Indiana Election Commission
Minutes
December 1, 2009

Members Present: Thomas E. Wheeler, II, Chairman of the Indiana Election Commission ("Commission"); Mary Titsworth-Chandler, proxy for S. Anthony Long, Vice Chairman of the Commission; Barbara McClellan, proxy for Daniel A. Dumezich, member of the Commission; Sarah Steele Riordan, member of the Commission.

Members Absent: S. Anthony Long, Vice Chairman of the Commission; Mr. Daniel A. Dumezich, member of the Commission.

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; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division.

Also Attending: Dr. Raymond Scheele, Co-Director of the Bowen Center for Public Affairs at Ball State University, and Co-Director of the Voting System Technical Oversight Program; Dr. Joseph Losco, Ball State University; Mr. Steve Pearson, Vice-President of Certification, Election Systems & Software; Mr. James Ries, Jr., MicroVote General Corporation; Mr. Steve Shamo, MicroVote General Corporation; Mr. Edward Perez, Hart InterCivic; Mr. Ted Gilkey, Hart InterCivic; The Honorable Sherry Brown, Harrison County Circuit Court Clerk; Mr. Robb McGinnis, Election Systems & Software.

1. Call to Order

The Chair called the December 1, 2009 meeting of the Commission to order at 8:00 a.m. in the Regency Ballroom of the Hyatt Regency at 1 South Capitol Avenue, 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 and Associates, 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 6, line 8, delete “(CK)”.

Page 32, line 17, correct the word “autonomy” to read “authority”.

Page 37, line 12, correct the word “king” to read “ring”.

Page 42, line 20, correct the word “report” to read “a report”.

Page 42, line 21, correct the word “fort” to read “forth”.

Page 47, line 22, correct the name “Wiley” to read “Wyle”.

Page 49, line 16, correct the word “minutes” to read “minutes ago”.

Page 50, line 6, correct “ou” to read “you”.

Page 60, line 15, correct the word “taking” to read “am taking”.

Page 63, line 1, correct the word “incorrect” to read “incomplete”.

Page 64, line 20, correct the word “trial” to read “trail”.

Page 81, line 20, correct the name “S. McGINNIS” to read “R. McGINNIS”.

Page 81, line 25, correct the name “S. McGINNIS” to read “R. McGINNIS”.

Page 85, line 3, correct the name “S. McGINNIS” to read “R. McGINNIS”.

Page 85, line 22, correct the name “S. McGINNIS” to read “R. McGINNIS”.

Page 89, line 12, delete “(Phonetic)”.

Page 89, line 20, correct the name “S. McGINNIS” to read “R. McGINNIS”.

Page 90, line 1, correct the name “S. McGINNIS” to read “R. McGINNIS”.

3. Adjournment

There being no further items on the Commission’s agenda, the Chair entertained a motion to adjourn. Ms. Riordan moved, seconded by Ms. McClellan, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting “aye” (Mr. Wheeler, Ms. Titworth-Chandler, Ms. McClellan and Ms. Riordan), and no Commission member voting “no,” the motion was adopted. The Commission then adjourned at 9:20 a.m.
Respectfully submitted,

J. Bradley King
J. Bradley King
Co-Director

Pamela Potesta
Pamela Potesta
Co-Director

APPROVED:

Daniel A. Damezich

Thomas E. Wheeler, M.
Chairman
INDIANA ELECTION COMMISSION
PUBLIC SESSION NOTICE

Date: Tuesday, December 1, 2009

At: The Hyatt Regency
1 South Capitol Avenue
Regency Ballroom
Indianapolis, Indiana 46204

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

Connor + Associates, Inc.
1650 One American Square
Indianapolis, IN 46282
(317) 236-6022
INDIANA ELECTION COMMISSION

Mr. Thomas E. Wheeler, II (Chairman)
Ms. Mary Titsworth-Chandler (Proxy) for Mr. S. Anthony Long, (Vice Chair)
Ms. Barbara McClellan (Proxy) for Mr. Daniel Dumezich, (Commission Member)
Ms. Sarah Steele Riordan, (Commission Member)

INDIANA ELECTION DIVISION

Mr. Dale Simmons - Co-General Counsel
Ms. Leslie Barnes - Co-General Counsel
Mr. Bradley King - Co-Director
Ms. Pamela Potesta - Co Director
CHAIRMAN T. WHEELER: All right. I'm going to call this meeting of the -- and I have to whack my gavel because I actually have one this time, call the meeting of the Election Commission to order.

It has been duly noted that we are meeting in connection with the Clerks Conference and give the clerks an opportunity to see what we do.

We are meeting in the Hyatt Regency pursuant -- duly noted in a notice. I note that I have four members of the Election Commission, although at this point we have two proxies. Sitting in for Commission Dumezich is Barb McClellan -- thank you Barb, and sitting in for Commissioner Long, who we wish a speedy recovery, is Mary Chandler -- thank you, Mary.

MS. M. CHANDLER: You're welcome.

CHAIRMAN T. WHEELER: I appreciate you guys being willing to serve. As you guys may be aware, we've had -- this is our third meeting in the last month to try to get through these systems, and I appreciate the Ball State participants in this proceeding for their third trip down to Indianapolis for these meetings,
and hopefully, we can get through this.

   We are going to start with Approval of Order 2009-314, it's an approval of forms for the primary and general for next year, and who is doing that?

   **MR. B. KING:** I am doing that. Mr. Chairman and Members of the Commission, in your packet you should see Order 2009-314. This is the final series of forms orders for this year. It contains absentee forms, candidate forms, and a voter registration form.

   The changes are of a couple of types, one with the -- the PRE-19, we have a new form, the affidavit of public safety officer or a member of the military returning to the polls to vote after responding to an emergency. This form was prompted by legislation enacted by the General Assembly earlier this year in 2009.

   We made a conforming change with the Spanish language version, voter registration form to remove an obsolete e-mail address, and I would be happy to answer any questions that any of the commissioners might have.

   **CHAIRMAN T. WHEELER:** Any questions from the commissioners?
(No response.)

CHAIRMAN T. WHEELER: Hearing none, I'll accept a motion to approve Order No. 2009-314, an order approving forms and providing for the continued use of certain forms?

COMMISSIONER S. RIORDAN: So moved.

CHAIRMAN T. WHEELER: Do I have a second?

MS. B. McCLELLAN: Second.

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

(No response.)

CHAIRMAN T. WHEELER: Hearing none, all in favor of approving Order No. 2009-314, signify by saying aye?

THE COMMISSION: Aye.

CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries.

MR. B. KING: Mr. Chairman, if I could proceed with the next item in your packet. It also concerns forms. You'll see a packet of material with the heading "Application for In-Person Absentee Ballot ABS-1." These forms are drafts that have been developed by several
county circuit court clerks over the last several months that call for varying sweeping redesigns in the absentee ballot forms, voter registration forms, and some provisional forms.

I wanted to submit these to the commission today with -- with our thanks to the clerks for their work on this draft and to report that we've begun discussions with Quest (CK) and others involved in our statewide voter registration system because the forms involved here will require a fair amount of technical work by those entities, if the commission chooses to approve them at a later date.

CHAIRMAN T. WHEELER: Now as I understand this, the form that you've included in our packet, that was a joint effort between the Division and the clerks?

MR. B. KING: That would be correct.

CHAIRMAN T. WHEELER: I like to see that kind of cooperation. Any questions regarding Absentee Ballot Form 1, ABS-1?

COMMISSIONER S. RIOR丹: I have a question. Mr. King, will these be -- obviously, this process is only starting, we're not in the middle of the year adopting these forms, this is
just to put us on notice and let us know that it's being worked on?

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

COMMISSIONER S. RIORDAN: Okay.

CHAIRMAN T. WHEELER: And again, we appreciate the clerks working with the Division to get this stuff done. That was information only?

MR. B. KING: Yes.

CHAIRMAN T. WHEELER: All right. Anything else under forms?

MR. B. KING: No.

CHAIRMAN T. WHEELER: All right. Moving onto Item No. 3, Voting System Certification Applications. Who's going to start with that; what -- what systems applications do we have pending right now?

MR. B. KING: Mr. Chairman, I would suggest that Dr. Scheele of Ball State give a overview of that.

CHAIRMAN T. WHEELER: All right. Let me ask it this way: As I recall, we had four vendors with systems beginning back in September. Recertification of systems was due October 1st; correct?
MR. B. KING: Yes, that's correct.

CHAIRMAN T. WHEELER: That's when we had to recertify existing systems?

MR. B. KING: Correct.

CHAIRMAN T. WHEELER: We had a meeting on September 16th, we held a meeting, and as I recall, none of those systems were in a position to be approved at that point in time; is that correct?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And that was -- wasn't a situation with the Commission not being willing to approve them, the situation was that they had not gone through the statutory mandated process?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And as I recall, Ray, primarily, in some cases that was testing?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: Some cases, it was some of the materials had not been provided?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: So none of the those -- Hart, Premier, ES&S or Microvote were approved at that meeting?
MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And I will make a statement that the Commission set that meeting for the purpose of getting that done prior to October 1st, and I will tell that the Commission Members were fairly disappointed that the vendors had not gotten with Ball State, and there were a variety of reasons, but had not gotten with Ball State and got it done. Now we've reset a meeting -- when was our last meeting?

MR. B. KING: November 16th.

CHAIRMAN T. WHEELER: November 16th to allow that testing to take place. During that November meeting we were able to get two of those systems approved; is that correct -- the vendors -- two vendors or two systems; correct?

MR. B. KING: That's correct, Mr. Chairman.

CHAIRMAN T. WHEELER: And that was which two, Hart and Premier?

MR. B. KING: Yes, Mr. Chairman. On November 16th the Hart InterCivic application for recertification was approved, and the, what was originally a Premier system before its purchase by ES&S recertification application was
approved. The Premier application dealt with the issue of the SSL certificates.

CHAIRMAN T. WHEELER: And found that Ball State reviewed those and those were approved by the commission during that meeting, so that left us with two vendors with systems still outstanding, ES&S and MicroVote?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And you're here to report on those two here today?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: Yeah, let me -- let's go ahead and do that now. Those of you who are planning on giving testimony during the course of this certification system, please stand?

(Witnesses complied.)

MR. B. KING: Please raise your right hand and respond I do at the conclusion of the oath?

