

Indiana Election Commission
Minutes
December 6, 2021

Members Present: Paul Okeson, Chairman of the Indiana Election Commission (“Commission”); Suzannah Wilson Overholt, Vice Chairman of the Commission; Michael Claytor, Proxy for Karen Celestino-Horseman, member; Litany A. Pyle, Member.

Members Absent: Karen Celestino-Horseman, Member.

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

Others Attending: Dr. Jay Bagga; Mr. Marc Chatot; Mr. Greg Coy; Ms. Jen Dunbar; Mr. Tim Hallett; Mr. Walter Justus; Ms. Kelli Khuri; Ms. Joy Martin; Mr. Merle Milhoan; Mr. Clee Oliver; Mr. Ben Swartz.

1. Call to Order:

The Chair called the December 6, 2021 meeting of the Commission to order at 1:30 p.m. EST in Conference Rooms 4-5, Indiana Government Center South, 402 West Washington Street, Indianapolis.

2. Transaction of Commission Business:

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

The following corrections to the Transcript are made and incorporated by reference:

Page 8, line 6, replace “do picture” with “affix”.

Page 8, line 19, replace “representation” with “representative”.

Page 34, line 20, replace “CURRY” with “KHURI”.

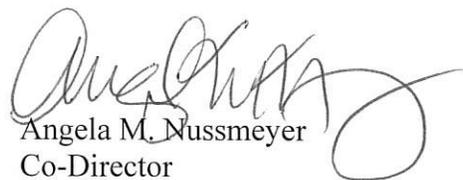
Page 62, line 5, replace “KING” with “CLAYTOR”.

The Commission adjourned its meeting at 3:04 p.m. EST.

Respectfully submitted,



J. Bradley King
Co-Director



Angela M. Nussmeyer
Co-Director

APPROVED:



—
Paul Okeson, Chairman

In the Matter Of:

INDIANA ELECTION COMMISSION PUBLIC SESSION

Transcript of Proceeding

December 06, 2021

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INDIANA ELECTION COMMISSION
PUBLIC SESSION

Conducted on: December 6, 2021

Conducted at:
Indiana Government Center South
Conference Room 4-5
302 West Washington Street
Indianapolis, Indiana

A Stenographic Record by:
Laurie M. Morgan, RPR

STEWART RICHARDSON & ASSOCIATES
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1 CHAIRMAN OKESON: Let's go ahead and call the
2 Indiana Election Commission to order Monday,
3 December 6, 2021, roughly 1:30, here at Government
4 Center South.

5 I note the following members present: Vice
6 Chair Suzannah Wilson Overholt, Michael Claytor,
7 who is serving as a proxy for Karen
8 Celestino-Horseman, and Member Litany Pyle.

9 I also recognize Indiana Election Division
10 Co-Directors Brad King and Angie Nussmeyer. And
11 Co-Counselors Matthew Kochevar and Valerie Warycha.

12 I apologize for the delay in getting started.
13 As you can see, we don't have our court reporter
14 here, so we're going to record the meeting. We
15 believe that person is en route, so we may jump off
16 of the recording.

17 If you are going to speak, though, we would
18 still ask that you say your name and spell it for
19 the purpose of the recording and getting accurate
20 minutes of the meeting. So I apologize for any
21 inconvenience there.

22 Also, we have sign-in sheets. If you are
23 planning on providing any testimony or wanting to
24 speak today, please be sure that you sign in and
25 provide the information requested.

1 Moving on I'd like to make sure that we have
2 compliance with the Open Door Law. I request the
3 co-directors confirm that.

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

8 CHAIRMAN OKESON: Thank you. Moving on we'll
9 do the approval of Commission meeting minutes from
10 October 27, 2021. Co-Directors, please present the
11 minutes.

12 MR. KING: Mr. Chairman, members of the
13 Commission, actually, that's a reference to a
14 previous set of minutes. The ones distributed I
15 believe were for November 15, 2021.

16 CHAIRMAN OKESON: Okay. Wrong date.

17 I recognize the minutes from November 15,
18 2021.

19 MR. KING: Those are recommended for approval
20 by myself and Co-Director Nussmeyer.

21 CHAIRMAN OKESON: Is there a motion to approve
22 the minutes from November 15, 2021, as presented?

23 VICE CHAIRMAN OVERHOLT: So moved.

24 CHAIRMAN OKESON: Second?

25 MS. PYLE: Second.

1 CHAIRMAN OKESON: Any discussion?

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

4 VICE CHAIRMAN OVERHOLT: Aye.

5 MS. PYLE: Aye.

6 MR. CLAYTOR: Aye.

7 CHAIRMAN OKESON: The "ayes" have it. The
8 motion carries and the minutes are approved.

9 At this time I'd like any of those who are
10 going to provide any testimony today please rise
11 and take the administration of the oath from
12 Mr. Kochevar.

13 MR. KOCHEVAR: All those who will be
14 testifying before the Indiana Election Commission
15 meeting today, please raise your right hand and say
16 "I do" after recitation of the oath.

17 Do you solemnly swear or affirm the testimony
18 you are about to give to the Indiana Election
19 Commission is the truth, the whole truth, and
20 nothing but the truth? Please say "I do."

21 ALL: I do.

22 CHAIRMAN OKESON: Thank you, Mr. Kochevar.

23 Moving on in the agenda, it looks like we have
24 some unfinished campaign finance matters,
25 ramification of finance settlement agreements.

1 We currently have no settlement agreements
2 filed; is that correct? I recognize staff.

3 MS. THOMPSON: Correct.

4 CHAIRMAN OKESON: Since there are no
5 agreements filed at this time, we'll move on to the
6 next item of business, approval of campaign finance
7 enforcement orders.

8 MS. THOMPSON: Yes, Mr. Chairman, members of
9 the Commission, Orders 2021-307 through 2021-312
10 have been prepared for the actions taken at the
11 November 15th meeting, and these orders are ready
12 for adoption.

13 CHAIRMAN OKESON: Which ones are those?

14 MS. TAYLOR: They're not in your packet.

15 CHAIRMAN OKESON: Well, there you go.

16 Is there a motion to adopt the Orders 2021-307
17 through 2021-312 as presented?

18 VICE CHAIRMAN OVERHOLT: So moved.

19 CHAIRMAN OKESON: Is there a second?

20 MS. PYLE: Second.

21 CHAIRMAN OKESON: Hearing a second. Is there
22 any discussion?

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

25 VICE CHAIRMAN OVERHOLT: Aye.

1 MS. PYLE: Aye.

2 MR. CLAYTOR: Aye.

3 CHAIRMAN OKESON: The ayes have it. The
4 motion carries.

5 MR. KING: Mr. Chairman, could staff receive
6 authorization from the Commission to do picture
7 signature stamps?

8 CHAIRMAN OKESON: Yeah. Just by "consent" for
9 signatures?

10 MR. CLAYTOR: Consent.

11 MS. PYLE: Consent.

12 VICE CHAIRMAN OVERHOLT: Consent.

13 MR. KING: Thank you.

14 CHAIRMAN OKESON: And we have one campaign
15 finance hearing on Justus Rental Properties. The
16 Commission has this enforcement hearing scheduled
17 for today, an alleged excess corporate contribution
18 by Justus Rental Properties. Is there a
19 representation of that corporation present?

20 MR. JUSTUS: Yes.

21 CHAIRMAN OKESON: Would you like to come
22 forward?

23 MR. JUSTUS: Yes.

24 MS. THOMPSON: Mr. Chairman, in your packet
25 behind the campaign finance tab.

1 CHAIRMAN OKESON: Do you want to go through
2 the option?

3 MR. JUSTUS: Could you go ahead and say them?

4 CHAIRMAN OKESON: Yeah. In the past before in
5 these proceedings of the campaign finance
6 enforcement actions, we have customarily given any
7 committee or other entity present a final
8 opportunity to pay a reduced civil penalty by
9 waiving the right to present evidence or arguments
10 to the Commission.

11 Of course, this corporation is welcome to
12 present evidence and arguments for the proposed
13 penalty to be waived or reduced, but this has been
14 an opportunity to waive that presentation and
15 accept a proposed fee.

