

Douglas Kellner: My name is Douglas Kellner; I will call the meeting to order. I'll ask the other commissioners to introduce themselves.

Evelyn Aquila: Evelyn Aquila.

Jim Walsh: Jim Walsh

Gregory Peterson: Gregory Peterson

Douglas Kellner: I'll ask the staff to introduce themselves.

Bob Brehm: Bob Brehm

Liz Hogan: Liz Hogan.

Bill McCann: Bill McCann

Dan Valvo: Dan Valvo

Elizabeth Mowrey: Elizabeth Mowrey

John Conklin: John Conklin

Tom Connolly: Tom Connolly

Pat Campion: Pat Campion

Bob Warren: Bob Warren

Anna Svizzero: Anna Svizzero

Paul Collins: Paul Collins

Kimberly Galvin: Kimberly Galvin

Todd Valentine: Todd Valentine

Douglas Kellner: And would our guests introduce themselves please.

John Lento: John Lento with ESS.

Angela Dickens: Angela Dickens from Students First.

Josh Oppenheimer: Josh Oppenheimer.

Bob Gronczniak: Bob Gronczniak from NYSTEC.

Douglas Kellner: Thank you and you're all welcome. We begin with the meeting of the Board of Canvassers to certify the amended election results for the general election for justices of the Supreme Court in the third judicial district. The staff has put together an amended canvass report. Is there a motion to adopt the amended report?

James Walsh: So moved.

Douglas Kellner: Those in favor say aye?

All: Aye.

Douglas Kellner: Opposed? So that is done and we will sign the canvass.

So that concludes the agenda for the Board of Canvassers and we'll now begin the meeting of the commissions of the State Board of Elections. First item on our agenda is approval of the minutes for December 15, 2011. Is there a motion?

James Walsh: So moved

Douglas Kellner: Those in favor of approving the minutes as written say aye.

All: Aye.

Douglas Kellner: Opposed? Minutes are adopted.

Now we will proceed with our unit updates. We'll start with our Executive Directors Todd Valentine and Robert Brehm.

Robert Brehm: A few items of note January 4th was the Governor's State of the State address and in addition to all of the lovely things that got most of the attention, there were a few items in his message related our office. He had four proposals that he touched on that perhaps we'll hear more of when we get his budget or other legislation, but the general four items that he mentioned were publicly funding of elections as a proposal. Lower contribution limits for offices. Lower contribution limits for public contractors or lobbyists, and a reference to a new enforcement or enhanced enforcement here at the State Board. We anticipate the budget is due out on Tuesday the 17th, so I don't know what we can anticipate to see in the budget other than what we've submitted which was what they directed us to give them was a flat budget from last year and keep a focus on the spending cap that we had last year. There was a report out today, and I mentioned to Todd this morning that I saw with the anticipation that the agencies are all going to have across the board 2.5% cut. Probably, but we'll see that on Tuesday and hopefully the

savings that we accrue by not paying rent with the restacking of the agency, will be able to cover that 2.5% as well as give us flexibility to do other things we haven't been able to do because the rent will be more than 2.5% so hopefully they won't take all the rent money away and in the end we still will have some agility to provide... well we can only hope. We can only have hope.

Evelyn Aquila: Well the 2.5 was on the television last night too.

Robert Brehm: I've heard talk of it and they mentioned it last year that they thought we were going to have to get 2.5% savings in the current fiscal year and then going forward. And then when they settled all the contracts, the word that we got was they're not going to do it in this fiscal year which would have been hard because we're pretty close as it is and there's a few, only a few weeks left in the fiscal year to get those savings. So that savings would have been hard.

But, and the other item is moving the agency. I don't know if you want to touch on that Todd.

Todd Valentine: Well, I mean we're still, there's a projected schedule for moving in mid March but to date, the elements that need to come together for that have not happened yet which is two fold, I mean primarily its move the facilities for our database and housing that and the appropriate connectivity to both our disaster recovery site, as well as all the counties. The concept right now is to build a data center for other agencies or expand our existing data center in both locations and then we'd connect to that. None of that work has been done yet. So I suspect, and we're planning on a meeting the 23rd, our next restacking meeting with the OGS to see if that schedule gets adjusted. But, the sooner we move, as Bob pointed out, the more savings we'll have. So we want to move because we can use that savings for other things that are useful to us. And it's, it will be some disruption and we understand that, but it also needs to be done in an orderly process, but at the same time we know we have an election and the counties need to connect to the database to audit that and produce their poll books, and then we also need to worry about, we don't know what the rest of the election cycle is going to be right now. In a week or two we'll know but, so it's, and they are sensitive to that and well aware of that, but it also puts us with a pinch especially if the budget comes out, which I assume it will, the savings related to us not paying rent anymore and if that doesn't come to fruition then we're going to have to figure something else out.

