHAIRMAN T. WHEELER: Because it just came
24 in yesterday. But I'm going to ask our staff
25 and both co-directors and legal staff to go

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1 through this immediately -- make it their No. 1
2 priority immediately after this meeting, go
3 through the application, make sure that it
4 complies -- if there's anything else besides
5 these four items listed, it is my assumption,
6 Mr. Ries and Mr. Shamo, you guys will
7 immediately respond to our inquiries, and I
8 certainly want to hear from your attorney on
9 Monday.

10 I will tell you the Commission is committed to
11 making sure this election works. I will tell you
12 that I as a commissioner have had -- I just can
13 understand how you guys were shipping and testing
14 the uncertified software during the -- I just -- I
15 don't understand that. We'll deal with that
16 another time.

17 My concern is between now and May 2nd to make
18 sure that we have systems up and running in all 47
19 counties that are certified and that work. And
20 it's my understanding that you are giving
21 guarantees to the Secretary of State that
22 those -- these systems are working; is that
23 correct?

24 MR. J. RIES: Correct.

25 CHAIRMAN T. WHEELER: So despite the fact

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1 they're not certified, at least the reports
2 we're getting back are that the test results are
3 positive; correct?

4 MR. J. RIES: Correct.

5 CHAIRMAN T. WHEELER: All right. Have
6 there been any problems reported to you so far
7 through the testing?

8 MR. J. RIES: No, sir.

9 VICE CHAIRMAN A. LONG: Do we have an
10 independent testing approval of Firmware Version
11 3.4?

12 MR. B. KING: Yes, that was the...

13 VICE CHAIRMAN A. LONG: So that's on file?

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CHAIRMAN T. WHEELER: It's right here, yes.

14

That's the March -- that's the February...

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VICE CHAIRMAN A. LONG: Okay. I was just going through their requirements to get us -- and then this application you were given yesterday, I noticed on the second page all these things that are supposed to be checked, supposed to be attached. Were they all received?

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CHAIRMAN T. WHEELER: I suspect the application fees weren't received.

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VICE CHAIRMAN A. LONG: I'm not -- I'm not

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1 worried about the application fee. I'm talking
2 about the -- I mean, I think we need to make
3 sure that this application is complete as a
4 revision of it, moving forward (indiscernible).

5

MR. B. KING: May I just comment?

6

CHAIRMAN T. WHEELER: Please.

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MR. B. KING: Mr. Chairman and Mr. Vice Chair, my answer would be no, I've not confirmed that all those documents were not received and whether they were included in the earlier March 20th filing.

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VICE CHAIRMAN A. LONG: And that would be the fourth or fifth condition that their application be made complete.

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CHAIRMAN T. WHEELER: Right. And it's my understanding that what's going to take place immediately after this meeting is that you're

18 going to sit down with our staff and you're
19 going to go through these and see what's there
20 and make sure every -- everything in the
21 application is there.

22 If something's needs to be signed, it's going
23 to be signed. If you need to cut us check -- I'm
24 not saying you have to worry about your checkbook
25 right this second, but I suggest you get a check

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1 for 1,500 bucks over here immediately. You're
2 going to contact everybody. We're going to get
3 this fixed.

4 That's -- that's -- we will work with you, and
5 I think the Secretary of State made a commitment on
6 Monday that he would work with you to make sure
7 that this takes place. We will work with you to
8 clean up this problem.

9 But please be aware, we consider this problem
10 to be of your making and we're going to deal with
11 that on the back end, after we get the election on
12 May 2nd, then we're going to deal with this issue
13 of the install -- installation, the selling, etc.,
14 we'll deal with that down the road.

15 Right now, I think everybody's efforts, your
16 efforts, our efforts need to be towards making sure
17 that we get this certification and that the
18 election goes forward.

19 Now as I understand it -- again, I just want
20 to emphasize, it's my understanding that 3.04 and
21 3.1 are working in those counties. The test

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22 results have all been positive. There have been no
23 issues with respect to the software and the
24 hardware that's being used, and let me ask you that
25 again; is that correct.

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1 MR. J. RIES: That is correct.

2 CHAIRMAN T. WHEELER: And so the voters in
3 those counties ask be assured that once we get
4 this certification, those systems will work
5 properly, and you're giving that -- that
6 assurance to this commission as well; correct?

7 MR. J. RIES: Correct.

8 CHAIRMAN T. WHEELER: And we will have that
9 assurance through the CIBER reports and
10 everything else, but I want that assurance from
11 you as well, and to the extent there are any
12 problems, you'll do everything within your means
13 to take care of it; is that correct?

14 MR. J. RIES: That's correct.

15 CHAIRMAN T. WHEELER: And it's my
16 assumption that with respect to the contracts
17 with each of those counties, there are
18 provisions in there that indemnify those
19 counties if there are additional expenses
20 incurred as a result of the system failures;
21 correct?

22 MR. J. RIES: Correct.

23 CHAIRMAN T. WHEELER: So, for example,
24 we've heard about ES&S where they have had to go
25 to paper ballot on some occasions, it's my

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1 understanding that they will be able based upon
2 those contracts on a county-by-county basis,
3 there's the indemnification provision so the
4 taxpayers aren't picking up those expenses;
5 correct.

6 MR. J. RIES: Correct.

7 CHAIRMAN T. WHEELER: And then you will
8 commit to us to pick up those expenses; correct?

9 MR. J. RIES: That's correct.

10 VICE CHAIRMAN A. LONG: Nothing further for
11 these folks.

12 CHAIRMAN T. WHEELER: All right. That
13 concludes -- and do you have anything else?

14 MR. J. RIES: Do you want us just to meet
15 you up in your office, Brad, after this hearing?

16 CHAIRMAN T. WHEELER: All right. We'll try
17 to get -- I don't -- we'll try to get out of
18 here quickly and let you guys go get some work
19 done. All right, that concludes Agenda Item
20 3B -- I apologize.

