over-voted. And those were handled properly according to the manual procedures.

Ten counties reported that there were no affected ballots found in those counties for any of these over-voted ballots. Seven counties did not respond. So we believe that Dominion complied with Section 2A of the resolution.

Now we'll move on to Section 2B of the resolution which is a software modification. We did receive from Dominion a letter on September 30th. That was the deadline imposed by the resolution for a plan. And the letter is included in the report we submitted to the Commission in an Appendix B.

The letter in Appendix B was from the Regional Manager of Sales from Dominion. And it informed us that at that point Dominion was still evaluating what software modifications might be necessary and that they would like to discuss this further with VSTOP prior to December 31st, 2016.

Subsequently VSTOP did communicate with Dominion on several occasions and asked for a more detailed plan. Because the letter of September 30th did indicate that they were working on a plan, but we have not received a copy of the

plan. Subsequently we sent reminder to Dominion for the plan, and we had a phone conference with Dominion very recently, on -- on January 27th. Is that right?

And in that phone conference we spoke with representatives from Dominion who indicated to us that they were still exploring options. And they have certain reasons for asking that they be given time to comply with the SEA-61 sections, but they asked for more time. Subsequent to that we did receive an e-mail from Dominion that they were going send a representative to this Commission meeting. And we see that we do have a representative from Dominion, Mr. Ian Piper.

And in the letter that we received from Dominion dated February 3rd, Dominion laid out a number of reasons for their exploration of software modifications indicating that these working systems are approximately 20 years old. They were manufactured by Global Election Systems, the GEMS, in the early 1990s. They used older versions of software and hardware. And Dominion is now exploring how to find help in getting that software modified.

So we are at the stage where we -- we have

all these communications, but we have not seen a plan yet for product enhancement.

CHAIRMAN BENNETT: And when was that plan due?

DR. BAGGA: The plan was due on September 30th last year.

CHAIRMAN BENNETT: Anything else in your report?

DR. BAGGA: That's it for the Section 2B, Mr. Chairman.

CHAIRMAN BENNETT: All right. Is there a representative from Dominion that would like to speak?

MR. PIPER: Sure. Ian Piper, I-a-n, P-i-p-e-r. I'm the Director of Federal Certification for Dominion.

In regards to the equipment, it actually was designed back in the earl -- the late '80s. And Dominion does not have any staff on board right now that is familiar with those languages that were used for that code base. We have not been able to locate any of the previous Premier or Global staff that did work on the code base who are willing to actually work on this -- on these changes. And the changes definitely would require

code modification.

I've got a statement of work that we are using to work with an actual third-party software house that GPS and Dominion have located in Illinois and that they are -- they believe that they are willing and able to work with the code-based languages we have, which are Turbo C and Assembler as well as an early version of C.

So with that we are in the part of getting an NDA and a contract worked out with this software house. And we believe as well too that there are other situations that we need to consider as well for the code changes that may not have been considered previously. And that's something that we need to explore further with VSTOP in regards to how that's going to be managed.

CHAIRMAN BENNETT: Is there any plan prepared at this point in time?

MR. PIPER: We don't have a timeline on that because we have to get a -- a feasibility done by the actual software house in order for them to be able to say that, yes, they can go ahead and make these coding changes. We believe the GEMS changes are going to be relatively minimal, except for this new condition that might need to be

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implemented which has to do with two-card ballots and the straight-party contest and the at-large contest.

But with the AccuVote Optical Scan System, that's sort of an unknown factor at this point in time until we're actually able to go ahead with that code and assess whether or not they'll be able to go ahead and make those changes.

CHAIRMAN BENNETT: Has Dominion submitted any written requests for an extension of time in which to submit its plan pursuant to the resolution?

MR. PIPER: Only the e-mail which Jay Bagga referenced from Monica Marics, who is the Executive VP of Engineering and Certification for Dominion.

CHAIRMAN BENNETT: What was the date of that e-mail?

DR. BAGGA: I have a copy right here, and I'll read from that. And I -- I believe that the Indiana Election Division has a copy that we sent to the Commission.