(Witnesses complied.)

MR. B. KING: Do you solemnly swear that the testimony you will provide to the commission today will be the truth, the whole truth, and nothing but the truth, so help you, God?

THE WITNESSES: I do.

CHAIRMAN T. WHEELER: All right. There's a
packet. I'm going to start with ES&S. I have a packet and the commissioners have a packet. As I understand it, one of the issues with ES&S was their -- their materials were actually denied in the September 16th meeting and they refiled an application -- on November 21st, they filed a new application with the appropriate materials and that was then turned over to Ball State for review?

**MR. R. SCHEELE:** Correct.

**CHAIRMAN T. WHEELER:** And Ray, can you go ahead and discuss your review?

**MR. R. SCHEELE:** Sure. I'm not sure if the packet -- let me hand it out and we'll do -- this packet contains -- this is for the commissioners -- this packet contains -- Pam and Brad.

**MS. L. BARNES:** Mr. Chairman, sorry to interrupt. We did not have a sign-in sheet. Ray, can you please state your name for the record?

**MR. R. SCHEELE:** Sure. I am Raymond Scheele, Co-Director of the Bowen Center for Public Affairs at Ball State University and Co-Project Director of the Voting System
Technical Oversight Program.

CHAIRMAN T. WHEELER: And Ray, just for people who -- we have some clerks here and people that aren't involved in the process, could you discuss -- just a two-minute overview of what Ball State's role in the system is?

MR. R. SCHEELE: Correct. The certification process -- we have been contracted by the Indiana Election Commission to oversee and make recommendations to the commissioners with respect to certifications of new machines, new voting systems in the state, as well to test and recommend to the commissioners recertifications of voting systems in the state, and we have done that in working with the vendors.

We've tested all of the machines that are on the agenda today, as well as -- well, all of them that have also been previously approved.

CHAIRMAN T. WHEELER: All right. How do you want to go? Why don't you start with the Premier, the former Premier system, since that application date is August 26th?

MR. R. SCHEELE: Okay. Yes, this is the Assure 1.2, the new certification. We have
tested this machine as the report indicates, on Wednesday, October 7th. The voting system was brought to the campus at Ball State, and in cooperation with the vendor's representatives, our team did all of self-tests on it, including conducting a mock election on the machines.

We have gone through our protocols with respect to this new voting system that ES&S would like to have certified. We have everything in place except for one document, and I think -- where's -- the ES&S representative is here.

We do not have as we speak right now -- we worked through the night on this, I think the ES&S representatives did, to get verification of the escrow of the voting system software and that has not come to us yet so we -- that is the one element we are missing on this voting system, and therefore, we're not in a position yet to recommend to you that it be certified as a new voting system for use in the State of Indiana.

CHAIRMAN T. WHEELER: All right, let me stop you there. And Brad, receipt of that escrow information is a statutory requirement?
MR. B. KING: Yes, Mr. Chairman, Members of the Commission, under Indiana Code 3-11-15-7(a)(8), one of the requirements for the application is to "Provide documentation of the escrow of the voting system's software, firmware, source codes, and executable images with an escrow agent approved by the election division."

CHAIRMAN T. WHEELER: So as I understand it, that's not an option, that is a mandatory requirement; correct?

MR. B. KING: Yes, it must satisfy the following requirements.

CHAIRMAN T. WHEELER: Okay. Who's here from ES&S; would you introduce yourself?

MR. S. PEARSON: Hi, my name is Steve Pearson. I'm Vice President of Certification for ES&S.

CHAIRMAN T. WHEELER: Steve, can you spell your name for Rhonda just so she can get it?

MR. S. PEARSON: It's P-E-A-R-S-O-N.

CHAIRMAN T. WHEELER: Okay, Steve, what's the deal -- you're missing one piece of paper?

MR. S. PEARSON: The acquisition -- the application had been submitted with the
acquisition and merger of the two companies.
Typically, the exhibit that provides evidence of
escrow is provided at the time of application.

It was an oversight, in the fact that we
detect that it was not submitted at the time of
the application prior to the acquisition, so we
will get that completed and submit that -- that
evidence of escrow.

CHAIRMAN T. WHEELER: On what kind of time
frame do you figure?

MR. S. PEARSON: Well, I need to determine
that it's been placed in escrow with the
independent escrow agent.

CHAIRMAN T. WHEELER: So right now, you
don't even know if it's in escrow?

MR. S. PEARSON: It's in escrow with the
EAC, but not -- we don't know if it was
deposited with an independent escrow agent, and
I think that I'll need probably a day to get
that determined, and we'll make that deposit
just as rapidly as we can, and generally,
that's -- we can do that in one day, get that on
deposit and get evidence of escrow.

CHAIRMAN T. WHEELER: And of course, since
this system hasn't been approved, nobody's using
it, so that's --

MR. S. PEARSON: Correct --

CHAIRMAN T. WHEELER: The money's not really a problem?

MR. S. PEARSON: Correct.

CHAIRMAN T. WHEELER: I'm just not sure when the Commission is going to meet again to approve -- it may be January or February.

MR. S. PEARSON: Okay.

CHAIRMAN T. WHEELER: So just understand if that's the case, but that's not going to impact any elections in Indiana or any primary elections; correct?

MR. S. PEARSON: No.

CHAIRMAN T. WHEELER: In that case, the recommendation is that we table this, --

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: -- I assume, and then you understand -- you don't have a problem with it, you're going to get it to us, and I'll put it on the next commission agenda?

MR. S. PEARSON: Yeah, I understand.

COMMISSIONER S. RIORDAN: Mr. Chairman, I move that we table the application of Election Systems & Software (formerly Premier Election
Systems) application for certification of the
Assure 1.2 until our next meeting.

CHAIRMAN T. WHEELER: Do I have a second?

MS. M. CHANDLER: Second.

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

(No response.)

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

THE COMMISSION: Aye.

CHAIRMAN T. WHEELER: Those opposed, same
sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries. All
right, which one do you want to do next?

MR. R. SCHEELE: ES&S Unity 3.0.1.0. This
is a DRE and optical scan voting system. We
tested this system with, again, the
representatives from ES&S on October 8th of this
year.

CHAIRMAN T. WHEELER: Let me stop you
there.

MR. R. SCHEELE: Sure.

CHAIRMAN T. WHEELER: This is a
recertification of a previously approved system?
MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: Statutorily, there's a deadline of October 1st; correct?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And you didn't even do the testing until October 8th; correct?

MR. R. SCHEELE: Correct. This is one of those that we couldn't address at the September meeting because we hadn't tested it yet.

CHAIRMAN T. WHEELER: Okay.

MR. R. SCHEELE: On the basis of our evaluation, if you go to the final paragraph, we find that the voting system referenced herein meet all the requirements of the Indiana Code for the use in the State of Indiana, including compliance with the legal requirements for voters with disabilities.

CHAIRMAN T. WHEELER: Now when we discussed the Unity 3.0.1.0 on September 16th, as I recall, I think they had everything in but the testing?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And as I recall, the Commission because -- and I think the Commission was unhappy to see that the testing had not
taken place before the statutorily mandated
deadline of October 1st, that that particular
application was denied?

MR. R. SCHEELE: Denied, correct.

CHAIRMAN T. WHEELER: ES&S has now refiled
that application as of November 24th?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And you reviewed it
and finds that it meets all of the requirements,
including the testing that you've now had the
opportunity to do?

MR. R. SCHEELE: Correct, which is why the
date of application on this report to you is
November 24th, which is their latest
reaplication.

CHAIRMAN T. WHEELER: Any questions from
commission members?

(No response.)

CHAIRMAN T. WHEELER: Hearing none, I'll
accept a motion on ES&S Unity 3.0.1.0?

MS. M. CHANDLER: Make a motion to approve
it.

CHAIRMAN T. WHEELER: All right, I have a
motion to approve, do I have a second?

COMMISSIONER S. RIORDAN: Second it.
CHAIRMAN T. WHEELER: Motion's been made and seconded, any further discussion?

COMMISSIONER S. RIORDAN: Could we just for purposes of the record have an explanation of exactly what this model does?

MR. R. SCHEELE: Sure. This is both a DRE system, which is the touch screen voting system, as well as an optical scan ballot card system. The technical firmware and software that are mentioned on this, some of it is self-explanatory, but a lot of it isn't because it's technical language dealing with their firmware and software.

But basically, what we did in our testing, our self-tests on this, everything was set up the way it would be in a precinct or a vote center, if this machine were to be used. We went through our protocol, which was all of the statutory requirements, both at the federal level as well as the state level, and we took a look at the laboratory reports on the systems and checked off everything at the national standards and then we went through all of the Indiana statutory standards that we had agreed with with staff, that it met all of the
statutory requirements in Indiana, at which time then we made certain and we recorded -- in fact, we videotaped all of these as well, we made certain that every serial number on every component was in our notes that we had tested.

Then we actually conducted a mock election on the machine, where we had made up the ballots, our team had, and we voted for an hour or so or more, and then we have our graduate assistants who take a look at that data and match it against what we knew the ballots were to show at the end to make certain that the machines were functioning in what we call a logical way and an appropriate way.

CHAIRMAN T. WHEELER: And it came out the way you predicted?

MR. R. SCHEELE: And it came out the way.

CHAIRMAN T. WHEELER: Who won?

MR. R. SCHEELE: Well, actually, we had several of us voting, and it was fun to vote all day.

CHAIRMAN T. WHEELER: It sounds a lot like Lake County -- cheap shot.

COMMISSIONER S. RIORDAN: And where are these systems used in Indiana, how many
MR. R. SCHEELE: Oh, did we bring that data on county use, perhaps ES&S -- I'm not sure.

MR. S. PEARSON: Sixteen counties.

CHAIRMAN T. WHEELER: Marion, some of the major counties?

MR. S. PEARSON: Yes.

CHAIRMAN T. WHEELER: St. Joe?

MR. S. PEARSON: Not this particular device, no.

CHAIRMAN T. WHEELER: St. Joe is an ES&S customer?

MR. S. PEARSON: Correct, but it's a different model.

CHAIRMAN T. WHEELER: Any further questions?

COMMISSIONER S. RIORDAN: No.

CHAIRMAN T. WHEELER: All right, there's been a motion that's been made and seconded, any question from any commission member?

(No response.)

