

Indiana Election Commission
Minutes
September 18, 2007

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

Members Absent: S. Anthony Long

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

Also Attending: Mr. James Ammeen; Mr. Chad Duran; The Honorable Linda Phillips, Tippecanoe County Circuit Court Clerk; Mr. John Price; Mr. Gordon White.

1. Call to Order

The Chair called the September 18, 2007 meeting of the Commission to order at 1:00 p.m. in Indiana Government Center South Conference Center, Room 12, 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.

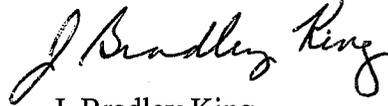
3. Adjournment

There being no further items on the Commission’s agenda, the Chair entertained a motion to adjourn. Ms. Riordan moved, seconded by Mr. Select, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting “aye” (Mr. John, Ms. Riordan, Mr. Select, and Mr. Wheeler), and no Commission member voting “no,” the motion was adopted. The Commission then adjourned at 2:15 p.m.

Respectfully submitted,

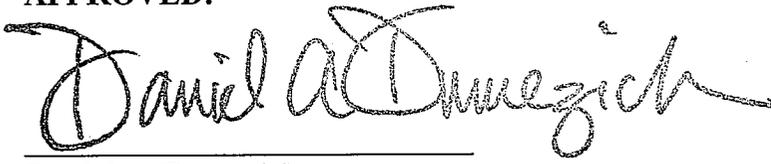


Trent Deckard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

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INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted On: Tuesday, September 18, 2007

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

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

CONNOR REPORTING, Inc.
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Indianapolis, IN 46282
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INDIANA ELECTION COMMISSION:

- Mr. Thomas Wheeler, II - Chairman
- Mr. Anthony Long - Vice Chairman
- Mr. Dan Dumezich - Commission Member
- Mr. Sarah Riordan - Commission Member

INDIANA ELECTION DIVISION STAFF:

- Mr. Dale Simmons - Co-Legal Counsel
- Ms. Leslie Barnes - Co-Legal Counsel
- Mr. Bradley King - Co-director
- Ms. Pam Potesta - Co-director

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1 CHAIRMAN T. WHEELER: All right. I'm going
2 to call the meeting of the Indiana election
3 commission to order pursuant to appropriate
4 notice on September 18th, 2007. Let the record
5 show that Commissioner Riordan is here and then

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6 Commissioner Long has supplied a proxy.

7 MS. P. POTEITA: Derek Select (Phonetic).

8 CHAIRMAN T. WHEELER: Thank you. Derek is
9 acting there. We have three commission members
10 present. Commissioner Dumezich is not here
11 today. First on our agenda, as I understand it,
12 is Order No. 2007-120. It's an order for
13 approval of forms of Tippecanoe County. Who is
14 doing that?

15 MS. L. BARNES: I have prepared the forms
16 along with Linda Phillips and she's here to
17 present and answer questions. Tippecanoe, as
18 you know, is a vote center kind of a project,
19 and following their mock election in the
20 primary, they discovered that some of the forms
21 did not work real well at the vote centers, the
22 current approved forms, and they have proposed
23 four forms that they feel would work a little
24 bit better with the current vote center setup.
25 Linda, do you want to present them in any...

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1 CHAIRMAN T. WHEELER: Linda, will you
2 introduce yourself?

3 MS. L. PHILLIPS: Sure. I'm Linda
4 Phillips, Tippecanoe County Clerk, and do you
5 want me to explain these forms? What -- what
6 would you like?

7 CHAIRMAN T. WHEELER: What was the problem?
8 What are you fixing?

9 MS. L. PHILLIPS: Well, okay, let's take

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10 the election forms where -- typically, the oath
11 is administered in a four-page booklet of the
12 oath booklet but it is designed for five
13 precinct election board members, and in the vote
14 centers, we have varying numbers of workers and
15 we -- some are working partial shifts, some are
16 working full day, they come in, they come out.
17 So it didn't really lend itself very well to
18 administering the oath because there's more than
19 five people in every case.

20 And then the election contract part, our
21 county attorney requires our poll workers to sign a
22 contract. So in the interest of killing as few
23 trees as possible, we decided to combine both the
24 oath and the contract as a two-part form. We fill
25 in and kind of both parties sign it, then the

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1 second act of the oath is administered. The person
2 who signed the oath gets a copy because it also
3 tells them where and when and what time to show up
4 after they vote. We thought that would be helpful.

5 The second form --

6 CHAIRMAN T. WHEELER: Hold on. Let me --
7 let me stop you there. The election contract
8 part, is that really just an attempt to kind of
9 bind these workers so they show up basically?

10 MS. L. PHILLIPS: Yeah. And it's
11 (indiscernible) that they are truly independent
12 contractors and not county employees, not
13 covered by county employees insurance. And I

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14 didn't write that part, the attorney did so...

15 CHAIRMAN T. WHEELER: The -- and then
16 there's four categories that they're looking at?

17 MS. L. PHILLIPS: Right.

18 CHAIRMAN T. WHEELER: And what are those
19 four categories?

20 MS. L. PHILLIPS: Well, workers can work a
21 full day shift which would be five --

22 CHAIRMAN T. WHEELER: Let me back you up.
23 I agree to serve as...

24 MS. L. PHILLIPS: Oh, okay. The vote
25 center supervisor would be the replacement for

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1 the inspector that would be filled by the party
2 who (indiscernible) inspector.

3 CHAIRMAN T. WHEELER: And I -- and I assume
4 in your -- go to the second one after you can
5 explain what the first is?

6 MS. L. PHILLIPS: Okay. Well, the
7 Democratic judge -- in order to make sure that
8 we have full bipartisan control over every vote
9 center, we're making certain that one
10 Republican, the vote center supervisor, and one
11 Democrat are there during the entire day.

12 CHAIRMAN T. WHEELER: I assume the clerk is
13 Republican -- you?

14 MS. L. PHILLIPS: Yes.

15 CHAIRMAN T. WHEELER: And so then the vote
16 center supervisor would also be Republican?

17 MS. L. PHILLIPS: Right.

18

19 Democratic judge would just be the other party?

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MS. L. PHILLIPS: Right.

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22 CHAIRMAN T. WHEELER: Okay. And they
23 have -- and they have equivalent duties in terms
of the vote center?

