

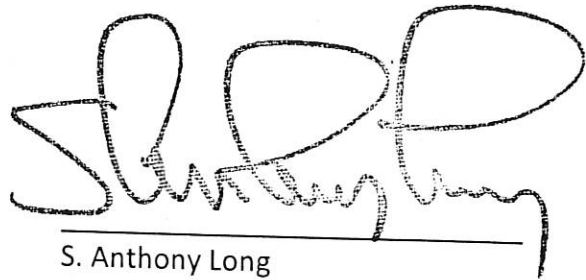
APPOINTMENT OF PROXY

THE UNDERSIGNED, S. Anthony Long, a member of the Indiana Election Commission, ("Commission") hereby appoints Mike Claytor as his Proxy of Record, pursuant to Indiana Code IC 3-6-4.1-8, to act on his behalf as follows:

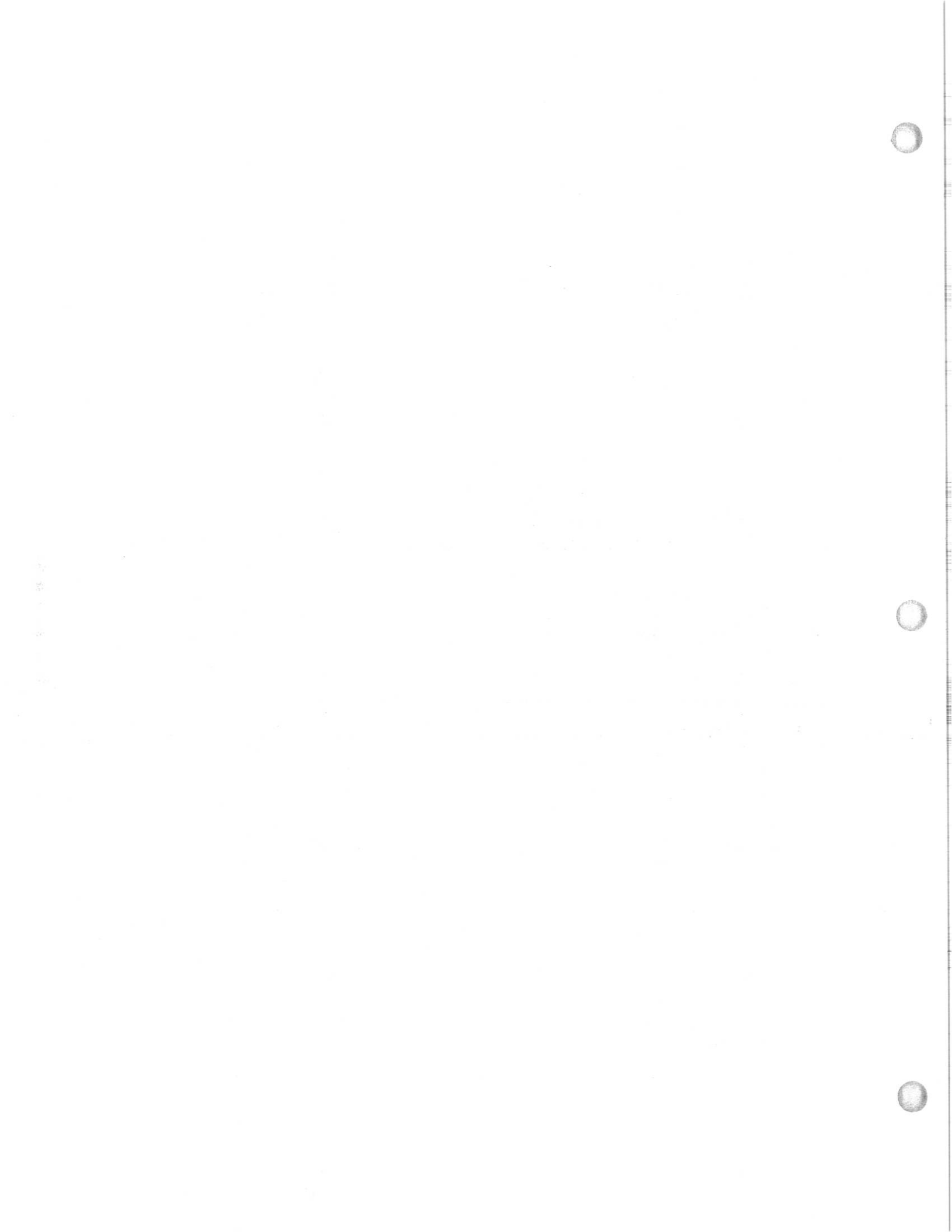
1. To attend the public meeting of the Indiana Election Commission on February 10, 2017.
2. To serve as a full voting member of the Commission on that date during the Commission's consideration of any matter.

This Appointment of Proxy expires at the adjournment of the February, 10, 2017, Commission meeting.

Date: February 2, 2017

A handwritten signature in black ink, appearing to read 'S. Anthony Long', written over a horizontal line.

S. Anthony Long
Member, Indiana Election Commission





STATE OF INDIANA

Indiana Election Division

J. Bradley King, Co-Director
Angela M. Nussmeyer, Co-Director

Indiana Election Division
302 West Washington Street, Room E204
Indianapolis, Indiana 46204-2767
Phone: (317) 232-3939
Fax: (317) 233-6793

**INDIANA ELECTION COMMISSION
PUBLIC SESSION NOTICE**

**Indiana Election Commission
Indiana Government Conference Center South
402 West Washington Street
Conference Center Room 2
Indianapolis, Indiana 46204
Friday, February 10, 2017, 1:00 p.m. EST**

The Indiana Election Commission will convene a public meeting at 1:00 p.m. EST on Friday, February 10, 2017, at Indiana Government Center South Conference Center Room 2, 402 West Washington Street, pursuant to Indiana Code 5-14-1.5-5.