16 Since this is the corporation's first
17 violation, the arrangement would be for the
18 committee to repay 25 percent of proposed fine.

19 If you would like to make a presentation and
20 accept that, or we can move on.

21 MR. JUSTUS: Do you want me to explain the
22 circumstances, or does it matter?

23 MS. THOMPSON: It doesn't matter if you just
24 accept.

25 MR. JUSTUS: Okay. I'll accept.

1 CHAIRMAN OKESON: If you don't mind, say your
2 name and spell it for the record.

3 MR. JUSTUS: Sure. My name is Walter Justus.
4 J-U-S-T-U-S.

5 CHAIRMAN OKESON: So is there a motion to
6 approve 25 percent?

7 VICE CHAIRMAN OVERHOLT: Because I don't think
8 we really approve the process, but, yes, I would
9 move that we approve accepting 25 percent of the
10 penalty plus mailing costs.

11 CHAIRMAN OKESON: There's a motion. Is there
12 a second?

13 MS. PYLE: Second.

14 CHAIRMAN OKESON: Having a second. Any
15 discussion? Any questions?

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

18 MS. PYLE: Aye.

19 MR. CLAYTOR: Aye.

20 VICE CHAIRMAN OVERHOLT: Aye.

21 CHAIRMAN OKESON: The "ayes" have it. Motion
22 carries.

23 MR. JUSTUS: Thank you, folks.

24 CHAIRMAN OKESON: Moving on, application for
25 certification of previously certified voting

1 systems. Election Systems & Software application
2 for certification of voting system EVS 5.2.4.0.

3 The Chair will recognize the co-directors and
4 their representatives from VSTOP to present the
5 information regarding this matter. The Chair will
6 then recognize any representatives of ES&S to
7 testify regarding this matter and recognize any
8 other interested party who wishes to testify
9 regarding this matter.

10 As we noted, there's a sign-up sheet up here,
11 so if you would like to talk, please make sure you
12 fill that out.

13 Do I need to put the motion out first for
14 discussion?

15 MR. KING: That's up to you.

16 CHAIRMAN OKESON: Do you want to do a motion?
17 We'll just have discussion, I guess.

18 VICE CHAIRMAN OVERHOLT: For purposes of
19 discussion, we would -- I'd move approval of the --
20 do you want to do each application separately?

21 So move the approval of the ES&S software
22 EVS 5.2.4.0.

23 CHAIRMAN OKESON: And that would be for a term
24 expiring October 1, 2025?

25 VICE CHAIRMAN OVERHOLT: Yes.

1 CHAIRMAN OKESON: Is there a second?

2 MS. PYLE: Second.

3 CHAIRMAN OKESON: Second.

4 Discussion, I'll turn it over to you.

5 MR. KING: Mr. Chairman and members of the
6 Commission, in your binders, this particular
7 application is behind the blue tab. There are
8 three documents which others will explain in more
9 detail.

10 The first is a report from VSTOP to the
11 Election Commission regarding the application of
12 ES&S for renewal of its EVS 5.2.4.0 voting system.

13 Following that lengthy report, there is a memo
14 to the counties which currently use this system
15 under Indiana Code 3-11-7-19. These counties were
16 required to be notified of this pending application
17 for renewal and to have the opportunity to present
18 any comments.

19 And the final document is the required IEC-23
20 statement of electronic poll book or voting system
21 vendor regarding foreign national ownership or
22 control of vendor.

23 So each of those documents are present. And
24 I'll defer to my counterpart, Co-Director
25 Nussmeyer.

1 MS. NUSSMEYER: Thank you, Mr. King.

2 Just very quickly for our members, as an
3 easier reference to the report itself,
4 Attachment 4, there is a voting systems checklist,
5 and it is a spreadsheet with all the state
6 statutory references to what is required within
7 each voting system and whether or not, as part of
8 the field test that the system has passed or failed
9 each of those checks.

10 So it would be an easier way for you all to
11 digest whether or not the systems meet our state
12 specific requirements beyond what might be in the
13 Federal VVSG or the Voluntary Voting System
14 Guidelines.

15 VSTOP also attached all of their test ballots
16 so that you can see sample ballot layouts that they
17 used as part of their field test to ensure that
18 those ballots did in fact meet our state law
19 requirements in the way that the ballots are meant
20 to be laid out to ensure that there would be
21 uniformity across the state for those using ballot
22 card voting systems.

23 Thank you. I would defer to Mr. King if he
24 wants to add more to my comments.

25 MR. KING: No, thank you.

1 CHAIRMAN OKESON: At this point in time I
2 would recognize members of VSTOP. If you would,
3 please introduce yourselves and speak into our
4 high-tech microphone there. And if you don't mind
5 spelling your name so we get it on the record.

6 MR. CHATOT: Sure.

7 CHAIRMAN OKESON: Thank you.

8 MR. CHATOT: So I'm Marc Chatot. M-A-R-C.
9 C-H-A-T-O-T. And we will be presenting the
10 EVS 5.2.4.0.

11 The EVS 5.2.4.0 is a paper-based, end-to-end
12 election management system that supports
13 jurisdictions election needs by creating and
14 maintaining a central election database, formatting
15 and printing of ballots, programming election
16 equipment, and collection and reporting of results.

17 This system was certified by the U.S. Election
18 Assistance Commission on June 5, 2018, and is
19 compliant with the Voluntary Voting Systems
20 Guidelines, VVSG 1.0. No changes or major features
21 are being introduced by this voting system.

22 The voting system was reviewed and
23 field-tested by using the Indiana Voting Systems
24 Certification Protocol approved by the Indiana
25 Election Commission on November 15, 2021.

1 The review and testing included all sections
2 of the protocol, including the recent legislative
3 requirements such as software hash verification and
4 review of the complete ballot creation and
5 deployment process.

6 Findings and Limitations: All DS200 systems
7 sold and used in Indiana are produced with no modem
8 or antenna installed. Additionally, the EMS does
9 not include the software or commercial
10 over-the-shelf items to allow modeming from a
11 DS200 to ElectionWare.

12 The use of the two scanners, Symbol QR Code
13 Scanner and the DS9208 and Zebra QR Scanner, are in
14 compliance with the legal requirements for voters
15 with disabilities.

16 CHAIRMAN OKESON: Commission Members, any
17 questions?

18 VICE CHAIRMAN OVERHOLT: I did have a
19 question. So when it says, "Any functionality
20 related to the prohibited features shall be
21 disabled, if possible," what mechanisms do we have
22 in place -- or if the county purchases this
23 software or this voting system, I mean what's
24 available to them in terms of making sure that
25 prohibited features are actually disabled?

1 It seems like that sentence should just say
2 they shall be disabled, period. The "if possible"
3 there seems a little odd to me.

4 CHAIRMAN OKESON: Is there someone from ES&S
5 here?

6 MS. NUSSMEYER: Mr. Chairman, if I might.

7 CHAIRMAN OKESON: Sure.

8 MS. NUSSMEYER: I believe what we're talking
9 about being disabled would be that commercial
10 off-the-self scanner. Correct?

11 MR. CHATOT: Yes.

12 MS. NUSSMEYER: So you are buying a product
13 off the shelf to be able to read a receipt tape
14 that's printed from the E-poll book, which includes
15 the ballot style only for the voter to walk over to
16 the DS200 so that that machine can auto pull up the
17 ballot on the DS200 touchscreen, for the voter then
18 to be able to vote, produce their ballot card, and
19 then walk over to the optical scan.

20 So what we're asking to be disabled is nothing
21 with the voting system per se. It is the scanner
22 that's purchased off the shelf, that although that
23 scanner can be used for other tasks, that any other
24 task related to it not be permitted.

25 MR. CHATOT: Yes.

1 MS. NUSSMEYER: I just wanted to provide
2 additional context.

3 CHAIRMAN OKESON: So this is a recertification
4 of an already existing software; correct?

5 MR. CHATOT: Yes.

6 MS. NUSSMEYER: So all the barcode scanner is
7 doing is reading the QR code so that the system
8 knows which ballot style to pull up on the ballot
9 marking device.