Evelyn Aquila: We'll talk about that later on about, both of you have visited the new spot?

Todd Valentine: We have. We went over last week for a meeting with regard; we took our technical people with regards to the database facilities. There are some facilities in the building, but there's not that much space within the existing facility because it's not going anywhere so, and we have some additional security requirements that we need to

have in place for our system. We have to limit the access to that, controlled access to that. That's not impossible, but the problem we have is the way our architecture is set up for the system to connect to the counties, it's very specific because we have established a virtual private network, so we cannot compromise that and the connectivity at that building is not up to the same standard here. You would think it's only a block away; you'd be able to get to the same flight not true. And moving out to the state office campus just a few miles west of here that has the same problem. Yes, there is part of the cable there but it doesn't go to the building we need it to go to so somebody is going to have to dig a trench and move it there. But while we were there they invited us to go tour some of the other floors where there are two agencies in particular that are already in the process of moving out of it. They were very nice. They showed us what; it's basically a large donut with a central core of elevators stairways, that sort of thing and then the office space is around. It's an open floor plan with limited office space just due to the air conditioning and environmental control. But the funny thing, after we toured, people were very nice, they showed us around, they showed us what offices they had, the furniture is not as good as our furniture, but that's another story. But the funny thing was when we get back we get a nice little email from the OGS real property division which controls, they're the state landlord, telling us we shouldn't have gone over unless we had been escorted, so we kind of laughed at that.

Evelyn Aquila: Did you steal some pens while you were there?

Todd Valentine: We were very nice. I don't know what happened. We didn't make any rude comments. It was funny so we were just laughing that off, whatever.

Kim Galvin: I'm sure that's ingratiating us to them right now.

Todd Valentine: I doubt their watching. But in general the facilities are fine and we'll be able to work out the logistics that we have now. I don't think it's going to happen in the timeframe they think it's going to happen, and we're not the only agency in that same problem. This database facility that they need too was not really anticipated with moving the personnel, to the extent that it needs to be done. So they had thought of it, not to say that they're not blind to this, it's just turning into a much bigger job because they do need to segregate agencies which have particular security needs, and for us particular connectivity needs to the counties. So we don't just need to set up an area of network for all our employees. We need to reach out to the entire state but in a very specific manner.

Evelyn Aquila: This is going to be a big year for us.

Todd Valentine: It's going to be a big year for us. We were very upfront about that and they respect that and understand that but they also see that our agency is ripe for moving because our lease is up from month to month and we'd like to have the savings. It's minimal amount of red if we can save it and we've asked time in the past when the lease

was originally up was space available, at the time it was not. So I think the location is good. It's only a block just south of here so.

Evelyn Aquila: Well that's not my concern. My concern is the upheaval of everything during the time when we have a presidential election and all that we have going on. We don't even have some of the dates yet, we're waiting for the federal court to give us a date and for ... so it is a lot of things happening.

Douglas Kellner: Well on that note, why don't we turn to Kim Galvin to give us the legal report.

Kim Galvin: Well there's no decision from Judge Sharp yet on moving the primary. I really, we're waiting, it could be any day who knows.

Evelyn Aquila: Is he in the midst of a criminal trial?

Kim Galvin: I have no idea. I don't know that, I mean there's a lot before him. There's a lot of issues. There's a lot of things that he's taken into consideration and I'm sure he's being very diligent in his consideration of the issue.

Other than that in the anxious waiting, because so many things revolve around that particular decision, the routine business of our written report pretty much says it all, but the written routine business of the unit is keeping us busy and we've also spent a great deal of time doing follow up with regard to that federal case as it relates to the 2010 ballot reconciliation efforts, which is the sometimes forgotten part of that law suit. Tom Connelly has done a very thorough and great job in the agency outreach to the counties themselves when there's a ballot discrepancy and we've had multiple calls with the Department of Justice in which we've exchanged information and reasoning and rationale in an attempt to winnow down that list of resurvey counties that ultimately results from that moving the primary law suit. And it's continuing. Our last call was yesterday. We provided them with a great deal of information and they said they're going to get back to us and thank you for our efforts and all that stuff.

