

Indiana Election Commission

Minutes

January 22, 2002

Members Present: Dudley Cruea, Chairman of the Indiana Election Commission (IEC) S. Anthony Long, Vice-Chairman of the IEC; Butch Morgan; Eric Koch, Proxy for Joseph M. Perkins, Jr.

Members Absent: Joseph M. Perkins, Jr.

Staff Attending: Co-Director Laurie Christie of the Indiana Election Division (IED); Co-Director Spencer Valentine; Co-General Counsel Kristi Robertson; Co-General Counsel Dale Simmons; Michelle Brzycki; Lori Hershberger

Also Attending: Joseph Hero, Appellant; Brad Klopfenstein, Libertarian Party; Andy Klineman, Ice Miller; Phil Bayt, Ice Miller; Scott Chinn, City of Indianapolis; Patrick Cunningham, City of Indianapolis; Steve A. Clark, Henry County Democrat Chairman; Mark Stratton, Legislative Services Agency; Maureen Bard, Legislative Services Agency; Joel Miller; Tim Henderson, Indiana Democratic Party; The Hon. Ed Mahern, Indiana State Representative; Roger Chiabai, Lake County Republicans;;J. Justin Murphy, Lake County Election Board; William Dudley, 6th District Captain; Sally Lasota, Director, Board of Elections and Registration; Michelle R. Fajman, Supervisor, Lake County Board of Elections; James L. Wieser, Attorney, Lake County Democratic Party; Nancy Marcum, Henry County Voter Registration; Linda S. Ratcliff, Clerk of Henry Circuit Court; Phillicia J. Estridge, Henry County Commissioner; Tom Saunders, Henry County Republican Chair; Frank Kollintzas, City of East Chicago; Sherry M. Beck, Marion County Voter Registration; Allan Sutherlin, Legislative Demographics Supervisor.

1. Call to Order

The chair called the January 22, 2002 meeting of the Indiana Election Commission to order at 10:30 A.M. at the Indiana Government Center South, 302 West Washington Street, Training Center, Training Room 5, Indianapolis, IN 46204. He noted that proper notice of the meeting had been given, as required by state law, and that a quorum of the Commission members were present.

Copies of the meeting notice and agenda 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. Proposed Precinct Establishment Orders

The chair called on Ms. Lori Hershberger to speak on establishing precincts. She stated that several county precinct submissions had been reviewed by the Election Division and the

Office of Census Data, and technically in order. She identified them as Ohio County (11 precincts); Dearborn County (48 precincts); Decatur County (20 precincts); Fountain County (22 precincts); Franklin County (24 precincts); Jackson County; Johnson County (104 precincts); and Washington County (22 precincts). In response to a question from the chair, Ms. Hershberger stated that the previous questions and technical problems regarding these county precinct submissions had been resolved by IED and the Office of Census Data.

The chair asked if there were questions or comments from Commission members concerning Order 2002-17. Mr. Koch stated that in addition to the counties presented, Marion County was referred to in the proposed order, and asked if this was an error.

The chair noted that Ms. Hershberger had identified eight counties as having had their precinct submissions corrected, and that Marion County should not have been included in this order. Mr. Simmons noted that a separate order had been prepared for Marion County's precinct submission.

The chair moved, seconded by Mr. Koch, that Order 2002-17 be approved, with the references to Marion County being removed. The chair recognized Mr. Long for discussion on the motion. Mr. Long stated that he did not intend to vote for this motion until the issue of Marion County is resolved. He said that the Commission is treating Marion County different than other counties, and that Marion County is in an identical situation with these counties. He stated that the Commission has acted to block Marion County's duly enacted reprecincting plan, and that he would not vote for this motion until Marion County is dealt with and its plan passed. Mr. Morgan stated that would also abstain on this motion.

There being no further discussion, the chair called the question. With two members (Cruea and Koch) voting aye, and two abstaining (Long and Morgan), the motion failed. In response to a question from the chair, Ms. Robertson indicated that three affirmative votes were required for the Commission to take any official action.

The chair stated that he recognized the concerns expressed by Mr. Long and Mr. Morgan. He apologized to those counties with representatives present, since he had indicated to them that the Commission would consider their counties first since the Commission's consideration of Marion County was likely to be time consuming. The chair stated that since the Commission could take no action until Marion County was considered, the Commission would proceed to hear Marion County first.

The chair recognized Ms. Brzycki, who stated that Marion County has 749 proposed precinct establishment orders, which would result in 647 voting and two non-voting precincts. She indicated that the proposal had been reviewed by the Office of Census Data, and that changes have been made in response to technical review by that office.

The chair invited public comment on this proposal. He noted that he and Mr. Koch had not been present at the Commission's last meeting, at which five hours of testimony had been offered on the Marion County precinct proposal. The chair stated that he and Mr. Koch had not had the opportunity to review any minutes prepared from that previous meeting. He indicated that he would allow each side fifteen minutes to present new information to the Commission since the previous Thursday's meeting, and then would allow Commission discussion. Ms. Robertson administered the oath to those present who planned to testify before the Commission.

Mr. Phil Bayt (Ice Miller) testified on behalf of the Marion County executive, which was requesting that the Commission reconsider the Marion County reprecincting plan. He stated that during a recess that occurred before the end of the Commission's previous meeting, he conferred with representatives of both the Republican and Libertarian parties and invited them to participate discussions about the reprecincting plan and maps, and to provide suggestions to Marion County. He added that he repeated this invitation publicly in the Commission meeting before it recessed.