10 CHAIRMAN OKESON: And change what's different;
11 right?

12 MS. NUSSMEYER: It's not different.

13 VICE CHAIRMAN OVERHOLT: I'm just commenting
14 on this language of "if possible."

15 So first of all this sentence, "Any
16 functionality related to the prohibited features
17 shall be disabled, if possible," so that's this
18 whole paragraph just has to do with the scanners.

19 So what is the possible functionality -- I'm
20 sorry. What is the prohibited feature that might
21 possibly exist on these approved scanners?

22 MS. NUSSMEYER: To be clear, it is not the
23 optical scan ballot part.

24 VICE CHAIRMAN OVERHOLT: I know that.

25 MS. NUSSMEYER: It's optional for a county to

1 use that. The poll worker can actually physically
2 go to the ballot marking device and enter the
3 ballot style number for it to be pulled up on the
4 screen.

5 And if ES&S is here and they would like to
6 speak more into this, I'm just basing it on
7 personal knowledge.

8 VICE CHAIRMAN OVERHOLT: Let's hear from ES&S.

9 MR. SWARTZ: I'm Ben Swartz from ES&S.

10 CHAIRMAN OKESON: Can you spell your name,
11 please?

12 MR. SWARTZ: B-E-N. S-W-A-R-T-Z.

13 VICE CHAIRMAN OVERHOLT: Can you come up here
14 because of our technical difficulties we're having
15 today?

16 MR. SWARTZ: Yes, you summed it up perfectly.

17 So the barcode scanner that you're referencing
18 is just an add-on sale to the express vote. You
19 attach it via USB, and you have to install it. So
20 there are some special install procedures that you
21 have to do for it even to be enabled.

22 And it would also have to be enabled on the
23 poll book side. So the poll book would print that
24 receipt. It's actually not a QR code. It's a
25 128c barcode. It just has numbers, essentially.

1 And you take that over to the express vote, you'd
2 scan it, and that would pull up your ballot style
3 on the express vote.

4 VICE CHAIRMAN OVERHOLT: I'm just trying to
5 figure out, maybe when people were drafting this
6 report it could have been more carefully worded,
7 quite frankly, because I think we've had
8 discussions like this before.

9 What I'm really trying to get at is what are
10 the prohibited features that need to be disabled on
11 these scanners, if there are any? What are the
12 prohibited features? Can they be disabled?

13 MR. SWARTZ: It's disabled by not installing
14 it. Does that make sense?

15 VICE CHAIRMAN OVERHOLT: Yes. So to me that
16 means if they're not installed, they were never
17 there. Is that what you are saying?

18 MR. SWARTZ: Yes.

19 VICE CHAIRMAN OVERHOLT: So let me ask it this
20 way. So does ES&S sell these scanners?

21 MR. SWARTZ: We do. I don't know about
22 Indiana. Do you know specifically about Indiana?

23 MR. HALLETT: If what?

24 MR. SWARTZ: If we have any configured here in
25 Indiana.

1 MR. HALLETT: Hi, my name is Tim Hallett.
2 T-I-M. H-A-L-L-E-T-T. The scanners are used in
3 Indiana.

4 VICE CHAIRMAN OVERHOLT: So the scanners are
5 used in Indiana. Are you the ones who sell --
6 well, not you individually, but is it ES&S that is
7 selling these scanners to the counties in Indiana
8 that are using this voting system?

9 MR. HALLETT: It would be an add-on sale to
10 the system.

11 VICE CHAIRMAN OVERHOLT: I'm sorry. I'm not
12 meaning to be clever. So it's not that a county
13 clerk decides to go to Wal-Mart and buy a scanner?

14 MR. HALLETT: No.

15 VICE CHAIRMAN OVERHOLT: So the scanner is
16 also part of the certified voting system?

17 MR. HALLETT: Yes, that's correct.

18 VICE CHAIRMAN OVERHOLT: So if the county is
19 buying -- decides they want the scanners, they get
20 the scanners from you.

21 So when that scanner is delivered to the
22 county clerk with the -- all the voting equipment,
23 are there any prohibited features that exist on the
24 scanners when they're delivered?

25 MR. HALLETT: We do have an option underneath

1 the admin to enable or disable it as well. So even
2 if you did have the barcode scanner installed,
3 let's say, it's like a little toggle or checkmark
4 that you would check, enable barcode or uncheck to
5 not or disable it.

6 VICE CHAIRMAN OVERHOLT: So what is it that
7 would be a prohibited feature? I'm sorry. Am I
8 just being really dense about this?

9 MS. NUSSMEYER: No, not at all.

10 CHAIRMAN OKESON: I'm with you.

11 VICE CHAIRMAN OVERHOLT: I'm trying to figure
12 this out. If we say, Okay, fine, we're going to
13 recertify your system, recertifying your system
14 means also then certifying the scanners, and we
15 have our requirements under Indiana law.

16 So what I'm trying to figure out is what is
17 the prohibited feature on those scanners that --
18 functionality. What is this sentence addressing?

19 MR. HALLETT: The scanner should only be
20 allowed to work with the barcode. There shouldn't
21 be any prohibited features included with the
22 scanner. The scanner is specifically certified to
23 be used with the barcode and that's it. So there's
24 no really prohibited --

25 MR. SWARTZ: So are you talking possibly any

1 barcode?

2 VICE CHAIRMAN OVERHOLT: It just occurred to
3 me. You didn't write this report. I'm putting you
4 in the hot seat. Okay.

5 So, VSTOP folks, you wrote this report. What
6 were you talking about in that sentence talking
7 about the function -- what is the functionality of
8 prohibited features that might exist on these
9 scanners that we are -- that we would be
10 certifying?

11 DR. BAGGA: Jay Bagga, co-director of VSTOP.
12 B-A-G-G-A. We only want to recommend certification
13 of the features for the 128c barcodes that are used
14 for scanning of those codes.

15 If these scanners may have other functionality
16 such as scanning other kinds of barcodes or QR
17 codes, that's not the purpose of those scanners, so
18 those are the prohibited features we don't want.
19 We only want to allow certain features to be
20 certified.

21 VICE CHAIRMAN OVERHOLT: Okay.

22 CHAIRMAN OKESON: So USB port, you load some
23 drivers or whatever and connect the scanner to the
24 system. Right? And it reads barcodes. And what
25 I'm hearing you say is you want to limit that

1 functionality to the barcodes that are only in the
2 system?

3 DR. BAGGA: Only of the 128c barcodes.

4 CHAIRMAN OKESON: But it could read other
5 barcodes?

6 DR. BAGGA: It's a general-purpose scanner.

7 CHAIRMAN OKESON: So a point-of-sale system
8 and a SKU and a barcode for inventory?

9 DR. BAGGA: Yes.

10 MR. SWARTZ: It would have to be the
11 four-digit barcode that represents the ballot style
12 as well.

13 CHAIRMAN OKESON: Basically we're saying that
14 any use of that that's not authorized is
15 prohibited, but I think the Vice Chair's question
16 is what would be a prohibited use and how do you
17 disable it?

18 VICE CHAIRMAN OVERHOLT: Right.

19 CHAIRMAN OKESON: What I'm hearing anyone say
20 is you're not going -- you don't know, and you
21 can't disable it, you're just not supposed to do
22 it?

23 MR. SWARTZ: No. Well, if it doesn't
24 recognize the barcode -- let's say there's nine
25 digits representing the barcode. It won't pull

1 anything up. So it has to meet certain
2 specifications.

3 CHAIRMAN OKESON: So there's a reason for the
4 statement. I guess what we're getting at, there is
5 a reason this was written in the report. We're
6 just trying to understand if there is some other
7 nefarious use or erroneous use of the barcode
8 scanner that needs to be dealt with.

9 VICE CHAIRMAN OVERHOLT: The sentence before
10 that says, "The use of any other features is
11 prohibited, including scanning QR codes, ballot
12 online, QR code and ExpressPass." So the use of
13 any other features is prohibited including those
14 things that are listed out.

15 So is -- I guess the thing -- so let me put it
16 this way. So those prohibited features -- and I
17 suppose there might be other prohibited features.