21 VICE CHAIRMAN A. LONG: I have one other
22 matter. You notified us that we're going to
23 have -- and I completely prefer an executive
24 session to talk about a hearing. I was
25 fortunate enough to hear part of the hearing

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1 today over at the Secretary of State's Office --
2 it doesn't relate to my vote at all, the ES&S

3 situation.

4 And there was some testimony from at least one
5 of the clerks -- I heard two -- two or three clerks
6 talking, and I was concerned about all of them, but
7 one of them, particularly, in St. Joe County, there
8 was evidence presented to the Secretary of State
9 that there were marketing efforts to push this
10 clerk into accepting delivery of uncertified
11 materials from ES&S.

12 And it's my position that while we're meeting
13 in executive session, we deal with procedural
14 issues and investigative issues, that the issues
15 relating to ES&S be put on the agenda.

16 And I want to do -- I'm taking this
17 declaration in this public forum so that my idea of
18 the executive session is not to conduct any or
19 transact any business only to deal on procedural
20 issues and direct staff as to what we would like to
21 have when we come back in a public forum.

22 And if we find probable cause to proceed to
23 the violation stage, my request is that as part of
24 the executive association, is that we be prepared
25 to at least do the preliminary reviews from counsel

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1 or the staff, and counsel, executive --
2 co-directors and counsel to at least be cognizant
3 of the areas of concern so that we can direct
4 investigation in regard to the ES&S problems that
5 appear to be out there, and that we be able -- some
6 efficiency of us coming here to Indianapolis or I

7 guess meeting down here in Indianapolis, and those
8 too far from here, that we can transact as much
9 business.

10 I would be prepared -- it looks like if
11 MicroVote, if their thing is in order, that we're
12 going to have to have another meeting before the
13 primary, that perhaps we work toward in
14 incorporating date as the -- as the executive
15 session, even if we might have to have a second
16 one, we might be able to get part of it done, but I
17 would like to have the ES&S issues that we heard
18 from the Secretary of State's hearing today, and
19 hopefully, (indiscernible) very quickly have a
20 chance to review that so that that investigation be
21 undertaken simultaneously.

22 I would continue to bring it up at the
23 executive session that I believe that things like
24 this and what we intend to discuss in executive
25 session, we need to disclose that to the public in

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1 the meeting so that we can carry out our
2 responsibility. But there were some extremely
3 troubling things that I heard and -- from ES&S.

4 And as one commissioner and one commissioner
5 only, I -- we have operated for years on the
6 credibility of our vendors. And as I sit here
7 today -- I mean, it's been a necessity because of
8 the fact that we don't have either the technical
9 computer training staff in order to perform this
10 testing ourself.

11 We rely on our independent testing authority
12 to the credibility of the vendors. And as we sit
13 here now, that credibility in my mind is severely
14 shaken and I don't know what to do. The ultimate
15 answer is going to be if we find over meaningful
16 and willful violation, I, for one, intend to let
17 the world know that by my vote that this is not
18 something I'm willing to tolerate in Indiana.

19 And you know, we've got two vendors here on
20 the level that we would -- I know with ES&S, we've
21 done -- we've had -- we've come to Indianapolis for
22 special meetings to try to help the counties -- let
23 me be clear, to help the counties. If it were just
24 a matter of MicroVote or ES&S wallering in their
25 own problems, that would be one thing, but we've

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1 got counties all over the state that are facing
2 difficulties and that's why I'm willing to come
3 back.

4 But I want -- I want to be able to discuss in
5 our executive session how we're going to proceed in
6 the investigation. I think it has to be an
7 investigation at this point with regard to the ES&S
8 situation.

9 CHAIRMAN T. WHEELER: All right.

10 VICE CHAIRMAN A. LONG: I appreciate you
11 allowing me to do this because I -- at the
12 hearing, to be...

13 CHAIRMAN T. WHEELER: I will -- I will take
14 that as a motion and we'll recess just briefly

15 here in just a second, I will take that as a
16 motion to direct the staff to investigate not
17 only the MicroVote situation but ES&S
18 investigation. I would also take that as a
19 motion to direct staff to obtain the transcripts
20 as well as the (indiscernible) of the Secretary
21 of State's hearing as part of our investigation
22 for consideration into that.

23 COMMISSION MEMBER T. JOHN: Second.

24 CHAIRMAN T. WHEELER: Motion's been made
25 and seconded, any further discussion?

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1 (No response.)

2 CHAIRMAN T. WHEELER: All in favor, signify
3 by saying aye?

4 THE COMMISSION: Aye.

5 CHAIRMAN T. WHEELER: Those opposed, same
6 sign?

7 (No response.)

8 CHAIRMAN T. WHEELER: I'm going to accept
9 the motion and recess briefly while we get set
10 up for the remainder of the issues.

11 COMMISSION MEMBER T. JOHN: So moved.

12 COMMISSION MEMBER S. RIORDAN: So moved.

13 COMMISSION MEMBER T. JOHN: Second.

14 CHAIRMAN T. WHEELER: All in favor, signify
15 by saying aye?

16 THE COMMISSION: Aye.

17 CHAIRMAN T. WHEELER: Motion carries.

18 Recess for 20 minutes.

19 (A recess was taken.)

20 CHAIRMAN T. WHEELER: All right. It's
21 approximately 12:45. I'm call the commission
22 meeting back to order. Recognizing that we have
23 three commission members here and that Mr. Long
24 has had to leave.

25 Turning to Agenda Item No. 3, who is handling ⁷⁸

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1 2006-94.