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25 MS. L. PHILLIPS: Right. They're both
expected to attend three hours of training.

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1 They're both (indiscernible) supply after
2 collection of the votes.

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CHAIRMAN T. WHEELER: This proposal is
4 just -- these are just year?

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MS. L. PHILLIPS: That's right.

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7 CHAIRMAN T. WHEELER: So these aren't --
8 because if this were of a broader mind, I'd have
some concerns about some of the language used.

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MR. B. KING: Mr. Chairman, if I may --

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CHAIRMAN T. WHEELER: Please.

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12 MR. B. KING: -- say that the co-directors,
including general counsel did review these forms
13 and work with Clerk Phillips in running that.
14 It is important to note these are forms for use
15 only in November of 2007 and only in Tippecanoe
16 County.

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18 There were some other forms that the
Commission approved in January of this year that
19 are unaffected by these. These are just the
20 improvements that they describe.

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CHAIRMAN T. WHEELER: Now with respect to

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22 this, though, is Tippecanoe County the only
23 county that's running vote centers in this
24 general election?

25 MR. B. KING: Wayne County is also.

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1 CHAIRMAN T. WHEELER: All right. And Wayne
2 County has a general election?

3 MR. B. KING: Yes.

4 CHAIRMAN T. WHEELER: I assume they have
5 some elected officers, and I believe the
6 Richmond race is probably contested?

7 MR. B. KING: Yes.

8 CHAIRMAN T. WHEELER: Is there a reason to
9 have a similar -- if these are good for
10 Tippecanoe, are these good for Wayne as well, or
11 is there something that you need in Tippecanoe
12 that causes the necessity for these particular
13 forms; is this a vote center issue or is this a
14 Tippecanoe issue?

15 MR. B. KING: I would describe it as a
16 Tippecanoe issue, in that the plans submitted
17 under the statute for Wayne County and
18 Tippecanoe County are different, and they
19 envision different roles being played, different
20 functioning within the vote center.

21 This is -- if Wayne County had come to us and
22 said we have -- we have forms we would like to
23 change for the January, we would have brought them
24 to the Commission as well, but they did not so we
25 know of no reason that the forms approved in

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1 January are not working perfectly well in Wayne
2 County, which had an actual election --

3 CHAIRMAN T. WHEELER: Right.

4 MR. B. KING: -- as opposed to a mock
5 election.

6 CHAIRMAN T. WHEELER: And so what's --
7 what's different between the two that causes the
8 necessity for these forms, and I realize you
9 said that's kind of their plan, but give me just
10 a rough -- I'm looking at voting centers
11 assuming -- I'm really looking beyond this
12 election but into if voting centers -- if
13 there's an issue about voting centers in the
14 general assembly then that's the session. I
15 just don't want to be in the position where the
16 Commission is, you know, approving forms on a
17 county-by-county basis based upon things you
18 need in the county.

19 Is it that the two systems are completely
20 different and they're both trial systems and then
21 we're going to come to a unified system if we deal
22 with them on...

23 MR. B. KING: I think that's -- Mr.
24 Chairman, I think that's a fair way to describe
25 it. The particular procedures, the greeter

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1 system, the postcard system differ slightly
2 between counties, but yes, if vote centers were
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3 to be a permanent ongoing part of an election
4 longer, there would need to be standardization
5 of the forms and standardization of all of the
6 procedures, but that's one reason why the
7 platform is in place to try some different
8 methods to see what works better.

9 CHAIRMAN T. WHEELER: I clearly support
10 vote centers. I think they're an excellent idea
11 or at least one idea of attack (indiscernible).
12 I just want to make sure we get successful here
13 so we can move into the general assembly and
14 maybe look at expanding the program. Any other
15 questions on the election contract and oath?
16 Sarah and Derek course, anything?

17 (No response.)

18 CHAIRMAN T. WHEELER: Election
19 certification report, (indiscernible) board,
20 anything on that?

21 (No response.)

22 CHAIRMAN T. WHEELER: Anything else that
23 you want to point out to the Commission prior to
24 voting?

25 MS. L. PHILLIPS: I don't know. If you

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1 have questions, I'll be glad to answer them.

2 CHAIRMAN T. WHEELER: Brad, anything else
3 from you?

4 MR. B. KING: No. We appreciated the
5 opportunity that Tippecanoe County took to work
6 with us and make these forms available.

7 CHAIRMAN T. WHEELER: All right. Anything
8 else from the commission members?

9 (No response.)

10 CHAIRMAN T. WHEELER: I'll accept a motion.

11 COMMISSION MEMBER S. RIORDAN: I move that
12 the commission grant the order approving forms
13 for Tippecanoe's County vote center project for
14 use in Tippecanoe County's Municipal 2007
15 election, Order No. 2007-120.

16 CHAIRMAN T. WHEELER: Do I have a second on
17 the motion?

18 MR. D. SELECT: Second.

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

21 (No response.)

22 CHAIRMAN T. WHEELER: Not hearing any, all
23 those in favor of approving Order No. 2007-120,
24 signify by saying aye?

25 THE COMMISSION: Aye.

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1 CHAIRMAN T. WHEELER: Those opposed, same
2 sign?

3 (No response.)

4 CHAIRMAN T. WHEELER: Motion carries. Next
5 item on the agenda is the -- addressing pending
6 motions in the MicroVote case, and I believe,
7 correct me if I'm wrong, kind of the issue that
8 was left over from our September 14th meeting
9 involved the appointment of an administrative
10 law judge or the selection of an administrative

11 law judge, is that -- Jim, John, that's where we
12 were?

13 MR. J. PRICE: I think that's one of the
14 issues, yeah.

15 MR. J. AMMEEN: Mr. Chairman, I believe
16 also there is a Petitioner's motion for approval
17 of the amended prehearing order that is
18 forthcoming.

19 CHAIRMAN T. WHEELER: And then I have --
20 John, you filed an answer yesterday or today.

21 MR. J. PRICE: Yesterday.

22 CHAIRMAN T. WHEELER: Okay. What I'd like
23 to do is address -- address the appointment of
24 an ALJ. My gut is, at least from my standpoint,
25 and I'll let Sarah and Derek speak, I'm not

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1 inclined to approve or disapprove the prehearing
2 order if we're in fact going to approve an ALJ.
3 We might be held to it, take a look at that and
4 see if fits with that person's calendar. So I
5 guess the thing I want to take up is the
6 appointment of an ALJ right now.