CHAIRMAN T. WHEELER: Hearing none, all in favor of approving a renewal of the Unity 3.0.1.0, signify by saying aye?

THE COMMISSION: Aye.
CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries.

MR. R. SCHEELE: Then Mr. Chairman, in the packet is the ES&S new certification request or application for the Unity 3.2.0.0. We tested this that same week as the previous system that we just talked about.

This test was conducted on Friday, October 9th by our team, and again, at the last paragraph on our report, on the basis of that evaluation, we find that the system referenced herein meets all the requirements of the Indiana Code for use in the State of Indiana and this includes compliance with the legal requirements for voters with disabilities.

CHAIRMAN T. WHEELER: Any questions from commission members?

COMMISSIONER S. RIORDAN: Is this something that is currently in use in Indiana?

MR. R. SCHEELE: No, this is a new system that's being asked for for new certification.

CHAIRMAN T. WHEELER: Anything else from the commission members?
(No response.)

CHAIRMAN T. WHEELER: Hearing none, I'll accept a motion on the Unity 3.2?

COMMISSIONER S. RIORDAN: I move that we approve the application by ES&S for the Unity 3.2.0.0.

CHAIRMAN T. WHEELER: Do I have a second?

MS. M. CHANDLER: Second.

CHAIRMAN T. WHEELER: All right. I have a motion that's been made and seconded, any further discussion?

COMMISSIONER S. RIORDAN: I have one question. Are these models compatible with the ones that we just reapproved or would these be a completely new system to a completely new customer?

MR. S. PEARSON: This is Steve Pearson again. No, it's a -- it's a separate system and they're not interchangeable.

CHAIRMAN T. WHEELER: Is it intended to replace?

MR. S. PEARSON: It is intended to be used as...

CHAIRMAN T. WHEELER: It's the next generation?
MR. S. PEARSON: It's the next generation, yeah.

CHAIRMAN T. WHEELER: Does it run -- does it run on the same --

MR. S. PEARSON: It introduces a new tabulator, a new precinct-based tabulator.

CHAIRMAN T. WHEELER: Will it run on the same hardware or does it involve new hardware as well?

MR. S. PEARSON: The one new tabulator we're introducing is our Model DS200, and it is a new product that we're introducing, that we want to introduce into the State of Indiana.

CHAIRMAN T. WHEELER: So that's going to cost our counties, I guess?

MR. S. PEARSON: Well, it'll give them the opportunity to step to the next level, I guess.

CHAIRMAN T. WHEELER: I suspect they'll appreciate that.

MR. S. PEARSON: But the other components, the Model 650 and the AutoMARK, are the same platforms, then it would just be a firmware upgrade to utilize those.

CHAIRMAN T. WHEELER: Any further questions from the commission members?
(No response.)

CHAIRMAN T. WHEELER: Hearing none, I'll accept a motion on the Unity 3.2.

COMMISSIONER S. RIORDAN: I think I made the motion earlier.

CHAIRMAN T. WHEELER: Oh, I'm sorry, that was the discussion. The motion's been made and seconded, hearing no further discussion, all in favor of approving the Unity 3.2, signify by saying aye?

THE COMMISSION: Aye.

CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries. All right, that leaves us with the MicroVote application?

MR. R. SCHEELE: Correct. We do not have in the packet a report on MicroVote.

CHAIRMAN T. WHEELER: Let me get to -- hold off one second. As with ES&S, at the September 16th meeting, MicroVote was not in a position to go forward. The Election Commission at that meeting denied the application. MicroVote has now, as I understand it, Brad, correct me if I'm
wrong, refiled their application on September, or sorry, it was actually signed on November 17th but received by the commission on November 25th?

MR. B. KING: That's correct, Mr. Chairman.

CHAIRMAN T. WHEELER: So we do have a -- we have an appropriate application in front of us; correct?

MR. B. KING: Yes, the application has been filed on the required...

CHAIRMAN T. WHEELER: All right. Now as I recall, the hold-up with this particular system last time, from the report last time, was that MicroVote did not have their final report from the independent testing authority?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And I believe at that meeting, the Commission directed MicroVote to work with Ball State in obtaining that information; is that correct?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: I would note that MicroVote had previously produced this same system back in, and Brad, correct me if I'm wrong, September of 2006?
MR. B. KING: Yes, Mr. Chairman, the previous certification was September 18th of 2006.

CHAIRMAN T. WHEELER: So in that certification, did we have the final report at that time?

MR. B. KING: No, Mr. Chairman.

CHAIRMAN T. WHEELER: As I recall, the election commission, because of the pendency of elections; particularly, the November 2006 elections, the election commission went ahead and certified the system, this particular system for use in the State of Indiana not withstanding the fact that the final report had not been received; is that correct?

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

CHAIRMAN T. WHEELER: So three years ago, more than three years ago we approved this without the final report; is that correct?

MR. B. KING: Yes that is correct.

CHAIRMAN T. WHEELER: And that approval was contingent upon receiving that final report?

MR. B. KING: Yes, it was, Mr. Chairman.

CHAIRMAN T. WHEELER: All right. And I believe -- I'm looking over your shoulder at the
September 18th minutes, which says, however, this approval is subject to three conditions: (1) MicroVote filing a copy of the complete report from CIBER Laboratory within 7 days after receipt of the report by MicroVote; (2) The report indicating system compliance with the 2002 FEC standards; and (3) MicroVote filing additional information no later than September 28th, 2006, confirming that CIBER exercised due diligence to confirm the system's straight party voting features complied with the system specifications filed by Cyber -- filed with CIBER by MicroVote. Of those conditions, as I understand it, MicroVote met one of those three conditions; is that correct?

MR. B. KING: Yes, the third condition.

CHAIRMAN T. WHEELER: And that would be the third condition, the filing of the CIBER report relating to the system specs, but the first and second conditions related to filing a complete report from CIBER were not met on September 18th of 2006.

As I understand it, the commission approved it contingent upon that information, and as I sit here today, December 1st, 2009, more than
three years later, has that condition been met?

MR. R. SCHEELE: No, we do not have an independent lab report from MicroVote.

CHAIRMAN T. WHEELER: All right. That's despite the fact that at the November 2009 meeting, the Commission, specifically, addressed you to work with MicroVote and get that complete report; correct?

MR. R. SCHEELE: Correct. We contacted MicroVote -- oh, excuse me, go ahead.

CHAIRMAN T. WHEELER: That has not been produced as of today?

MR. R. SCHEELE: That's correct, it has not been produced.

CHAIRMAN T. WHEELER: All right. Why not?

MR. J. RIES: My name is Jim Ries. After the November 16th meeting, we spoke with the gentleman from Ball State pursuant to a request to try to obtain documentation from CIBER. We sent a letter directly to the program engineer at CIBER that day, and subsequently --

CHAIRMAN T. WHEELER: Jim, let me -- let me stop you there -- actually, let me ask two questions: One, you agree that those conditions were imposed in September of 2006; correct?
MR. J. RIES: Correct.

CHAIRMAN T. WHEELER: No. 2, you agree that as of today, you have not complied with those conditions?

MR. J. RIES: That's correct.

CHAIRMAN T. WHEELER: You understand that those are statutory conditions for the approval of that particular system?

MR. J. RIES: I believe they are.

CHAIRMAN T. WHEELER: You understand that the commission went around those statutory, and I'm not sure we had the right to do it, but we did it, because of the upcoming November 2006 elections; correct?

MR. J. RIES: Correct.

CHAIRMAN T. WHEELER: And you understand the commission did that based upon your reputation, and I believe it was your representation, that you would get that letter?

MR. J. RIES: That's correct.

CHAIRMAN T. WHEELER: All right. And as of today, do you have that letter?

MR. J. RIES: We do not have the final test report because it was never generated.

CHAIRMAN T. WHEELER: I understand. That
was going to be my next question. Now tell me why you don't have that letter -- we're three years in?

MR. J. RIES: We actually asked CIBER to respond back to Mr. Losco and a copy to Brad as well and members of the commission, CIBER, Inc. was -- lost their accreditation for VSTL at the end of August of 2006, and that is referenced in the response to Mr. King and Mr. Losco -- our question still remains, is all the testing was performed in the month of June or July 2006. Subsequent letters were sent to the election commission confirming that that testing had been completed and a report would be forthcoming.

Within that jurisdiction of time, the governing body was NASED at the time, that had the autonomy to authorize certification to system vendors. Our question remained and we posed the question two weeks in writing to Miss Kelly Rohacek why that report was never generated, even though we completed the testing in July and they did not lose their accreditation until August 31 of 2006, and that response was simply never answered.

CHAIRMAN T. WHEELER: All right. And
that's a letter dated November 17th, 2009
from -- signed by you as president of MicroVote
to this Kelly Rohacek, Practice Director, CIBER, Inc.?

    MR. J. RIES: Correct.

    CHAIRMAN T. WHEELER: And I believe there's
a copy of that in the commission's packet from
MicroVote.

    COMMISSIONER S. RIORGAN: Mr. Chairman, is
it September 17th or November?

    CHAIRMAN T. WHEELER: November 17th is what
I'm looking at right here.

    MR. J. RIES: November 17th.

    CHAIRMAN T. WHEELER: And I believe your
letter was in response to an e-mail exchange
between, it looks like you and Ball State; is
that correct?

    MR. J. RIES: Correct.

    CHAIRMAN T. WHEELER: I have an e-mail in
the packet, the commission has an e-mail in the
packet, and Joe, is this from you?

    MR. J. LOSCO: Yes, it is.

    CHAIRMAN T. WHEELER: I'd like you to
address that e-mail at 8:53 a.m. addressing what
Mr. Ries says -- Mr. Ries has said CIBER
completed their reporting, and basically, they
just never issued the report, and I take your
e-mail to kind of beg to differ with him?

MR. J. LOSCO: Yes, Joe Losco.

CHAIRMAN T. WHEELER: Joe, can you spell
your last name?

MR. J. LOSCO: L-O-S-C-O. In the
communication we had with Mr. Ries, we pointed
out after reviewing their materials once again
after the November meeting with the commission,
that there were two possibilities that we could
explore, in terms of looking for some
verification.

CHAIRMAN T. WHEELER: Let me -- let me back
you up --

MR. J. LOSCO: Sure.

CHAIRMAN T. WHEELER: -- because I want to
talk -- do you have a copy of your e-mail?