2 MS. K. ROBERTSON: I will do that. Mr.
3 Chairman and Members of the Commission, in your
4 packets you'll find the Form Order 2006-94 and
5 copies of the of the proposed forms following
6 that. You've got a couple of different things
7 happening here.

8 On the PRO-9 and PRO-10 -- these are
9 provisional ballot forms, and the reason these are
10 being changed is because there was recent statutory
11 changes in deadlines for county provisional
12 ballots. The legislature just passed this this
13 past legislative session.

14 And so the PRO-9 is the form that a or -- a
15 voter is given a provisional ballot at the polls on
16 election day and you are given this form that will
17 tell you instructions about how you'll find the
18 deadlines, and if you have to provide any kind of
19 documentation, like a photo ID, for example or also
20 how you can check whether a provisional was counted
21 or not, and if not, why not. That's what the PRO-9
22 is.

23 The PRO-10 is the affidavit that someone that
24 does not have a photo ID on election day and cannot
25 provide one because they are indigent, or if they

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1 have a religious objection to being photographed,
2 they can come to the county clerk's office after
3 the election and fill out this PRO-10 affidavit,
4 and the only change on this was again the time
5 period -- it was 13 days after the election to
6 provide this, or to come and sign this affidavit,
7 it is now 10 days after the election.

8 CHAIRMAN T. WHEELER: And just -- just for
9 clarification purposes, and I understand you
10 guys are no longer defendants, as I understand
11 the photo ID litigation was unsuccessful in
12 defending that. We'll see what happens after
13 that.

14 MR. B. KING: I'm not sure whether we're
15 still defendants or not because we're under --

16 MS. K. ROBERTSON: We don't know if it's
17 going to be appealed or not.

18 MR. B. KING: -- appeal so...

19 CHAIRMAN T. WHEELER: It's under appeal.
20 So at least at this point, (indiscernible) photo
21 ID and...

22 MS. K. ROBERTSON: That's correct. The
23 CEB-23, 24 and 25, these were -- these are the
24 reports that counties will file (indiscernible)
25 either certified or (indiscernible) primary,

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1 these forms were revised and include the obvious
2 stuff we have this year. We are hoping that the
3 counties will take advantage of a component of a
4 statewide voter registration system and file
5 this information electronically in the system,
6 but they are not required to do so. So we
7 wanted to provide them with paper copies of the
8 forms, forms that basically we want certified to
9 us by (indiscernible). So these are just
10 updating this request. And that's all I have
11 and I'll be happy to answer any questions.

12 CHAIRMAN T. WHEELER: I'll accept a motion
13 regarding Order 2006-94 approving forms?

14 COMMISSION MEMBER T. JOHN: So moved.

15 CHAIRMAN T. WHEELER: Do I have a second?

16 COMMISSION MEMBER S. RIORDAN: Second.

17 CHAIRMAN T. WHEELER: The motion's been
18 made and seconded, any further discussion?

19 (No response.)

20 CHAIRMAN T. WHEELER: All in favor of the
21 motion to approve Order 2006-94, indicate by
22 saying aye?

23 THE COMMISSION: Aye.

24 CHAIRMAN T. WHEELER: Those opposes, same
25 sign?

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1 (No response.)

2 CHAIRMAN T. WHEELER: Motion carries.

INDIANAELECTIONCOMMISSION4-19-06.txt
3 who's doing Voter's Bill of Rights?

4 MR. B. KING: I can take the next two, Mr.
5 Chairman, if you'd like? Order 2006-95 is a
6 revision of the Absentee Voter's Bill of Rights.
7 This is very straight forward. In counties that
8 have central count of absentee ballots, there is
9 a different deadline of noon on election day to
10 get the absentee ballot back.

11 we've added alternative language to the
12 absentee Voter Bill of Rights to reflect that
13 option in those counties. This order would be
14 effect -- and we have advised the counties already
15 to make this change if they are using central count
16 so this order is retroactive to March 22nd, Mr.
17 Chair.

18 CHAIRMAN T. WHEELER: I'll accept a motion
19 to approve Order 2006-95 revised Voter's Bill of
20 Rights?

21 COMMISSION MEMBER T. JOHN: So moved.

22 CHAIRMAN T. WHEELER: Do you have a second?

23 COMMISSION MEMBER S. RIORDAN: Second.

24 CHAIRMAN T. WHEELER: Motion's been made
25 and seconded, any further discussion?

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1 (No response.)

2 CHAIRMAN T. WHEELER: Hearing none, all in
3 favor signify by saying aye?

4 THE COMMISSION: Aye.

5 CHAIRMAN T. WHEELER: Those opposed, same
6 sign?

INDIANAELECTIONCOMMISSION4-19-06.txt
(No response.)

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CHAIRMAN T. WHEELER: Motion carries.

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Order 2006-95 approving Absentee Voter, or

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revised Absentee Voter Bill of Rights is passed.

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MR. B. KING: Mr. Chairman, the fifth item

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on the agenda, Order 2006-96 is approving the

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revised Voter's Bill of Rights. This is the

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poster that's placed in polling places and other

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locations to give voters advice on election day

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about their rights on a number of different

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subjects.

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The commission has previously approved the

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Voter's Bill of Rights. This update is to reflect

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changes in legislation in the 2006 session.

21

CHAIRMAN T. WHEELER: All right. I'll take

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a motion to approve Order 2006-96, approving

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revised Voter's Bill of Rights?

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COMMISSION MEMBER T. JOHN: So moved.

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CHAIRMAN T. WHEELER: Motion has been made,

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do I have a second?

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COMMISSION MEMBER S. RIORDAN: Second.

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CHAIRMAN T. WHEELER: Motion's been made

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and seconded, any further discussion?

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(No response.)

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CHAIRMAN T. WHEELER: Those in favor of

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Order 2006-96, signify by saying aye?

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THE COMMISSION: Aye.