Mr. Bayt stated that after this meeting, Chief Deputy Mayor Mike O'Connor telephoned Dr. Borst of the Marion County City-County Council and invited Dr. Borst to provide suggestions and input. Mr. Bayt said that Mr. O'Connor had left several of Mr. O'Connor's telephone numbers in his message to Dr. Borst, but had not received a response from Dr. Borst at this time. Mr. Bayt stated that on Friday, Marion County had provided two separate letters identifying the county's request for resubmission, which were sent to all parties concerned. Mr. Bayt added that he had sent letters to Mr. Keeler and to Mr. St. Angelo of the Marion County Libertarian Party offering to provide them with information and seeking their input, and had copied Mr. Bock, who was representing the City-County Council. Mr. Bayt stated that he did not hear from anyone on Friday, Saturday, or Sunday.

Mr. Bayt indicated that on Monday, he telephoned Mr. Klopfenstein of the Libertarian Party, and had two meetings with him as a result, including one meeting which included Mr. St. Angelo, the Executive Director of the Marion County Libertarian Party.

Mr. Klopfenstein then stated that he and Mr. St. Angelo had received an opportunity to review and discuss these proposed precinct changes, and as a result are prepared to support the proposed precinct changes.

Mr. Bayt then stated that he had received a voice mail response from Mr. Matt Klein of Mr. Bock's office, indicating that since Mr. Bock was out of town and would not be available before today's meeting, his firm was not authorized to take any action on behalf of their clients without Mr. Bock's involvement. Mr. Bayt added that this morning he had received a voice mail message from Mr. Bock simply stating that he would not be present at today's meeting, and not offering any further information or suggestions.

Mr. Bayt testified that he had traded telephone messages yesterday with Mr. Keeler, the Republican Party county chair, and had delivered maps to him this morning. He noted that these were the same maps provided to Mr. Klopfenstein at his request. Mr. Bayt stated that as of this time, he has received no information, comments, or suggestions from Mr. Keeler regarding the precinct plan.

Mr. Bayt noted that in a letter from Mr. Keeler to the Co-Directors of the IED, Mr. Keeler questioned the accuracy of the "active voter" information in this submission, and questioned the accuracy of the Co-Directors' statements at the last Commission meeting concerning the compliance of the precinct plan with state law.

Mr. Bayt stated that the Co-Directors and the Office of Census Data have reviewed the plan, and recommended its adoption by the Commission in compliance with state law. He said that at the last Commission meeting, he believed that the Commission made statements on the record indicating that the precinct plan complied with state law.

Mr. Bayt stated that Mr. Keeler's letter concerning the accuracy of the active voter information identified one typographical error on one IEC-8 precinct submission form out of 649 submitted. He stated that this typographical error was an obvious one concerning the number of active voters in a precinct (1103 instead of 2206), and has been corrected. Mr. Bayt said that this error was not the basis for calling into question the veracity of the active voter numbers.

Mr. Bayt remarked that Mr. Keeler's letter had indicated that Ms. Sherry Beck of the Marion County Board of Voter Registration had testified at the last meeting regarding the accuracy of these numbers. Mr. Bayt stated that according to the record of the last meeting, this was not correct, and that she did not testify that these numbers were inaccurate. Mr. Bayt said that Ms. Beck had participated in several telephone conference calls with Marion County's voter registration vendor regarding the formula for computing the number of active voters in a precinct. Mr. Bayt stated that he and the others involved in these telephone calls had agreed on the methodology for computing active voters, and that these numbers had come from the Marion County Board of Voter Registration. Mr. Bayt stated that this information is accurate and was submitted appropriately, and that each and every precinct contains fewer than 1200 active voters.

Mr. Bayt said that the statements made by the Co-Directors at the last Commission meeting regarding the precinct plan's compliance with state law were correct, notwithstanding Mr. Keeler's letter, and that there is no reason to doubt the accuracy and veracity of the decision made by the Co-Directors.

Mr. Bayt stated that at the last meeting, Ms. Brzycki had testified that she had checked the number of registered voters in each precinct according to the submission, and that only when the number of registered voters exceeded 1200 did she investigate further. He noted that it is impossible for the number of active voters to exceed the number of registered voters in a precinct. Mr. Bayt remarked that as a result, she had not called into question any of the voter information contained in the IEC-8's, except for the obvious typographical error.

Mr. Bayt noted that in all of the other counties approved by the Commission, there had been no independent verification of the number of active voters, or independent review of the county's records. Mr. Bayt stated that no other county before the Commission has been held to the non-statutory level of scrutiny that Marion County has been. Mr. Bayt added that no other county has had as many precinct changes proposed as Marion County, or as much work (by both sides) in reviewing the plan.

Mr. Bayt said that Republican representatives have had all of the information filed with the Election Division and the Office of Census Data since December 21, 2001, and that during the month since, the Commission has not heard the first suggestion from them for any change to the plan. Mr. Bayt stated that it is inappropriate to hold Marion County to a different standard than that applied to other counties, or to Marion County itself in previous precinct submissions. Mr. Bayt requested that the Commission favorably consider Marion County's precinct proposal.

The chair asked Mr. Bayt if the plan presented to the Commission today was exactly the same as the one proposed December 21. Mr. Bayt responded that Marion County had not made any changes to the December 21 plan on its own initiative, but only in response to technical questions raised by the Office of Census Data and Ms. Brzycki. He added that the

changes made in response to these technical questions only affected 227 people out of 860,000 people in Marion County. Mr. Bayt said that the vast majority of these changes were the correction of “slivers” that did not contain any population and that only two or three precincts were involved where census blocks were required to be combined. Mr. Bayt stated that on the days that any of these technical changes were requested (January 15, 19, and 21), information regarding the changes were forwarded to Mr. Bock, the representative of the Republican Party, pursuant to a public records request.

In response to a question from the chair, Mr. Bayt stated that there are currently 917 precincts in Marion County, and would be 649 (not 749) if the precinct plan is adopted. The chair remarked that although Mr. Bayt claims that Marion County is unique in the amount of scrutiny, no other county in the state has taken such a drastic cut in the number of its precincts.