Paul has been updating the legal update for the conference that's coming next week and the other preparations that are required for that, Commissioners conference. And other than our written report, I think the only other important thing to note is that on the other federal law suit involving the machines and the database, as you know, we've had a bit of an impasse with New York City and their list maintenance. We have seen to, we've made great progress I think on both fronts, both on the manual list maintenance and the technological development needed to put a primary fix in place that's acceptable for all of us to use the system as it's intended. We've had multiple calls from the Department of Justice on that as well, and multiple calls with New York City in which they've provided us with a report showing that they are manually cleaning their lists. They've done what appears to be a very, very good job in doing that, removing tens of thousands from eye

count off and purged so far and they're in the process of doing another run to get more voters off and they've also agreed to continue to do that and report to us every 60 days so that we might keep the Department of Justice informed.

Douglas Kellner: Kim they're not taking voters off, they're taking duplicates off.

Kim Galvin: Oh yes, sorry. Sorry about that. My bad. We put together some, we have another joint report with the Department of Justice due today in follow up from the one last month. We've put some language together just particularly on the status of New York City and the efforts they're making which is a positive thing. And we've provided that to the Department of Justice. He called me, the person handling it called me late last night, it's in the review process. They seem to be completely satisfied with the situation and we're going to file that report today. So unforeseeing any change between now and when we get our edits back I think it should be pretty standard filing.

And other than that, we've just been working along. Does anybody have any questions?

Evelyn Aquila: Kim we don't deal with Mr. Heffernan anymore do we?

Kim Galvin: No he retired, God bless him. We pushed him out I think.

Evelyn Aquila: No he retired on his own.

Kim Galvin: He said good-bye before he left and there's I think a young attorney named Justin Weinstein Tull who is handling. He had worked with Brian Heffernan overlapped for some period of time and he's pretty hip on us if you will and he's doing a nice job as the liaison there.

Douglas Kellner: Kim, you didn't mention the legislative package. Where do we stand with that now?

Kim Galvin: Well I know that there was more meetings on that and I only participated very accidentally. We are getting comments back from the counties that we sent out the last time with the new development there have been continual meetings though.

Robert Brehm: New York City, I saw Pam Perkins at the State of the State and she, because of the holidays had overlapped with Dawn so I talked to Pam at the State of the State and I talked with Dawn shortly after, they had asked their units in the City Board to get their comments by last Friday and they were trying to have a meeting this Monday. We still haven't received their feedback to that. But just their verbal to us that they had some things they'd like to talk to us about. So, they're the ones that really need this help to get, not that everybody in the whole state can't use a rewrite of that section. So.

Kim Galvin: Yeah, they did say that its up to their units heads or whatever.

Robert Brehm: They knew when Kim had her other items that she needed the city's attention on, the Department of Justice that we couldn't ask them to devote at the same time, yet we knew the results would be they might only do ours and not theirs. So they are working on the answer for us and I know we'll talk to them on Tuesday when we see them at the conference, so from that perspective. We had some comments from the county commissioners that we've shared and they had some suggestions from, because it went to the legislative committee. We know that they're going to discuss it on Tuesday up there so they have the information and we just have to put their comments into cleaning it up a little bit.

Douglas Kellner: Good, moving forward, that's what we want to hear.

Kim Galvin: Anything to add Paul?

Paul Collins: No, it's all pretty well in the report the cases which we're handling and we haven't got a decision from that Nassau voting machine case that I'm waiting on and the other federal cases, one of them, the Germalic case is fully briefed, submitted, the other one Schultz case, we haven't filed that brief yet. Election work update 2012 is done.

Douglas Kellner: It's a great job and good reading. And if anyone wants one, they should just send an email to Paul or Kim.

Kim Galvin: We're going to send it out electronically. Paul is going to send it to all our commissioners...

Bob Brehm: Whatever our handouts are at the conference next week usually Anna through opts sends copies out to everybody.

Douglas Kellner: Some of the election lawyers who aren't commissioners may benefit from that also Paul.

Kim Galvin: Yeah, we get a lot of requests for that actually.

Douglas Kellner: Yes, well it's probably the best compilation of election law cases that's out there right now. So it's a good job.