18 Are these scanners being -- when they are
19 delivered to the counties, are they delivered so
20 that those prohibited features are disabled?

21 MR. SWARTZ: That particular scanner only
22 reads the 128c barcode. It only accepts four
23 digits of the code.

24 VICE CHAIRMAN OVERHOLT: And then you said
25 under admin there's a -- but there is a toggle that

1 someone with admin rights could change that?

2 MR. SWARTZ: No. They would basically turn on
3 or off the scanner. The use of the scanner, you
4 can turn it on and off.

5 CHAIRMAN OKESON: You have to have admin
6 rights to turn it on?

7 MR. SWARTZ: Yes. It doesn't change the
8 usage.

9 VICE CHAIRMAN OVERHOLT: So would it be
10 accurate then to say that any functionality related
11 to the prohibited features shall be disabled,
12 period? Because from what you said, it is possible
13 to disable those features and they will be disabled
14 upon delivery.

15 MR. HALLETT: The disabilities of firmware
16 issue in the scanner, it's the actual -- because a
17 general-purpose scanner can scan, but there's
18 firmware that's only allowed to scan the four digit
19 code.

20 MR. SWARTZ: Yes. We have a configuration
21 setting that we scan that barcode with upon
22 delivery, or prior to delivery.

23 MS. NUSSMEYER: If I might just to help
24 translate a little bit here as well. So when you
25 go with the ES&S system and you check in, you're

1 presented a receipt tape, if the county wants to
2 use the receipt tape to be able to pull something
3 up on the ballot marking device.

4 If the county decides to move forward with
5 that, then what I'm hearing from you is that the
6 barcode that's printed on that receipt tape, only
7 the scanner will have features enabled that will
8 only read this barcode as your firmware would
9 indicate. Right?

10 MR. SWARTZ: Correct.

11 MS. NUSSMEYER: When that ballot style pulls
12 up, the voter votes on the touchscreen machine, but
13 it also produces a ballot card, and that ballot
14 card includes that person's precinct and ballot
15 style designation.

16 So at any point in the process if the voter
17 believes that they have the wrong ballot style that
18 was pulled up by the receipt tape, then they would
19 be able to correct that by spoiling their ballot
20 and getting a new one issued.

21 And at that point the poll worker can even
22 override, as I understand, using the scanner and
23 pull up manually the ballot style on the ballot
24 marking device.

25 VSTOP, as part of their field test, also

1 looked at your ballot marking device, because we
2 had recent changes in the state law that explicitly
3 state things like we have to know not just Q
4 numbers on the optical scan ballot card, we have to
5 know who that person selected. Correct?

6 And the voter will be able to review that
7 ballot card to see who, in fact, they voted for
8 before they then walk it over to the tabulator on
9 election day for it to be fed through the tabulator
10 or secured in an absentee envelope if it's
11 in-person absentee voting where they can't rescan.

12 I don't mean to ask leading questions. I want
13 to provide context and background for the people in
14 the audience and for all as well.

15 CHAIRMAN OKESON: So it sounds like the
16 statement about the "if possible," that sounds to
17 me like it's an unnecessary and inappropriate
18 caveat, because it is totally possible to disable
19 these functions that prohibited -- it is
20 possible -- it is definitely possible to disable
21 the prohibited features, so there shouldn't be any
22 question about whether it's possible or not.

23 MR. SWARTZ: That's fair.

24 MS. WARYCHA: Sorry to interject, but now we
25 have a court reporter. Just for her benefit going

1 forward, if everybody could just say and spell
2 their name while she gets accustomed to who
3 everybody is here for the next hour, because she's
4 not used to all of our faces.

5 VICE CHAIRMAN OVERHOLT: Okay.

6 CHAIRMAN OKESON: It appears since we're
7 making an edit to the way the report is written, we
8 need to amend the motion as written.

9 VICE CHAIRMAN OVERHOLT: Should we wait to
10 hear -- we're hearing other comments too; right?

11 CHAIRMAN OKESON: Yes, we are.

12 VICE CHAIRMAN OVERHOLT: So could we wait and
13 make a comprehensive amendment as necessary?

14 CHAIRMAN OKESON: Okay. I'll roll with that.

15 VICE CHAIRMAN OVERHOLT: Amending amendments
16 can get very messy.

17 CHAIRMAN OKESON: Okay. Is there anyone else
18 that would like to offer testimony?

19 MS. WARYCHA: Chairman, could you state your
20 name.

21 CHAIRMAN OKESON: Paul Okeson, O-K-E-S-O-N,
22 Chairman of the Indiana Election Commission.

23 Is there anybody else that would like to
24 provide testimony?

25 Is it Kelly Khuri? Karie Khuri?

1 MS. KHURI: Kelly. We're just in public
2 comment section B right now; right? There's still
3 going to be a D for the next system?

4 CHAIRMAN OKESON: Yeah. This is just for this
5 particular motion on this particular voting system.

6 MS. KHURI: Okay. I'll hold up.

7 CHAIRMAN OKESON: Pardon me?

8 MS. KHURI: I'm going to wait.

9 CHAIRMAN OKESON: Okay. Joy Martin.

10 MS. MARTIN: Where do you want me to stand?

11 CHAIRMAN OKESON: You are welcome to sit up
12 here. And, again, please state your name and spell
13 it for the court reporter.

14 MS. MARTIN: Joy Martin. J-O-Y. M-A-R-T-I-N.

15 CHAIRMAN OKESON: Before you begin, just to
16 keep things moving, I'd like to limit it to about
17 three minutes.

18 MS. MARTIN: Okay. Sure. These systems that
19 we're talking about all have no visibility to the
20 user. They just have visibility to a person in the
21 know.

22 And I'm going to relate that back to when I
23 was teaching, I had a science class, and every
24 person had different assignments given to them, and
25 they were laid out in my book where no one could

1 see them.

2 So in order to help each person understand
3 where their grade was, I posted all their grades on
4 the wall with a unique serial number only known to
5 that person so they could visually see all the way
6 across how their grades were as it went through the
7 semester, and they could see from beginning to end
8 that their grade was what it should have been.

9 In all of these cases that we're talking
10 about, there's ways to enable or disable, enable or
11 disable. We have no confirmation, as a voter going
12 out to a system, that it's not been enabled or the
13 disabled function has not been removed. We have
14 nothing.

15 I could bring an IT guy with me, but you'd
16 probably need an hour to look at all of the
17 possibilities that he could think of, not to
18 mention all of the back doors that are in that
19 system inherently, because let me tell you, every
20 program has a back door. You may not know what
21 that door is, where it is, how to get to it, but
22 somebody does.

23 So we have no way to secure these systems no
24 matter what. They're electronic. They're not
25 visible. No one can see them. And the only way we

1 can have a secure system is if it's accountable,
2 and that's to paper ballots.

3 VICE CHAIRMAN OVERHOLT: Ms. Martin, before
4 you leave, you are a resident of Brown County?

5 MS. MARTIN: Yes, I am.

6 VICE CHAIRMAN OVERHOLT: So they actually use
7 a Unisyn system, just so you know, not an ES&S
8 system.

9 MS. MARTIN: We're getting new poll books.

10 VICE CHAIRMAN OVERHOLT: We aren't talking
11 about new poll books today. I just thought I'd let
12 you know the name of the system in your county is
13 Unisyn.

14 MS. MARTIN: And they are all programmed, and
15 they are all able to go on the internet at will to
16 the person setting them up.

17 VICE CHAIRMAN OVERHOLT: I just wanted to let
18 you know it's not an ES&S system.

19 MS. MARTIN: They are all bad systems. I have
20 programmed computers before. I know how to do it.
21 I know how it's done. And I do not trust them.

22 CHAIRMAN OKESON: Thank you for your
23 testimony.

24 MS. MARTIN: Thank you.

25 CHAIRMAN OKESON: Jen Dunbar.

1 MS. DUNBAR: Jen, J-E-N. Dunbar, D-U-N-B-A-R.
2 Thank you. Hi. How are you today? Thanks for
3 allowing public comments. We appreciate it.