The chair stated that as a former circuit court clerk, he understood the logistics of trying to get out notices in a small county with 18,000 registered voters when two or three precincts were changed. The chair asked Mr. Bayt if he knew how many thousands of cards and notifications were going to need to be sent out to inform people about these changes. Mr. Bayt answered that routinely each year in Marion County, all registered voters receive a postcard telling them where their polling place is located. The chair responded that this procedure was not typical, and that in most counties, these notices were only sent to voters whose precinct had changed. Mr. Bayt said he understood that in 2002 each Marion County voter will receive a card, and that they would work with the circuit court clerk to see that this happens.

Mr. Long said he understood from the last meeting that although there were 269 precinct changes, that only 104 polling places would be deviating from what they were previously. Mr. Bayt answered that the plan called for 269 precinct combinations, but that about half of those precincts were already voting in the same polling places. He added that the plan made an effort to combine those precincts which were already voting in the same polling place.

Mr. Bayt stated that if the Marion County precinct plan is not adopted, there are more than one hundred instances where precinct lines will breach congressional and state legislative district lines, due to changes in the way that census blocks are tabulated and lines are drawn. Mr. Bayt remarked that there will be chaos and an extraordinary amount of work in either case, but that an appropriate, systematic approach to saving money and easing administration in adopting a plan that makes good sense and has been extensively reviewed by IED and OCD makes sense for Marion County voters.

The chair expressed his concern regarding exceeding the number of active voters. He noted that he had not read any of the testimony from the last meeting, but he understood that the formula for computing active voters did not come from the Board of Voter Registration, but came from the vendor.

Mr. Bayt responded that Marion County implemented a new voter registration software system in 1997, and that when an initial query is made in the system, a voter who was active at the time of the data conversion shows a March 4, 1997 registration date. He noted that Marion County, and other counties in Indiana, identify “active voters” in accordance with the National Voter Registration Act, which is broader and more inclusive than the definition of that term involved in the statutes governing reprecincting.

Mr. Bayt stated that it is appropriate to use the definition of active voter that relates to the reprecincting plan. He remarked that as a result of this anomaly, they had to work with the vendor, NTS Data Systems, to reconcile the difference between the definition of active voter in NVRA and the definition of active voter in the Indiana Code. Mr. Bayt said they had done so by including Sherry Beck and Cathleen Mullin and representatives of NTS in a series of telephone conference calls and read to them the statutory definition of active voter.

Mr. Bayt stated that this definition has a two-pronged test: the first prong of the test is that you were either registered or voted in any election during the preceding four years. Mr. Bayt indicated that we decided to be over inclusive and look at not just the prior four years from the date we were intending to file the plan, but should include the entire calendar year for the last four years, which would take us back to January 1, 1997. Mr. Bayt indicated that as a result of being over inclusive in this calculation, there would be no way to challenge the number of active voters under the plan. Mr. Bayt noted that as a result of the anomaly, every voter had a registration date of March 4, 1997, so the result was over inclusive, but they proceeded to use that formula.

Mr. Bayt added that the second prong of the test to determine an active voter is that any voter who has not voted in an election during the preceding four years, but had responded in writing to an address notification card, would count as an active voter. Mr. Bayt remarked that this group amounted to zero, since there were no such cards. He added that as a result of identifying the statutory definition to the vendor, the vendor created a formula that identified the number of active voters in each precinct. Mr. Beck stated that Marion County sent a letter to the Co-Directors on December 5, 2001 specifying the methodology by which active voters were counted. Mr. Bayt stated that this letter reflects exactly what was done, which was to count every voter who had registered or who had voted, and then to subtract out the duplicates so no one was counted twice. Mr. Bayt said that this process resulted in numbers that came from the vendor, to the Voter Registration Board, and then ultimately to Marion County. Mr. Bayt stated that this calculation was made using dates of January 1, 1997, March 5, 1997, and December 15, 1997, and that they chose to use the most inclusive methodology with the January 1, 1997 date. He added that this was the data supplied to the Marion County Board of Registration. He stated that he believed these numbers were accurate, and apologized for the one typographical error, which has been clarified and corrected on the record. Mr. Bayt concluded that he has received no response from the Commission or IED staff to his December 5 letter objecting to the methodology used to calculate the number of active voters.

The chair then recognized Mr. John Keeler, Marion County Republican Party Chairman, to present testimony in opposition to the precinct plan.

Mr. Keeler stated that Mr. Bock, the attorney representing the Marion County City-County Council, had been called away on business to Arizona and could not be present today. Mr. Keeler noted that less than a week ago, the Commission had conducted a five hour hearing regarding this matter, although two Commission members attending today were not present. He remarked that all of the Commissioners had stated that an excellent and thorough presentation had been made by both sides. He added that Commission members had opportunities to ask questions, and to observe the demeanor and judge the credibility of witnesses. Mr. Keeler noted that at the end of the day, the vote was a two-to-two tie, which prevented the Commission from moving on the Mayor of Indianapolis's plan to reprecinct Marion County, and to dramatically reduce the number of precincts.

Mr. Keeler stated that there was substantial disappointment with the lack of public input concerning the plan, and in fact the evidence was that there was no public input.

Mr. Keeler remarked that that reasonable people could differ regarding the accuracy of the methodology used to calculate the number of active voters under the plan. He indicated that while he did not know what the Commission members would indicate in their finding of facts in this matter, that he believed that the two Commission members who voted no on the plan had this concern in the back of their minds. Mr. Keeler noted that after this extensive testimony and reaching a tie vote, the Commission is back less than a week later with the same plan before it. Mr. Keeler asked the Commission what has changed.