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CHAIRMAN T. WHEELER: Those opposed, same

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sign?

INDIANAELECTIONCOMMISSION4-19-06.txt
(No response.)

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CHAIRMAN T. WHEELER: Order No. 2006-96,
approving revised Voter's Bill of Rights passes.
Who's doing campaign finance enforcement?

MR. B. KING: Kristi, do you want to start
with the ratification, then we'll...

MS. K. ROBERTSON: Sure. Mr. Chairman,
Members of the Commission, in your packets under
campaign finance tab, you'll find a memo from
Brad King and I. This is similar to what
the -- I think it's the last commission meeting,
campaign finance committees that file their
reports (indiscernible) now enter into some
agreement to pay their entire fine and waive the
hearing, the hearing before the election

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commission.

So this is the latest group of people that
have taken that -- advantage of that, and you'll
see that on the second page, the list of committees
with a total of \$6,800 that would be put into
campaign finance enforcement.

So as we have done in the past, I think we
just need ratification by the election commission
(indiscernible).

CHAIRMAN T. WHEELER: Any discussion by the
Commission?

(No response.)

CHAIRMAN T. WHEELER: I know there was a
\$5,000 from the Hoosier Beverage Association.

INDIANAELECTIONCOMMISSION4-19-06.txt
MS. K. ROBERTSON: Yes.

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CHAIRMAN T. WHEELER: All right. Having no further discussion, do I have a motion for ratification of campaign finance agreements attached under the campaign finance report from the co-directors dated April 19th, 2006?

COMMISSION MEMBER T. JOHN: So moved.

COMMISSION MEMBER S. RIORDAN: So moved.

COMMISSION MEMBER T. JOHN: Second.

CHAIRMAN T. WHEELER: All right. Motion's been made and seconded, any further discussion?

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(No response.)

CHAIRMAN T. WHEELER: Hearing none, all those in favor of approving or ratifying the campaign finance agreements and pay the penalty and waive the hearing, signify by saying aye?

THE COMMISSION: Aye.

CHAIRMAN T. WHEELER: Opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries. All right, (indiscernible).

MR. B. KING: Mr. Chairman, let me begin that, and knowing the time considerations here, Pam Potesta and Michelle Thompson, our campaign finance staff, have sat patiently through the earlier proceedings.

You may recall January 17th, the commission meeting, that there was extensive discussion and two orders that were adopted by the commission

INDIANAELECTIONCOMMISSION4-19-06.txt
19 concerning campaign finance forms. These are
20 included in your packets and they reflect the
21 language adopted at that meeting, Order 2006-1 and
22 2006-5.

23 But to summarize a long discussion, it was
24 brought to the commission's attention that several
25 committees were filing forms that did not appear

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1 to, or we were not certain, conformed with current
2 campaign finance reporting law.

3 And then (indiscernible) if you're amenable, I
4 can ask Michelle Thompson to report what the staff
5 has done since the January 17th meeting at the
6 commission's direction and see where you would like
7 to proceed with that.

8 CHAIRMAN T. WHEELER: This is like the
9 (indiscernible) software.

10 MS. M. THOMPSON: Right.

11 MR. B. KING: That's correct.

12 MS. M. THOMPSON: Mr. Chairman, this order
13 was adopted on the 17th, and I -- on the 18th, I
14 faxed.

15 CHAIRMAN T. WHEELER: And you're referring
16 to the order, you're talking about the
17 Commission's Order No. 2006-5?

18 MS. M. THOMPSON: Correct.

19 CHAIRMAN T. WHEELER: which is in the
20 packet --

21 MS. M. THOMPSON: Correct.

22 CHAIRMAN T. WHEELER: -- under campaign

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finance?

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MS. M. THOMPSON: This order was adopted

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the 17th, and on the 18th, I faxed this order to

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all our vendors on our list and also put it in

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the mail to all our vendors. As of April, I've

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heard from nobody regarding -- from the vendors

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wanting to make sure that their forms were

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approved by our commission.

6

In April, right before the deadline, I did

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hear from a lady from Race Trax. We did -- I did

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look at her forms. I told her I can look at them

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but they still needed to be approved by the

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commission -- have not heard a word since. I'd

11

like to kind of show you what we're getting in.

12

MR. B. KING: Michelle, can I interrupt

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you?

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MS. M. THOMPSON: Sure.

15

MR. B. KING: Do I also understand, Mr.

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Chairman, if I may, that you also provided a

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copy of this order to each of the committees?

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MS. M. THOMPSON: Yes. When I sent out

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their packets in March, a copy of that order as

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well.

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CHAIRMAN T. WHEELER: So it went to every

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committee; right.

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MS. P. POTESTA: Yes. So everybody was

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notified.

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CHAIRMAN T. WHEELER: Everybody knows?

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1 MS. P. POTEESTA: Everybody knows. Some of
2 the things --

3 CHAIRMAN T. WHEELER: And nobody -- kind of
4 the conclusion is nobody getting them now?

5 MS. P. POTEESTA: Correct.

6 MS. M. THOMPSON: These are some -- this is
7 Race Trax. This is one of the committees that
8 filed a report. I kind of highlighted some of
9 the things that are missing. Obviously, the
10 revised date's wrong. Type of report, had some
11 things missing. It looks like they updated the
12 front page to 2000, but when they went to their
13 schedules, they didn't update them.

14 CHAIRMAN T. WHEELER: They say '98 still?

15 MS. M. THOMPSON: Right. Missing
16 application on this one. I can't tell you for
17 sure because they're under a thousand, if
18 that's -- that's actually in there or not.
19 Schedule B was updated on 2000, but I have not
20 heard from the vendor.