4 CHAIRMAN OKESON: You're welcome.

5 MS. DUNBAR: I come here for love of all
6 Hoosiers and everyone. I want everyone to vote and
7 everyone to have their vote counted accurately. So
8 that's where my heart is, so thank you. Another
9 shout out to Brad King for his wonderful history on
10 election voting.

11 We used to vote by voice. We would have to go
12 out and shout out -- can you imagine that? But now
13 we want -- we vote in secret, but we should count
14 in the open. Counting should be transparent and
15 open.

16 So that's what I was going to talk a little
17 bit about, that I feel -- you know, there's eight
18 people here. If I gave all of you a ballot and you
19 filled it out and you put it -- you know, secretly
20 so I don't see what it is, you folded it and put it
21 in a big basket here, and we all counted out and
22 there were eight ballots, we would have faith, I
23 think all of us, in that.

24 Now compare that to our current system where
25 we have e-poll books, which are all connected to

1 the Internet.

2 In 2018, ES&S broke federal and state law, and
3 I didn't see anything about what happened to them
4 after that. There was no punishment. There was no
5 fine. I could have missed that, but I didn't see
6 that. So that was one thing.

7 We had people on a different system, not on
8 MicroVote, in Starke County on e-poll books mobbing
9 on California ballots here in Indiana, because
10 they're connected to the Internet. So that was one
11 thing.

12 And then we take it to ballot marking devices,
13 which are not honorable after the election. You
14 have to do it during the election if you want to.
15 So that was the other thing.

16 And then we take it to a tabulator, which may
17 or may not be connected to the Internet. NBC, last
18 year Cynthia McFadden did a report on ES&S, and
19 they found here in Indiana they were connected to
20 the Internet. So I don't know how that was
21 possible.

22 Did you hear about that? I just didn't know
23 how that was possible, because I thought they
24 always say they're not connected to the Internet.
25 So that was the other thing.

1 I think between those two systems where you
2 had eight paper ballots, we all count in the open,
3 versus the systems that are so rapidly changing and
4 complex, that the laws can't keep up.

5 And there's a valiant effort trying to make
6 sure that they're legal, but I think we have like
7 quantum computing and on and on and on that I don't
8 think will ever keep up to make sure that our vote
9 is safe and transparent.

10 I think that's all. Thank you.

11 CHAIRMAN OKESON: Thank you for your comments.

12 VICE CHAIRMAN OVERHOLT: Ms. Dunbar, you live
13 in Hamilton County?

14 MS. DUNBAR: I do, yes. We have MicroVote.

15 CHAIRMAN OKESON: That's all I have signed up.
16 Anyone else?

17 MR. MILHOAN: It's for a different system.

18 CHAIRMAN OKESON: The sign-up sheet is for the
19 software systems being approved.

20 MS. CURRY: We don't know the different
21 systems.

22 CHAIRMAN OKESON: Hold on. Since you made a
23 comment, will you just give your name and spell it.

24 MR. MILHOAN: Merle Milhoan. M-E-R-L-E. Last
25 name M-I-L-H-O-A-N. And I'll gladly hold my

1 comments.

2 MR. OLIVER: Could I go ahead and do mine?

3 CHAIRMAN OKESON: Did you sign up?

4 MR. OLIVER: I did on the other sheet, but...

5 CHAIRMAN OKESON: We'll wait until we get to
6 that matter. You'll have a chance.

7 We've had questions and discussions, so now we
8 have to amend --

9 MR. KING: You still have to make a change
10 that incorporates the staff report.

11 CHAIRMAN OKESON: So are we amending of the
12 writing of the report to take out the words "if
13 possible"?

14 VICE CHAIRMAN OVERHOLT: Yes. So I was the
15 one who made the motion; right?

16 CHAIRMAN OKESON: Yes.

17 VICE CHAIRMAN OVERHOLT: Sorry. I'm Suzannah
18 Wilson Overholt. O-V-E-R-H-O-L-T. Suzannah,
19 S-U-Z-A-N-N-A-H, Vice Chair.

20 So I would move approval of the ES&S
21 EVS 5.2.4.0, renewal of that certification. And
22 accepting VSTOP's report with the modification on
23 page 4 of the report that -- under Findings and
24 Limitations, the second bullet, to delete -- at the
25 end of that paragraph, delete "comma if possible."

1 CHAIRMAN OKESON: So that stands as the
2 motion. Do we have a second?

3 MS. PYLE: Litany Pyle. L-I-T-A-N-Y.
4 P-Y-L-E. I'll second.

5 CHAIRMAN OKESON: Any discussion on the
6 amended motion?

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

9 VICE CHAIRMAN OVERHOLT: Aye.

10 MS. PYLE: Aye.

11 MR. CLAYTOR: Aye.

12 CHAIRMAN OKESON: The ayes have it. The
13 motion carries.

14 Now we have to do a motion to adopt it as
15 amended. Is there a motion?

16 VICE CHAIRMAN OVERHOLT: I would move to adopt
17 the ES&S report as amended.

18 MS. PYLE: Second.

19 CHAIRMAN OKESON: Any discussion?

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

22 VICE CHAIRMAN OVERHOLT: Aye.

23 MS. PYLE: Aye.

24 MR. CLAYTOR: Aye.

25 CHAIRMAN OKESON: The "ayes" have it. The

1 motion carries.

2 Moving on to the next item, Election Systems &
3 Software application for certification of voting
4 system EVS 6.0.4.0. And we'll again recognize
5 co-directors Brad King and Angie Nussmeyer.

6 MR. KING: Mr. Chairman, members of the
7 Commission, Brad King, the co-director of the
8 Indiana Election Commission. B-R-A-D. K-I-N-G.

9 Behind the orange tab in your binders are the
10 same three documents as the previous system. The
11 first is the VSTOP report regarding the application
12 for renewal of ES&S's EVS 6.0.4.0 voting system
13 application.

14 Following that lengthy document, there is a
15 memo addressed to the one county in this case,
16 Howard, that is in the process of implementing use
17 of this particular system, advising them of the
18 county's right under Indiana Code 3-11-7-19 to
19 provide comments regarding the system.

20 And then finally the IEC-23 statement of
21 foreign ownership or interest control.

22 CHAIRMAN OKESON: And I'm going to go ahead
23 and offer a motion to approve and get it seconded
24 so we can have testimony and discussion.

25 So for purposes of that I move the application

1 submitted by ES&S for recertification of
2 EVS 6.0.4.0 voting system be approved for marketing
3 and use in Indiana, with the term expiring
4 October 1, 2025, with the restrictions set forth in
5 the report submitted by VSTOP.

6 MR. CLAYTOR: Second.

7 CHAIRMAN OKESON: Thank you.

8 MR. CLAYTOR: Michael Claytor. C-L-A-Y-T-O-R.

9 CHAIRMAN OKESON: With that we'll move forward
10 with discussion.

11 MR. CHATOT: Marc Chatot. M-A-R-C.

12 C-H-A-T-O-T.

13 The EVS 6.0.4.0 is a paper-based, end-to-end
14 election management system that supports
15 jurisdictions election needs by creating and
16 maintaining a central election database, formatting
17 and printing of ballots, programming election
18 equipment, and collection and reporting of results.

19 This system was certified by the U.S. Election
20 Assistance Commission on May 3, 2019, and is
21 compliant with the Voluntary Voting System
22 Guidelines, VVSG 1.0. No changes or major features
23 are being introduced by this voting system.

24 This voting system was reviewed and
25 field-tested by using the Indiana Voting Systems

1 Certification Protocol approved by the Indiana
2 Election Commission on November 15, 2021.

3 The review and testing included all sections
4 of the protocol, including the recent legislative
5 requirements such as software hash verification and
6 review of the complete ballot creation and
7 deployment process.

8 Findings and Limitations: All DS200 systems
9 sold and used in Indiana are produced with no modem
10 or antenna installed. Additionally, the EMS does
11 not include the SW/COTS to allow modeming from a
12 DS200 to ElectionWare.

13 During the field test, ES&S presented a
14 feature for the electronic adjudication of the
15 scanned ballots through the ElectionWare software.