For more information contact:

Angie Nussmeyer, Co-Director, Indiana Election Division, (317) 232-3939
Dale R. Simmons, Co-General Counsel, Indiana Election Division (317) 232-3939

Notice posted in accordance with IC 5-14-1.5 on January 27, 2017



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INDIANA ELECTION COMMISSION PUBLIC SESSION AGENDA

Indiana Government Conference Center South
402 West Washington Street
Conference Center Room 2
Indianapolis, Indiana 46204
Friday, February 10, 2017, 1:00 p.m. EST

1. Call to order and determination of quorum;
Introduction of members and staff (*Chairman Bennett*)
2. Documentation of compliance with Open Door Law (*Ms. Nussmeyer and Mr. Simmons*)
3. Campaign finance settlement agreements (*Ms. Thompson and Ms. Taylor*)
4. Voting System Technical Oversight Program recommendation regarding Election Systems & Software, LLC engineering change orders
5. Voting System Technical Oversight Program report and recommendation regarding Hart InterCivic, Inc. testing plan pursuant to Resolution 2016-3
6. Voting System Technical Oversight Program progress report regarding Dominion Voting Systems, Inc. under Resolution 2016-1
7. Adjournment



Indiana Election Commission

Minutes

February 10, 2017

Members Present: Bryce H. Bennett, Jr., Chairman of the Indiana Election Commission (the Commission); Michael A. Claytor, as proxy for Vice Chairman of the Commission S. Anthony Long; Suzannah Wilson Overholt, member; Zachary E. Klutz, member

Members Absent: S. Anthony Long, Vice Chairman of the Commission

Staff Attending: Angela Nussmeyer, Co-Director of the Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Dale Simmons, Co-General Counsel of the Election Division; Matthew Kochevar, Co-General Counsel of the Election Division; Patrick Becker, Special Projects.

Also Attending: Dr. Jay Bagga; Dr. Bryan Byers; Aniketh Ramname; Ian Piper, Dominion Voting Systems; Kyle Conrad, GBS; Paula Lantz, White County Clerk; Laura Cosgray; Wendy Hudson, Elkhart County Clerk; Christopher Anderson; Christa Coffey, Tippecanoe County Clerk.

1. Call To Order

The Chairman called the February 10, 2017 meeting of the Commission to order at 1:00 p.m. in the Indiana Government Center South, Conference Center Room 2, at 402 West Washington Street, Indianapolis, Indiana.

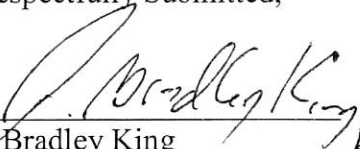
2. Transaction of Business

The Commission proceeded to transact the business set forth in the Transcript of Proceedings for the meeting prepared by Lisa C. Pierce of Connor Reporting. This document is incorporated by reference into these minutes, with the following corrections.

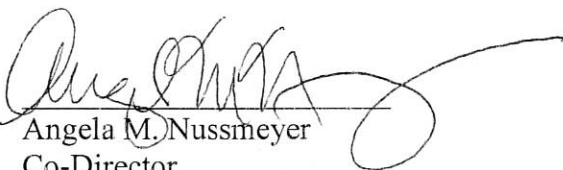
- Page 7, Line 12, replace "3410" with "3.4.1.0"
- Page 9, Line 20, replace "IDC" with "IED"
- Page 10, Line 24, replace "3rd" with "30th"
- Page 12, Line 11, replace "ECUs" with "ECOs"
- Page 13, Line 24, replace "State" with "straight"
- Page 13, Line 25, replace "State" with "straight"
- Page 14, Line 9, replace "State" with "straight"
- Page 14, Line 20, replace "off" with "op"
- Page 17, Line 9, replace "then tech" with "they intend"
- Page 35, Line 4, replace "GPS" with "GBS"

Page 37, Line 22, replace "VREs" with "DREs"
Page 37, Line 23, replace "ob" with "op"
Page 37, Line 25, replace "DR" with "DRE"
Page 41, Line 25, replace "Lance" with "Lantz"
Page 42, Line 2, replace "Lance" with "Lantz"
Page 42, Line 12, replace "Lance" with "Lantz"
Page 43, Line 3, replace "Lance" with "Lantz"
Page 43, Line 6, replace "Lance" with "Lantz"
Page 43, Line 8, replace "Lance" with "Lantz"
Page 43, Line 13, replace "Lance" with "Lantz"
Page 43, Line 17, replace "Lance" with "Lantz"
Page 43, Line 21, replace "Lance" with "Lantz"

Respectfully Submitted,

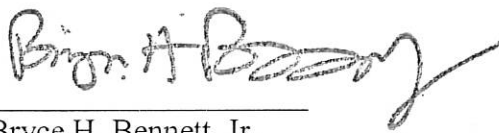


J. Bradley King
Co-Director



Angela M. Nussmeyer
Co-Director

APPROVED:



Bryce H. Bennett, Jr.
Chairman

In the Matter Of:

INDIANA ELECTION COMMISSION HEARING

TRANSCRIPT OF HEARING

February 10, 2017



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Transcript of Hearing
February 10, 2017

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INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted on: February 10, 2017

Conducted at: Indiana Governmental Center
402 West Washington Street
Conference Room 2
Indianapolis, Indiana 46204

A Stenographic Record By:
Lisa C. Pierce

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A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

Mr. Bryce Bennett - Chairman
Mr. Michael Claytor - Proxy for Vice Chairman
S. Anthony Long
Mr. Zachary Klutz - Member
Ms. Suzannah Overholt - Member

INDIANA ELECTION DIVISION STAFF:

Ms. Angie Nussmeyer - Co-Director
Mr. Dale Simmons - Co-Legal Counsel
Mr. Matthew Kochevar - Co-Legal Counsel

1 CHAIRMAN BENNETT: At this time I'd like to
2 call to order the meeting of the Indiana Election
3 Commission for Friday, February 10th, 2017. And
4 the time is 1:00 p.m. At this time we will call
5 to order the meeting. And then in terms of a
6 determination of the quorum, I would introduce
7 myself, Bryce Bennett, Chairman of the Indiana
8 Election Commission. We have Mike Claytor as
9 proxy for Vice Chairman Anthony Long. We have
10 member Suzannah Wilson Overholt with us. And we
11 have member Zachary Klutz.

12 The Indiana Election Division staff is our
13 Co-Director Angela Nussmeyer. And Brad King
14 Co-Director is absent due to illness.

15 Co-General Counsels, we have Matthew Kochevar
16 and Dale Simmons. The court reporter today is
17 Lisa Pierce of Connor & Associates.

18 Before we begin I want to remind everyone, on
19 behalf of the court reporter, to identify yourself
20 when you begin to speak; spell your name. And
21 when you identify yourself, speak clearly. And do
22 not speak at the same time as others. I would
23 like a Documentation of Compliance with the Open
24 Door Laws and I call upon Miss Nussmeyer and
25 Mr. Simmons for that.

1 MR. SIMMONS: Yes. Mr. Chairman, we have
2 complied with the Open Door Law and notice had
3 been posted outside our offices as well as on the
4 internet. So we would -- we've complied with the
5 -- with the law.

6 CHAIRMAN BENNETT: Very well, thank you.
7 With that we will proceed to ratification of
8 campaign finance settlements. We will consider
9 ratification of those settlement agreements, and I
10 would ask for a presentation by Miss Nussmeyer and
11 Mr. Simmons regarding these agreements.

12 MS. NUSSMEYER: Okay. Thank you,
13 Mr. Chairman. If you look under your tab, under
14 the pink tab for the CFA settlements, you'll
15 notice there are a number of committees who have
16 now paid their fines for campaign finance reasons.
17 And we would recommend the Commission approve of
18 those agreements.

19 CHAIRMAN BENNETT: Is there a motion to
20 ratify the settlement agreements as presented?

21 VICE CHAIRMAN PROXY CLAYTOR: Mr. Chairman, I
22 am embarrassed to say that, once again, I am one
23 of the miscreants listed on the settlement
24 agreements, by way of disclosure. But that will
25 not stop me from voting or making a motion to

1 approve this settlement agreement.

2 CHAIRMAN BENNETT: Which one is --

3 VICE CHAIRMAN PROXY CLAYTOR: The Gregg for
4 Indiana. Way down by the bottom.

5 CHAIRMAN BENNETT: And do you have -- move to
6 ratify these settlement agreements?

7 VICE CHAIRMAN PROXY CLAYTOR: I have.

8 CHAIRMAN BENNETT: Is there a second?

9 COMMISSION MEMBER KLUTZ: Second.

10 CHAIRMAN BENNETT: Motion is seconded. Any
11 discussion?

12 (No response.)

13 CHAIRMAN BENNETT: Hearing none, all in favor
14 say "Aye."

15 THE COMMISSION: Aye.

16 CHAIRMAN BENNETT: All opposed say, "Nay."

17 (No response.)

18 CHAIRMAN BENNETT: Ayes have it. The
19 ratification of the settlement agreements is
20 approved.

21 Everyone who is present today that plans to
22 testify before the Election Commission regarding
23 any matter, please stand now for the
24 administration of the oath. And I recognize Dale
25 Simmons to administer the oath.

1 MR. SIMMONS: Please stand, raise your right
2 hand. Say "I do" after administrating of the
3 oath.

4 Do you solemnly swear or affirm, under the
5 penalties of perjury, the testimony you're about
6 to give the Commission, Indiana Election Committee
7 is the truth, the whole truth and nothing but the
8 truth? Say "I do."

9 (Consent by all.)

10 CHAIRMAN BENNETT: Thank you. We will now
11 begin consideration on several voting system
12 matters on our agenda. Recognize Jay Bagga and --
13 as far as presentation and recognition to election
14 system and software change orders. Dr. Bagga.

15 DR. BAGGA: Thank you, Mr. Chairman. I'm Jay
16 Bagga, B-a-g-g-a, a Co-Director for VSTOP. And
17 before we present our formal report, I'm pleased
18 to introduce two other VSTOP members that are
19 present here: Dr. Bryan Byers. He's a professor
20 of criminal justice and criminology. He's a new
21 VSTOP Co-Director. Dr. Joe Losco had retired at
22 the end of December last year.