So towards the end of this document Monica Marics, the VP of the -- one of the VPs of Dominion has stated that while the State has requested completion of this work by March 1st,

2017, due to the items listed above -- and these are the items that Mr. Piper talked about -- Dominions will -- Dominion will not be able to meet this time frame.

We understand the State's desire to have this automated fix, and we'll continue to work towards that goal. We will keep you appraised of our developments in these areas as they materialize.

CHAIRMAN BENNETT: My question was related to the plan that was due on September 30th, 2016. Was there any written request for an extension of that deadline?

MR. PIPER: I'm not aware of that myself. The -- the matter was handed to Gio Constaniello at that time.

COMMISSION MEMBER KLUTZ: Mr. Chairman, if I may.

CHAIRMAN BENNETT: Yes.

COMMISSION MEMBER KLUTZ: How many -- how many counties have Dominion machines?

DR. BAGGA: There are twenty counties that have Dominion systems. And Dominion has both VREs and ob scan systems. And we have a chart here that I'll read out from of the distribution among counties and between the TSX, which are the DR

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systems, and operating -- the -- the OS systems.

Dominion has a total of 216 OS units spread across twenty counties. The largest one has 25 units. And then they're all the way down to some counties with one unit. They also have 1,023 DREs. But this does not apply to DREs. So it's 216 units among the twenty counties that are affected.

COMMISSION MEMBER KLUTZ: If I may, to the staff. There's a representation in their letter that says, No elections will be affected in 2017 within our customer base within those twenty counties. Do any of those twenty counties, do we know -- I mean, there could be referendums.

MR. SIMMONS: Right. I -- I think they're -- Mr. Chairman, Members of the Commission, if I may. I -- I think their -- their response -- yes, you're right. There are referendums. White County -- I think the clerk from White County, here today, is having a referendum in May. I'm not sure what they're saying. I mean, certainly in a referenda the straight party wouldn't be a factor.

COMMISSION MEMBER KLUTZ: Correct.

MR. SIMMONS: In the, you know, that part of

the system, the logic won't impact referendum. I don't know if that's what they're saying.

COMMISSION MEMBER KLUTZ: Okay. And then there's -- the last paragraph says that they look forward to talking with the -- the Division in detail prior to December 31st, 2016. Was that -- was there a meeting? Did you attempt to schedule anything with us on or before the 31st.

MR. PIPER: I wasn't tasked with anything at that point in time.

COMMISSION MEMBER KLUTZ: When did you issue your work order with the third-party software house? When was the date of that issue?

MR. PIPER: That was back last -- beginning of February.

COMMISSION MEMBER KLUTZ: You mean within ten days ago?

MR. PIPER: Yes.

COMMISSION MEMBER KLUTZ: So September 30th of '16 you say you're working on it. And then ten -- within the last ten days you issued a work order to the third party?

MR. PIPER: Correct.

CHAIRMAN BENNETT: Does VSTOP have a recommendation with regard to compliance or

noncompliance?

DR. BAGGA: We have not seen the plan for product enhancement. So at this time we have no report on whether the system is compliant because we don't know what the plan is.

CHAIRMAN BENNETT: Okay.

COMMISSION MEMBER OVERHOLT: Mr. --

CHAIRMAN BENNETT: Go ahead.

COMMISSION MEMBER OVERHOLT: May I ask a question?

CHAIRMAN BENNETT: Sure.

COMMISSION MEMBER OVERHOLT: Do we know the -- the contracts that these counties have with Dominion, do we know what Dominion's obligations are to those counties to be able to update and maintain equipment to keep it compliant with Indiana law?

DR. BAGGA: So to answer that question, the way the compliance was carried out in the 2016 election was to deploy the manual procedures for that Section 3-12-1-7(f). But the -- the Indiana Code requires automatic processing of that.