16 After discussion of this feature with the
17 Indiana Election Division, it has been determined
18 that Indiana law does not authorize the use of this
19 procedure to make determinations regarding the
20 tallying of votes or validity of a ballot. For
21 this certification, this feature must be disabled
22 among the ES&S EVS 6.0.4.0 voting system utilized
23 in Indiana.

24 On the basis of VSTOP's review and evaluation,
25 we find that the voting system referenced herein,

1 with the Scope of Certification and the limitations
2 therein, meets all the requirements of the Indiana
3 code for use of the state of Indiana. This finding
4 includes compliance with the legal requirements for
5 voters with disabilities.

6 CHAIRMAN OKESON: So what I hear you
7 succinctly stating here is that this is just
8 recertification. There's been no changes to the
9 software. It's as it was being used prior to the
10 expiration?

11 MR. CHATOT: Exactly.

12 CHAIRMAN OKESON: No barcode scanner?

13 MR. CHATOT: Right.

14 CHAIRMAN OKESON: Any questions?

15 VICE CHAIRMAN OVERHOLT: Well, I do. Sorry.

16 CHAIRMAN OKESON: No.

17 VICE CHAIRMAN OVERHOLT: I seem to be latching
18 on to the same language in these, but just because
19 it says that the features -- so referencing back to
20 this electronic adjudication feature, so it says
21 this feature must be disabled.

22 So my question is, can that feature be
23 effectively disabled?

24 MR. CHATOT: I will defer to ES&S for that.

25 MS. NUSSMEYER: If I might, though, before

1 this discussion, I think there was a recent change
2 in state law that may permit the electronic
3 adjudication, a ballot. Do you want to read it,
4 Matthew?

5 MR. KOCHEVAR: Mr. Chairman, members of the
6 Commission, there was a recent addition to state
7 law that is Indiana Code 3-11-15-13.8. It has to
8 do with electronic adjudication.

9 That section reads, "A voting system certified
10 for use under this chapter may include features to
11 permit the use of electronic adjudication of
12 ballots to review voter's intent so long as, one,
13 the adjudication is conducted in compliance with
14 Indiana law," meaning the ballot standards, those
15 we find in 3-12-1 specifically; "and, two, the
16 software is part of the electronic management
17 system, EMS, certified by the Commission as part of
18 the voting system."

19 CHAIRMAN OKESON: Can you state your name?

20 MR. KOCHEVAR: Yes. My name is Matthew
21 Kochevar, K-O-C-H-E-V-A-R, co-general counsel at
22 the Indiana Election Division.

23 MS. WARYCHA: And I will just confirm.
24 Valerie, V-A-L-E-R-I-E, last name, W-A-R-Y-C-H-A.
25 I'm co-general counsel. I'm just confirming that

1 Matthew is accurate in his statement.

2 CHAIRMAN OKESON: I don't doubt that he is,
3 but what exactly did you say?

4 MR. KOCHEVAR: So essentially, because I was
5 thinking about the questions you would want to
6 probably ask VSTOP and then the vendor.

7 With the changes in state law, electronic
8 adjudication or the taking of a paper ballot and
9 using a piece of software can magnify it to
10 determine did the voter vote for this, is the
11 circle complete, can you determine they're voting
12 for X candidate as opposed to the other one.

13 In order to do that, it has to be certified by
14 this Commission. So the first thing you want to
15 figure out and ask -- and I think the report
16 answers that -- is, is this -- can this particular
17 software be added into the EMS that's part of this
18 certified system? That's the first question you
19 want to ask, and the vendor and VSTOP can confirm
20 that.

21 Number two I think you would want to ask VSTOP
22 is that if it was included in the certification,
23 did they want tested?

24 And then number two is, is that in their test,
25 did they confirm that this part of the voting

1 system complies with all state laws that we have
2 on -- for ballot adjudication as well as the other
3 standards of voter intent and how to count ballots.

4 CHAIRMAN OKESON: Thank you for that. I guess
5 I would say, as the way this report is written, the
6 first question I will ask is were you aware of the
7 change in law? And, therefore, to his question,
8 did you test for it? Does it work?

9 MR. BAGGA: Mr. Chairman, we did become
10 recently aware of that law, but we left the report
11 as it is, because that's how the system was
12 certified last time.

13 CHAIRMAN OKESON: Could you say your name,
14 please.

15 MR. BAGGA: Jay Bagga, B-A-G-G-A, co-director
16 of VSTOP.

17 MR. KING: Mr. Chairman, members of the
18 Commission, the application is for a renewal of an
19 existing certified system, and therefore any
20 alteration, whether it be an engineering change
21 order or something of more magnitude, would have to
22 be submitted separately.

23 CHAIRMAN OKESON: So it's not contemplating
24 the change in the law, it's simply recertifying a
25 system as was used prior to this date?

1 MR. KING: Correct.

2 VICE CHAIRMAN OVERHOLT: So if ES&S wants to
3 market that functionality, they would have to come
4 back?

5 DR. BAGGA: Yes.

6 CHAIRMAN OKESON: Do you have any more to add?

7 DR. BAGGA: No.

8 CHAIRMAN OKESON: Any other questions?

9 VICE CHAIRMAN OVERHOLT: No.

10 CHAIRMAN OKESON: We'll move on. Again, keep
11 the comments to three minutes. We'll go to the
12 sign-in sheet. Merle.

13 I know you've done it a couple times, but
14 could you say your name.

15 MR. MILHOAN: Merle. M-E-R-L-E. Last name is
16 Milhoan, M-I-L-H-O-A-N.

17 Members of the Commission, first of all, thank
18 you for your time, your energy, and your work. To
19 be honest, I've not been deeply engaged in a lot of
20 this process until the last 12 months. I'm sure
21 all of you have been much longer than that, and I
22 appreciate that. So thank you for your time and
23 service.

24 I'm a retired engineer from a Fortune 200
25 company here in Indiana. And during my career I

1 spent time settling standards, running tests, to
2 determine if systems met -- and that's all really
3 important and good stuff.

4 A couple things that I think I apply -- I've
5 learned and I've applied, one is that's all great,
6 but the bottom line is your customers get what they
7 want, are they happy with it, are they going to
8 come back. In business those are really important
9 questions.

10 And I would submit many of your customers are
11 not happy, don't like what they're getting and
12 don't really want to come back, including me, but
13 many others. So I think that's an important thing
14 that I hope you recognize in here.

15 Second thing is, as an engineer, I understand
16 a lot of these technical things. Maybe not
17 election systems, but in my work environment. But
18 a lot of times I think it's useful to drop all of
19 that stuff and just get down to something simple.

20 So I think about -- something I do every day,
21 and you probably do it every day and will this
22 week, you pull a credit card out of your pocket,
23 and you flash it to somebody and you buy something.
24 And when you do, you probably get a little piece of
25 paper, a receipt.

1 And if you are like me, certainly my wife
2 makes darn sure I do, I take that home, and every
3 month she gets a statement, and she takes the
4 receipts, and she marks it off. Right?

5 Because my money is important me, same as my
6 vote is important to me. And I want to make sure
7 it's rectified and everything is right. And I
8 don't want to pay a dollar more than I have to, and
9 I'm willing to pay every dollar I should. Okay?
10 We all have that system and we know it.

11 Now I want to take that analogy to our
12 election system. I vote on MicroVote. I did not
13 get a receipt. Some people do. I didn't get a
14 receipt. So I used my credit card, but I didn't
15 get a receipt.

16 And at the end of the month, I'm not going to
17 get a statement. I will hear something that
18 somebody says about what happened with that, okay,
19 but I won't get a statement, and I can't compare,
20 and I can't check.

21 And I'm sure that Mr. Bagga and company are
22 bright people; they do a lot of good things making
23 sure the systems work and blah, blah, blah. But if
24 the bank calls me and says, You owe me \$457, okay,
25 and I have no receipt, and I have no statement, all

1 I have is the bank calling me telling me a result
2 and that's it, I can pay the 457 and go on and do
3 it again the next time.

4 Or I can come to some group at the bank and
5 say, I don't know, I can't understand, I can't
6 audit it, I don't think it's right. But I have no
7 recourse, and I have no confidence, and I have no
8 ability -- no ability to understand was my vote
9 really what was counted in the way I intended it to
10 be.