23 Then we also have with us Mr. Aniketh Ramname
24 who is a project manager for VSTOP.

25 So the first report we would like to present

1 is an ECO report from ES&S. Election Systems &
2 Software has formally requested approval of ECOs,
3 Engineering Change Orders, to their certified
4 voting systems in Indiana. Each of the ECOs in
5 the list that we have presented to you has been
6 evaluated by VSTOP team according to the protocol
7 approved by the Indiana Election Commission.

8 Members of VSTOP team have researched these
9 ECOs and the corresponding VSTL report, and we
10 find them in compliance with requirement for
11 de minimis changes to hardware components that are
12 compatible with Unity 3410 and EVS 5200 voting
13 systems certified for use in Indiana as listed
14 below. We recommend approval by the Indiana
15 Election Commission.

16 CHAIRMAN BENNETT: Is there a motion to
17 approve the election system software change orders
18 as presented and recommended by VSTOP?

19 VICE CHAIRMAN PROXY CLAYTOR: I so move.

20 CHAIRMAN BENNETT: We have a motion. Is
21 there a second?

22 COMMISSION MEMBER KLUTZ: Second.

23 CHAIRMAN BENNETT: Motion and a second. Any
24 discussion?

25 (No response.)

1 CHAIRMAN BENNETT: Hearing none, all in favor
2 say "Aye."

3 THE COMMISSION: Aye.

4 CHAIRMAN BENNETT: All opposed say "Nay."

5 (No response.)

6 CHAIRMAN BENNETT: Ayes have it. Motion is
7 approved.

8 I will now recognize Jay Bagga for a
9 presentation and recommendation with respect to a
10 test plan to comply with the Commission's
11 Resolution 2016-3 and Senate Bill 61 enacted in
12 2016.

13 DR. BAGGA: Thank you, Mr. Chairman. I next
14 present a report which is an update on Resolution
15 2016-3, Hart InterCivic. In that resolution there
16 are two sections that we've been following.

17 Section 2A was a section that applied to
18 manual procedures being applied for elections in
19 2016. Hart did comply with all the deadlines.
20 They submitted to VSTOP documentation by
21 August 26th of 2016 that they had notified all the
22 counties of the manual procedures. These manual
23 procedures were also tested by labs and were found
24 to -- in compliance and were approved by VSTOP.
25 And we reported this in an earlier meeting of IC

1 on September 23rd, 2016.

2 On December 2nd VSTOP asked Hart for an
3 assessment of how the manual procedures were
4 carried out, and we did receive -- receive a
5 report from Hart. And they pointed out to us that
6 only one county, Monroe, had one paper ballot that
7 was an over-voted ballot, according to 3-12-1-7
8 Section F of IC Code. And that ballot was
9 properly handled according to the manual
10 procedures that were tested.

11 I'll next move on to our report on Section 2B
12 of the Resolution 2016-3. That section was
13 concerned with a -- a manual -- a -- a plan for
14 product enhancement. Hart did comply with that
15 deadline, namely September 30, 2016. And they
16 submitted to VSTOP a product enhancement plan.
17 VSTOP requested some clarification on some parts
18 of the plan. And Hart did supply that
19 clarification which was subsequently approved by
20 VSTOP for recommendation to IDC. And VSTOP did
21 send a -- a communication to Indiana Election
22 Division recommending that the plan be approved.

23 Subsequently Hart also submitted a test plan
24 and a script at the beginning of January, on
25 January 10th, 2017. Should the Commission approve

1 the product enhancement plan, then this test plan,
2 which is also a part of that plan, will be carried
3 out, and the testing will be done at the lab.

4 Subsequently that plan was revised. On
5 January 31st we received a revised plan, and we
6 have included the plan with the report that we are
7 presenting to the Commission. We are prepared to
8 recommend that that test plan be carried out,
9 should the Commission approve the product
10 enhancement plan and the test plan.

11 CHAIRMAN BENNETT: Is there a motion to
12 approve the test plan presented by VSTOP for Hart
13 InterCivic?

14 VICE CHAIRMAN PROXY CLAYTOR: So moved.

15 CHAIRMAN BENNETT: We have a motion. Is
16 there a second?

17 COMMISSION MEMBER KLUTZ: Second.

18 CHAIRMAN BENNETT: Motion and a second. I
19 have one question. Materials that we have states
20 that if Indiana approves the final test report by
21 January 30th, 2000 -- 2017, Hart InterCivic plans
22 to complete the task during the first two weeks of
23 February. And we have -- we are beyond
24 January 3rd of 2017. Is this going to present any
25 problem?

1 DR. BAGGA: That's right. So we have a -- an
2 e-mail from Hart that came yesterday to the
3 Indiana Election Commission Co-Directors. And
4 that e-mail asserts, and I'll report that as part
5 of our report, that should the test be carried out
6 and be approved by VSTOP a -- a week from today,
7 then Hart intends to meet the -- meet the
8 March 1st deadline but would like to request
9 March 3 be the day. And they are saying that they
10 can meet the deadline of implementation in the
11 counties by March 3rd.

12 MR. SIMMONS: Mr. Chairman.

13 CHAIRMAN BENNETT: Yes.

14 MR. SIMMONS: One of the issues that staff
15 has -- has discussed with respect to
16 implementation, when we were reviewing the
17 materials, it mentioned software modification.
18 Some of the other vendors had programming
19 modifications. If this is a software
20 modification, that would require a application,
21 payment of a fee and approval certification
22 process.

23 So it might be good to try to clarify, before
24 we discuss any implementation, whether we have a
25 programming change or an actual software

1 modification. And -- and that's something maybe
2 VSTOP can address.