7 My understanding is that you guys took a swing
8 at try to go agree to somebody, and unfortunately,
9 due to prior commitments Magistrate Shields is
10 unable to serve as administrative law judge.

11 MR. J. PRICE: She said she'd prefer to
12 play golf.

13 CHAIRMAN T. WHEELER: I think that it was
14 as a consequence of her retirement as a federal

15 judge, she was unable to accept compensation for
16 her serving as an ALJ. With respect to golf,
17 knowing Magistrate Shields, I suspect
18 (indiscernible).

19 MR. J. PRICE: Much better stated.

20 CHAIRMAN T. WHEELER: Since you're speaking
21 into that microphone.

22 MR. J. PRICE: I decided your answer is
23 correct.

24 CHAIRMAN T. WHEELER: There we go. In that
25 case, as I believe the Commission indicated at

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1 the last meeting -- with the inability of the
2 parties to select somebody, weren't in a
3 position to select an ALJ, and I would accept
4 any discussion on the recommendation or a motion
5 from any commission members regarding the
6 appointment of an ALJ in this matter.

7 COMMISSION MEMBER S. RIORDAN: Well,
8 before -- thank you, Mr. Chairman. Before we
9 talk further about making specific
10 recommendations or making specific motions, I
11 want to be certain that the parties have
12 exhausted every effort possible to come to
13 agreements on someone who could serve in this
14 capacity who would be, you know, acceptable to
15 both of you?

16 CHAIRMAN T. WHEELER: Who is willing to
17 serve?

18 COMMISSION MEMBER S. RIORDAN: Right.

19 MR. J. PRICE: Well, that's a -- that's a
20 valid observation. Mr. Ammeen sent me the names
21 of three or four people who are basically
22 mediators and we went through each one of those,
23 and frankly, I don't think we need to cover all
24 the reasons, but decided for various reasons, we
25 probably ought to keep going on it, and then

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1 other matters came up, and frankly, we didn't
2 keep going on it. The ball possibly was in our
3 court from that viewpoint. So if you're saying,
4 which I think is a good observation, should we
5 keep trying again -- that's not a bad idea,
6 because maybe this time we should throw three or
7 four names on their side of the court and see
8 what Mr. Ammeen thinks.

9 COMMISSION MEMBER S. RIORDAN: It's nice
10 that that was happening and that you completed
11 that, but if you haven't and the Commission
12 thinks that it makes sense to take more time so
13 that you can reach agreement rather than we
14 appoint someone and tell you you have to live
15 with it and potentially have to address
16 objection to say that person or whatever, it
17 seems to me that it would be best for everyone
18 if you could -- if you could do it by agreement.

19 I don't know, Mr. Chairman, what are your
20 thoughts? I know you're interested in sticking to
21 a timetable.

22 CHAIRMAN T. WHEELER: My gut is -- here's
Page 13

23 my concern. My concerns were that we are in
24 late September. We have a municipal election in
25 November. I assume that you guys are not going 16

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1 to want to have anything around the time of the
2 municipal election because I suspect John's
3 going to have (indiscernible).

4 MR. J. PRICE: True.

5 CHAIRMAN T. WHEELER: And to be perfectly
6 honest, I'd prefer them to concentrate on
7 getting the elections right than favoring that
8 out. We will then have a primary election on
9 May...

10 MR. B. KING: 6th.

11 CHAIRMAN T. WHEELER: May 6th which is a
12 presidential primary election which may -- may
13 or may not be significant by the time of
14 Florida, because as early as they -- they're
15 going, maybe nobody else cares.

16 But it would certainly be significant in terms
17 of other -- other races -- the gubernatorial race,
18 for example, at least on the Democratic side, I
19 think there are multiple challengers. I don't -- I
20 certainly want to have this behind us before that.

21 So that's -- that's my concern on the meeting.
22 I think we're on a very tight time frame. It seems
23 to me that if given that time frame, you're going
24 to need a ruling on a bunch of pending motions
25 before the election, you're going to turn around 17

1 and go straight into a hearing.

2 Probably in terms of time frame, and I know
3 that we discussed this -- Sarah and I've discussed
4 this with you, when we were trying to frame this
5 up, you're looking at a hearing date of December to
6 get a turnaround.

7 And then, you know, it depends on how
8 long -- you know, most of the ALJs are going to say
9 I need 30 or 60 days to try and get an order out so
10 you're looking at getting an order in February,
11 assuming we appoint somebody today.

12 MR. J. PRICE: Actually, we've agreed
13 between us that February is probably a more
14 likely hearing date. That doesn't bind you, of
15 course. It would bind the ALJ.

16 CHAIRMAN T. WHEELER: I have -- I,
17 personally -- now if we appoint an ALJ, that's
18 their call. I am very uncomfortable with a
19 February hearing date, to be honest, because the
20 last -- to be honest, the last thing I want to
21 see is I want to see an order of decision -- it
22 may be adverse to MicroVote coming down right
23 before the election and MicroVote or everybody
24 else dealing with that order and maybe dealing
25 with an appeal of that order, when we ought to

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1 be concentrating on getting that presidential
2 primary election. I just -- I just think you're

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3 too close to that election.

4 That's me talking. I'm not Sarah or Derek or
5 anybody else. I just -- I have some real concerns
6 with that time frame because I -- I really -- I
7 think we all, all need to have that primary -- that
8 presidential primary election go smoothly without
9 the problems that we had that led to this problem
10 where your guys were on a short -- regardless of
11 the merits of this thing, where your guys felt like
12 they were on a very short time frame and had to be
13 dealing with software issues right before the
14 election.

15 You know, if there are problems, I'd rather be
16 dealing with that -- you know, as I've indicated to
17 the Commission, if you put yourselves on a February
18 time frame, we get some kind of recommendation or
19 finding of violation, your people may be dealing
20 with the press, publicity and everything else.
21 We'll have panic of the county clerks going, you
22 know, what am I going to do?

23 I just, personally, would prefer that to
24 happen January or February rather than April
25 because I think that's going -- that's going to

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1 impact all of it and impact us all adversely, too.

2 MR. J. AMMEEN: May I comment? That's why
3 the proposed amended prehearing order is
4 prepared the way it is. With -- with where we
5 are now, being September 18th, the current
6 prehearing order closes discovery October 26th.