Evelyn Aquila: May I just say, since I won't be at the conference that I apologize for not being at the conference. I think it's the first one I've ever missed, but my nephew is being married in Florida and unfortunately I have to be there. Fortunately maybe.

Douglas Kellner: The first in 20 years, you can go and congratulations to your family.

So let's hear from Anna Svizzero to do the report for election operations.

Anna Svizzero: Thank you commissioner. We have a couple of items to add to our written report. We provided the proclamation and the other information including a calendar related to the special elections that were called by the governor this past week. There are 5 of them, one senate seat and 4 assembly seats. Two of the assembly seats filed ballot access documents with us so we have staff ready to receive those and we'll deal with whatever gets filed with us. We're also preparing for the filings related to the presidential primary. Those will be due in February. The certification resolution which is before you has occupied us all. I would like to commend Bob Warren and his team. I think the staff has worked admirably to put together test plans. We assumed all of the functional testing responsibilities rather than contract that out to our lab. And I think that you'll be impressed with the work that we did, that they did and with the report that was written and with the work that is before you by way of a vote on the certification itself. We prepared conference presentations, worked with others in the agency that are doing the same thing and I don't have anything beyond that for an update other than what's in our written report.

Douglas Kellner: Any questions? So we'll turn to public information, John Conklin.

John Conklin: Thank you commissioner. We don't really have too much to add to the written report. Donna and Patrick have completed the review of all the county poll site surveys. And Tom is going to follow up with any of the ones that are missing. We're going to be sending a letter out to the counties asking them to reply to that. Greg and Patrick continue to process poll site and training vouchers and basically we just want to remind the counties to complete their quarterly reports and send them in. Do you have any question to add Tom?

Tom Connolly: No.

Douglas Kellner: Alright, well thank you. Do campaign finance, Elizabeth Hogan.

Elizabeth Hogan: Thank you commissioner. I really have nothing to add to the written report that was submitted to you through the packet. I'll point out two things though that the January 2012 periodic filing is due. This year it will be due on January 17, which is different, so I note that for anybody who has an interest in that and that's because of the way the dates fall, the Sunday and the holiday. Cut off date then for the filing is tomorrow which is January 13th. The other thing I just bring to your attention and that's on in the new business, is the draft for the independent expenditure regulation which we were charged with drafting to reflect existing law as applies to the reporting of independent expenditures. But other than that, I think everything is pretty much routine things in the report. Bill do you want to add anything?

William McCann: Nope.

Douglas Kellner: Everything is going to smoothly this New Year. So we'll turn to information technology and welcome Dan Valvo to the table.

Dan Valvo: I refer all comments to Elizabeth Mowrey

Elizabeth Mowrey: Thank you. Okay. Email migration we physically moved our email group point system to outlook on December 8th. We have a couple of issues, as everybody knows, but we're working through them. We appreciate everyone's patience. The 40 N. Pearl St. restack project, mentioned most of what I was going to say but we do have calls to AT&T and Time Warner next week to discuss our requirements for NYSVoter order and the NYSBOE side. The move act, we are working with Scytl on a BPN connection and our website has moved from Elections.state.ny.us to Elections.ny.gov. The EFS software is currently in beta testing and is available to selected users on our website. And our help desk has been dealing with calls and collecting comments from people using the software. We completed the 2011 annual security gap analysis. Staff processed the 32 day post general filing. Filings received for the 27 days post general were 2700 and the help desk received 151 calls for the month of December. And that's all I have.

Anna Svizzero: 150 of them were us on requests.

Douglas Kellner: Where do we stand on the testing of the upgrade to the campaign finance filing system?

Elizabeth Hogan: It's in the beta stage. We have I think upwards of about 24 maybe people who are participating. We have a liaison group through our education people and campaign finance working with the people in IT. What's happening is this select group of people has been asked to use the new software to affect their filing for January. What we're doing then is we're taking and categorizing any comments or questions relative to the software, any problems and after the filling, we'll do a final assessment and we'll meet internally to decide if there are any changes that need to be made to the software to reflect problems or issues, and then what we'll do is just have a final version of it. So our plan of course, was I think as my report indicated, I think active filers is up over 12000 at this point. Our intention was to make the software available to new filers, to new treasurers so that's the software they were going to go with. And certainly to any existing filers who wish to upgrade to that new software. But it would be near impossible for us to expect 12,000 filers to suddenly start using new software, our system would just crash and we're holding it together with tape now.