MR. J. LOSCO: The September 17th e-mail, I
don't.

CHAIRMAN T. WHEELER: I'm looking at your
e-mail the 17th at 8:53 a.m. going to Mr. Ries.

MR. J. LOSCO: That one, I don't, I'm
sorry -- oh, yes, from...

CHAIRMAN T. WHEELER: It's from you to Mr.
Ries.

MR. J. LOSCO: No, I don't.

CHAIRMAN T. WHEELER: Let me give --
Commissioner Riordan has been kind enough to let
you use this copy, we have it in our packet,
because it was also cc'ed to both Brad and Pam,
our co-directors. Looking at that, it begins
Dear Jim, do you see that?

MR. J. LOSCO: Yes, uh-huh.

CHAIRMAN T. WHEELER: All right. And this
is the e-mail that you've been referring to
where you're e-mailing it back and expressing
some concerns --

MR. J. LOSCO: Yes.

CHAIRMAN T. WHEELER: -- about the process
and the MicroVote contention that all the review
has been done?

MR. J. LOSCO: Yes.

CHAIRMAN T. WHEELER: You refer to a
gentleman by the name of Jack Cobb?

MR. J. LOSCO: Yes.

CHAIRMAN T. WHEELER: What is your
understanding of who Jack Cobb is or was?

MR. J. LOSCO: Jack Cobb was an employee of
CIBER labs at the time the certification -- at
the time the review was done by CIBER labs.

CHAIRMAN T. WHEELER: And you're referring to two letters from Mr. Cobb dated September 8th, 2006 and September 20th of 2006?

MR. J. LOSCO: Yes, that's right.

CHAIRMAN T. WHEELER: And those were letters done by Mr. Cobb in response to requests by MicroVote?

MR. J. LOSCO: By MicroVote, yes.

CHAIRMAN T. WHEELER: And so these were in response to MicroVote's attempt to provide some format of this final report?

MR. J. LOSCO: Yes, that's right.

CHAIRMAN T. WHEELER: And you express some concerns about Mr. Cobb's letter, I note in there. He states, "Some information provided may not be exact" in his letters. You note that he did not provide any of the test results in his letter?

MR. J. LOSCO: Correct.

CHAIRMAN T. WHEELER: You also note that Mr. Cobb states that a report, quote, recommending a system to be certified will be sent to the EAC -- that never ever happened; is that correct?
MR. J. LOSCO: Correct.

CHAIRMAN T. WHEELER: And those -- and those were all expressed in your e-mail or concern back to Mr. Ries?

MR. J. LOSCO: Correct.

CHAIRMAN T. WHEELER: And as a consequence of that, you say, and I'm quoting you, "We do not have and cannot find this document but believe it may provide us with some assurance about the reliability of the CIBER tests."

As I understand it, from your perspective as, and this is the king leader of the three of you, Ball State's perspective, the information in the Cobb letters was not compliant with either the statutory requirement for a final report and did not -- was not sufficient to give you a level of comfort that the system was actually -- had been fully tested and met the statutory requirements; is that correct?

MR. J. LOSCO: That's correct, Mr. Chairman.

CHAIRMAN T. WHEELER: And that's what you're expressing back to him in this letter or e-mail?

MR. J. LOSCO: Yes.
CHAIRMAN T. WHEELER: And as I understand it, you give him two options, what are those two options?

MR. J. LOSCO: First, to inquire again from CIBER to see if the testing data is available and we can look at it, or secondly, to provide us with the referenced report to EAC recommending certification.

CHAIRMAN T. WHEELER: And what you're saying -- what I take from this is in the absence of something like that, we cannot recommend approval of the system because it doesn't meet the statutory requirements of having a final report?

MR. J. LOSCO: Correct.

CHAIRMAN T. WHEELER: Now Mr. Ries, as I understand, this e-mail is what generated your letter to MicroVote -- to CIBER; correct?

MR. J. RIES: That's correct.

CHAIRMAN T. WHEELER: And that was taking one of these options they offered, to get back with CIBER and try to get this information?

MR. J. RIES: Yes.

CHAIRMAN T. WHEELER: I take it from what you've said, there's been no response to this
letter?

MR. J. RIES: No. We did receive a response back from Kelly Rohacek on -- I believe it was the 24th of November cc'ing Brad King and Joe Losco, that in fact MicroVote did complete the testing. We did everything we could. We do not generate the final report, that comes from the testing facility, not MicroVote.

The reference letters that you mention from Jack Cobb, referenced that the testing was completed, the 2002 standards were performed, and a subsequent letter requested by the EAC in September of 2006, I believe was sent back to you, Chairman Wheeler, from Jack Cobb listing some answers to questions as far as straight party voting and issues that were tested, that they were compliant.

CHAIRMAN T. WHEELER: And I note in her response, she states, "The final outcome of this testing was found to be incomplete and did not result in a final letter."

MR. J. RIES: The certification portion of it. The testing was completed.

CHAIRMAN T. WHEELER: Well, that's not what it says in there.
MR. J. RIES: Well, I missed it.

CHAIRMAN T. WHEELER: CIBER says that the testing was incomplete.

MR. J. RIES: The testing was completed. The certification not completed.

CHAIRMAN T. WHEELER: With all due respect, CIBER, which was the independent testing authority said that it wasn't. That's what this -- this letter you just provided says that testing was incomplete -- that's what she says; right?

MR. J. RIES: You've got the letter.

CHAIRMAN T. WHEELER: Okay.

MR. S. SHAMO: Excuse me, the two previous letters state from CIBER that the testing has been completed.

CHAIRMAN T. WHEELER: Which letter are you referring to?

MR. S. SHAMO: The two Jack Cobb letters from August 20th, 2006, and it was followed up on September 18th.

CHAIRMAN T. WHEELER: But the Jack Cobb letter very specifically says the information -- some information provided in this letter may not be correct. That's what he said in his letter;
right?

**MS. L. BARNES:** Mr. Chairman, can you have him introduce himself?

**CHAIRMAN T. WHEELER:** I'm sorry, Steve, introduce yourself?

**MR. S. SHAMO:** Steve Shamo with MicroVote.

**CHAIRMAN T. WHEELER:** Okay.

**MR. S. SHAMO:** You've referenced several times the statutory requirement for the report -- I'm not sure where that statutory requirement is for the report. If I remember correctly, two years ago, when we went through this process, Mr. Simmons recommended that requiring the report could be problematic in certain situations if testing was completed, and you had -- we were waiting for the EAC to produce a report in retrospect, so I'm wondering where is the statutory requirement, the test documentation, and at the last meeting Mr. Simmons at least confirmed that, a report is not a statutory requirement, however, it is preferred by the commission; is that correct?

**MR. D. SIMMONS:** Well, actually, that was the case back then -- oh, sorry.

**COMMISSIONER S. RIORDAN:** No, no, please.
CHAIRMAN T. WHEELER: Go ahead.

MR. D. SIMMONS: Actually, that was the case --

CHAIRMAN T. WHEELER: Dale, introduce yourself?

MR. D. SIMMONS: Dale Simmons, General Counsel, for the Indiana Election Division. Actually, that was the case back then, and I think I did respond that the commission had become uncomfortable because all we were getting were letters, not full reports, which full reports identify the whole system, identify the testing performed, it has a lot of detail.

At that time we were getting reports, and all the statute says is documentation from the ITA, it doesn't specify the report. Since that time there have been the introduction of Ball State as the reviewer, and there is a statute that says they review -- they have to review report, specifically, to program requirements are set forth in 3-11-16-4, subpart 3, "Review reports concerning voting systems prepared by independent laboratories." So since the introduction of Ball State, certainly, a report is part of the requirement.
CHAIRMAN T. WHEELER: All right. Now let's go back for a second. As I understand it, your position at this point is this is as good as it's going to get, and we're not going to get a final report from CIBER on your system?

MR. J. RIES: That's what CIBER has addressed to us, that they never sent their data, test data to NASED at the time.

CHAIRMAN T. WHEELER: Now let's go to the next question that I, specifically, asked you at our next meeting: Why can't you just go to another vendor -- Wyle or someone else, there are other vendors other than CIBER, and get your system approved there?

MR. J. RIES: Well, we did. In April of 2007, we submitted this product upgrade to a company by the name of iBeta out of Denver, Colorado, and we went you said the 2005 standards, so we -- if we were to -- if any vendor were to submit their current system today for testing, it would have to be under the 2005 EAC standards.

CHAIRMAN T. WHEELER: I guess I don't understand that, and I think I -- I said that at the last meeting -- you and I had this
conversation at the last meeting, and let me read to you what you said to me: Because those standards might be a little -- the 2002 standards were no longer recognized, so if we were to go to another lab, we would have to do exactly what we've done, is resubmit our product under the 2005 standards.

MR. J. RIES: Correct.

CHAIRMAN T. WHEELER: And you -- you stand by that today; correct?

MR. J. RIES: Correct.

CHAIRMAN T. WHEELER: Now I still don't understand why they can't certify under the 2002 standards. Why couldn't you go to Wyle and say Wyle, here's our system, we don't need 2005, we need 2002, why can't you do that?

MR. J. RIES: Because those standards don't exists today. They're not recognized by the EAC and...

CHAIRMAN T. WHEELER: You're telling me Wyle can't do that?

MR. J. RIES: They cannot.

CHAIRMAN T. WHEELER: Okay, and you're under oath?

MR. J. RIES: To my knowledge, the 2002
standards are not a recognized standard of
testing for any vendor?

CHAIRMAN T. WHEELER: Have you made any
inquiry as to whether they can or can't?

MR. J. RIES: Yes, we have.

CHAIRMAN T. WHEELER: All right. Mr.
Scheele, or whichever one is going to address
it, as you'll recall, at the end of the meeting
I asked both of you to check into that issue
because the one thing I cannot understand, as I
sit here today, is that MicroVote can sit for
three years after having, specifically, been
told to get that report and not get that report,
and as I understand what Mr. Ries has testified
today under oath, and it's the same thing he
said back on November 16th, that the ITA, the
Independent Testing Authority, cannot test the
2002 standard -- you understood him to say that
then, and do you recall me actually,
specifically, directing both of you to go back
and do that; do you recall that meeting?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And you recall I told
both of you to do that?