3 DR. BAGGA: This -- this indeed is a software
4 modification in V -- in Hart's systems.

5 MR. SIMMONS: Okay.

6 DR. BAGGA: So -- so we intend to go through
7 dealing with it as a software modification.

8 MR. SIMMONS: Have they applied?

9 DR. BAGGA: They have not applied for new
10 certification. Software modification can be
11 handled through ECUs as a non de minimis
12 modification.

13 CHAIRMAN BENNETT: Is that --

14 MR. SIMMONS: Mr. Chairman, we have a
15 de minimis statute that defines de minimis,
16 3-5-2-6-16.3 that says, The following are not
17 de minimis changes: Software and firmware
18 modifications. So that's -- that's what sort of
19 raised the question with staff. We have a legal
20 definition that says a de minimis change does not
21 include a software modification.

22 DR. BAGGA: That -- if I may. This would not
23 be a de minimis change; it will be a non
24 de minimis change which requires the software
25 modification. And since this software

1 modification is being made, or has been made as
2 Hart asserts, it doesn't have to be tested at the
3 VSTL, at the lab. And that testing will be
4 carried out once the Commission approves.

5 MR. SIMMONS: Mr. Chairman, can I ask a
6 follow-up question?

7 CHAIRMAN BENNETT: Yes.

8 MR. SIMMONS: So is -- is approval of a -- a
9 non de minimis software change through an ECO, is
10 that part of the ECO protocol the Commission has
11 approved?

12 DR. BAGGA: It is. It is, sir, yes.

13 MR. SIMMONS: Okay.

14 DR. BAGGA: And I have a copy here of that
15 Commission -- of the -- the protocol. So the ECO
16 protocol handles both de minimis as well as non
17 de minimis changes.

18 CHAIRMAN BENNETT: Given the discussion that
19 we've had, can you summarize the test plan that
20 we're being asked to vote on at this point?

21 DR. BAGGA: Certainly. The test plan that
22 we'll be testing in the lab, after it's been
23 approved, would test the Section 3-12-1-7(f) of
24 Indiana Code which relates to over-votes for State
25 party. So if a voter votes two State parties, for

1 example, then the entire ballot is considered to
2 be void except for questions and school board
3 candidates. All the parties and candidates, the
4 voting becomes void, even if the voter has marked
5 some of those.

6 So according to the SEA-61 changes in Indiana
7 law, this process should be automatic; that is, if
8 a ballot is fed through the voting system with an
9 over-voted State party ballot, then all of the
10 partisan votes have to be voided. And this
11 software change will make that happen and still
12 needs to be tested.

13 COMMISSION MEMBER KLUTZ: Automatically.

14 DR. BAGGA: Automatically.

15 COMMISSION MEMBER KLUTZ: Without manual.

16 DR. BAGGA: Automatically. Yes. So the
17 manual procedures that were in place for the 2016
18 election went as follows: If there is an
19 over-voted paper ballot -- now, this only applies
20 to off scan machines and paper ballots. DRE don't
21 have to -- they're already satisfied 'cause they
22 don't allow over-votes.

23 So for a paper ballot, if a paper ballot is
24 fed through the system, it is not accepted because
25 it's over-voted, then there are a couple of

1 choices a voter has. Either the voter can correct
2 the ballot, that over-voted ballot, and -- and --
3 and submit a corrected ballot, which will then be
4 received and submitted. If the voter decides not
5 to correct the ballot, the manual procedures
6 require a poll worker to segregate that ballot to
7 be adjudicated later on. That's -- that's the
8 manual procedure that was followed in the 2016
9 election.

10 But Indiana law requires that -- that it not
11 be manual, that it be automatic. So if the voter
12 decides to feed that ballot anyway, it will be fed
13 through the machine and then to the voting system.
14 And then only the school board candidates and
15 questions will be counted. It will void all the
16 other ballots. So that's the automatic part of
17 the process, yes.

18 CHAIRMAN BENNETT: And this test plan
19 includes the understanding that the system will be
20 tested and a determination whether it's in
21 compliance with -- with the Election Code and the
22 Senate Bill 61 and will be completed by March 3rd
23 of 2017; is that correct?

24 DR. BAGGA: Yes, Mr. Chairman. The -- the
25 test plan that's included in the report that VSTOP

1 submitted to the Commission has the details of how
2 the test plan will be carried out at the lab.
3 Subsequent -- subsequently to that the -- the --
4 the test report will come to VSTOP. And VSTOP
5 will review the report. And then we'll make a
6 determination whether it met -- whether it
7 complies with the law.

8 And at that point we, VSTOP, will -- if it
9 does comply, then VSTOP will submit a report to
10 the Indiana Election Commission and to the
11 Commission stating that the -- the test was
12 successful. And at that point we will recommend
13 that this be approved. And subsequent to that
14 this will then be implemented in the field, in all
15 of the jurisdictions where Hart's voting systems
16 are.

17 CHAIRMAN BENNETT: If it's approved by the
18 Commission.

19 DR. BAGGA: If it's approved by the
20 Commission.

21 CHAIRMAN BENNETT: Okay.

22 COMMISSION MEMBER KLUTZ: From the time the
23 March 3rd test takes place, how long till you get
24 your report to review do you anticipate?

25 DR. BAGGA: So according to this e-mail that

1 Eddie Perez sent yesterday to the Division -- and
2 we have a copy here, and I -- I believe that's a
3 copy that you -- you -- you will have -- his
4 timeline or Hart's timeline is that if the
5 Commission were to approve the -- the test plan
6 today, they -- they will have it tested early next
7 week in the lab.