7 We haven't even started discovery. I mean, I
8 can serve something now and get it responded to
9 within the time frame allotted under the current
10 order.

11 when we go through the November election this
12 year, then the next month, I believe that the
13 division is coordinating a big conference for the
14 clerks in December, some annual -- it's a training
15 program that goes on immediately after
16 Thanksgiving, and then -- you know, so you go from
17 an election to Thanksgiving to training with the
18 clerks to Christmas, I don't -- the earliest we
19 could possibly get to a hearing probably is the
20 first couple of weeks in January.

21 I would do anything possible to move this
22 thing up faster. I would request, frankly, that
23 you guys -- you, the Commission, appoint an ALJ
24 today. And what happened in the negotiations on
25 this was that MicroVote proposed using anybody from

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1 The Mediation Group. Well, we did the mediation at
2 The Mediation Group. After that, I was accused of
3 extortion. We're not going back --

4 CHAIRMAN T. WHEELER: Well, let -- let's --
5 let's remove all that stuff.

6 MR. J. AMMEEN: -- to The Mediation Group
7 on that point. We've submitted some other
8 names, about a half dozen or so other names,
9 including mediators, including former judges,
10 including Terry Albright at Baker & Daniels, who

11 is a skilled arbitrator, maybe the best
12 arbitrator in the state, if he would be willing
13 to serve.

14 I think something needs to be done. Whether
15 it's a panel of three, where each side gets to
16 strike one and the last one standing gets it, but
17 we they'd to get this thing moving forward.

18 CHAIRMAN T. WHEELER: I agree with you a
19 hundred percent. It strikes me that between you
20 and Mr. Price, with all due respect, if one said
21 the sky was green and one said the sky was blue,
22 it just isn't going to happen, and I mean that
23 no disrespect to either one of you.

24 I mean from my standpoint, I'm ready to
25 just -- and I think that's why -- at least I tried

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1 to indicate at the last commission meeting, which
2 was if you guys couldn't do it in that two weeks,
3 we were going to pick somebody, and I think we're
4 there, and -- and the reason I'm there has to do
5 with time frame more than anything else,
6 that -- and I've expressed my concern on time
7 frame, and I'm talking more than the other
8 commissioners, and I'll defer to Commissioner
9 Riordan or Derek, if they have any thoughts on it?

10 COMMISSION MEMBER S. RIORDAN: Well, do the
11 parties have anything else to -- I mean, if we
12 appoint somebody...

13 MR. J. PRICE: Well, to avoid the problem
14 you suggested a minute ago, and I'm going to

15 shock the chairman by saying this, I agree with
16 Mr. Ammeen's statement that the easiest way to
17 do it is for you to name a panel of three and
18 let us in each strike one, and by doing that,
19 we've participated in the process. It would be
20 a little difficult to challenge the process at
21 that point.

22 CHAIRMAN T. WHEELER: My concern is two
23 things: No. 1, I don't have a panel of three.
24 We, unfortunately, have no panel of
25 administrative law judges in this -- in this

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1 particular commission. I have been unable to
2 get buy-in from other ALJs for a variety of
3 different reasons.

4 The -- our process and my throwing it back to
5 you at the last commission meeting was my
6 difficulty in finding anybody to do this for a
7 number of different things -- for length of time,
8 for the political nature involved -- a lot of
9 political people won't even consider touching this
10 with a 10-foot pole.

11 There just -- there aren't very many people,
12 and some of it is financial constraints. We
13 proposed Lee McNeely that Mr. Ammeen had a conflict
14 with. So from my standpoint, I don't have three
15 names to give you. It's just that's -- that's the
16 way it's been. I've asked for proposals from most
17 of the people in this room, I suspect. I would
18 take a variety of different names.

19 The problem we have at our commission, and I
20 want to address that separately with the division
21 is so this doesn't happen again, and of course,
22 this is our first -- this on our first hearing
23 ever. Certainly, since I've been around, this may
24 be our first administrative hearing ever and so
25 obviously it's (indiscernible) commission, which is

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1 why we don't have a pool of administrative judges.

2 The expertise in the other divisions that I've
3 talked with, and I know Gordon and I talked,
4 because Gordon does a lot of administrative
5 representation of other agencies, it doesn't match
6 what we need.

7 And the ALJs that I'm familiar with, I
8 couldn't even get the -- their agencies to allow me
9 to use them or suggest them or they had no interest
10 in getting involved with this, which is -- on one
11 hand, it's -- yeah, it's a very specialized area of
12 law, but I don't think the issues that they're
13 addressed are that complicated because they're
14 really factual issues.

15 But trying to convince people of that
16 particular fact who don't have my election law
17 expertise is very very difficult. And so that was
18 a long way of saying no, I don't have a pair of
19 names. And I really couldn't find anybody and I
20 would have an extraordinary amount of difficulty,
21 and I've expressed frustration (indiscernible)
22 being unable to find somebody as well. So that was

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23 in response to that. The answer is I don't have
24 three names. I guess you were -- it was on your --
25 on your floor.

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1 COMMISSION MEMBER S. RIORDAN: Thank you.
2 I just want to have everyone say what they want
3 to say on the record about this because, you
4 know, if we're here and we're going to do it,
5 we're going to appoint someone and then that's
6 how it will be handled.

7 And you know -- I mean, frankly, a little bit
8 concerned that -- you know, everybody wants to have
9 an ALJ and then it sort of falls to the commission
10 to get that work done, and I don't think that is
11 the optimal way to do it.

12 But we've all acknowledged that we've done our
13 best and that we have taken all the steps we could
14 to find someone who would be appropriate for this
15 and that this is really the best course and we all
16 want to adhere to the timeline and that it's time
17 for the Commission to just get it done.

18 So if anybody has anything that they want to
19 put on the record about that, I would be interested
20 in hearing what you have to say.

21 MR. J. PRICE: Just as an idea -- I hadn't
22 thought of this before. I haven't sent it to
23 Mr. Ammeen. The founder of mediation in this
24 state is an attorney who's probably got a little
25 more time now than he used to be -- Tom Lemon up

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1 in Warsaw does a lot of mediations.

2 MR. J. AMMEEN: I don't see that mediation
3 is necessarily a skill that one needs to be an
4 adjudicator in this proceeding. In fact, it
5 might be better off going with arbitrators who
6 are used to actually deciding cases and deciding
7 the issues and handling discovery and doing
8 those kinds of things.