MR. R. SCHEELE: Correct.
CHAIRMAN T. WHEELER: Mr. Ries, you recall me saying that as well, don't you?

MR. J. RIES: Yes, I do.

CHAIRMAN T. WHEELER: Okay. I can read it from the record, if you'd like. You went and checked as well; correct?

MR. J. LOSCO: Yes.

CHAIRMAN T. WHEELER: And what was the response of Wyle?

MR. J. LOSCO: This e-mail is a copy of correspondence between myself and Frank Padilla, who is the program manager --

CHAIRMAN T. WHEELER: Would you give a --

give a copy to Mr. Ries, please?

MR. J. LOSCO: Yes, program manager at Wyle for voting systems testing, and I asked, specifically, if it were possible to test the 2002 standards, whether or not that could be made by a vendor or whether the state needs to come in and ask for that kind of certification, etc., and you could see at the top of the page is the response I got back from Frank Padilla where he says that a state or vendor can ask us to test to any standard we are accredited to.

We are accredited to the 2002 Standard. The
only difference is our process would not involve
the EAC if we test to the 2002 standard and the
report would be produced by Wyle for the vendor
or the state directly. All testing would follow
the same procedures and guidelines. So to
answer your question directly, either can pay or
request, and yes, we can perform the testing
required.

CHAIRMAN T. WHEELER: Okay. And that's --
his response is dated November 17th at 8 a.m.;
is that correct?

MR. J. LOSCO: Yes.

CHAIRMAN T. WHEELER: Now as I understand
it, you simply asked him can he test to 2002,
and Wyle's response was yeah?

MR. J. LOSCO: Yes.

CHAIRMAN T. WHEELER: So that answers the
question I kept asking, which was can the ITA
test the 2002, and the answer is yes. Now they
said it wouldn't involve the EAC, but in terms
of issuing a final report, as to whether it's
compliant with 2002 standards, Wiley said sure?

MR. J. LOSCO: Yes, Mr. Chairman.

CHAIRMAN T. WHEELER: Mr. Ries.

MR. J. RIES: We submitted our product on
April 17th, 2007 under the 2005, which we have completed and received EAC accreditation so it would make no business sense for us to resubmit a system under older standards when we've already gone through the process with a newer upgraded system.

CHAIRMAN T. WHEELER: But when you say it doesn't make any business sense -- I mean, you had an order from the Commission to do it.

MR. J. RIES: Which we pursued every viable avenue in testing...

CHAIRMAN T. WHEELER: Did you call Wyle and ask them?

MR. J. RIES: Wyle was not -- we did not use Wyle at the time.

CHAIRMAN T. WHEELER: I understand that, but CIBER was gone. You didn't call them and see -- I mean, you were under the order of the Commission in September '06 -- I mean, what boggles my mind is at that point in time you're in the midst of an investigation by the Secretary of State, you're in the process of a situation with the election commission, and you don't even call another ITA to see if you're going to comply with an order of this
commission?

MR. J. RIES: We did, we refiled an application on April 17th, 2007, with iBeta for this said system under the new standards, and it took us nearly two years to complete that process, so we went through the process. CIBER was not a viable entity at the time. There was another company in Denver by the name of SysTest, who were having issues as well, so we went forward with iBeta and completed that testing in the middle of 2008, and received the final EAC certification report in December of 2008.

CHAIRMAN T. WHEELER: Mr. Ries, I asked you, specifically, under oath just a couple of minutes if you checked into it, and you said no, nobody can test the 2002. That was -- that was your testimony on November 16th and that was your testimony again.

MR. J. RIES: And it still is my testimony. I checked with iBeta, who we currently have our product certified with, if we could go back, a regression, and they could not, and I don't believe I have any correspondence in writing, but we already completed the 2005 federal
testing so it made no sense for us to go
backwards.

CHAIRMAN T. WHEELER: Are you familiar with
the election commission's -- I'm sorry.

COMMISSIONER S. RIORDAN: I --

CHAIRMAN T. WHEELER: I apologize. Are ou
familiar with the election commission's order
that was entered into connection with
MicroVote's prior -- at least -- I think there
were findings with at least misstatements to
this commission in connection with the prior
certification process that is currently in
litigation -- now you probably have seen a copy
of some of the appellate materials on that?

MR. J. RIES: I have.

CHAIRMAN T. WHEELER: Do you recall what
the commission ordered with respect to MicroVote
doing business in Indiana and with respect to
whether or not the commission would stay the
sanctions that had been entered against
MicroVote and what the conditions of that stay
were?

MR. J. RIES: At this point, I -- you know,
I'm not sure what you're saying.

CHAIRMAN T. WHEELER: Do you recall on the
final order of this commission where we noted that you were given an order of prohibition, a five-year order of prohibition from sales, marketing, etc. of equipment in the State of Indiana, and we, quote, stayed that based upon No. 1, MicroVote performing its contractual obligations to Indiana customers, B) MicroVote must abide by all election laws; do you recall that?

MR. J. RIES: I believe I do.

CHAIRMAN T. WHEELER: That's all my questions for right now.

COMMISSIONER S. RIORDAN: Just to refresh my memory. What is the model number or what is the product that you are seeking certification for today?


COMMISSIONER S. RIORDAN: And is that a touch screen or is that a ballot card?

MR. J. RIES: It is a DRE.

COMMISSIONER S. RIORDAN: Which means touch screen; right?

MR. J. RIES: It's touch button.
COMMISSIONER S. RIORDAN: A touch button?

MR. J. RIES: Correct.

COMMISSIONER S. RIORDAN: So it's not one that has a paperless trail?

MR. J. RIES: That is correct.

COMMISSIONER S. RIORDAN: And basically, the product that we're talking about does what, in practical terms, it tabulates votes --

MR. J. RIES: It tabulates votes.

COMMISSIONER S. RIORDAN: -- based on a touch by the voter?

MR. J. RIES: That is correct.

COMMISSIONER S. RIORDAN: And what is the number of counties that are currently using this product?

MR. J. RIES: Forty-eight.

COMMISSIONER S. RIORDAN: Okay. And are any of those big counties, like Lake or...

MR. J. RIES: Lake County, Allen County, Hendricks County and Hamilton County.

COMMISSIONER S. RIORDAN: Okay. And those are machines that are out there right now and we do not have -- are you telling us that -- that those machines that are in the field being used right now are certified to the 2005 standards?
MR. J. RIES: No, they are not.

COMMISSIONER S. RIORDAN: Okay, because I was confused when you were talking about the 2005 standards. What has been certified to the 2005 standards?

MR. J. RIES: We resubmitted an upgrade version, both hardware and software, under the EAC 2005 standards, but that has not been certified by the State of Indiana.

COMMISSIONER S. RIORDAN: And -- and is there an application?

MR. J. RIES: No, there is not.

COMMISSIONER S. RIORDAN: Okay. So what I'm trying to nail down is are those -- these machines are out there being used in the counties and we don't have an independent testing report that tells us that these meet the 2002 standards or the 2005 standards, we don't have that right now; right?

MR. J. RIES: That's correct.

COMMISSIONER S. RIORDAN: Okay. And I think Mr. Wheeler went into why that is, but the way I understand the statute, we have to have documentation -- it says we have to have documentation, it doesn't say we must have a
complete report from an independent testing
authority, but it also requires that we cannot
certify anything unless it complies with either
the 2002 standards or the 2005 standards.

And what we rely on as proof that a system
complies with either of those years' systems is
an independent testing report, so actually, it
isn't discretionary. And I think that the
commission, you know, requiring something more
than an employee saying we did it and it's okay,
I think that standard is okay -- I mean, I think
that's appropriate for us because what we're
doing here is protecting voters who are just
pushing buttons rather than a paper trail. Is
it possible to use an ITA now to approve under
the 2002 standard?

MR. J. RIES: Well, I mean, based on the
letter I just saw, I -- I suppose so, but I
guess our other option would be to resubmit a
new application under the 2005 already tested
system and that would come with a cost to the
counties.

COMMISSIONER S. RIORDAN: Why -- why would
that come at a cost to the counties?

MR. J. RIES: Because there are some
hardware modifications that have to be performed for each individual unit.

COMMISSIONER S. RIORDAN: Is there anything wrong with the units that are out there right now?

MR. J. RIES: No.

COMMISSIONER S. RIORDAN: I mean, are they due for an upgrade or can they keep using those?

MR. J. RIES: No, they're not due for an upgrade.

COMMISSIONER S. RIORDAN: So ideally, the best scenario for the counties is that they can keep using what they're using and we can approve it with the proper documentation, they don't have to buy anything new, but what you're saying is that if you're not in a position to get the 2002 independent testing standards, independent testing authority's certification, then you're going to have to put new products out to the clerks right?

MR. J. RIES: Modifications.

COMMISSIONER S. RIORDAN: Sorry, modifications, okay.

MS. M. CHANDLER: I have a question whenever you're done.
COMMISSIONER S. RIORDAN: Please.

MS. M. CHANDLER: Jim, do these counties know that their systems are in peril?

MR. J. RIES: I'm sorry?

MS. M. CHANDLER: Do these counties, these 48 counties know that their systems are in peril, may not be certified?

MR. J. RIES: What do you mean by in peril?

MS. M. CHANDLER: May not be certified?

MR. J. RIES: I believe they do.

MR. S. SHAMO: Yeah. May I clarify something, too? There seems to be a lot of fluffing over, in terms of the conversation regarding the 2002 testing back against 2002 standards. When we made the business decision to move forward with 2005 testing standards rather than 2002 testing standards, we were told then that the EAC would never file a final report.

In our mind, that's the certification that everything is moving toward. So when Jim was stating that we can't test against the 2002 standards, my -- my memory of those discussions was testing against the 2002 standards would still leave us short of any federal
certification from the point in time when NASED abandoned the project and EAC came over.

So I think there's a lot of clarification that's got to take place in that before you can simply say you can test against the 2002 standards.

**CHAIRMAN T. WHEELER:** Let me ask for clarification from Co-Director King.

**MR. B. KING:** Mr. Chairman, just on the point of the role of the election assistance commission, Indiana law has never required that a voting system to be certified, receive a certification number, a system number, as it's called, from either the U.S. Election Assistance Commission or its predecessor, NASED, the National Association of State Election Directors -- again, that's never been a requirement under Indiana law. All that's been required is sufficient documentation under the statute and meeting the other requirements under Indiana law for the commission to certify a voting system.