8 In fact, the lab already has a copy and the
9 test plan. And then tech to send the test reports
10 to us by the middle of next week. And they're
11 asking VSTOP to review the test reports by a week
12 from today, February 17th. And they are saying
13 that if that happens, then they'll have time to
14 meet the implementation deadline by March 3rd
15 instead of by March 1st.

16 CHAIRMAN BENNETT: Any other questions?

17 MS. NUSSMEYER: Mr. Chairman, if I may,
18 though. The Commission would have to meet to
19 approve that final plan from you before Hart could
20 actually roll the new software to the equipment in
21 the counties.

22 DR. BAGGA: Essentially, yes. Because VSTOP
23 will only make a recommendation to the Division
24 and the Commission.

25 MS. NUSSMEYER: Okay.

1 DR. BAGGA: It will be up to the Commission
2 to -- to accept that.

3 MS. NUSSMEYER: So that would mean we would
4 need to meet in the near future or be amenable to
5 delaying the full implementation to the counties
6 if we were to meet after February 17th, is the way
7 I understand the timeline to be. I don't know if
8 Mr. Simmons agrees.

9 MR. SIMMONS: Yeah. That's the way --
10 Mr. Chairman, that's the way I understand it too.

11 DR. BAGGA: Yes.

12 MR. SIMMONS: We -- we -- we get a test
13 recommendation and then final approval for
14 implementation from the Commission.

15 CHAIRMAN BENNETT: And that implementation --

16 MR. SIMMONS: Install it, I think is what
17 they're --

18 CHAIRMAN BENNETT: Yeah. That comes from the
19 Commission. And that has to be before February
20 17th?

21 MR. SIMMONS: Well, no. To meet the
22 Commission's deadline you have to come sometime
23 before March 1st --

24 DR. BAGGA: March 1st.

25 MR. SIMMONS: -- according to the resolution

1 or March 3rd according to what they're saying they
2 can do.

3 MS. NUSSMEYER: But March 3rd is when they
4 believe they will have it fully implemented at the
5 county, in other words installed.

6 MR. SIMMONS: They can start --

7 MS. NUSSMEYER: They could -- right. So if
8 we -- if we don't meet in the next few weeks, then
9 they are delayed in rolling out the new product to
10 their counties. Because they couldn't deploy the
11 new coding to the equipment until the Commission
12 agrees that their test plan -- their final product
13 meets our criteria.

14 VICE CHAIRMAN PROXY CLAYTOR: But in their
15 e-mail they're saying we would have to meet and
16 approve it February 17th.

17 MS. NUSSMEYER: Right. In order for them to
18 meet --

19 VICE CHAIRMAN PROXY CLAYTOR: In order for
20 them to start rolling it out.

21 MS. NUSSMEYER: Correct, Mr. Claytor. And
22 part of that too is they came to the Division in
23 January to try to -- to get the test plan and
24 didn't realize they needed the Commission's
25 approval of their test plan in order to move

1 forward with rolling out the new product. So
2 there was a bit of a delay on our end, I believe,
3 because they were --

4 DR. BAGGA: Yes.

5 MS. NUSSMEYER: -- ready to -- to move
6 forward.

7 CHAIRMAN BENNETT: So we either have to meet
8 by the 17th or extend the deadline imposed by the
9 -- the order -- order.

10 MS. NUSSMEYER: That's how -- that's how I
11 understand it.

12 VICE CHAIRMAN PROXY CLAYTOR: But then we'd
13 have to extend the deadline anyway if we're going
14 to let them go to March 3rd. Because I think
15 their deadline is March 1st.

16 COMMISSION MEMBER KLUTZ: Do they need up
17 until the 17th? I mean, are they being -- are
18 they -- are they trying to get away with one date
19 because they need up until the 17th? Or could we
20 meet before the 17th?

21 DR. BAGGA: Our understanding is that they --
22 they need some time after the Commission has
23 approved the report to go implement it in the
24 counties. And that to us seems like a period of
25 about two weeks roughly.

1 MS. NUSSMEYER: Uh-huh.

2 DR. BAGGA: So --

3 MS. NUSSMEYER: Uh-huh. In -- in the e-mail,
4 if I may, Mr. Chairman, it says if VSTOP and/or
5 the IEC is able to issue final approval of the
6 test report by Friday, February 17th. So,
7 Commissioner Klutz, to your question, if we met
8 before the 17th, then it appears that they would
9 be able to roll it out by the March 1st deadline,
10 assuming that the VSTL report comes back by
11 February 10th. Which -- well, it comes back in
12 the early part of next week.

13 DR. BAGGA: Right. So it's also -- if -- if
14 I may -- sorry.

15 CHAIRMAN BENNETT: How likely is that
16 assumption?

17 DR. BAGGA: If I may, Mr. Chairman. This
18 would be contingent upon the lab completing its
19 test and sending VSTOP the report in time for
20 VSTOP to review the report and go back to the lab
21 in case there are any questions and then bring the
22 report and our recommendation back to the
23 Commission. So we would say at least a week for
24 that, starting from the day the tests begin.

25 MS. NUSSMEYER: And, Mr. Chairman, if I may,

1 for the record, I know that Mr. Perez from Hart
2 was intending to be here today. But with all of
3 the snow he was concerned about -- 'cause he would
4 have to fly into Chicago -- that he would not be
5 able to be down here today. So that's why he
6 e-mailed Dale and I and also then spoke to the two
7 of us yesterday. And we knew that he would not be
8 here today.