21 CHAIRMAN T. WHEELER: So bottom line, we
22 have a bunch of vendors that are failing to
23 comply with our new forms?

24 MS. M. THOMPSON: Correct.

25 CHAIRMAN T. WHEELER: Including Race Trax,

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1 and you're getting -- you're getting all of
2 these to see if any of these forms -- forms that
3 don't work because the vendors haven't fixed

4 their problem?

5 MS. M. THOMPSON: Correct. Now we've been
6 able to at least get these committees into the
7 system, you know, and can data enter them.
8 They're just missing, missing fields.

9 CHAIRMAN T. WHEELER: You're just missing
10 information, the required information?

11 MS. M. THOMPSON: Correct.

12 CHAIRMAN T. WHEELER: So in terms of the
13 solution, what -- is the solution we need to
14 take action against the vendors; what are our
15 options?

16 MR. B. KING: Mr. Chairman, there are a
17 number of different options. Noting that the
18 committees have filed defective reports, the
19 committees can be asked to file reports that
20 provide the missing information, but the
21 underlying root of the problem, at least in my
22 opinion, is the product being provided by the
23 vendor.

24 To just briefly offer two or three ideas. One
25 certainly is the Commission can ask the campaign

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1 finance vendors to appear and explain why they are
2 providing software to their customers.

3 CHAIRMAN T. WHEELER: How many -- how
4 many -- how many -- I'm familiar with Race Trax,
5 obviously, but are there any other vendors?

6 MS. M. THOMPSON: Mr. Chairman, there's
7 some of them that make their own forms. You

8 know, they've got...

9 MR. B. KING: But on our list.

10 CHAIRMAN T. WHEELER: They -- you mean you
11 have vendors that make their own forms or
12 committees?

13 MS. M. THOMPSON: Committees that make
14 their own forms, too, as well.

15 MS. K. ROBERTSON: Yeah, there are
16 committees -- I think we have a couple of
17 committees. You have vendors and they have a
18 software out there that's not current. You have
19 committees that are coming up with their own,
20 creating their own.

21 CHAIRMAN T. WHEELER: When you say -- when
22 you say committees, what kind of committees?

23 MS. K. ROBERTSON: Campaign finance
24 committees that file.

25 CHAIRMAN T. WHEELER: Individual campaign

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1 finance. What about any -- are there -- do we
2 have a situation with parties, like for example,
3 a county party is using a particular version and
4 is filing for a whole bunch of candidates?

5 MS. K. ROBERTSON: I...

6 CHAIRMAN T. WHEELER: I thought that's what
7 happened in Marion -- Marion County was using
8 own (indiscernible).

9 MS. K. ROBERTSON: Marion County.

10 CHAIRMAN T. WHEELER: They have their own
11 version.

12 MS. K. ROBERTSON: They have their own.

13 CHAIRMAN T. WHEELER: And we approved
14 their...

15 MS. K. ROBERTSON: (Indiscernible).

16 CHAIRMAN T. WHEELER: Right.

17 MS. M. THOMPSON: I believe was it the
18 Greater Indianapolis one?

19 MS. K. ROBERTSON: And they submitted it
20 again for our approval and...

21 CHAIRMAN T. WHEELER: Is it working? Is it
22 still (indiscernible)?

23 MS. M. THOMPSON: It's still got some
24 missing fields. I mean, I have not -- I have
25 not corrected them -- for them to...

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1 MS. K. ROBERTSON: (Indiscernible) prepared
2 their report, contacted me last week to see how
3 to get this approved and I said (indiscernible).
4 I gave the (indiscernible) to Pam and actually
5 review it to see if it was compliant -- they're
6 using our summary, but they are -- they are
7 creating their own schedules.

8 CHAIRMAN T. WHEELER: A spreadsheet of some
9 kind.

10 MR. B. KING: Right. Exactly.

11 MS. K. ROBERTSON: And they are missing
12 some information so I think what we have, we
13 have vendors that have reports and software that
14 are not compliant. We have committees that are
15 creating their own that have problem and then we

16 have committees that have bought software in the
17 past, like Race Trax, for example, that aren't
18 getting upgrades because you have to pay for
19 those and so they just using what they can from
20 several years ago so -- and so that committees
21 are filing on software. (Indiscernible) Race
22 Trax (indiscernible) is compliant, only -- the
23 only way that's going to work for their customer
24 is they're going to buy the -- the new copies, a
25 variety of things.

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1 CHAIRMAN T. WHEELER: Do we have the --
2 these are noncompliant; correct, so that subject
3 extend to a fine of some sort; correct?

4 MS. M. THOMPSON: That makes the report
5 defective.

6 CHAIRMAN T. WHEELER: All right. Do we
7 have -- I guess you had -- you had three
8 suggestions. We got through one.

9 MR. B. KING: That's okay. A couple -- a
10 couple of others. Aside from the commission as,
11 you know, the body that conducts campaign
12 finance enforcement, one way to look at this
13 also is a vendor is selling a product to a -- to
14 a consumer that is defective for the purpose for
15 which it was designed.

16 And it may be an option from the commission to
17 consider bringing litigation in terms of an
18 injunction to prevent vendors from providing
19 defective products.

20 CHAIRMAN T. WHEELER: So we need -- we need
21 to probably need to set a (indiscernible)?

22 MR. B. KING: Yes, that would be correct.
23 Well, No. 3 was to -- as I said, to enforce the
24 requirements with regard to defective reports
25 against individual filers. There may be --

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1 there may be other remedies that others may
2 think of but those were the -- the two that came
3 to my mind.

4 CHAIRMAN T. WHEELER: My gut on this is, I
5 hate -- I hate to whack individual committees.
6 I'm concerned about the vendors. My thought
7 would be to pull everybody in, everybody -- file
8 a notice of deficiency with everybody, set a
9 meeting like we set for campaign finance
10 enforcement meeting, bring them in, give them an
11 opportunity to cure, have the vendors there
12 explaining how they're going to fix their
13 software in front of all of these committees who
14 are subject to being fined by us, which would
15 hopefully get the vendors into a...