Mr. Keeler stated that there has still been no public input on the plan. He said that last Friday Mr. Bayt delivered a letter to the Commission indicating that he was resubmitting the same plan on which there had been no public input before. Mr. Keeler stated that although there have been some last-minute telephone calls to various political leaders in Marion County to solicit their advice, he had received his call at 1:00 yesterday afternoon. He said that he had been out, and unable to respond until 7:00 last night. Mr. Keeler added that after he left his office at 9:30 this morning to attend this meeting, he received a set of maps that he had been promised for at least 21 days. Mr. Keeler stated that there had been no opportunity to reach out to neighborhood groups and community groups regarding this plan. He stated that this may explain why two of the Commission's members voted against this plan. Mr. Keeler said that with no public input, and no investigation of the active voter issue, a second plan is now before the Commission.

Mr. Keeler said that he believed that both the Commission members who voted against, and those who voted in favor of the precinct plan gave serious consideration to the testimony offered at the last Commission meeting by Marion County circuit court clerk Sarah Taylor, who is responsible for administering elections in Marion County. He characterized her testimony in summary that it would be impossible or extremely difficult to conduct an election in May 2002 if precinct changes are made now.

Mr. Keeler noted that tomorrow marked the beginning of the filing period for precinct committeemen and delegates to state convention, and that if the Commission overrode its action of less than a week ago, the Commission would put Ms. Taylor in an impossible position since these candidates would not know which precincts they live in and Ms. Taylor would not be able to administratively deal with this in a timely basis.

Mr. Keeler urged that the Commission defer consideration of the resubmitted plan from last Friday until the Commission members are present who heard the evidence offered at last week's hearing, and after the Commission conducts a thorough investigation of the active voter issue.

Mr. Keeler closed by presenting two witnesses to the Commission: Ms. Sherry Beck of the Marion County Board of Voter Registration and Mr. Allan Sutherlin, Legislative Demographics, to address the active voter issue and the conference telephone calls testified to by Mr. Bayt.

Mr. Long asked if any representative from the Republican Party or any member of the Marion County City-County Council had contacted Mr. Bayt or go to the Mayor's office to try to have some communication. Mr. Keeler responded that he had no personal knowledge regarding that any member of the City-County Council did, and that he had received the

letter and voice mail messages he discussed earlier asking if the Republican Party had any suggestions. He added that he and Mr. Bayt had been trading voice mail messages since that time, and had no opportunity to communicate.

Mr. Long responded that the Libertarian Party, whom he assumes has far less assets and members than the Republican Party in Marion County, have had the time, energy and resources to review the plan, while the Republicans have not.

Mr. Keeler responded that when Mr. Bayt telephoned him at 1:00 yesterday afternoon, Mr. Bayt merely indicated that he would make maps available to Mr. Keeler, and that Mr. Keeler was not invited to any meeting. He added that he did not receive these maps until approximately 9 or 9:30 this morning.

Ms. Sherry Beck testified to the Commission that she was the Republican member of the Marion County Board of Voter Registration. In response to a question from Mr. Morgan, Ms. Beck stated that she had taken the oath for witnesses.

Ms. Beck stated that based on her recollection, she would like to respectfully disagree with Mr. Bayt's testimony regarding the meeting that occurred between Mr. Bayt and Republican representatives and any agreement regarding the formula used to identify active voters.

Ms. Beck said that they did meet with Ms. Cathleen Mullin in the County Voter Registration office regarding the 1997 date in Marion County's software system. She remarked that Marion County did not change its software system in 1997, but had added an upgrade to permit signatures to be scanned into the system. Ms. Beck noted that for the last ten or twelve years, Marion County Voter Registration had scanned the voter registration affidavit, but with this upgrade the voter's signature could also be scanned and added to the poll book. Ms. Beck said the question came up as to whether all of these voters had registered in 1997. She said that she responded no, that her own record would show that she had a long voting history although the main screen indicates her registration date is 1997. Ms. Beck said that the Commission had asked if her county chairman was aware of her voting record, and that she had answered that her county chairman was aware of it, and knew that it was longer than since 1997.

Ms. Beck stated that she was not a part of any discussion with Mr. Bayt and the vendor regarding the formula for computing active voters, and was merely asked about the 1997 date.

Ms. Beck remarked that although Mrs. Taylor, the Marion County clerk, is responsible for putting on the election, until Marion County Voter Registration Board gets all of this information into the Registration Board's software system, Mrs. Taylor can't do anything.

Ms. Beck stated that shortly after the state Election Administrators Conference in December 2001, she asked Ice Miller, through Cathleen Mullin, her Democratic counterpart in the Registration Board, to provide NTS, Marion County's software vendor in New York, with a disk that would at least layer the house, senate, and congressional district lines on Marion County's old precincts so that we could be prepared. She added that as of this date, Ice Miller has not provided a disk that is compatible with Marion County Voter Registration's system. She said that as a result, Marion County is already behind, and this project must be completed before anything else is done.

Ms. Beck said that when Marion County receives any new precincts, the combined precincts will not be a difficult problem for the Board of Voter Registration. She stated that in contrast, those precincts which are redrawn to move a few census blocks in or out of the precinct will require the Board of Voter Registration to manually reassign voters in these areas to their new precincts and make certain that all the district information is correct concerning those voters. Ms. Beck said that in these cases, the Board will have to draw new precinct lines on a street map to ensure that all the voters affected by the redrawn lines are included in their new precinct. Ms. Beck stated that although the Board of Registration is short staffed by three members, they will do their best to make any changes. She cautioned that the process is fraught with the possibility for error, and that despite their best efforts there will be errors on election day and terrible problems for the clerk, Mrs. Taylor.