9 CHAIRMAN BENNETT: Well, if we have to end up
10 modifying our resolution anyway because all these
11 pieces of the puzzle don't fall into place, it
12 seems to me that it might be less disruptive for
13 the Division and the Commission to extend our
14 resolution deadline as opposed to trying to fit
15 this meeting into the existing resolution.
16 Discussion on that?

17 COMMISSION MEMBER KLUTZ: I have no issue
18 with that.

19 MR. KOCHEVAR: Mr. Chairman.

20 CHAIRMAN BENNETT: Yes.

21 MR. KOCHEVAR: If I may, 'cause I'm actually
22 looking at that part of the resolution under
23 Section 2. And that's in Paragraph B.

24 COMMISSION MEMBER OVERHOLT: There are two
25 Paragraph Bs.

1 MR. KOICHEVAR: Yeah. It's supposed to be the
2 actual Paragraph B that has the --

3 COMMISSION MEMBER KLUTZ: You know, the other
4 resolutions aren't like that. I wonder what
5 happened.

6 MR. KOICHEVAR: The part I'm referring to, it
7 says, The plan must, one, provide for all
8 necessary testing and implementation of necessary
9 modifications no later than March 1, 2017. And,
10 two, be reviewed by VSTOP and submitted to the
11 Indiana Election Commission for approval.

12 I think there are two ways of looking at that
13 part of the resolution and -- and interpreting it.
14 One is I think the -- the way that Hart's looking
15 and it and what we discussed, is it's saying that
16 their -- their changes must be implemented by
17 March 1, 2017. I think another way of looking at
18 it is saying that the plan that Hart had submit
19 had to -- they had to build a plan where -- where
20 essentially everything that was under their
21 control, all of their -- their testing, what they
22 could implement could be done on March 1, 2017, if
23 the Indiana Election Commission was able to meet
24 at various amounts of time to -- to approve
25 what -- what you need to approve to have that

1 change implemented.

2 So taking that reading, essentially you can
3 view it as, well, they come to us with their test
4 plan, assuming that you approve it today, it would
5 appear that they have met -- they have met the --
6 the requirements under this section. They are
7 prepared with everything that's under their
8 control to make an implementation by March 1st.
9 But for the Commission having to meet and to make
10 that final -- to review the final test results and
11 make the approval of the modification, they --
12 they can't implement them on March 1.

13 I hope that made sense. I -- I -- I think
14 I -- I lost -- I lost a little bit towards the
15 end, sorry. But -- and I'll -- I'll defer to
16 Mr. Simmons if he gets what I'm saying. I know we
17 discussed this a little bit outside of -- as we
18 were prepping for the meeting.

19 MR. SIMMONS: Mr. Chairman, and -- and I
20 think that this sum total of what I think we're
21 all saying is: Our understanding of the
22 assumptions in their plan, that the Commission
23 could be very flexible and meet on -- very quickly
24 to approve at different stages of the process, you
25 know, test plan, implementation or reviewing after

1 the test and saying, Yes, implement.

2 So I think they built that into their
3 assumptions. And so they're kind of looking at us
4 saying, Well, we're -- we're sorry we didn't know
5 the Commission was not that flexible, but we're
6 hoping you don't hold that -- that against us.
7 Because we -- we -- according to our benchmarks,
8 if they had been available to meet and approve of
9 at every point according to the plan, we would
10 have made the deadline. So they're -- they're
11 sort of -- that's sort of where they are.

12 CHAIRMAN BENNETT: This appears to me to be a
13 situation where Hart is working in good faith and
14 trying to get this done according to the
15 resolution. I'm trying to figure out the best way
16 to reward that diligence without disrupting the
17 Commission or the Division in -- inordinately.

18 Couldn't it all be solved if we were to amend
19 our resolution to extend that March 1st deadline
20 by some reasonable period of time?

21 MR. SIMMONS: Sure.

22 VICE CHAIRMAN PROXY CLAYTOR: I -- I don't
23 know, Mr. Chairman. I -- that certainly makes
24 sense. I don't know if we need to do that on this
25 resolution. We can certainly. And then that

1 makes the most sense and gives them some comfort.
2 But I don't think the resolution approving them
3 going forward is determinative of giving them more
4 time in going forward with --

5 CHAIRMAN BENNETT: On the test plan you mean?

6 VICE CHAIRMAN PROXY CLAYTOR: On the -- on
7 the -- right. Approving the -- the test plan. We
8 don't necessarily have to go to March 3rd. I
9 think the problem is, if we can't meet on the 17th
10 and something happens and then they need to extend
11 it to March 5th or some crazy time, we could have
12 gone ahead with just approving the plan today.
13 And then at our next meeting, when we have to
14 approve their implementation, we could change the
15 target date. And I don't --

16 CHAIRMAN BENNETT: Even if that -- even if
17 that occurred after March 1st?

18 VICE CHAIRMAN PROXY CLAYTOR: Even if that
19 occurred after March 1st. I'm certainly willing
20 to go either way.

21 CHAIRMAN BENNETT: Well, I think we take a
22 two-step process. I mean, there is a motion on
23 the -- on the table that has been seconded and
24 we've had a lot of discussion about the test plan.
25 So we can resolve that at this point in time.