9 Just the way the proceeding is going, it's not
10 that there's likely to be much in the way of
11 consensus between the Division and MicroVote --

12 CHAIRMAN T. WHEELER: I'm getting that
13 impression.

14 MR. J. AMMEEN: -- which is why, you know,
15 the panel of names or potential names that we've
16 submitted to MicroVote included, for example,
17 retired judges or senior judges from the Court
18 of Appeals.

19 CHAIRMAN T. WHEELER: And those -- those
20 were all rejected; correct?

21 MR. J. AMMEEN: Well, they weren't
22 responded to and...

23 CHAIRMAN T. WHEELER: Let me -- let me...

24 MR. J. AMMEEN: I just wanted to explain
25 the thinking behind it, Mr. Chairman, is to try

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1 and find someone who has been out of the
2 political process so that you don't run into
3 that problem -- what you've already expressed
Page 22

4 being difficult, is political people don't want
5 to touch this. You know, Terry Albright is an
6 FAA arbitrator. He's not the only one in the
7 state, but that might be the pool we need to go
8 to get somebody who is used to be neutral in an
9 adjudicatory capacity and not in a negotiating
10 capacity.

11 And then the other thing, of course, is going
12 to be would winds up paying for it, is just another
13 question. We need to discuss this.

14 CHAIRMAN T. WHEELER: I think that's --
15 that's not an issue you need to worry about. I
16 believe that's the Commission's expense, --

17 MR. J. PRICE: Correct.

18 CHAIRMAN T. WHEELER: -- and we understand
19 that. I have seen the bills from Mr. McNeely I
20 believe in your case and they were not
21 inconsequential. That's the actual conversation
22 that I was having with Brad and Pam, if they had
23 the funding available to pay it, and I'm glad we
24 do. So anything else anybody wants to add?

25 MR. J. PRICE: Well, this is a response.

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1 Having engaged in a few arbitrations, there are
2 a couple of problems. Arbitrators tend to not
3 follow the Rules of Evidence. They tend to
4 allow in anything under almost any circumstance
5 because that's the way they're trained.

6 As a matter of fact, the arbitration handbook
7 tells them to do that. And secondly, results tend

8 to be Solomonian. They tend to be baby-splitting
9 type results and I'm just...

10 CHAIRMAN T. WHEELER: I believe -- I
11 believe you and I have had that experience --

12 MR. J. PRICE: That's right.

13 CHAIRMAN T. WHEELER: -- that we've
14 litigated.

15 MR. J. PRICE: That's right. So I'm not
16 real excited about an arbitrator, frankly.

17 MR. J. AMMEEN: May I respond to that?

18 COMMISSION MEMBER S. RIORDAN: Well, I just
19 have a couple of observations, and what we're
20 basically talking about is an administrative
21 process and the Rules of Evidence will be
22 loosely applied in any instance.

23 And I -- I think this all really kind of begs
24 the question about whether or not you want us to
25 pick somebody who you have to live with or you're

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1 going to come up with somebody by agreement. And I
2 think we've all said that it would be better if you
3 could do it by agreement, and we do, for lack of a
4 better term, get this show on the road.

5 But that being said, if -- if we could have
6 some sense that over the next very few days -- you
7 know, you might have an opportunity to review the
8 names that he submitted and strike from that and
9 kind of forge a consensus on who can handle this,
10 but that would be really good.

11 I would much rather see and I would feel much

12 better about you all choosing someone to resolve
13 your dispute than shoving somebody down your
14 throat.

15 MR. J. PRICE: Well, I'm -- I'm with you on
16 that. If we can start with a panel that is
17 either neutral or we both pick or -- instead of
18 our just picking from his five, which as I've
19 indicated none of the five really we thought
20 would be appropriate, then I agree with you that
21 that would be a good way to do it. Let's try to
22 get it moved forward.

23 CHAIRMAN T. WHEELER: Are you done, John?

24 MR. J. PRICE: Yeah.

25 CHAIRMAN T. WHEELER: All right. We've

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1 given the parties both the opportunity to speak.
2 I'll accept a motion relating to the appointment
3 of an ALJ?

4 COMMISSION MEMBER S. RIORDAN: Thank you,
5 Mr. Chairman. I move that the commission
6 appoint as administrative law judge to serve and
7 preside over this Microvote proceeding, a Mr.
8 Paul Jefferson, who is an attorney with the firm
9 of Barnes & Thornburg.

10 I have reviewed his credentials and find them
11 to be appropriate for handling a matter of this
12 nature. And I would say that we appoint Mr.
13 Jefferson to preside as ALJ and give the parties
14 one week to find an alternative to Mr. Jefferson,
15 and if are unable to do so by agreement, one week

16 from today, that Mr. Jefferson be appointed.

17 It's my understanding that Mr. Jefferson has
18 been consulted and that he's available to preside,
19 he is willing to preside and that he has stepped up
20 to the plate to serve. And it's a complicated
21 motion, but just to make this clear.

22 CHAIRMAN T. WHEELER: AS I understand the
23 motion -- well, do I have a second on the
24 motion?

25 MR. D. SELECT: Mr. Chairman, I second the

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1 motion.

2 CHAIRMAN T. WHEELER: All right. As I
3 understand the motion, we will appoint Mr.
4 Jefferson as the hearing officer or the ALJ in
5 this matter to be dated one week from today.
6 The parties have one week to consult and agree
7 on a administrative law judge. If they cannot
8 file agreement within one week, the appointment
9 will take -- take effect.

10 I will task the Division with drafting the
11 appropriate order that will reflect the motion that
12 has just been made. Any further discussion with
13 respect to the motion?

14 MR. J. AMMEEN: The Commission will be
15 retaining the ultimate authority?

16 CHAIRMAN T. WHEELER: That is correct.
17 This is simply for fact finding purposes, and a
18 recommendation from the Division, we'll retain
19 the ultimate authority, or it would similar to

20 what (indiscernible), the Secretary of State
21 handles, as I assume. Any further discussion?

22 (No response.)

23 CHAIRMAN T. WHEELER: All in favor of the
24 motion signify by saying aye?

25 THE COMMISSION: Aye.

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1 CHAIRMAN T. WHEELER: Those opposed, same
2 sign?

3 (No response.)

4 CHAIRMAN T. WHEELER: Motion carries. Any
5 additional business since I'm operating off the
6 agenda (indiscernible) but...