**MR. S. SHAMO:** Nor has it required a report and the appointment with Ball State. I guess my point is in a broader sense, you have to realize
this is a perpetually moving target. Even under
the 2005 current standards, you can test to the
2005 current standards and then have a new board
of directors come in and test on the 2005
standards and they can look back at previous
products and go, well, that previous board
didn't quite have it right so we can move
backward in regression.

So I guess I -- I feel a little disarmed in
the discussion, from the sense that you see it
from one perspective, however, this is a -- I
think all of the vendors in the room share a
similar frustration in the certification process
how it's evolved since its inception. It's been
a perpetual moving target and we haven't even --

CHAIRMAN T. WHEELER: Let me interrupt you,
Steve, just for a second. The one non-moving
target was that we recertified you without that
report, and told you in 2006, that as a
condition of that recertification, you had to
produce that final report. We told you that.
It wasn't a moving system. It wasn't golly,
whether you have to do a report or don't have to
do a report. Your recertification was
conditional upon providing that final report.
You've known that since 2006.

What I've heard you say several times is we made a business decision. What you made a business decision to do is ignore an order of this commission, as far as I can tell, because I know based upon what Wyle said, you can test to 2002 standards. You chose not to for business reasons, as both you and Jim have said, and I respect your decision to do that, but understand that this commission, what you've said is we've made a business decision to ignore your order.

We went over backyards to certify it without that final report, and you know what happened, we never got it. So when you're saying to us it's not fair, that now we require a final report, it's a moving target -- well, one of the reasons we require a final report is because you ignored us when we certified it.

We certified it because we were concerned that the counties would not be able to use those systems during the November '06 elections. You have tried to play us against the clerks again and again, and frankly, I get tired of it. We held a special meeting. We went six months waiting for that report -- we held a special
meeting, we certified without that report, we conditioned it upon receipt of that report, and you didn't do it for three years. I know from what Wyle said, you could go get that report right now. You can get that report between now and May.

I know the counties can continue to receive, to use those under the grandfather thing, but you chose not to do it for what I keep hearing as business reasons.

MR. J. RIES: Chairman Wheeler, I disagree with you. We were not the entity that generated the final report. We completed and complied with all the testing. We did not ignore your request, and I taking issue with that.

We were told in December of 2006, finally, after Jack Cobb left, that we would not get that report. Our option at that time was to submit with an EAC approved voting system testing laboratory, which we did, and we did that in April of 2007, so we did...

CHAIRMAN T. WHEELER: All right. Why wouldn't you go to Wyle right now?

MR. J. RIES: Because it's -- because they would have to take this system -- I have no idea
of time frame -- I mean, I think anybody in here that's been through this will tell you that months and months can go by.

We've already done it, Chairman Wheeler, so our only other option would be to resubmit a new application for this existing product and make modifications in the field at a cost to the counties.

**MR. S. SHAMO:** The question I have -- it goes beyond you and us, it's more CIBER. Since August, since this -- this situation or this process began -- in spite of the September 18th meeting, it was a short time frame, we were notified by Ball State on August 24th, and I believe...

**CHAIRMAN T. WHEELER:** Notified them of what?

**MR. S. PEARSON:** Of needing to come to them for review. That was the first notice that we received from anyone from the State that this process would begin. And since that day started, we've been trying to generate the test requirement or the test package which they require to test against.

**CHAIRMAN T. WHEELER:** What I don't
understand is you've been under this requirement since September of '06, and suddenly, it's a surprise that three years later, we ask for it. I don't understand that.

MR. S. SHAMO: I wouldn't say it's a surprise. I mean...

CHAIRMAN T. WHEELER: That's what you just told me, you said golly, it's a surprise that Ball State asked for that report.

MR. S. SHAMO: I didn't say golly and I also didn't say it wasn't fair. Several times you've put words into our situation here. What I'm saying is this process unfolded very quickly for us in the last few months -- yes, you can argue all you want about the last three years, but the bottom line is the report -- your letter of condition says to get that report to you within seven days upon receipt. We have not received it, simply put.

COMMISSIONER S. RIOR DAN: Mr. Chairman -- pardon me -- procedurally, where are we, and what -- what do we need now?

CHAIRMAN T. WHEELER: As I understand it, we have an application. Ball State has indicated that the application remains
incorrect; is that correct?

MR. J. LOSCO: Correct.

CHAIRMAN T. WHEELER: So we have two
options, we can table the application or we can
deny the application.

MS. M. CHANDLER: What's the -- is there a
motion?

CHAIRMAN T. WHEELER: There's no motion
pending.

MS. M. CHANDLER: It seems to me, Mr.
Chairman, that the discussion has been complete,
that we lack discretion to approve so the only
issue is whether you table or deny, and if we
deny, do you have procedurally the right to
reapply -- it sounds like yes, so I think...

CHAIRMAN T. WHEELER: That is correct, and
indeed that's what happened in September, we
denied it once and they reapplied, --

MS. M. CHANDLER: Which is their right.

CHAIRMAN T. WHEELER: -- which is this
reappplication.

MS. M. CHANDLER: So I -- I would
respectfully move for a vote.

CHAIRMAN T. WHEELER: Any further
discussion?
(No response.)

CHAIRMAN T. WHEELER: Do I have a motion?

MS. M. CHANDLER: Motion.

CHAIRMAN T. WHEELER: Motion is for what?

COMMISSIONER S. RIORDBN: To deny or to table it?

MS. M. CHANDLER: I would move that we deny.

CHAIRMAN T. WHEELER: Do I have a second on the motion for purposes of discussion?

(No response.)

CHAIRMAN T. WHEELER: Motion fails for lack of second. Do I have any other motions?

COMMISSIONER S. RIORDBN: I'm trying to formulate, you know, a middle ground and formulate some sort of a solution -- I mean, I don't -- I've said many many times, that when you're talking about using a voter -- you know, a voter who uses their hand to make a vote and there's no paper trial and the appropriate entities have not signed off on the magic that happens inside that computer as counting everything correctly, particularly, when it comes to straight party votes, I can't sleep at night knowing that we don't have the statutorily
required proof that it meets the standards that
the federal government has set out.

That being said, you know, these have been
out there for a long time, and I don't think --
I don't think in these particular times that
it's okay to just tell counties that they've got
to buy something new -- I mean, I really have
what hard time with that, too.

Does anyone have a sense of what it would
require to go to Wyle, No. 1, and No. 2, if
CIBER couldn't deliver on their -- presumably,
what were their contractual obligations to you,
you know, do you have any remedy against CIBER?

MR. S. SHAMO: We certainly do.

COMMISSIONER S. RIORDAN: And what's going
on with CIBER right now, did they get their
accreditation back?

MR. J. RIES: Yes, they did.

COMMISSIONER S. RIORDAN: Can you file a
lawsuit against them and ask that they be
compelled to produce the report at their
expense -- I mean, are you going down that road
at all?

MR. J. RIES: Certainly, with this most
recent confirmation letter, that's an option.
CHAIRMAN T. WHEELER: Let me ask -- if I could ask a quick question with the other vendors. Do any of the other vendors use Wyle?

UNIDENTIFIED SPEAKER: Not currently.

MR. S. PEARSON: We use Wyle for some of our hardware evaluations.

CHAIRMAN T. WHEELER: What are your experiences with Wyle?

MR. S. PEARSON: Our experience with Wyle has been good.

CHAIRMAN T. WHEELER: Responsive?

MR. S. PEARSON: Yes.

CHAIRMAN T. WHEELER: Let me ask you, leave aside MicroVote, do you have an idea in your experience what kind of time frame it would take Wyle to do something like this; do you have any idea?

MR. S. PEARSON: What are you asking, that they do a complete retest or just a generation of a report on previously tested materials?

CHAIRMAN T. WHEELER: Either one -- I don't have a grip on that?

MR. J. RIES: Our experience with Wyle has been fantastic -- we've used them for many many years, and they are responsive on the hardware
side. They don't typically perform software compliance testing.

CHAIRMAN T. WHEELER: And I guess my question is: Why not go to Wyle and do this?

MR. J. RIES: Well, I mean, based on this very vague e-mail, it's certainly not sanctioned by the EAC so I don't really know without talking to Frank Padilla who what would be involved.

MR. S. PEARSON: May I make a request -- it may be denied, but may I request that you do table it in time for us to find out from Mr. Padilla the timetable that you're asking about?

CHAIRMAN T. WHEELER: I think that's a fair statement, and frankly, I was going to make a motion from the chair to table it, because -- and that's kind of -- with all due respect, that's what I was asking the last time -- I mean, I can go back and read the transcript.

I said look, No. 1, figure out if there's a final report -- I said three things in there, so No. 1 is the final report, and No. 2, if there's not a final report, can anybody else do it, and No. 3, if they can do it, what's it going to take to do it?
MR. S. SHAMO: I think I -- I know myself misunderstood you in that last meeting, in terms of saying -- sending it back through a complete retesting, which I know would be -- our current testing has taken over two and a half years, that's how I understood that.

CHAIRMAN T. WHEELER: If CIBER's, in fact, has got the information and they're willing to give it to Wyle, for example, and Wyle can test that, then that takes care of it. I'm concerned because CIBER has said -- I mean, you saw the same letter, I had you passed the letter, they said -- you know, according to CIBER, they didn't complete the testing.

MR. S. SHAMO: But I -- again, I think that Kelly wrote -- with Kelly being new on the scene and picking up the pieces of someone else, I'm not certain how she's defining testing, you understand -- you see what I mean?

CHAIRMAN T. WHEELER: And I -- and I understand that and I think -- so I agree with you, Steve. I think that what we need to do is table this, that's at least going to be my recommendation, and I think I heard sort of a second or at least an agreement to table this,
but you need to get on -- I really mean that.

I have -- for me, personally, I think No. 1, you've had three years; No. 2, I think the failure to do it; and then what I view at least as a threat, that we're going to have to charge the counties to upgrade to 2005 -- I have a real problem with that because I think it's because you guys have failed to comply over the last three years.

And you've got another chance -- I mean, I thought -- I thought we made that clear in November, that this is what we should have done, we're sitting here in December, and I've been very clear with all the vendors that we'll set meetings to try to get these approvals, and we've done that -- we did that for you guys in '06 -- I mean, we did that without that letter. I'm willing to do that, but you've got to do something, is what I'm saying.