11 So it's a simple analogy, but to me that's a
12 world I do not want to live in. And I will
13 challenge each and every one of you, the next time
14 you pull a credit card out of your pocket, I really
15 hope you think about that. Right? This is how I
16 want to cast my vote. And that's it. It's done.
17 And I have no recourse. All I can do is decide if
18 I want to give my credit card again to somebody
19 else and pay my bill that they tell me I owe.

20 And our voting system is very much like that.
21 No matter how hard everybody works to try to make
22 it robust and secure and accurate, it is not an
23 honorable system.

24 And I recognize this is not pertinent to these
25 very specific issues you're taking up today, but I

1 hope you are hearing the community tell you these
2 things. And I really hope that you use your
3 influence and authority to try to make this system
4 much more secure and robust than it is.

5 CHAIRMAN OKESON: I appreciate your comments
6 today and note that the intention of this process
7 today is to recertify these systems. So the
8 commentary and the sign-in sheets should be geared
9 toward you're on the record speaking about
10 MicroVote in your county and some comments that you
11 made that don't seem germane to the EVS 6.0.4.0?

12 MR. MILHOAN: And my county may very well move
13 to ES&S some day in the near future. Right? So I
14 think my comments are very appropriate in that way.

15 CHAIRMAN OKESON: I understand. Thank you.

16 MR. MILHOAN: Thank you for your time.

17 CHAIRMAN OKESON: Greg Coy? Cox?

18 MR. COY: Coy. Are you attempting Q and A at
19 all?

20 CHAIRMAN OKESON: We're not here to answer
21 questions. Could you please state your name and
22 spell it.

23 MR. COY: Greg Coy. G-R-E-G. C-O-Y.

24 A couple specific questions around the -- one
25 is the change, the electronic adjudication that I

1 have, which is, was anything -- in terms of
2 electronic adjudication, has it been looked at in
3 terms of --

4 CHAIRMAN OKESON: So what I would recommend is
5 that you put your questions in writing and send
6 them to the election division for a potential
7 response. We're not really here to have a Q and A
8 on the recertification unless you have some
9 comments that you would like to make, you're
10 welcome to make them for the purpose of the record.

11 VICE CHAIRMAN OVERHOLT: And I guess I'd add
12 to the electronic adjudication, what we were just
13 told actually wasn't part of the recertification,
14 because an electronic adjudication isn't part of
15 what had been certified before. So for them to be
16 certified for electronic adjudication, they're
17 going to have to go through a new process for that
18 specific comment.

19 CHAIRMAN OKESON: That would be an engineering
20 change. They would submit a change order request
21 for -- to be submitted and go through the same
22 process again. So without that, they're not able
23 to sell that feature to the counties.

24 MR. COY: So in order to get questions
25 answered around the security, the confidentiality,

1 integrity, the whole ability of the systems in
2 terms of -- let's just say privilege
3 administration, who has access, administrative
4 access, things like that, the security around the
5 system?

6 MS. WARYCHA: I was just doing a public record
7 request. Those come into the election division all
8 the time. Myself and Matthew fill those, a
9 bipartisan effort, elections@iec.in.gov. You can
10 always submit a public request there, and it comes
11 to Matthew and I, and we work with the co-directors
12 and the Commission to answer anything that comes
13 out of there.

14 MR. COY: We've submitted quite a number of
15 them, and the percentage of response is very, very
16 low.

17 MS. WARYCHA: You submitted as public -- we're
18 required by law to respond to public record
19 requests, if you put it in that way.

20 MR. COY: The response was not very in-depth,
21 let's put it that way. So I'm just looking for
22 more insight into the actual security and controls
23 around the systems themselves. And some of that's
24 the vendor, right, I understand that, but there's
25 some issues around the security and specifically

1 around adjudication -- electronic adjudication and
2 the full abilities that exist.

3 CHAIRMAN OKESON: I would take her up on her
4 offer, follow up on it. We're trying to get
5 through this particular part of the process. We're
6 not trying to shut you down. We're just trying to
7 keep it germane to the matter at hand, which is a
8 motion and second to approve this software for
9 recertification, unless you have comments about
10 that.

11 MR. COY: No.

12 CHAIRMAN OKESON: Is it Clee Oliver?

13 MR. OLIVER: C-L-E-E. O-L-I-V-E-R. Thank you
14 again for doing this. One thing I would suggest,
15 and I did last time I was here, is to put this
16 out -- you're asking for public comment, but
17 there's nothing on public to comment on, because
18 it's not online.

19 You know, the certification, the stuff that
20 they're going through right now is not online. So
21 how do you comment on something that you haven't
22 even seen yet? You've all got your books here, but
23 we haven't got anything to public comment on. Just
24 a suggestion, please.

25 First of all, I'd like to ask ES&S to be

1 decertified as a voting system in the State of
2 Indiana. I'm in Howard County so we have ES&S.

3 In 2006 ES&S paid a fine to the State of
4 Indiana for an enforcement proceeding initiated by
5 the Secretary of State, Todd Rokita, and agreed to
6 contribute \$245,000 to help fund VSTOP. Conflict
7 of interest? I don't know.

8 Georgia, ES&S resulted from more than -- a
9 result of more than 150,000 voter backup paper
10 ballots were not produced. As of this time, and
11 this article was 2000 -- I forget what the date
12 was. It was in litigation.

13 Indiana, Johnson County, 2018, the company's
14 brand new machines failed to determine if some
15 people had voted twice. The result in Johnson
16 County, they needed to purchase new machines at
17 more than \$1.5 million.

18 In 2006, Florida, ES&S machines lost 18,000
19 votes. Other issues of lawsuits filed by ES&S,
20 September of '18 against Cook County, Illinois.
21 ES&S sued two companies in Los Angeles, California.
22 2016, they sued Colorado.

23 2016 they sued Wisconsin against the voting
24 rights activists' audit USA. In that suit -- they
25 sued individuals that they purchased machines that

1 were old machines off eBay and said that if you
2 help anybody out, we're going to sue you too.

3 Computer scientists at the University of
4 Michigan said, "The vendors have made" -- I'd like
5 to quote. "The vendors have made election
6 officials fearful of working with researchers to
7 independently test equipment."

8 Bloomberg News reported that ES&S occasionally
9 packaged the machines and sold as new.

10 In closing, Senator Ron Wyden of Oregon,
11 Democrat of Oregon, quote, ES&S maintains there is
12 no need for tighter regulations or oversight of
13 this business.

14 From what I'm seeing, I mean they -- so my
15 last comment down here was, I guess you must
16 certify or you might get sued.

17 I would like to give these documents, if I
18 could, to be on record to the committee, if I
19 could, please.

20 CHAIRMAN OKESON: Could you please hand the
21 documents to Valerie.

22 MR. OLIVER: (Hands documents.)

23 Also, I want to know who to turn this in to.
24 This is a forwarded request for the documentation
25 presented today. So I guess you have 24 hours to

1 let me know, because I'm giving it to you in
2 person, if I'm correct.

3 MR. KOICHEVAR: Yes.

4 MR. OLIVER: Okay. Thank you.

5 Like I said, the part that really bothered me
6 most is the fact it's not online. You don't get to
7 see it. Certification of F stop -- or F stop,
8 that's cameras -- VSTOP.

9 I'd asked again, just as recent as last week
10 for Vigo County, have not got it. I talked to the
11 Secretary of State. She was in our breakfast the
12 other morning, and I asked her. And she said, It
13 should be on the website in two weeks. And we'll
14 see what happens.

15 I think I talked to Matthew, and I appreciate
16 your help in trying to get that stuff. I guess
17 this committee does not have the documentation that
18 we are now seeing here.

19 So, again, I appreciate your listening and
20 hope that you, again, decertify ES&S. Thank you.

21 CHAIRMAN OKESON: Thank you for your comments.

22 Joy Martin.

23 MS. MARTIN: Joy Martin again. Just food for
24 thought. When you buy a new PC for home -- I'll
25 not say for work because usually that's all taken

1 care of for you, but when you buy a new PC at home
2 or when you have a new phone at home, what's the
3 first thing that you do? You set it up to go
4 online. Why? Well, all of your information that
5 you need to acquire is online.