7 (No response.)

8 CHAIRMAN T. WHEELER: All right. That's
9 all we have. I will take a motion to adjourn?

10 MR. J. PRICE: Mr. Chairman?

11 CHAIRMAN T. WHEELER: I'm sorry.

12 MR. J. PRICE: Just one quick little
13 overlay on all of this, that I know that Mr.
14 Chad Duran is acquainted with this, because he's
15 the deputy attorney general who's handling the
16 case. We've recently asked the new special
17 judge in our appeal case to stay these
18 proceedings.

19 CHAIRMAN T. WHEELER: Who's your special
20 judge?

21 MR. J. PRICE: Thomas Carroll, and there's
22 been no response yet from the court on that. I
23 assume there will be an oral argument set and

24 Mr. Duran and I will argue that post haste.

25 COMMISSION MEMBER S. RIORDAN: I'm sorry.

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1 So Judge Shaheed was initially your draw and
2 then you moved for the appointment --

3 MR. J. PRICE: I moved to change judges --

4 COMMISSION MEMBER S. RIORDAN: -- of a
5 special judge, and you got Judge Carroll --

6 MR. J. PRICE: And there was a panel.

7 COMMISSION MEMBER S. RIORDAN: -- and now
8 you have moved to have another replacement
9 judge?

10 MR. J. PRICE: No.

11 COMMISSION MEMBER S. RIORDAN: No.

12 MR. J. PRICE: No. We've -- we've moved to
13 have the hearing.

14 COMMISSION MEMBER S. RIORDAN: He's it,
15 okay.

16 CHAIRMAN T. WHEELER: And a move to stay
17 these proceedings; correct -- I mean, I assume
18 other motions?

19 MR. J. PRICE: Correct.

20 CHAIRMAN T. WHEELER: I assume the Division
21 is not a party to that particular proceeding;
22 correct?

23 MR. J. PRICE: No. The -- the stay because
24 they --

25 CHAIRMAN T. WHEELER: Is the Division being

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1 served with pleadings -- the stay, I would
2 assume. I have not seen -- did you file the
3 earlier stay -- this is the original stay you
4 filed or did you file something different?

5 MR. J. PRICE: Well, not the stay in this
6 matter. This is the stay as a portion of the
7 appeal that was taken from Mr. McNeely's
8 decision.

9 CHAIRMAN T. WHEELER: That includes an
10 attempt -- do you have a motion to stay this
11 matter, --

12 MR. J. PRICE: Yes, that's correct.

13 CHAIRMAN T. WHEELER: -- I think in front
14 of the judge.

15 MR. J. PRICE: That's correct. And it
16 would stay the division from proceeding further
17 in this matter.

18 CHAIRMAN T. WHEELER: All right. And
19 so -- so the Division is -- would be a party --
20 because you're requesting a stay, the Division
21 would be heard on that particular issue, I
22 assume; correct?

23 MR. J. PRICE: I'm assuming that they may
24 wish to be heard, yes, but Mr. Duran represents
25 the defendants and...

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1 CHAIRMAN T. WHEELER: which would be the
2 Secretary of State's Office?

3 MR. J. PRICE: Correct.

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Division?

MR. J. PRICE: well, the statute says that...

CHAIRMAN T. WHEELER: I understand.

COMMISSION MEMBER S. RIORDAN: Yeah.

CHAIRMAN T. WHEELER: We did that last time -- at the last hearing.

MR. J. PRICE: The statute says...

CHAIRMAN T. WHEELER: Is the Division being served with this?

MR. J. AMMEEN: We have not been served in this.

CHAIRMAN T. WHEELER: Because it strikes me that the stay is really directed not so much at the Division but at the Commission itself; in other words, the Commission's been served in that.

MR. J. AMMEEN: I have a copy here that Mr. Duran sent, Your Honor.

CHAIRMAN T. WHEELER: Mr. White, do we have a copy of that? Mr. White's the Commission's

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attorney.

MR. J. AMMEEN: And -- and as a matter of information, the actual motion for hearing on request for stay of administrative proceeding itself is only two pages long, but the exhibit is the motion to dismiss that was filed in this proceeding.

8 So we have not yet seen the entry on the
9 docket of a written order denying the motion to
10 dismiss, which arguably would then suggest that
11 this, or suggesting to Judge Carroll that the
12 motion to dismiss in fact has not yet been denied.

13 CHAIRMAN T. WHEELER: All right. And I --
14 I understand kind of the legal arguments. I'm
15 concerned with the practical method of making
16 sure that the Commission is aware of what -- if
17 the Commission is a (indiscernible) to this
18 party, in this -- I don't know, Mr. White, what
19 to think about that -- I assume that the stay is
20 directed at us, we -- that being the Commission
21 rather than the Division of staying these
22 proceedings, then who is the appropriate respond
23 creak to that motion?

24 MR. G. WHITE: Well, frankly, I'm a little
25 confused in how -- and to say these guys but not

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1 these guys. Maybe if I...

2 CHAIRMAN T. WHEELER: That's -- that's what
3 I don't know.

4 MR. G. WHITE: Maybe I should be
5 (indiscernible).

6 MR. J. PRICE: That's a -- that's a
7 legitimate question that we were looking at
8 yesterday. We may have to move to add the
9 Commission as a necessary party for the purposes
10 of the stay and I'll know that by tomorrow when
11 research is done.

12 But Judge Carroll was just this week qualified
13 to appear so I don't think you'll see anything
14 until the following week anyway.

15 CHAIRMAN T. WHEELER: And I would
16 appreciate as a courtesy if you would serve Mr.
17 white --

18 MR. J. PRICE: Sure.

19 CHAIRMAN T. WHEELER: -- so at least -- at
20 least we're apprised of what's going on.

21 MR. J. PRICE: Yeah.

22 CHAIRMAN T. WHEELER: The Secretary of
23 State's Office -- I notice that the deputy
24 secretary of state is here, if the Secretary of
25 State's Office would be so kind as perhaps to

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1 share some of these pleadings as well with
2 Mr. White or at least give him access to it.

3 MR. C. DURAN: Of course.

4 CHAIRMAN T. WHEELER: I'm not sure who's
5 representing you in those proceedings -- Mr.
6 John, Tom John is representing you?