In response to a question from the chair, Ms. Beck stated that she does have concerns that under the proposed precinct plan, there are more than the legal limit of 1,200 voters in some precincts. She added that she has reviewed some of the proposed precincts, and has run a report listing the number of active voters. She stated that she recognized that there is a difference between the definition of active voter under NVRA and the definition of active voter to be used in redrawing precincts, but that her information indicated that there were several proposed precincts which would contain more than 1,200 voters. She added that she had provided that information to Mr. Bock, and was sorry that he was not here today to present it. She indicated that perhaps Mr. Sutherlin could testify regarding the information regarding these specific precincts.

Ms. Beck noted that the Registration Board is required to contact every voter in Marion County since the county now contains three congressional districts and all new state legislative district lines. She stated that as of this morning, Marion County has 534,000 active voters, according to NVRA, who must be notified regarding their new precinct and polling place and new legislative districts. She noted that the Voter Registration Board still has to add on the layer of school district election lines. Ms. Beck stated that this will be a very difficult task for Marion County to complete before May 2002.

Mr. Long asked if the information Ms. Beck had provided to Mr. Bock regarding proposed precincts that exceeded 1,200 active voters had been provided to Ms. Brzycki or to Ms. Christie or her staff for technical review. Ms. Beck responded that no, she had not, that she had just been introduced to Ms. Brzycki this morning, and had not provided this information to other Election Division staff.

Mr. Morgan asked if Ms. Beck had provided this information to the Mayor's office. Ms. Beck responded that no, she had not done so. Mr. Morgan asked why Ms. Beck had not shared this information with anyone other than Mr. Bock. Ms. Beck responded that Ms. Mullin was aware of the numbers being used, and that Ms. Beck was not a part of the redrawing of the precincts. She added that Ms. Mullin had the same opportunity to run these lists, and that she assumes that Ms. Mullin did so for Ice Miller. Ms. Beck stated that she did not feel any need to do this, and apologized if that was wrong. She stated that this information was public information, and available in the Board of Registration office for anyone to look at.

Mr. Long stated that his reason for asking was to determine whether we were more concerned with finding and fixing the problem or with having objections to the plan. He said that the priorities troubled him as much as anything.

Ms. Beck responded that she understood his point, and apologized to any attorneys present at the meeting. She added that whatever was decided, it will be next to impossible for Marion County Board of Registration to input all of this data, provide it to Mrs. Taylor, and inform these 534,000 voters of Marion County in a timely fashion in which new districts they are located. The chair noted that Ms. Beck's letter was dated today.

The chair recognized Mr. Bayt, who asked that since counsel at the Commission's previous meeting was allowed to ask questions to those who gave testimony, if he could also be extended that courtesy today. There was no objection, and the chair granted five minutes to Mr. Bayt for that purpose.

Mr. Bayt thanked Ms. Beck for her testimony, and asked whether due to the changes in congressional district lines and state legislative district lines that notices will have to be sent to all voters in Marion County anyway. Ms. Beck responded that this is correct.

Mr. Bayt asked whether due to these changes in legislative district lines, precinct boundaries had to be redrawn and combined to match census block lines, and that the change in legislative district lines would cause a lot of work for the Board of Registration anyway. Ms. Beck responded that doing the mailing is not the problem, it is getting the information into the county's software first in order to be able to generate a mailing.

Mr. Bayt asked if Mr. Bock has offered up 104 instances in which precincts had to be recombined as a result of census block changes, which would cause a problem to anyone, no matter what. Ms. Beck responded certainly.

Mr. Bayt asked, with respect to the active voters, when Ms. Beck reviewed the active voter list and came to the conclusion that there could be some precincts with more than 1200 active voters, what list did Ms. Beck look at, and how did Ms. Beck determine this information. Ms. Beck responded that she ran a list of what Marion County calls active voters. In response to a follow up from Mr. Bayt, Ms. Beck responded that she ran this list using the NVRA definition of active voter.

Mr. Bayt asked if Ms. Beck was aware of the Indiana statute that defined active voter for the purposes of reprecincting, and if so, whether Ms. Beck had modified the report listing active voters as defined by NVRA to reflect the Indiana statute. Ms. Beck responded that she was aware of this statute, but that the list was not provided to her. She added that she presumes the list was provided to Mr. Bock. In response to a follow up from Mr. Bayt, Ms. Beck states that she did not modify this active voter report to conform with this Indiana statute.

Mr. Bayt asked if Ms. Beck had ever provided a copy of the report listing these active voter numbers to Mr. Bayt, or to anyone in the Mayor's office, or the Corporation Counsel's office. Ms. Beck responded that she did not do so.

Mr. Bayt asked Ms. Beck who she had provided this report to. Ms. Beck responded that she had provided the report to Mr. Bock and Mr. Klein's law firm. She added that she had not been retained by anyone to do this. Mr. Bayt stated that he understood and appreciated this.

The chair asked Ms Beck if Mr. Bock and Mr. Klein had requested that list from Ms. Beck. Ms. Beck responded that they did not.

The chair recognized Mr. Allen Sutherlin for five minutes to ask questions.

The chair recognized Mr. Morgan, who asked if Mr. Sutherlin has a contractual or fiduciary relationship with the Indiana Election Commission. Mr. Sutherlin responded that the firm he is employed by does have such a relationship. In response to a follow up from Mr. Morgan, Mr. Sutherlin stated that the contract is over, but that the firm provided technical support for the system that was used to analyze these precincts.

Mr. Morgan asked the Co-General Counsels or Co-Directors if this contractual relationship would interfere with Mr. Sutherlin's testimony in this matter.

Mr. Valentine stated that he would defer to counsel as to the legal issues, but that as a co-director, he has a problem if Mr. Sutherlin has active voter numbers that differs from the numbers before the Commission, since Mr. Sutherlin has not provided the Indiana Election Division with that information.