Douglas Kellner: So when do you anticipate that new filers will be given the new system?

Elizabeth Hogan: I would say we'll do an assessment after the January periodic filing, probably the end of January, develop, I think Elizabeth what do you think, develop any

new any tweaks probably in February and then have a final version available at that point?

Elizabeth Mowrey: I haven't really been involved in that. We can work with you on that.

Elizabeth Hogan: Okay but that's our timeframe, I would say within a few months.

Todd Valentine: In time for use in the July periodic?

Elizabeth Hogan: Yes, I believe so.

Bill McCann: Logistics is going to be the major issue because, well training and staff resources are, the call centers between the two units are only a handful of people and if you do a general roll out to the whole 12,000 people, now you're looking at...

Douglas Kellner: No I like the idea of phasing it in with new filers and those who ask to.

Bill McCann: Well we have to look, we're still doing an analysis of what that implementation would be.

Elizabeth Hogan: I think within a few months we'll be able to sit down and have a new discussion about any issues that have come up over the initial use of it by the beta group. So I think that's reasonable. Of course the issues that is always outstanding and as we have brought to you before and I think earlier maybe in a board meeting last summer was with the changes in technology so quickly, we had discussed that people who are not using desk top computers, who are using iPads and tablets this is not available to them. Our software, we're really in a very precarious place. We have done this fix to try to accommodate making filing easier. But it doesn't address the issues of the need for new software that is much more technologically feasible at this point. That hasn't been addressed. Especially a web based filing.

Evelyn Aquila: Do we have a cost?

Elizabeth Hogan: There is a cost and we have made a request in our budget every year since I have been here to try to address these things, but we're not getting anywhere with getting any funding for that so. It's really hard.

James Walsh: What would that cost, approximately?

Elizabeth Hogan: Well what we initially asked for, as I can recall Bob in our last side letter last year for the budget we were asking for about \$300,000 for the initial assessment. It was less than five. And we were asking for that for the initial assessment

of “Okay if we are going to go there with a new method of software and new access, what’s it going to entail? What will it entail building and what the costs might be?” So initially we were thinking in this year, of course, I know when we do our side letter it may be more, we haven’t...

Robert Brehm: We haven’t done our side letter yet, but generally a gap analysis of what the system currently isn’t doing and what it needs to do is a building block to some kind of recommendation. But that’s a lot of money to study that.

Elizabeth Hogan: But I think we would have to ask them for at this point \$400,000. To do this because every year that we ask, the next year when it doesn’t happen, we have to build in the additional costs of just general cost increases. So we ask, that’s the initial step that we need is to have our system assessed and our needs assessed and we have not been able to get a foot in the door at this point to do that.

James Walsh: I know this is not for you to answer, but are other state agencies as technologically behind as we are or some more advanced than we?

Elizabeth Hogan: I believe a number of them are more advanced. I mean there are, we do filings, as attorneys we do filings of financial disclosure filings of our own that we have to submit in May and it’s a web based filing system and from what I understand COPIE which is the previous ethics commission, which now is defunct and now it’s the JCOPE Commission, it’s my understanding that their software is built out to reflect current technologies and so it’s not the entire state that is in the position that we’re in. But, the discussion relative to the whys and there wherefores of that I’m not in a position to discuss with you.

James Walsh: Thank you.

Evelyn Aquila: That hurts though.

Douglas Kellner: If there are no other questions, we’ll proceed with new business since we don’t have any old business.

And the first item on the agenda is the resolution to upgrade election systems and software DS200 precinct based optical scan voting system and optical scan voting system companion auto mark ballot marking device.

Anna Svizzero: We’ve got Bob Warren here to answer any questions you might have concerning the reports that we’ve provided or the resolution itself.

Douglas Kellner: I do have a few questions and I should note that this is actually a historic occasion because if we approve this resolution it will be completing the certification of the ES&S DS200 that has now been ongoing for 3 years, 4 years. So Bob

you just want to review the documentation for what the vendor has submitted in order to accomplish this final certification and upgrade?