7 MR. J. AMMEEN: It's Chad Duran, the Office
8 of Attorney General.

9 CHAIRMAN T. WHEELER: Oh, the AG's office.
10 I think you said that. I assume you know where
11 he is?

12 MR. G. WHITE: It's closer.

13 CHAIRMAN T. WHEELER: well, then in that
14 case, you have access -- you don't have any
15 objection to Mr. White having access to Mr.

INDIANAELECTIONCOMMISSION09-18-07.txt
16 Duran's -- not his file but at least the
17 pleadings in the case?

18 MR. C. DURAN: None whatsoever, Mr.
19 Chairman.

20 CHAIRMAN T. WHEELER: Thank you.

21 MR. J. AMMEEN: Mr. Chairman, what this
22 does is it brings us to a setting way to another
23 issue that's actually kind of a knarley little
24 question that I really need -- probably need to
25 defer to the co-directors and the co-general

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1 counsels to discuss this with the commission.
2 But MicroVote filed a praecipe for a record in
3 this proceeding.

4 CHAIRMAN T. WHEELER: In which proceeding?

5 MR. J. AMMEEN: In this 2007-01.

6 CHAIRMAN T. WHEELER: This -- this
7 proceeding?

8 MR. J. AMMEEN: The -- there's no
9 interlocutory appeal. There's no reason to
10 praecipe for a record here. So the only thing
11 the Division can conclude is that it must have
12 something to do with what's going on in superior
13 court, but there are some questions about what
14 is to go into the record and what the process is
15 here for delivering a certified copy of the
16 record to MicroVote. This motion, I think,
17 perhaps is -- coming from this motion appears
18 to --

19 CHAIRMAN T. WHEELER: Where was the

INDIANAELECTIONCOMMISSION09-18-07.txt
20 praecipe for record filed? Where was it filed?

21 MR. J. AMMEEN: It was filed in this
22 proceeding with the other co-directors here who
23 are receiving all the pleadings.

24 CHAIRMAN T. WHEELER: I'm struggling with
25 the basis for that. Did we get a copy of that?

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1 COMMISSION MEMBER S. RIORDAN: I don't --
2 we may have, but I've never saw it.

3 MR. G. WHITE: Any idea when that happened?

4 MR. J. AMMEEN: I believe it happened on
5 the same day, August 23rd, the same day that
6 petition for judicial review was served or
7 something close to about that time.

8 MR. D. SIMMONS: 22 or 23, around there.

9 CHAIRMAN T. WHEELER: Because I don't have
10 a memory of that.

11 MR. D. SIMMONS: I think it's in the 20s --
12 22, 23, 24, somewhere around there.

13 MR. J. AMMEEN: And it was addressed to
14 either the Commission or the Division. It's
15 just -- we've kind of got a -- so the question
16 about how to (indiscernible) -- here's a copy.
17 It was served on the 23rd.

18 CHAIRMAN T. WHEELER: I have -- I have the
19 actual physical copy. It's Docket No. 24. They
20 were kind enough to three-hole punch it for me
21 in the binder. Election Division, Secretary of
22 State and/or the Election Commission. Does the
23 Secretary of State's Office plan on respond to

24 go this praecipe? I understand that's sitting
25 out there. I -- I'm certainly not in a position 40

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1 to rule on this or do anything with this at this
2 point. I will bring it to the attention of our
3 counsel and him take a look at that and
4 perhaps...

5 MR. J. AMMEEN: It may be most useful, Mr.
6 Chairman for Mr. Simmons to speak to some of the
7 questions. We've just been try to go figure out
8 what needs to be prepared.

9 CHAIRMAN T. WHEELER: But what I'm -- what
10 I'm struggling with is why does that affect the
11 Commission? why -- why do we need -- why does
12 the Commission need to address this --
13 Mr. Simmons?

14 MR. D. SIMMONS: Well, we were just
15 regardless of whether this is attached to -- I
16 think these are usually attached to a verified
17 petition for judicial review --

18 CHAIRMAN T. WHEELER: Sure.

19 MR. D. SIMMONS: -- which would be
20 addressed, I would think to this commission,
21 though, I don't see...

22 CHAIRMAN T. WHEELER: This temporary cite,
23 4-21.5 is --

24 MR. D. SIMMONS: Right.

25 CHAIRMAN T. WHEELER: AOPA so...

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1 MR. D. SIMMONS: That's right there.

2 Right, that's AOPA.

3 CHAIRMAN T. WHEELER: It's an AOPA appeal
4 provision?

5 UNIDENTIFIED SPEAKER: Yes, that's judicial
6 review.

7 MR. D. SIMMONS: Right, that -- that
8 chapter is the appeal provisions. One of
9 the -- whether or not -- I suspect we'll be
10 arguing about whether there's currently an
11 appeal or whether somebody's entitled to raise
12 issues in a court at this time, but you know,
13 just to move things along, I mean it seems to me
14 that we can put together a record and certify it
15 as the official record -- if somebody wanted us
16 to do that anyway, it seems to me that we could
17 do that.

18 The only thing we're struggling with is if
19 that is to be done, who would certify it? These
20 are the pleadings filed with the Division pursuant
21 to -- in Tab 3 there was initial notice of
22 prehearing order that directed all filings be made
23 with the co-directors of the Indiana Election
24 Division.

25 well, if that's -- if we're the official

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1 filing place, would we be the entity -- would the
2 co-directors be the persons to certify that these
3 are the pleadings filed with the Indiana election
4 commission in this administrative cause before the

5 Commission or would the Commission certify that
6 record.

7 And the -- AOPA also directs that transcripts
8 be prepared of the hearings at the expense -- of
9 course, the agency has the responsibility of
10 preparing the transcript, the way I understand, the
11 way it works is that we would pass that through to
12 MicroVote who has the praecipe for that, to the
13 extent there are transcripts that have not been
14 prepared. I think we have a transcript of the last
15 hearing.

16 MR. J. AMMEEN: From the August 27th
17 proceeding, we actually had a court reporter
18 present so we'd have a transcript, and the
19 original is here along with the invoice.

20 We're confused, or I should say the Division
21 is confused, and here's my role as an advocate -- I
22 almost feel like I probably should let Dale speak,
23 but any and all agency documents expressing the
24 agency's actions including any orders, I'm not sure
25 what that sentence means and I don't think the

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1 Division does either.