16 UNIDENTIFIED SPEAKER: I'm sorry to
17 interrupt. I have another meeting coming in at
18 1:30. I'll have to turn the whole room around.

19 COMMISSION MEMBER T. JOHN: They may have
20 to wait for a bit.

21 CHAIRMAN T. WHEELER: Yeah, just give us...

22 COMMISSION MEMBER T. JOHN: Give us a
23 little time. They may have to wait for a bit.

24 UNIDENTIFIED SPEAKER: Thank you.

25 CHAIRMAN T. WHEELER: Okay. Thoughts on

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1 that?

2 COMMISSION MEMBER T. JOHN: I actually
3 somewhat disagree with you, Tom, on a going
4 forward basis. With these committees, if we
5 haven't raised the issue with them before, I
6 agree, let's not blind side them.

7 But I think ultimately, on a going forward, we
8 need the whole committees responsible and
9 accountable for what they do and that they're
10 compliant. And they're the ones that ultimately
11 are subject to our jurisdiction.

12 I'm not clear as to how we can reach out to
13 these vendors and what our jurisdiction is over
14 them, and at some point I'd -- let me finish, but
15 then I'd like to hear what Dale and Brad's
16 perspective is on that, and Kristi and Cody, too.

17 But I do think we should refer these vendors
18 that are selling defective software to the consumer
19 division of the attorney general for their review,
20 and I would move that we do that, and the attorney
21 general can then make a review of that.

22 But then long-term, I believe that ultimately
23 the process is to hold these people accountable. I
24 think we have to serve notice and make it clear
25 that using vendor software does not release you

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1 from the responsibility to insure that you file
2 compliant reports, and that if committees choose to
3 use out dated software, choose to create their own
4 software, they do so at their own risk. That's my
5 position.

6 COMMISSION MEMBER S. RIORDAN: well, I
7 guess I need to (indiscernible) is that all the
8 information that they're required to provide
9 (indiscernible). I mean, I would assume that is
10 that we're making -- whether they download our
11 forms or however they do it, they -- they can
12 find out what information they need to provide,
13 but I think maybe we ought to just know if the
14 software agrees and put them in compliance and
15 give them an opportunity cure that.

16 CHAIRMAN T. WHEELER: That was done, though
17 at this time, with your packet that went out,
18 isn't that correct?

19 MS. M. THOMPSON: With the packet that went
20 out.

21 CHAIRMAN T. WHEELER: They were advised
22 that they were (indiscernible).

23 COMMISSION MEMBER T. JOHN: When did that
24 go out?

25 MS. M. THOMPSON: Every committee got this

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1 same letter.

2 COMMISSION MEMBER T. JOHN: Prior to --
3 prior to the filing?

4 MS. K. ROBERTSON: I would say then that
5 what my feeling is or would help is a directed
6 letter to the committees that we don't have
7 problems, because in that packet, they got
8 forms, they got reporting schedules,
9 (indiscernible).

10 CHAIRMAN T. WHEELER: Who reads all that
11 stuff?

12 MS. M. THOMPSON: You know (indiscernible).

13 MS. K. ROBERTSON: I hope they would.

14 CHAIRMAN T. WHEELER: I understand.

15 MS. K. ROBERTSON: But I'm wondering if we
16 need today would fit -- because we know what
17 committees have a problem, just send a letter
18 directly to them on just this issue.

19 CHAIRMAN T. WHEELER: How many committees
20 are we...

21 MS. M. THOMPSON: With this problem?

22 CHAIRMAN T. WHEELER: Yeah.

23 MS. M. THOMPSON: I can't answer that.

24 CHAIRMAN T. WHEELER: No idea?

25 MR. B. KING: Maybe a minimum?

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1 MS. M. THOMPSON: I'd say estimate 50 --
2 50, 75 -- I mean, maybe on that one.

3 CHAIRMAN T. WHEELER: All right. What do
4 you -- what do you think, sending them a letter,
5 No. 1, that goes to the committees, sending a
6 letter advising they're noncompliant. Do you
7 want to pursue enforcement actions against those

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8 committees -- I heard Tom say yes?

9 COMMISSION MEMBER T. JOHN: Well, no. What
10 I said is we'll give them the one bite now.

11 CHAIRMAN T. WHEELER: This is their one
12 bite?

13 COMMISSION MEMBER T. JOHN: This is their
14 one bite.

15 CHAIRMAN T. WHEELER: Send them a letter?

16 COMMISSION MEMBER T. JOHN: I'd like to
17 send a letter to every committee.

18 CHAIRMAN T. WHEELER: I saw
19 (indiscernible) -- I mean, these guys,
20 obviously, we -- we came in in an emergency --
21 did an emergency approval last time, yet they
22 did the same thing again.

23 MS. K. ROBERTSON: Again, they're not
24 paying it.

25 CHAIRMAN T. WHEELER: (Indiscernible).

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1 MS. K. ROBERTSON: We got three back, and
2 they're not paying it.

3 CHAIRMAN T. WHEELER: And I'm -- I mean,
4 I'm -- I'm perfectly cognizant of the fact they
5 put you in a bad situation. As I recall, you
6 got it at 12:00_ whatever for a 1:00 o'clock
7 meeting?

8 MS. K. ROBERTSON: Right.

9 CHAIRMAN T. WHEELER: And therefore,
10 putting you in a bad situation.

11 MS. K. ROBERTSON: I think -- I think maybe

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12 these are just -- these are what they're
13 supposed to do, because they're not looking at
14 this that they have to file. So it's always
15 coming up right before they have to file and
16 they've already got this all in a database so
17 they're basically either...