6 It's online at the bank. It's online at all
7 of the stores that you purchase from. It's online
8 where you shop. It's online with Wikipedia. It's
9 online with the movies that you buy.

10 So when you get that set up, you just leave it
11 set up and don't do anything more to it? You've
12 got your banking account information on it. No.
13 You do virus protection immediately.

14 Immediately you set up virus protection on
15 your laptop, your phone, desktop, stuff proprietary
16 to the company that sells you the phone. That
17 virus information is up to date.

18 What is a virus? It's a program that is
19 designed to do something in your computer to either
20 disable it or to steal information or to shut it
21 down. So it is nefarious.

22 Once you set up that virus software, is it
23 once and done? No. Every time you go online, if
24 you have good virus software, it checks for
25 updates. Why? Because new viruses are coming out

1 all the time, computer viruses, and they are intent
2 on stealing from you.

3 So if we have software here that is going to
4 be certified at this point in time, is that
5 software certified when a user goes in and uses
6 that device with that software on it? Can that
7 person go in and run the software check on it,
8 virus scan on it, right before they place their
9 vote? No one can. That's not feasible.

10 And viruses are always changing. Viruses come
11 out before the antivirus software comes out to fix
12 it. So we're always a step behind.

13 So there is no way we can have an electronic
14 voting system of any sort that is trustworthy to be
15 used for something as important as our vote. Thank
16 you.

17 CHAIRMAN OKESON: Jen Dunbar.

18 MS. DUNBAR: Hi. I'm back. Thank you again.
19 I'll try to make it quick. So to summarize what I
20 said before, equal votes are all connected to the
21 Internet. They have firewalls too.

22 Voting systems were connected to the Internet,
23 by the NBC report by Cynthia McFadden last year in
24 January of 2020, and ballot marking devices are not
25 honorable.

1 Now I'm going to focus and be more specific on
2 ES&S, since that's the system. So ES&S, as we know
3 from the great reporting, broke the law in '18 in
4 Johnson County by not keeping the firewall box.

5 The whole issue in the long lines in Johnson
6 County in '18 was because of not enough firewall
7 capacity. So probably one of the most important
8 things that needed to be looked at in the VSTOP
9 report, which was very complete, was the firewall
10 box.

11 The next thing, they also -- when you read the
12 VSTOP report about that Johnson County e-poll book
13 fiasco in 2018, you see that there was poor
14 communication, and they were handing out supervisor
15 passwords to everybody just to try to do a
16 workaround to get everything to work. Again,
17 against the law. So two times against the law with
18 that one.

19 Then if you go to that 2020 report from
20 Cynthia McFadden NBC where they found our machines
21 here in Indiana were connected to the Internet. I
22 recommend everybody watch that if you haven't
23 already.

24 They also found that ES&S was not very
25 transparent financially. We don't know who owns

1 it. They won't release their financials at all.

2 And they also found parts from other countries
3 in our machines. I don't think we look at every
4 single machine, we just look at one that goes
5 through VSTOP, so I think that's a concern as well.

6 Source code is not open to the public. And as
7 well the EAS, the U.S. Election Assistance
8 Commission admonished them for misleading
9 advertising. They were saying their DS200 that had
10 the modems in them -- in other states, not ours --
11 as you mentioned, they were saying they were ESD
12 certified, which they weren't.

13 So to me, I would implore not voting on any
14 ES&S for that reason. It's not a company -- think
15 in your own mind, if somebody broke the law,
16 misleading advertising, financially not
17 transparent, lots of lawfare, suing all the states,
18 is that somebody who we should do business with
19 just because they put in a quote.

20 And I don't know whose responsibility is it to
21 say no, that's not somebody -- I mean I don't know
22 what everybody does in their daytime except for the
23 people who work for the division, but would you
24 want to work for a corporation like that.

25 A lot of the machines in the auto mark that's

1 in our system, every year they have DEF CON, a
2 voting village, and every year they're able to hack
3 in with like five minutes. Like children can hack
4 into all these things.

5 They found passwords like 111 and ESS. And
6 they found Netflix and Hula on it. And they found
7 lack of hardening on some of the software. And
8 they do this every year, so I don't think they're
9 super safe.

10 I feel like we want to modernize our
11 elections, and I hold no -- I think it was good
12 experiment, but I think we should maybe think about
13 cutting our losses, not using machines, go the way
14 Europe -- they still go on paper. They didn't do
15 the machines. So I think that would be good.

16 I think it was a gamble we took. We tried it,
17 and we should go back to paper. A famous guy,
18 Kenny Rogers, you may know him, said, "Know when to
19 hold 'em and know when to fold 'em, know when to
20 walk away, know when to run."

21 I think we should walk away and run from
22 machines, not just ES&S but definitely ES&S, and
23 then you all can count your machine while you're
24 sitting at the table because you'll have a lot of
25 it. That's all. Thank you.

1 CHAIRMAN OKESON: No other individuals signed
2 up to speak.

3 MS. KHURI: I didn't see the header on the
4 clipboard, that there was a difference.

5 CHAIRMAN OKESON: Could you state your name.

6 MS. KHURI: Kelly, K-E-L-L-Y. Last name,
7 K-H-U-R-I.

8 CHAIRMAN OKESON: You didn't list your county.

9 MS. KHURI: I know. Clark. And I know what
10 we have, Unity 3.4.1.

11 VICE CHAIRMAN OVERHOLT: ES&S?

12 MS. KHURI: Yes. So I agree with everything
13 the previous lady said and then some. My issue
14 is -- and will be maintained until we do transfer
15 back to paper ballots, paper poll books, and
16 counted -- is cyber security.

17 I did mention last time about FireEye. And
18 the lady who you're proxying disagreed with me.
19 And I was like, I have a correction for the
20 minutes, because FireEye was contracted for
21 election security. The contract we have in our
22 county, Ms. Lawson's press release stated such in
23 the same sentence.

24 So I really would like -- you've already
25 approved your minutes, but perhaps this one can

1 reflect that FireEye was contracted for election
2 security, and they have had issues. As we know
3 from the previous meeting, we talked about FCC
4 filing and so forth.

5 And our county commissioners have stated
6 everything is hackable. Our cyber security has
7 gone up 100 percent. That's Clark County. I have
8 the minutes if you would like to review them, but
9 these things have been stated.

10 So with everything that's been said today
11 about this particular vendor -- and our machines
12 are very, very old. Okay. And our commissioners
13 and clerk are throwing around perhaps some
14 different ones for well over a million dollars.
15 And if I have anything to do with it, it will be
16 stopped.

17 And I think that it would behoove you all to
18 do as the previous lady asked, to cut and run. Cut
19 and run on ES&S. Cut and run. Thank you all.

20 CHAIRMAN OKESON: Anyone have any questions?

21 We have a motion and a second. All those in
22 favor signify by saying, "Aye."

23 VICE CHAIRMAN OVERHOLT: Aye.

24 MS. PYLE: Aye.

25 MR. CLAYTOR: Aye.

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

3 That concludes our business with the
4 Commission today. Is there a motion to adjourn?

5 MR. KING: So moved.

6 CHAIRMAN OKESON: Second?

7 MS. PYLE: Second.

8 CHAIRMAN OKESON: All those in favor?

9 VICE CHAIRMAN OVERHOLT: Aye.

10 MS. PYLE: Aye.

11 MR. CLAYTOR: Aye.

12 CHAIRMAN OKESON: So adjourned. Thank you.

13 (The Indiana Election Commission Public
14 Session was adjourned at 3:04 p.m.)

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1 STATE OF INDIANA

2 COUNTY OF MARION

3 I, Laurie Morgan, a Notary Public in and for
4 said county and state, do hereby certify that the
5 foregoing public section was taken at the time and
6 place heretofore mentioned between 1:30 p.m. and
7 3:04 p.m.;

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

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my notarial seal this 22nd day of
14 December, 2021.

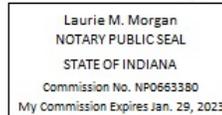
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Laurie Morgan

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19

My Commission expires:
January 29, 2023

20

Job No. 167897

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