COMMISSION MEMBER OVERHOLT: No. I'm -- I'm -- I'm asking, I guess, and -- and I -- and this is probably beyond your purview. But I'm just

wondering if you have any knowledge of what the requirements are between the -- because there -- there would have been at some sort -- at some point some sort of contractual obligation between Dominion and these counties to be providing -- to maintain the equipment in a manner that kept it consistent with Indiana law, regardless of what those requirements of Indiana law are.

And I'm just wondering if we know whether those contracts are still in force and effect or -- or what is going on with respect to those.

DR. BAGGA: So -- yes. So we can -- I -- I believe VSTOP can partially answer that question by pointing to an e-mail from -- again from Dominion to -- to VSTOP which says that currently none of the twenty AccuVote counties, Dominion counties in Indiana, are under contract for Dominion for any software maintenance.

COMMISSION MEMBER OVERHOLT: Oh. Okay, thank you.

CHAIRMAN BENNETT: Are there any clerks here in the counties who would like to speak? Would you state your name, please.

MS. LANCE: My name is Paula Lance, White County Clerk.

CHAIRMAN BENNETT: Do you have any questions?

MS. LANCE: I do have a concern. We have a referendum. I -- I do believe Christa Coffey from Tippecanoe County also too. How does -- how is this going to affect my election? If -- if our -- if the system is not going to be in compliance, do -- do --

CHAIRMAN BENNETT: Well, my understanding from the conversation here today is that the referendums would not be impacted by the changes that are necessary.

MS. LANCE: And in -- in saying that -- that -- because the -- the referendum would not affect the changes, that would still allow me to use this equipment?

CHAIRMAN BENNETT: If the equipment remains certified.

MS. LANCE: Thank you.

CHAIRMAN BENNETT: That's my understanding. If anyone in the room has a different understanding of how the straight-party ticket changes from Senate Bill 61 would impact the referendum, I'd be happy to hear from you.

COMMISSION MEMBER KLUTZ: If I may, Mr. Chairman. To the White County Clerk: How

many machines -- you -- you weren't the one county with twenty-five machines, were you?

MS. LANCE: No.

COMMISSION MEMBER KLUTZ: How many machines do you have?

MS. LANCE: Are you talking optical scan?

COMMISSION MEMBER KLUTZ: Yes.

MS. LANCE: We only use the optical scan during absentee voting. We only use paper ballots for absentee voting and military mail-out. We use the TSX machines in all of our vote centers.

COMMISSION MEMBER KLUTZ: Okay.

MS. LANCE: As well as our -- during our absentee time as well. But we do use -- we still use paper ballots through optical scan for --

COMMISSION MEMBER KLUTZ: -- absentees.

MS. LANCE: -- absentees.

COMMISSION MEMBER KLUTZ: Is there -- forgive me with this question. Is this an absentee process for referendums?

MS. LANCE: Yes.

COMMISSION MEMBER KLUTZ: Yes.

COMMISSION MEMBER OVERHOLT: So might the bigger question be then if the -- if the certification is currently into October, or

expires October 1, what's the -- what might the impact then be on the November elections? And I guess I don't know if there are November -- I mean, there aren't regular November elections. But are there any referenda -- are all the referenda and everything, is that all scheduled to occur in May and so that we don't have any activity in November? Or we -- we never know what we don't know.

COMMISSION MEMBER KLUTZ: I think they could file a referendum after the May --

MS. NUSSMEYER: Through October 1st, I believe.

MR. KOCHEVAR: August 1st.

MS. NUSSMEYER: August 1st. Thank you. I'm sorry. Thank you.

COMMISSION MEMBER OVERHOLT: Well --

MR. CONRAD: I can answer that question. My name's Kyle Conrad. I'm with Governmental Business Systems. We're the vendor for Dominion. There will be no partisan offices in Indiana --

COMMISSION MEMBER OVERHOLT: Right.

MR. CONRAD: -- on any ballot, whether it be May or November. So the same theory for May election should apply to November.

MS. NUSSMEYER: Except your certification expires on or before October 1st, 2017.

MR. CONRAD: Correct. But as far as this software change -- as far as the operation of equipment is not -- not going to be impacted.