18 CHAIRMAN T. WHEELER: Changing the name.

19 MS. K. ROBERTSON: Right, or filing
20 something that is...

21 CHAIRMAN T. WHEELER: I guess -- I guess my
22 inclination is kind of a mixture, is No. 1, send
23 them a letter saying look, you know, you're not
24 in compliance. Please be advised that the fine
25 for not being in compliance is X thousand

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1 dollars. The next filing date is -- whatever
2 the next filing date is June.

3 MS. M. THOMPSON: October.

4 COMMISSION MEMBER T. JOHN: October.

5 CHAIRMAN T. WHEELER: Next filing date is
6 October.

7 COMMISSION MEMBER T. JOHN: Through June.

8 CHAIRMAN T. WHEELER: We will impose those
9 fines in October, and then deal with the vendors
10 on what -- on what -- I think we -- do we have
11 the power to do something?

12 MR. D. SIMMONS: Not if we drag people in,
13 but...

14 COMMISSION MEMBER T. JOHN: What's our
15 power regularly?

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MS. K. ROBERTSON: Yeah, we only have
the --

MR. B. KING: Maybe the short answer is --
I mean, we have the authority under, and daily
can quickly give a code cite here.

MR. D. SIMMONS: In 3-6-4.1-21, and this
was Mr. King and I trying to think creative the
other day, that if the Commission finds that
substantial reason to believe a election law

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1 violation has occurred here on a widespread
2 basis, it can expeditiously make an
3 investigation -- of course, you'd have subpoena
4 powers.

5 One of the ideas we were kicking out
6 is -- kicking around is if you had the vendor come
7 in here -- vendors for this -- these products that
8 are defective come in here...

9 CHAIRMAN T. WHEELER: There's only four
10 vendors, as I understand, four?

11 MS. K. ROBERTSON: Right.

12 CHAIRMAN T. WHEELER: So we're not talking
13 a ton of people.

14 MR. D. SIMMONS: You could subpoena saying
15 look, we're going to -- we're considering
16 referring this to the attorney general to enjoin
17 you from continuing to disperse these defective
18 products because they are leading to election
19 law violations, that is defective reports.

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That -- that may -- and then, by the way,

20
21 these committees do have the alternative. We have
22 software available for them. It complies. And you
23 know...

24 MS. K. ROBERTSON: (Indiscernible).

25 CHAIRMAN T. WHEELER: I don't have a

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1 problem putting that in the letter. What do you
2 guys -- what do you think, Tom? Do you want to
3 give the vendors one shot to come in and...

4 COMMISSION MEMBER T. JOHN: Sure. I can do
5 that.

6 CHAIRMAN T. WHEELER: All right. And then
7 we go to the AG's office.

8 MS. K. ROBERTSON: (Indiscernible).

9 CHAIRMAN T. WHEELER: Giving them one
10 shot -- bring the vendors in and explain the
11 problem and ask them to correct it, and then
12 after that, they go to the AG's office. We
13 don't need -- do we need...

14 MR. B. KING: You probably...

15 COMMISSION MEMBER T. JOHN: Okay. I'll
16 move -- I will withdraw my motion for immediate
17 referral of the matter and move that the
18 commission, is it a hearing, yeah, on the
19 facilitation of election violations by the
20 various vendors of campaign finance reporting
21 software and call in all of the noncompliant
22 software vendors for, or subpoena all the
23 noncompliant software vendors to appear at that

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24 meeting and explain themselves, and hopefully,
25 advice -- advise us of their cures.

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1 CHAIRMAN T. WHEELER: Now do we have to
2 actually convene in the open hearing under that
3 statute or is that -- can we do that during a
4 commission meeting; what are...

5 MR. D. SIMMONS: We can have an AOPA --

6 MR. B. KING: During our...

7 MR. D. SIMMONS: -- hearing during a
8 commission meeting.

9 CHAIRMAN T. WHEELER: All right. Because I
10 think we have to have an AOPA hearing for the
11 purpose of actually issuing subpoenas; correct?

12 COMMISSION MEMBER T. JOHN: My advice would
13 be to issue a subpoena.

14 UNIDENTIFIED SPEAKER: Are you calling them
15 in here to tell them (indiscernible).

16 CHAIRMAN T. WHEELER: No, I just want to
17 see -- I want them here. I want to make sure
18 they're here.

19 MR. D. SIMMONS: So why don't we put the
20 agenda of the --

21 CHAIRMAN T. WHEELER: Put it down as agenda
22 item.

23 MR. D. SIMMONS: -- the upcoming...

24 CHAIRMAN T. WHEELER: I suspect we'll have
25 several hearings.

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1 COMMISSION MEMBER T. JOHN: That what it
2 sounds like.

3 MR. D. SIMMONS: Didn't -- I don't know,
4 but I think we had the commission, the last time
5 we issued subpoena, authorized the election --
6 election division co-directors to issue those
7 subpoenas and I think the election or the...

8 CHAIRMAN T. WHEELER: Do we have the power
9 to do that?

10 MR. D. SIMMONS: I -- I think I can...

11 CHAIRMAN T. WHEELER: (Indiscernible), if I
12 can send you a subpoena that way.

13 MR. D. SIMMONS: Let me have a look at
14 that, but I think that's what we did last time,
15 subpoena power.

16 MS. K. ROBERTSON: I think you have to give
17 proper notice of the hearing regardless.

18 MR. B. KING: Of the hearing.

19 MR. D. SIMMONS: Right. We have to give
20 notice.

21 MR. B. KING: Of the hearing?

22 MS. K. ROBERTSON: Right.

23 MR. B. KING: But not in terms of the
24 issuance of the subpoena.

25 MR. D. SIMMONS: Yeah, and -- yeah.

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1 CHAIRMAN T. WHEELER: And Dale has the -- I
2 mean, it's more extensive notice requirements
3 than just the 48-hour...