MR. S. SHAMO: Just an editorial comment.

May I ask --

COMMISSIONER S. RIORDAN: I don't think we want any editorial comments. I'm ready to make a motion -- I'm ready to make a motion -- we've got to stop this debate because it's not being
productive. I think that I would move that we table the application, and I think given that we're in the holiday season, we have to add a little time, but I mean, I think January 15th, and I'd really like to have some communication between the vendor and the division staff to kind of let us know where the process is, and you know, that we -- that we get some information about what CIBER can do to help you out and that we also get some information about what Wyle or another vendor can do to help you out because we've got to get this taken care of before the next election.

And also, for purposes of housekeeping, we had a lot of documents back and forth today, and I want to make sure that everything is part of the record in the event that it's required later. I guess I have a packet that has -- did you bring this or did somebody else bring this?

**MR. B. KING:** That was brought by staff.

**COMMISSIONER S. RIORDAN:** It was brought by staff.

**CHAIRMAN T. WHEELER:** You have a copy of the packet given to commissioners.

**COMMISSIONER S. RIORDAN:** And this is a --
this starts ES&S letter dated November 23rd, 2009, there are a number of forms that follow it, and then some correspondence that relates to this matter, I want to make sure that's in the record, and I also want to make sure that the November 17th e-mail from Mr. Padilla is in the record and the November 24th e-mail from Kelly Rohacek are also part of the record.

CHAIRMAN T. WHEELER: And would you -- would you place -- can I place your copies in the record to pass to the court reporter, do you mind?

COMMISSIONER S. RIORDAN: Sure. Yeah, let me make sure there's no scribbling on here.

CHAIRMAN T. WHEELER: That's my problem, I scribbled on mine.

COMMISSIONER S. RIORDAN: But anyway, that's my motion, that we table until January 15th at the outside, and we also direct MicroVote to provide an update every week about where you're going, to the co-general counsel about where things stand, that's my motion.

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

MS. B. MCCLELLAN: I second the motion.
CHAIRMAN T. WHEELER: The motion's been made and seconded, and for purposes of discussion, I would ask that Commissioner Riordan will accept a friendly amendment that will include Ball State in the notification process and act as -- as a proxy, as they have, in determining whether or not the information we are getting -- I mean, I would like to hear from Ball State -- I'd like to hear from Wyle what needs to be done, how long it would take them, and what it would cost to do it.

MR. R. SCHEELE: Okay.

CHAIRMAN T. WHEELER: And fairly rapidly, if we can, and that that would be communicated to the co-directors as -- did you say co-directors are in the process?

COMMISSIONER S. RIORDAN: Either co-directors or the co-general counsel just so that we're kept in the loop and we know things are moving. I'm a little bit concerned. I don't think we can require somebody to use a particular vendor, but if we're talking about Wyle as providing just some indication of what's possible.

MR. R. SCHEELE: Right. Sure.
COMMISSIONER S. RIORDAN: What's possible and what can be done -- I mean, we can't shove them down your throat.

CHAIRMAN T. WHEELER: Yeah, you can use any vendor -- I could care less what vendor, but you know, as long as they can certify 2002.

COMMISSIONER S. RIORDAN: I'll accept that amendment.

CHAIRMAN T. WHEELER: Any further discussion?

(No response.)

CHAIRMAN T. WHEELER: Motion's been made and seconded, all in favor, signify by saying aye?

THE COMMISSION: Aye.

CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries. Any further business with the Commission?

(No response.)

CHAIRMAN T. WHEELER: We had a prior issue related to Hart InterCivic in Harrison County. I would note the Clerks Conference was scheduled to start 10 minutes ago, in which several
members, the people on the dias, are supposed to be participating in that particular conference, and I don't know if the conference starts until we get over there, and we'll have a herd of grumpy clerks, despite the fact that we said that, but what I would like to do is table this particular one. It appears to me that we will be having a commission meeting in the not too distant future to discuss this particular issue.

COMMISSIONER S. RIORDAN: The Hart InterCivic issue?

CHAIRMAN T. WHEELER: The Hart InterCivic issue. That being said, are there people here on the Hart InterCivic issue?

MR. E. PEREZ: We are, yes.

CHAIRMAN T. WHEELER: All right. Tell me who's here?

MR. E. PEREZ: To start speaking just quickly --

CHAIRMAN T. WHEELER: Please introduce yourself.

MR. E. PEREZ: My is a Edward Perez, I'm the manager of compliance, and we also have Ted Gilkey, who's from our sales department.

CHAIRMAN T. WHEELER: And you gave us a
declaration, as I understand it?

MR. E. PEREZ: Yes, sir.

MR. T. GILKEY: Yes, Mr. Chairman.

CHAIRMAN T. WHEELER: Is there anybody else here from Hart InterCivic?

MR. E. PEREZ: Not from Hart InterCivic.

MR. T. GILKEY: Not from Hart InterCivic, no.

MR. E. PEREZ: There are -- we have other parties that are also knowledgeable.

CHAIRMAN T. WHEELER: Harrison County?

MS. S. BROWN: Harrison County Clerk, Sherry Brown.

(Discussion among the commission.)

COMMISSIONER S. RIORDAN: If we move to table this, aside from the fact that you've traveled here?

MR. E. PEREZ: If I may speak very respectfully. My feeling on it is -- what I wanted to say, I really sincerely regret that Hart was not able to be at the prior meetings, not only because -- I sincerely recognize the importance of the commission's work and why these proceedings are necessary, but on the specific issue of Harrison County, it's our
sworn testimony that the facts are actually very straight forward, and that's why we came today because we believe that we can briefly and in an expedient way clear up what I really think was a kind of misrepresentation -- it was a fact about an action that the county had taken that I think was not placed in the proper context -- it was offered by a non-neutral party, and we came today in the spirit of full collaboration, full responsiveness and full disclosure to answer your questions because we really -- we are confident that we have been studiously in compliance with the prohibition against marketing and selling systems not certified.

**COMMISSIONER S. RIORDAN:** I -- I appreciate that and recognize that and appreciate it, but we -- we are not voting to certify any of your equipment today.

**MR. E. PEREZ:** Understood.

**COMMISSIONER S. RIORDAN:** We basically summoned you here in order to kind of set the record straight or at least explain to us what was going on; right?

**MR. E. PEREZ:** That's exactly right.

**COMMISSIONER S. RIORDAN:** While it is
important for us to address this issue, we don't
have a matter that's going to affect the use of
any voting systems equipment right at this
particular second. The question is whether you
were marketing outside the parameters of Indiana
law to a county; right?

MR. E. PEREZ: That is -- that is my
understanding, yes.

COMMISSIONER S. RIORDAN: Okay. So I think
we should table it.

MR. E. PEREZ: I mean, we currently are a
certified system, that is correct.

CHAIRMAN T. WHEELER: I think what we're
going to do because I recognize you guys have
traveled here and I want to give you the
opportunity to be heard, what we're going to do
is let Brad and Pam get on with starting the
meeting, ask that Leslie and Dale stay here to
provide us legal counsel as we -- as we go
through this, if that's okay with you guys, just
so we can get through this because I appreciate
the fact -- are you guys okay with that --
Leslie, Pam, are you guys okay with that?

MS. L. BARNES: Yes.

CHAIRMAN T. WHEELER: Brad, are you okay
with that?

MR. B. KING: Yes.

CHAIRMAN T. WHEELER: They can get the meeting started.

MR. E. PEREZ: I just want to say I sincerely appreciate the commission's flexibility.

CHAIRMAN T. WHEELER: Give me one sec.

COMMISSIONER S. RIORDAN: I don't there's anything that we're going to need a vote on. This is basically hearing the testimony.

CHAIRMAN T. WHEELER: Let's hear the testimony and we'll table the vote.

COMMISSIONER S. RIORDAN: And I think that Ms. Titworth-Chandler needs to leave for another commitment and we'll still have a quorum.

CHAIRMAN T. WHEELER: Okay, we'll keep it -- if Barb will stay with us for a couple of minutes, we'll keep our quorum. All right, thank you, Mary, I appreciate it, and we'll let Brad and Pam go here for just a second and then we can hear this. Surely grateful was said several times. Okay, go ahead -- and I would -- and I would note we all have the declaration in
the attached documentation.

MR. E. PEREZ: Okay.

CHAIRMAN T. WHEELER: I think each of the commissioners had an opportunity to review that.

MR. E. PEREZ: Very good, then I really won't have much to add. I do want to reiterate and I'm going to be sincere to you, that -- that it is not just fluff, that before I quickly get to a summation of what I think are the facts, that I take very seriously what the charge of the I felt IEC is, to protect the State's interests and the counties and the voters -- my own background is in political science in the state legislature and I don't view this part of election administration as an extra or an add-on or as an annoyance for us as technology providers, it's part of the public process, and we have tried to show to the members of Ball State and to the commission that we do take that seriously.

And if I also just may say, Mr. Chairman, as I think a correction of the facts, and I say this very very humbly, that Hart InterCivic, actually we completed our testing with Ball State on September 17th -- excuse me, Wednesday,
September 16th, which was actually two days before the prior meeting, which again, I could be wrong, but I believe it was on the 18th, and we certainly made effort --

CHAIRMAN T. WHEELER: Let me ask Ray real quick, why did we not approve Hart at the September meeting?

MR. R. SCHEELE: Our recommendation at the September 18th meeting was to approve, but I think because the other vendors weren't ready, I don't think the commission was not quite ready. That's my interpretation.

CHAIRMAN T. WHEELER: So you had -- Ball State had actually completed its due diligence and such?

MR. R. SCHEELE: Yeah, that's correct.

MR. E. PEREZ: We had completed our testing.

CHAIRMAN T. WHEELER: But the Commission tabled those --

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: -- tabled two of those, the Hart and Premier, and denied ES&S and MicroVote?

MR. R. SCHEELE: Correct.
CHAIRMAN T. WHEELER: Go ahead.

MR. E. PEREZ: Thank you. More to the point, I think what's more important with the facts about Harrison County, it's our sworn testimony, and I'm going to say it today, you've seen it in the document, that during the period of time that the Hart Voting System Version 6.2.1 was not certified in the state, which was from October 1, 2009 until November 16th, 2009.