Mr. Long stated that is Mr. Sutherlin is a contractor with the Commission, and if he has numbers generated by the system that differ from the numbers the Commission received from the system, he would like to hear about that. Mr. Long added that if this is the case, then the State of Indiana may well have a civil action against this firm due to negligence.

Mr. Simmons stated that with any witness testimony, that the witness's background, relationships, and knowledge is relevant in judging the credibility of any witness, and it would be appropriate for the Commission to do so in this case if it so chooses.

Ms. Robertson stated that she did speak with Ms. Brzycki, the staff member who reviewed Marion County, and that Ms. Brzycki was not consulted by Legislative Demographics regarding this review of the precinct information.

Mr. Long asked what the Election Division paid Legislative Demographics to do. Ms. Brzycki responded that Legislative Demographics provided the Autobound software used for the reprecincting aspects of the Division's geographic information system (GIS). She added that Legislative Demographics was also available for technical assistance if there were problems with importing data into the program.

In response to a question from Mr. Long, Ms. Brzycki responded that this was the program, among others, that she used in her review of Marion County's precincts. She clarified that this program had not been built by Legislative Demographics, but had been recommended by and acquired through them.

Mr. Koch stated that he did not know what Mr. Sutherlin's testimony would be about, but that Mr. Koch doubted that the contractual relationship for software or technical assistance has anything to do with the calculation of active voters.

Mr. Sutherlin proceeded to testify. He identified himself as representing Legislative Demographic Services, a Delaware corporation, located in Fairfax, Virginia. Mr. Sutherlin stated that he was asked by the majority caucus of the Marion County City-County Council to review information regarding the proposed precinct boundary change plan submitted for

Marion County. Mr. Sutherlin stated that his goal was to analyze numbers. He said that following the Commission hearing last week, he had a conversation with Marion County's voter registration system vendor to obtain numbers to analyze the question of active voters. He indicated that he had been asked for this information since there appeared to be discrepancies between the registration rolls and information indicating that some of the proposed precincts contained more than the 1200 active voters prescribed by state law. Mr. Sutherlin stated that his goal was not to become an advocate, but merely to perform analysis at that point.

Mr. Sutherlin said that he returned to Indianapolis about 6:30 last night, and obtained a copy of a data run that was performed by NTS Data Services, Marion County's voter registration vendor. He noted that NTS had provided a spread sheet setting forth the numbers described in Mr. Bayt's letter, and a column of numbers that had been provided to Ice Miller in constructing Ice Miller's plan.

Mr. Sutherlin stated that he had worked the numbers, without a great deal of time this morning, and identified two precincts which appeared to have a problem. He added that immediately before this meeting, he had advised Ms. Christie that these two precincts appeared to have an error. Mr. Sutherlin stated that he did not know in how many precincts in Marion County this error might exist. He stated that he understood that it was the policy of the Commission and the Election Division to accept the numbers provided by the counties as being accurate and true representations concerning active voters. He remarked that if there is no information to the contrary, there is no reason to challenge that, and that this had been the traditional approach taken.

Mr. Sutherlin said that in this case, however, there may be a need to do some additional research. He identified the two precincts he had found as Wayne Precinct 40 and Wayne Precinct 23. Mr. Sutherlin stated that based on the numbers provided on the secondary run, he eyeballed the data, and thought that there might be a problem. He said that in Wayne Precinct 23, based on the NTS calculation, there were 1283 active voters, and that in Wayne Precinct 40, there were 1551 active voters. He stated that he believed the math he did this morning is correct, and that there may be a need to do additional analysis on this issue.

Mr. Sutherlin stated that he had provided technical support to the Commission in doing their analysis. He added that he is retained by a number of clients throughout the State of Indiana for redistricting purposes. He said that in the last decade, he had participated in reprecincting in Marion County on two different occasions, and is familiar with the precincts there.

Mr. Long requested to see the hard copies concerning these two precincts.

Mr. Bayt was recognized by the chair to question Mr. Sutherlin. Mr. Bayt asked whether he or his firm are personally engaged by the Republican caucus of the Marion County City-County Council for any work. Mr. Sutherlin responded that he is currently anticipating a contract, but is not under contract at this moment. He stated that he anticipated that he will be involved in the Marion County redistricting process.

Mr. Bayt asked if Mr. Sutherlin or his firm had personally been involved in the past with re-precincting in Marion County. Mr. Sutherlin responded that yes, that in the 1990's he had performed this service twice. He added that his primary goal had been to analyze the number of active voters, and to identify precincts which had gone over this number. Mr.

Sutherlin said that in only three or four cases had the county combined precincts as part of this process. He stated that it was very important to note that this work was very administrative, and that met with both Democratic and Republican members of the County Election Board to reach an agreement with the changes proposed at that time. He said that these proposed changes were then taken to the county chairmen and the other interested parties involved. He noted that only after that point were the plans submitted to the Corporation Counsel, who prepared the documents for the Marion County executive. Mr. Sutherlin stated that the process was different since it was administrative, and very open.

In response to a question from Mr. Bayt, Mr. Sutherlin said that this process did not occur at a public meeting, although information about the proposed changes was provided to members of both parties, including ward chairmen. He added that he did not attend any public hearing regarding the changes.

Mr. Bayt asked about Wayne Precinct 40. He stated that his records indicating that this proposed change was merely a renumbering of the precinct formerly designated Wayne 38, and that there was no change in the precinct's boundaries. Mr. Sutherlin responded that he was at a disadvantage here, but believed that the precincts referred to were the "old" Wayne Precinct 40, the "old" Wayne 43, and "old" Wayne Precinct 69.

Mr. Long noted that the documents Mr. Long was reviewing indicated that there were 1500 voters in a precinct with 1320 voters in it. He added that the documents for another precinct indicated that the precinct contained 776 registered voters, while Mr. Sutherlin indicates that there are 1283 voters. Ms. Brzycki stated that she would not be able to look at information concerning old numbers. Mr. Sutherlin remarked that this information was based on the electronic file provided on December 21.