2 MR. D. SIMMONS: Obviously, there's going
3 to be some point if it's getting at the
4 agency -- if it's referring to the Election
5 Division, going to be a lot of documents that
6 are protected by attorney/client privilege,
7 obviously, so...

8 MR. J. PRICE: well, I don't know if --
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9 CHAIRMAN T. WHEELER: How can -- well, hold
10 on. How can an agency document be part of the
11 record of proceeding?

12 MR. D. SIMMONS: I -- I don't think it
13 would be.

14 CHAIRMAN T. WHEELER: I think that's the
15 point that (indiscernible) some of this looks --
16 I mean, John, this looks like, and I'm not going
17 to deal -- this is like a request for production
18 of documents as opposed to preparing an
19 administrative record.

20 I mean, if you're saying look, I want the
21 record of proceedings, this is it, okay, that's our
22 document. But you're -- you've -- you've asked for
23 documents identified by the agency as having been
24 considered by and before its action and used as a
25 basis for its action?

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1 MR. J. PRICE: We're pleased to have a
2 record that reflects the proceedings before the
3 Commission.

4 CHAIRMAN T. WHEELER: I mean, what's the
5 agency, is my first question -- you or an
6 agency, who's the agency?

7 MR. J. PRICE: Well, the agency is the
8 Division. As you know this a little bit of a
9 hybrid situation because the Commission is quasi
10 independent, actually independent, and the
11 Division is, by law, a portion of the Indiana
12 Secretary of State's Office, and all we really

13 want in the praecipe is just the record of
14 proceedings.

15 CHAIRMAN T. WHEELER: Here's -- here's what
16 I'm inclined to do, and let me suggest there for
17 the other commission members, what I'm inclined
18 to do is have the parties either brief this
19 issue or simply submit an order indicating what
20 it is that you want certified.

21 I believe the commission is the entity to
22 certify because there's a record of the proceedings
23 in front of the Commission, not a record of
24 proceedings from the Division. I believe the
25 agency -- at least the agency contemplated under

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1 AOPA is indeed the Election Commission rather than
2 the division of the Election Division, and as a
3 consequence, I would like to see either -- either a
4 briefing or a proposed order identifying what you
5 actually want.

6 John, if all you want is this, draft us up a
7 proposed order, and that's -- that's a lot easier
8 to get than -- and that may address all the
9 concerns the Division has about, --

10 MR. J. PRICE: I think that's a good idea.

11 CHAIRMAN T. WHEELER: -- you know, Brad's
12 private documents or whoever.

13 MR. J. PRICE: Sure. Well, that's a good
14 idea. We'll do that.

15 MR. J. AMMEEN: Mr. Chairman, I think the
16 Division's question bound to certification was

17 are they acting as a clerk when they're also
18 litigating, and that's -- we're perfectly -- we
19 believe actually the Commission should certify
20 the record.

21 CHAIRMAN T. WHEELER: And that's -- that's
22 an issue that I would appreciate some legal
23 analysis on that. I'd like -- I'd like to share
24 it with Mr. White and get some advice from
25 Mr. White from the Commission's standpoint, if

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1 that's -- Sarah?

2 COMMISSION MEMBER S. RIORDAN: I understand
3 your point that -- that, you know, a litigator
4 and how can you certify the proceedings, the
5 contents of the proceedings in which you're a
6 litigant.

7 And so that's why it seems to me that the
8 chairman's idea of asking the parties again to
9 reach some agreement, if possible, or else submit
10 their individual thoughts about what you think
11 makes up the record and then leave it to the
12 Commission to certify it.

13 CHAIRMAN T. WHEELER: Well, let me make it
14 clear. I believe it's the Commission that
15 certifies. So every -- the parties agree
16 nothing goes out of here until the Commission
17 certifies it.

18 MR. J. AMMEEN: Your Honor, I'm in complete
19 agreement with that. I believe my client is.
20 If it -- if it please the commission, I'd like

21 to make a closing statement (indiscernible).

22 COMMISSION MEMBER S. RIORDAN: I have one
23 more question on the certification,
24 Mr. Chairman. We -- whatever your thoughts
25 either by agreement or individually about, you

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1 know, who pays for the cost of transcription, or
2 the cost of transcription, because in my
3 business it's not cheap. I don't know what our
4 resources are within this agency, but I'd be
5 interested in hearing what they'll have to say.

6 MR. J. PRICE: We're the requesting party
7 so we have to pay for it.

8 CHAIRMAN T. WHEELER: That was easy.

9 COMMISSION MEMBER S. RIORDAN: That's all
10 then. Thank you.

11 MR. J. AMMEEN: I think what part of the
12 confusion here is -- actually, a part of it, and
13 I'm going to advocate now that this is --

14 CHAIRMAN T. WHEELER: what are you -- let
15 me stop you there. what are you advocating?
16 I've resolved all the issues right now.

17 MR. J. AMMEEN: This praecipe, Mr.
18 Chairman, clearly, is in defiance of the
19 order --

20 CHAIRMAN T. WHEELER: well, let me stop you
21 there. Put that in writing -- what I've asked
22 for is you put that in writing, John will put
23 his in writing, you submit it -- I don't have
24 any -- I mean, I have no clue so arguing to me

25 is going to do you no good, at least to me. I 48

1 don't know about some of the other
2 commissioners.

3 what I would prefer to see is that in writing,
4 give it to the AG's office, and let them take a
5 look at AOPA, look at the unique circumstances of
6 the Commission and its relationship with the
7 Division and then be in a position to give us
8 some -- some advice because I -- I don't have a
9 clue. I don't have the statutes. And I am -- I am
10 not in a position to listen to argument from either
11 you or John on it either.

12 It's just -- it's just -- it's a waste of your
13 time because it's not -- it's just not making --
14 making any sense to me right now.

15 MR. J. AMMEEN: Okay.

16 CHAIRMAN T. WHEELER: I will -- thank you.
17 All right. I will accept a motion?

18 COMMISSION MEMBER S. RIORDAN: I move that
19 we adjourn.

20 MR. D. SELECT: Second.

21 CHAIRMAN T. WHEELER: The motion's been
22 made and seconded, all in favor, signify by
23 saying aye?

24 THE COMMISSION: Aye.

25 CHAIRMAN T. WHEELER: Those opposed, same 49

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sign?

(No response.)

CHAIRMAN T. WHEELER: Thank you.

(At the time the proceedings were adjourned.)

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