It is our testimony that we were not in contact with Harrison County and we were not marketing and selling to Harrison County. Essentially, what happened and what I've tried to describe in a time line was sales --

CHAIRMAN T. WHEELER: Let me stop you for one question.

MR. E. PEREZ: Yes, sir.

CHAIRMAN T. WHEELER: ES&S raised this issue; correct?

MR. S. McGINNIS: Yes, that's correct.

CHAIRMAN T. WHEELER: Okay. And so have you had an opportunity to review -- do you have an extra copy to give to ES&S?

MR. E. PEREZ: I do. I might have a copy.

MR. S. McGINNIS: It's not necessary, Mr.
Chairman. The question was more of a point of clarification for us to ask if we were allowed to sell our old line of products from that time frame. That's what I was checking.

CHAIRMAN T. WHEELER: As I understand what Hart has said, and I'm shorting a little bit, because we have an obligation with the clerks, too.

MR. E. PEREZ: Understood.

CHAIRMAN T. WHEELER: As I understand it, basically, your position is to the extent we did any selling, it was before October 1st, when certification expired?

MR. E. PEREZ: Yes, sir.

CHAIRMAN T. WHEELER: And the fact that they voted after October 1st isn't our vote?

MR. E. PEREZ: That's correct, and that that -- the scheduled of the county council that took place on October 13th, it's my understanding and after conferring with our sales representative, Ted Gilkey, that that was scheduled by the county at the time that the system was still certified. I believe that it is was actually put on the county schedule on September 28th or 29th.
I have known and have complied with and have been very up front with Mr. King, in particular, about the prohibition against marketing and selling, and that the moment that happened, --

CHAIRMAN T. WHEELER: Let me ask --

MR. E. PEREZ: -- we did stop those activities.

CHAIRMAN T. WHEELER: Yeah, let me ask you, and I'm sorry, Harrison County, your name is?

MS. S. BROWN: Sherry Brown.

CHAIRMAN T. WHEELER: Sherry, I take it you were involved in this process?

MS. S. BROWN: Yes.

CHAIRMAN T. WHEELER: He has indicated that it was on the agenda for, I assume, the county council; correct?

MS. S. BROWN: Correct.

CHAIRMAN T. WHEELER: On September 28th, prior to October 1st; correct?

MS. S. BROWN: Correct.

CHAIRMAN T. WHEELER: And I take it, having spent a long time on a county council myself, it got pushed off, or what -- tell me what happened, why did it get pushed into October?
MS. S. BROWN: Their -- the council has two meetings and one is to hear requests, like a planning meeting, and then two weeks later they have an action meetings -- meeting, and the 28th was their planning meeting.

CHAIRMAN T. WHEELER: So that was the information meeting. That was -- let me tell you what I want to do -- and then they voted on it in October?

MS. S. BROWN: On October 1st.

CHAIRMAN T. WHEELER: So to the extent there would have been marketing of the system, that would have taken place at the September meeting -- I assume, the September 28th meeting?

MR. E. PEREZ: And the period prior to that.

CHAIRMAN T. WHEELER: And the period prior to that?

MR. E. PEREZ: Yes, sir.

CHAIRMAN T. WHEELER: You know, then they made it similar in an executive session and a general session, and then they made their decision, their actual vote took place in mid October.

MS. S. BROWN: In mid October.
CHAIRMAN T. WHEELER: Does that answer your questions?

MR. S. McGINNIS: Kind of. I just had the feeling we were not allowed to take any action after the October 1st date or I would have scheduled some of my appointments during that time frame, and again, I just wanted clarification on it, is all I was looking for.

CHAIRMAN T. WHEELER: As I understand it, Hart --

MR. E. PEREZ: We didn't schedule anything.

CHAIRMAN T. WHEELER: Hart did not conduct any contacts after October 1st?

MR. E. PEREZ: That's correct.

MR. T. GILKEY: That's correct, we weren't present.

CHAIRMAN T. WHEELER: And that's my understanding, kind of -- I just want to make sure you guys are playing on an even field, and I -- I think that's what you were asking as well.

MR. S. McGINNIS: That's all I was asking as well, Mr. Chairman.

CHAIRMAN T. WHEELER: And -- and I -- is there anything else from your guys -- I'm sorry,
I keep interrupting you, and I apologize?

MR. E. PEREZ: No, unless you have other questions -- I mean, that's why we're today, and I want to be absolutely...

CHAIRMAN T. WHEELER: I spent all of my time talking so let me let one of the other commissioners ask questions.

MR. E. PEREZ: Yeah. In some ways, there's not that much to tell but I do want to answer whatever questions they have.

MR. T. GILKEY: And to further -- actually, we did cancel any existing appointments that we did have. We had scheduled demos --

COMMISSIONER S. RIORDAN: After October 1?

MR. T. GILKEY: We had scheduled demos set up and are now actively re-engage those.

CHAIRMAN T. WHEELER: So the same thing as ES&S did, scheduled those and...

MR. T. GILKEY: Correct. No one was in attendance at the county council meeting on October 13th, Hart InterCivic or...

COMMISSIONER S. RIORDAN: And the county council meeting was the county council's timing and prerogative and that's beyond the control of anybody in this room; right?
MS. S. BROWN: Correct.

MR. E. PEREZ: Because I also note in our declaration, just to be very much on the safe side, that on November 16th, on the date that we received news that our voting system had been recertified, I did go out of my way to contact Mr. King and be absolutely above board and say I want to be absolutely clear, is that certification effective right now and would you have any concerns about us contacting Harrison County, and he indicated he did not, as the prohibition extends only to those systems that are not certified.

CHAIRMAN T. WHEELER: And you note that in your time line, that --

MR. E. PEREZ: I do, yes.

CHAIRMAN T. WHEELER: -- on November 16th you talked to him -- you requested it and got it and then you moved forward?

MR. E. PEREZ: Yes. And again, I think it should also be stated that we don't have an order and we don't have a contract with Harrison County.

COMMISSIONER S. RIORDAN: I'm satisfied.

CHAIRMAN T. WHEELER: At this point we have
the complaint, we should vote on the
complaint -- I'm not sure what the process is.

MR. D. SIMMONS: Well, Mr. Chairman and
Members of the Commission, when this has been
previously come up in other context, MicroVote,
the commission considered under 3-6-4.1, I think
it was, 21, whether there's substantial reason
to believe that election law violation has
occurred, and in this case the election law
violation would be illegal marketing or selling,
so there's that first step, and once you make
that determination, you would refer it to staff
to investigate and...

CHAIRMAN T. WHEELER: So we just need -- we
just need to, based upon what we've heard today,
make a decision as to whether there's sufficient
reason to believe that a violation has taken
place?

MR. D. SIMMONS: That's correct.

CHAIRMAN T. WHEELER: Speaking for myself,
I feel very comfortable with the explanation
that Hart has provided. It seems to me that, as
I think we're obligated to do statutorily,
there's a level playing field for all the
parties and all the parties should have ceased
and desisted -- it sounds like everybody did.

I don't think Hart is responsible for the
scheduling the county council meeting, and
having been on county council, I'm fairly
certain that's the case. Although, I would
disagree that the clerk does not have a great
deal of influence on that -- I'm very
disappointed in you.

MS. S. BROWN: Not in our county.

CHAIRMAN T. WHEELER: If you knew the
former clerk in Boone County, Ms. Garoffolo
(Phonetic), which you met, it was a whole
different story in my county. In any event, I'm
certainly declined to determine that there's not
a substantial basis to believe that a violation
has taken place.

COMMISSIONER S. RIORDAN: Is there an
actual complaint pending -- there's an actual
complaint?

MR. S. McGINNIS: Mr. Chairman, not from
our end.

CHAIRMAN T. WHEELER: Okay.

COMMISSIONER S. RIORDAN: You -- you just
made -- you just kind of raised a question?

CHAIRMAN T. WHEELER: And that's fair.
MR. S. McGINNIS: We were asking what am I allowed to do so there is no complaint from ES&S regarding this matter.

CHAIRMAN T. WHEELER: Fair enough.

COMMISSIONER S. RIORDAN: And there -- there isn't anything filed regarding this?

MS. L. BARNES: There was an inquiry, an e-mail inquiry, I believe.

COMMISSIONER S. RIORDAN: Right, but there's no...

CHAIRMAN T. WHEELER: Right.

COMMISSIONER S. RIORDAN: So I don't -- I don't think there's any...

CHAIRMAN T. WHEELER: Well, for Hart's purposes, I guess I would like to give them closure on the issue.

MR. E. PEREZ: I would sincerely appreciate that, Mr. Chairman.

CHAIRMAN T. WHEELER: And so I guess from my inclination, I'd like to see a motion that there is no basis to believe that there's been a violation, because I think that gives them something -- certainly, for Harrison County -- for you to go back to Harrison County and say hey, they did what they were supposed to do and
it was appropriate.

COMMISSIONER S. RIORDAN: Okay. Then I guess I'll formulate a motion to that effect, which is that upon hearing raised concerns about marketing outside the authorized time line, the Commission has convened and has heard testimony and has received documentary evidence, and having considered same, the Commission determines that there is no substantial reason to believe that an election law violation has occurred.

CHAIRMAN T. WHEELER: Do I have a second?

MS. B. McCLELLAN: Second.

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

(No response.)

CHAIRMAN T. WHEELER: Hearing none, all in favor of the motion, signify by saying aye?

THE COMMISSION: Aye.

CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries. The declaration, I'm going to place into the record with the court reporter. Any further business?
(No response.)

MR. E. PEREZ: Our thanks to the Commission.

CHAIRMAN T. WHEELER: Thank you. Hearing none, I'll accept a motion to adjourn?

COMMISSIONER S. RIORDAN: So moved.

CHAIRMAN T. WHEELER: Do I have a second?

MS. B. MCCLELLAN: Second.

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

THE COMMISSION: Aye.

CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: We're adjourned.

(At this time the proceedings were concluded.)
STATE OF INDIANA )
COUNTY OF HENDRICKS ) SS:

I, Rhonda J. Hobbs, RPR, and a Notary Public and Stenographic Reporter within and for the County of Hendricks, State of Indiana at large, do hereby certify that the transcript is a full, true and correct transcript made from my stenograph notes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 22nd day of December, 2009.

My Commission Expires:
August 24, 2017
County of Residence:
Hendricks County