Mr. Bayt stated that the combination, based on the NTS data run, adds up to 794 active voters. Mr. Sutherlin responded that this was entirely possible since the NTS data run provided to him last night contained different numbers than the run provided previously to Mr. Bayt.

Mr. Bayt asked Mr. Sutherlin if he had asked the vendor to generate the current active voter list based upon the NVRA data, or to run the data that is consistent with the formula set forth in the statute concerning active voters. Mr. Sutherlin responded that he asked for the active voters whose registration date occurred in the last four years, plus those voters who were registered prior to that period of time who had participated in any election during the last four years. In response to a follow up from Mr. Bayt, Mr. Sutherlin responded that the duplicates were subtracted.

Mr. Bayt asked if Mr. Sutherlin would provide him with that information. Mr. Sutherlin agreed to do so. Mr. Bayt stated that one more than one occasion, NTS had provided information that Mr. Bayt believed to be accurate that is inconsistent with Mr. Sutherlin's information.

Mr. Bayt asked who Mr. Sutherlin had spoken to with regard to this information. Mr. Sutherlin responded that he had participated in a conference call with Mr. Bock and with Mr. Matt Biandi, Vice-President of Software Development Services at NTS.

Mr. Bayt asked how this information had been transmitted. Mr. Sutherlin responded that this information had been transmitted to Mr. Bock's law firm by email, and that the law firm had provided the information to Mr. Sutherlin.

Mr. Long stated that he did not understand how Mr. Sutherlin can tell the Commission, based on old precincts, that his analysis is that there is something wrong with the new precincts. Mr. Sutherlin responded that when you overlay the electronic files provided by the Mayor's office with the current Marion County precinct map (that is used for redistricting and represents the administrative precincts accurately), and you ask the software to provide you with a listing, then if a precinct is not broken, and is combined entirely, the report will indicate that. He stated that the report he was looking at indicated that these three precincts were combined entirely.

Mr. Bayt stated that he has examined the data, and with respect to those three precincts, the numbers provided to Mr. Sutherlin are identical with the numbers he was provided by NTS, and indicate that the numbers are 250, 397, and 147, for a total of 794. Mr. Sutherlin asked whether Mr. Bayt combined only the active voters prior to reapportionment. Mr. Bayt responded that he had used the 1-1-97 column, which is the inclusive number, and that he did not add all the columns up, just the left hand column. Mr. Sutherlin stated that according to the information provided, column #1 only indicates the registered voters in the last four year.

Mr. Bayt stated that the methodology set forth in his December 5 letter is contained in the left column, and that the other columns reflect incorrect start dates for the list. He noted that the second column reflects a start date of March 5, 1997, and the third column a start date of December 15, 1997, and apologized if Mr. Sutherlin had gotten that confused.

Mr. Sutherlin stated that he is reading the description set forth in black and white, and that there is enough confusion at this point.

Mr. Bayt asked Mr. Sutherlin to identify the other precinct combination he had mentioned. Mr. Sutherlin responded that this was Wayne Precinct 23 and Wayne Precinct 74. Mr. Bayt said that the second combination referred to adds up to an active voter count of 650. Mr. Bayt asked if Ms. Brzycki could examine the voter registration population of these precincts and confirm that the number of active voters could not possibly exceed 1200.

Mr. Bayt asked the Commission to examine new Wayne Precinct 65, which was the first combination spoken of. Mr. Bayt also called the Commission's attention to Wayne Precinct 55.

Mr. Sutherlin stated that reasonable doubt had been raised in his mind regarding these numbers. He remarked that if there was an opportunity to physically examine the voter file, and actually examine the registration records in that file, it might be able to be resolved. He said that he was dealing with data that he did not create and with a definition provided to him in an email from Mr. Biandi. He indicated that Mr. Bayt's count appeared to be under 1200 active voters, but that he was only responding to the data that he was provided. Mr. Sutherlin added that he was responding to questions raised regarding this data by Marion County Board of Registration staff. He stated that he still has unresolved questions after examining a couple of these precincts.

In response to a question from Mr. Long, Ms. Brzycki stated that her calculations for Wayne Precinct 65 showed that this precinct contained a voting age population of 600. She noted that voting age population was different than “active voters”, but would provide the Commission with information on that point.

The chair asked why Wayne Precinct 65 was relevant since the only precincts involved in this discussion were Wayne 40 and Wayne 23. Ms. Brzycki stated that the proposed Wayne Precinct 65 is a combination of the existing Wayne 23 and Wayne 74.

In response to a question from Mr. Bayt, Mr. Klineman stated that on the electronic map, the new precinct formed from combining Wayne Precinct 23 and Wayne Precinct 74 would be designated as Wayne Precinct 55. Mr. Klineman stated that new Wayne Precinct 65 would be a combination of the current Wayne Precinct 40, Wayne Precinct 43, and Wayne Precinct 69.

The chair and Mr. Long said that they had just been told that the new Wayne Precinct 65 would consist of Wayne Precinct 23 and Wayne Precinct 74, and that this was totally different. Ms. Brzycki stated that the Election Division’s program does not identify the combination as Wayne Precinct 55, but gives it a different number, which makes the process confusion. She added that she had a chart

In response to a question from Mr. Long, Ms. Brzycki stated that the precinct containing a voting age population of 600 was Wayne Precinct 23, not Wayne Precinct 65. She added that when old Wayne Precinct 23 and old Wayne Precinct 74 had been merged under the proposed plan, they retained the name of Wayne Precinct 23. She stated that this area contains 600 people who are eighteen years of age or older. Mr. Long then asked for clarification regarding old Wayne Precincts 69, 40, and 43.