COMMISSION MEMBER KLUTZ: But uncertified machines would not be used after --

MR. CONRAD: I'm sorry?

COMMISSION MEMBER KLUTZ: But uncertified machines would not be used after --

MR. CONRAD: Correct.

CHAIRMAN BENNETT: Well, I would be remiss if I didn't express disappointment, as the Chairman of the Indiana Election Commission, that our Resolution 2016-1 regarding Dominion Voting Systems has not seemed to have been taken very seriously.

As you can tell from our discussions here with other vendors, we take every provision of that resolution seriously. This one has been flaunted and not even, in my view, a good faith attempt made to try to comply with it. And it, once again, puts the voters and the clerks in the State of Indiana in a very bad position that we do not like to see.

And does anyone have any other thoughts on that or have any motions about -- motion concerning where do we go from here?

COMMISSION MEMBER KLUTZ: Mr. Chairman, I would echo those comments. I think we will be meeting perhaps on or before March 15th. I would ask or perhaps make a motion, if the Commissioners would agree, that we ask our staff to look into the decertification process, the timeline and procedures, and report to the Commission as to what that decertification process looks like at our next meeting.

CHAIRMAN BENNETT: Is there a second to that motion?

VICE CHAIRMAN PROXY CLAYTOR: Second.

CHAIRMAN BENNETT: I have a motion and a second. Any discussion?

(No response.)

CHAIRMAN BENNETT: Hearing none, all in favor of the motion as presented say "Aye."

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say "Nay."

(No response.)

CHAIRMAN BENNETT: Motion carries. Thank you.

The Indiana Election Commission has finished its business for today. Is there any motion for the Indiana Election Commission to adjourn?

VICE CHAIRMAN PROXY CLAYTOR: So moved.

CHAIRMAN BENNETT: Those in favor say "Aye."

THE COMMISSION: Aye.

CHAIRMAN BENNETT: Opposed, no.

(No response.)

CHAIRMAN BENNETT: The ayes have it. The Indiana Commission is adjourned.

(Time Noted: 1:55 p.m.)

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

I, Lisa C. Pierce, a Notary Public in and for the County of Hamilton, State of Indiana at large, do hereby certify that the foregoing hearing was taken on behalf of the Indiana Election Commission at the Indiana Government Center, 402 West Washington Street, Conference Room 2, Indianapolis, Marion County, Indiana, on February 10, 2017, commencing at the hour of 1:00 p.m., pursuant to Rules of Applicable Procedure;

That said hearing was taken down in stenographic notes and afterwards reduced to typewriting under my direction, and that the typewritten transcript is a true record of the testimony given by said participants;

That the parties were represented by their aforementioned counsel.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative or attorney of any party, or otherwise interested in the event of this action,

and am not in the employ of the attorneys for any party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, 2017.

Lisa C. Pierce

NOTARY PUBLIC

My Commission Expires:
March 14, 2021

County of Residence:
Hamilton

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SETTLEMENT AGREEMENTS

2-10-17

Indiana Stonewall Democrats - $50.00
Hoosiers for Justice PAC - $250.00
Howard County Democratic Party - $50.00
Tech for Equality PAC - $50.00
Free Enterprise Indiana PAC - $50.00
Jeffersonville Firefighters Local 558 PAC - $350.00
Indiana National Organization for Women PAC - $50.00
Friends of Justin Chupp- $50.00
Sikhs PAC - $100.00
Hale for Indiana - $1000.00
Indiana Osteopathic Assoc. PAC - $350.00
Friends of Indiana Hospitals - $50.00
Hendricks County Republican Party - $50.00
Johnson County Professional Firefighters PAC Fund - $550.00
Southwestern Indiana Building and Construction Trades Council PAC - $1000.00
Voters for Julie Olthoff - $400.00
Iron Workers Local 103 Indiana PAL - $200.00
Trucking Industry PAC - $50.00
Gregg for Indiana - $1000.00
Associated General Contractors of Indiana PAC - $1000.00

Total: $6650.00