4 MR. B. KING: Right.

5 COMMISSION MEMBER T. JOHN: Well, I would
6 move that the president or you or the
7 co-directors?

8 CHAIRMAN T. WHEELER: Co-directors.

9 MR. D. SIMMONS: Co-directors.

10 COMMISSION MEMBER T. JOHN: Move that the
11 co-directors, I would move that we authorize the
12 co-directors to issue subpoenas pursuant to, or
13 to effectuate the holding of the hearing
14 regarding the campaign finance software vendors.

15 CHAIRMAN T. WHEELER: The only modification
16 is that an appropriate meeting? I don't want to
17 necessarily bring them to our next AOPA meeting
18 (indiscernible).

19 COMMISSION MEMBER T. JOHN: In cooperation
20 with our chairman, too.

21 COMMISSION MEMBER S. RIORDAN: Second.

22 CHAIRMAN T. WHEELER: Motion's made and
23 seconded, any further discussion?

24 (No response.)

25 CHAIRMAN T. WHEELER: All those in favor

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1 signify by saying aye?

2 THE COMMISSION: Aye.

3 CHAIRMAN T. WHEELER: Opposed, same sign?

4 (No response.)

5 CHAIRMAN T. WHEELER: Go onto VTI. Thank
6 you.

7 MR. B. KING: Mr. Chairman -- sorry -- I
8 can take that. It's really very short and

9 sweet.

10 CHAIRMAN T. WHEELER: Not to mention the...

11 MR. B. KING: At the January 17th
12 commission meeting, VTI appeared and have a
13 direct record electronic voting system certified
14 for approval. However, the optical scan upgrade
15 or optical scan system did not have the
16 documentation from CIBER. That was the only
17 piece missing at that January 17th meeting.

18 On April 11th, 2006, we received a letter from
19 CIBER signed by Shawn Southworth that's included in
20 your packet that indicates the ScanTron Software,
21 1.04, Version E, has been tested and found to
22 comply with 2002 FEC standards.

23 The only -- and the co-directors as a result
24 have recommended that the commission certify this
25 voting system for the period expiring October 1, 107

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1 2009.

2 CHAIRMAN T. WHEELER: It's my understanding
3 there's a representative from VTI here.

4 MR. M. BURNES: Michael Burnes.

5 CHAIRMAN T. WHEELER: And you were here and
6 took an oath?

7 MR. M. BURNES: Yes, that's correct.

8 CHAIRMAN T. WHEELER: Just for my own
9 edification, how many times counties does VTI?

10 MR. M. BURNES: Four.

11 CHAIRMAN T. WHEELER: Pardon me?

12 MR. M. BURNES: Four.
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13 CHAIRMAN T. WHEELER: What counties do you
14 have?

15 MR. M. BURNES: Boone, Parke, Randolph and
16 Cass.

17 CHAIRMAN T. WHEELER: And where are you
18 guys located?

19 MR. M. BURNES: We're based out of
20 Milwaukee, Wisconsin, but I live in Carmel,
21 Indiana.

22 CHAIRMAN T. WHEELER: How many states do
23 you operate out of?

24 MR. M. BURNES: Kansas and --

25 CHAIRMAN T. WHEELER: Oh, I was going to

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1 guess Wisconsin.

2 MR. M. BURNES: Wisconsin, no. We're going
3 for certification in Wisconsin in a few weeks.

4 CHAIRMAN T. WHEELER: All right. So I
5 guess you're kind of the vote of the
6 (indiscernible). Do you have any questions?

7 COMMISSION MEMBER S. RIORDAN: No.

8 CHAIRMAN T. WHEELER: I'll accept a motion
9 to approve.

10 COMMISSION MEMBER T. JOHN: I would move
11 that we -- pursuant to the co-directors'
12 recommendation, approve ScanTron ES2800 Hardware
13 No. ES2800 from Version 1.04, software
14 implementation -- oh wait, I lost -- Software
15 Version 1.0.4 be approved for marketing, sale,
16 leasing, installation and implementation in

17 Indiana for a period expiring October 1st, 2009
18 subject to filing complete a complete text and
19 CIBER report to the Election Division
20 (indiscernible).

21 CHAIRMAN T. WHEELER: The motion's been
22 made, do I have a second?

23 COMMISSION MEMBER S. RIORDAN: Second.

24 CHAIRMAN T. WHEELER: Any further
25 discussion?

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1 (No response.)

2 CHAIRMAN T. WHEELER: I have one question.
3 Obviously, (indiscernible). What's this
4 (indiscernible) testing -- they've tested
5 everything but this one?

6 MR. M. BURNES: Yes.

7 CHAIRMAN T. WHEELER: So there's been no
8 testing of this?

9 MR. M. BURNES: No.

10 CHAIRMAN T. WHEELER: Nobody is using --
11 testing still uncertified?

12 MR. M. BURNES: No, sir.

13 CHAIRMAN T. WHEELER: Any other questions?

14 (No response.)

15 CHAIRMAN T. WHEELER: All in favor of the
16 motion to approve VTI's ScanTron 2800 Firmware
17 1.0.04 or Software Version 1.0.4, signify by
18 saying aye?

19 THE COMMISSION: Aye.

20 CHAIRMAN T. WHEELER: Those opposed, same
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21 sign?

22 (No response.)

23 CHAIRMAN T. WHEELER: Motion carries. It's
24 been approved. I believe that's our last agenda
25 item. Is there a motion to adjourn?

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1 COMMISSION MEMBER S. RIORDAN: So moved.

2 CHAIRMAN T. WHEELER: Seconded. All in
3 favor, signify by saying aye?

4 THE COMMISSION: Aye.

5 (At this time the proceedings were concluded.)

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