Mr. Sutherlin stated that there seems to be huge confusion. He said that the information provided by the vendor, NTS, has confused all of us, since the numbers provided do not correspond with the numbers Marion County has used. Mr. Sutherlin said that the lack of communication between election staff is fraught with huge dangers for the county as it goes forward into a primary election. He stated that there is such confusion involving a number of precincts that he has a lot of fear about whether this can all come together.

Mr. Bayt stated that it is fairly easy for someone to stand up and throw numbers around that do not match with information provided and information not provided to staff and get things confused. He apologized if Mr. Sutherlin is confused, but he believes that the data provided by staff is accurate.

In response to Mr. Long’s earlier question, Ms. Brzycki stated that the precinct has a voting age population of 1,629, which is not a reflection of the number of active voters.

Mr. Morgan asked if Mr. Sutherlin believed that the NTS numbers are a mistake. Mr. Sutherlin responded that the numbers differ and he did not understand why they differ. He added that the calculation appeared to have been based on the methodology explained in their cover memo, and that NTS is Marion County’s vendor.

Mr. Morgan asked who requested that this information be sent to Mr. Bock’s office, meaning was it Mr. Sutherlin or Mr. Bock who made this request. Mr. Sutherlin responded that he had participated in a conference call in which he had asked for a copy of the data

that was provided to Mr. Bayt. He added that when NTS performed the data run, the information was provided to Mr. Bock as the lawyer, and that Mr. Bock provided this information to Mr. Sutherlin. In response to a follow up from Mr. Morgan, Mr. Sutherlin indicated that this call had occurred after the Commission's last meeting.

Mr. Morgan then asked Ms. Beck whether Marion County was disputing its own vendor's numbers. She responded no, but the answer is not clear because the process is like a poll since the result depends on how you ask the question, and the results can be skewed. She said she did not know what formula was used when Mr. Bayt asked Marion County's vendor for figures, and she is not exactly sure what Mr. Bock asked their vendor. Ms. Beck said that she is not disputing the NTS numbers at all, but that she is not sure what was asked of them. In response to a question from Mr. Morgan, Ms. Beck stated that NTS has been Marion County's vendor for approximately ten years.

Mr. Long noted that the summary statement for Wayne Township Precinct 40 shows 1,320 registered voters. He stated that it would take an astronomically high turnout to get 1,200 voters. He added that he did not see where Mr. Sutherlin gets 1,551 active voters in a precinct with 1,320 voters. Mr. Long thanked Ms. Brzycki for providing this information.

The chair then closed discussion on Marion County. The chair stated that he was very concerned on voting on this proposal since he was not at the last Commission meeting, which included five hours of testimony. He said that he did not know what had been discussed, and how the Commission members decided to cast their votes. The chair stated that he also had great concerns since Ms Taylor was not here today so that he could hear more about what her concerns are. The chair remarked that reducing 914 precincts to 649 precincts will cause chaos tomorrow when filing begins tomorrow for precinct committeemen candidates. He expressed his concern regarding the different figures that the Commission is receiving for different precincts, and that more investigation is needed into the issue of active voters.

The chair said that during his ten years of service on the Commission, he has never seen a county come forward proposing such a drastic change in the number of precincts, and that this may have been a concern of the Commission members at the last meeting. The chair noted that the city-county council lines do not need to be redrawn until the end of December, and the Commission can examine this further after the November 2002 election. He indicated this would give the Marion County clerk's office more time to send out these notices to all Marion County voters. The chair said that not hearing from the attorney, or anyone else who testified in opposition to the plan at last Thursday's meeting, he did not see how he could vote to change the decision the Commission made the previous Thursday.

Mr. Long stated that he has been very critical of the process, which was very similar to the process that was not acceptable in LaPorte County a couple of years ago. He noted that the Commission members had got to see their quotes on the board regarding that. He stated that the Commission should be consistent, since the Commission sent that proposal back to the LaPorte County Board of Commissioners to give the Board an opportunity to send the precinct plan back to this Commission after review the comments from the opposition party. He said that the Board of Commissioners chose not to send the precinct plan back.

Mr. Long stated that the plan from Marion County before the Commission today has passed Office of Census Data review, after having passed Ms Brzycki's review, and that the plan had been returned after changes were made. He said that with regard to chaos, he

understood that Marion County had more than one hundred breaches of congressional and state legislative district lines. Mr. Long remarked that chaos would be personified since the Marion County clerk would have to make decisions within these precincts as to which state legislators the voters would vote for, and that the chaos will be catastrophic and will shut down the election for state senators and state representatives in Marion County.

Mr. Long stated that this precinct plan complies with state law and has been certified to the Commission by both co-directors after review by everyone who needs to review it. He said that the Commission was given additional days for input following the vote at the last Commission meeting, and that one party chose to have input and the other party did not. He remarked that it is tantamount to a breach of the Commission's public responsibility not to pass this plan. He stated that any problems or excesses in precincts can be amended at any time until a year before the next decennial census, and that a precinct plan is needed that complies with the congressional and legislative district lines in the most populous county in Indiana. Mr. Long stated that the Commission is not doing its duty to allow this political football to again stalemate this Commission.

Mr. Long moved that the Commission adopt the order approving the Marion County precinct plan. Mr. Morgan seconded the motion.

There being no further discussion, the chair called the question. With two members (Long and Morgan) voting aye, and two voting nay (Cruea and Koch), the motion failed.

Mr. Long said that he had enjoyed the day, but that he would not waste any more of his time, and was leaving.

3. Adjournment

The chair stated that seeing no quorum, the Commission would have to adjourn the meeting. The Commission then adjourned at 12:30 p.m.

Respectfully Submitted,

J. Bradley King
Co-Director

Kristi Robertson
Co-Director

APPROVED:

Brian L. Burdick
Chairman