1 Unless there's any further discussion on that.

2 COMMISSION MEMBER KLUTZ: No.

3 CHAIRMAN BENNETT: So we have a motion and a
4 second to approve the test plan. All in favor say
5 "Aye."

6 THE COMMISSION: Aye.

7 CHAIRMAN BENNETT: All opposed say "Nay."

8 (No response.)

9 CHAIRMAN BENNETT: The ayes have it. The
10 test plan is approved.

11 And I understand there's a suggestion that we
12 just go about our business and take this up at our
13 next meeting. And that sort of leaves open the
14 question, I suppose, of whether the resolution was
15 complied with because it probably won't be done by
16 March 1st.

17 COMMISSION MEMBER KLUTZ: I would think Hart
18 would want some assurances that -- or an
19 acknowledgement by the Commission that we are
20 extending this deadline stated in the resolution.

21 CHAIRMAN BENNETT: Can we do that informally
22 by stating it on the record without a -- a formal
23 amendment of our resolution? Or do we need to
24 formally --

25 MR. SIMMONS: Yeah. Mr. Chairman, yeah,

1 certainly we'd be willing to communicate that.

2 I -- I think their -- their major concern is that
3 they don't miss that deadline under the current
4 status that they not be punished for that. And I
5 think that's been the will of the Commission as
6 expressed by the Commission here today. And I'd
7 be willing to communicate that to Hart.

8 CHAIRMAN BENNETT: Do we want to phrase that
9 or frame that in terms of a -- an extension of two
10 weeks? Or do we just give them an open-ended
11 pass?

12 MR. SIMMONS: Or at least until they can --
13 at least as long as they continue to diligently
14 pursue their implementation that --

15 MS. NUSSMEYER: Because they would be before
16 the Commission by October 1st, correct, to
17 recertify their systems for the next period of
18 time as well. So --

19 COMMISSION MEMBER KLUTZ: I don't want to
20 lose any momentum here. I mean, I'd -- I'd like
21 to have it -- something on the books so that
22 there's this -- not this October 1 outside date,
23 and reports get put on a shelf and people forget
24 about this. I -- my preference would be to say
25 that we acknowledge their good faith efforts in

1 attempting to comply with this resolution. We --
2 we realize that the March 1st deadline, that their
3 planning was based upon the assumption that we
4 could meet quickly. And while we can, seven days
5 with multiple schedules is difficult.

6 So I guess I would say that -- that -- make a
7 motion that we extend the March 1, 2017 deadline
8 as provided in Section B1 to March 15th, on or
9 before March 15th. And we would agree to meet by
10 then. That would be my motion.

11 VICE CHAIRMAN PROXY CLAYTOR: I would second.

12 CHAIRMAN BENNETT: The motion is seconded.

13 Discussion? Any further discussion?

14 (No response.)

15 CHAIRMAN BENNETT: Anything from the floor
16 with regard to the ability to comply with the
17 March 15th deadline if it is extended?

18 DR. BAGGA: Mr. Chairman, we would like to
19 recommend that the Commission not have a date for
20 next meeting until we've seen the report and
21 reviewed it, and then we can send to the
22 Commission for approval. We expect that to happen
23 within the next week. But when tests are done and
24 if things are not the way they are and we want
25 more information from the lab on the tests, then

1 we -- that may take a little bit longer time,
2 although we don't expect that. The tests are
3 straightforward and they should go through. But
4 we won't be able to make a recommendation until we
5 have reviewed the test report. Which, again, is
6 expected to happen next week.

7 COMMISSION MEMBER KLUTZ: And my -- and my
8 motion wasn't intended to schedule a meeting for
9 March 15th. It was just that we --

10 DR. BAGGA: Oh.

11 COMMISSION MEMBER KLUTZ: -- would like to
12 meet on or before March 15th as soon as we hear
13 back from you.

14 DR. BAGGA: Yes, that's good. I'm happy with
15 that.

16 CHAIRMAN BENNETT: My question is: Can we
17 expect to hear become from you before March 15?

18 DR. BAGGA: Almost certainly, yes.

19 CHAIRMAN BENNETT: Okay. And all in favor of
20 the motion presented by Commissioner Klutz say
21 "Aye."

22 THE COMMISSION: Aye.

23 CHAIRMAN BENNETT: All opposed say "Nay."

24 (No response.)

25 CHAIRMAN BENNETT: Ayes have it. Motion

1 carries. Thank you.

2 At this point I'd like to call on Dr. Bagga
3 again to provide a report and recommendations with
4 regard to Dominion Voting Systems.

5 DR. BAGGA: Thank you, Mr. Chairman. This
6 next report is an update on Resolution 2016-1 on
7 Dominion's compliance with Indiana Code
8 Section 3-12-1-7(f). Dominion has AccuVote/GEMS
9 voting systems in twenty counties in Indiana.
10 And, again, we will address Section 2A and
11 Section 2B of the resolution independently. We'll
12 begin with Section 2A.

13 We have reported to the Commission in its
14 September 23rd, 2016 meeting that Dominion
15 complied with the manual procedures process for
16 Section 2A of the resolution. On December 2nd
17 VSTOP asked Dominion to provide to us an
18 assessment of how the manual procedures worked in
19 the 2016 election, November 2016 election.

20 And on January 26th we were told that -- in
21 an e-mail that GBS, Governmental Business Systems,
22 which is a service provider to Dominion in
23 Indiana, did do a survey of the twenty counties
24 regarding how the manual procedures worked. Seven
25 ballots were found in three counties which were