Bob Warren: Yea, the vendor submitted the source code and the TDP to originally to Wiley labs where Wiley labs went through and did a review to the EAC standards. The review of that work along with the source code and TDP went to our lab SLI, formerly Systest where they performed a source code review of all the executable changes. They compared the version that was submitted against the version that was originally certified and the changes, the executable changes that kicked out, they reviewed those to ensure that they adhered to the VVSG State Laws and Regulations. They then did a review of the TDP to assure that the TDP met the requirements of our matrix that we provided them. From that, we received a build a trusted build that we could perform functional testing on because the state performed the functional testing on this upgrade. And once we confirmed the functional test and we reviewed all the open issues, because there were open issues left from the source code review, and we applied the same procedure that we had from the original certification. As you remember in the original cert, we had a list of open items and part of this certification effort was to go through those items to verify that they truly had been fixed. SLI provided responses to those items. We sat down with NYSTEC and went through each of the items and we were able to close those items out in the source code perspective. During this effort we did the same process. We created a list, we had an open items list and we maintained that through the process. Our approach was to ensure that any item that was on that list didn't affect the integrity of the voting system, from the scanner to the counting of the results. There were 4 or 5 items when we were done that were related to the DS200, so we requested that the vendor go back and fix those items before we presented for certification. They did. That source was presented back to SLI for review. Once that was completed, we then did our witness build. And during the witness build, we were able to sit and watched it via Skype so we could watch the process of the witness build being done in Alabama.

So, from this, we did end up with a listing of open items. We are confident that none of those items affect the integrity of the voting. We proved that out through our functional testing. We ran ten test cases on the system. We have all that documentation if anybody needs to see it and that we compared those results to the tapes off the scanner, the results on the EMS system. We verified the reports on the EMS system and we verified the valid images that were presented with in the EMS system. So we do have some items and we will maintain those items as we did from the prior certification going forward that the next version that comes out, we will just verify that those items have been removed or closed out or whatever.

Oh and one last note, just so in case anybody is confused, there has been a lot of talk of ES&S system being decertified and that relates to Cuyahoga County in Ohio but I just want to assure you that the version that they are on is a different version that we were ever started with. They are on a 1.4 version on their DS200, we're on version 2.1. The version that they started with was just a version ported over from the original ES&S 100

system. Ours was a complete rewrite that they used, so those issues were never introduced into our system.

Douglas Kellner: I think that's worth emphasizing because people who follow that, hear DS200 and they know that Cuyahoga County Ohio is using the DS200 but it's not actually the same machine that we have. And I guess it's a little bit of a side track, but you did go through the issues raised by the EAC with the Cuyahoga County scanners right

Bob Warren: Yes

Douglas Kellner: and what did you find in terms of how those issues relate to the system that's used in New York?

Bob Warren: Well the issue, the specific issues that they had in Cuyahoga, one was the machine freezing up and shutting down and that was due to, from the reports that I received, the system being started without a memory stick in and then the system would do a check every 8 seconds or so to determine whether there was a memory stick. It would write an entry to the log each time it did a check and eventually the log would fill up. The calibration settings for the system were maintained in that same memory location as the log and it rendered the machine useless at that point, even if you put the memory stick in. So that was one issue. We don't have that. We can start our machine and our machine will have no issue sitting there. It will do one check and it will just sit there and respond that you need a memory stick. The other issue they had was with a ballot skewing issue which it was counting phantom votes because the ballot was skewed. Our system will check for the integrity of the ballot. It will self adjust as the ballot is being scanned through if that were to occur.

Evelyn Aquila: Bob you have given me an education in this over these last couple of months and I thank you very much.

Bob Warren: Take me to Florida with you.

Evelyn Aquila: no, no, no, no wedding bells are ringing

Douglas Kellner: Bob now you mentioned that there were several open items that were going to be carried over for the next version. Do you want to go through. I mean I have the written report but I think that people are still interested in knowing the specifics since some of these issues are not going to be public, to explain what the open items are and how they don't affect the actual operation of the system.

Bob Warren: Well one that comes to mind, and they're all similar in nature, is that there was one issue that the VVSG says that you can't assume a buffer size is large enough. Well there's a buffer within the ERM system that the vendor has set to hold a value of 2.1

billion. Well I don't think we have 2.1 billion voters in New York State. So that will never be an issue for us, so we've recorded that as an informational item. We will then have the vendor go back and adjust that so that it follows the VVSG. But its issues like that that we've made them all informational so that we'll maintain those as we go forward and verify those.

Douglas Kellner: I also saw that there were a couple of source code reference issues where the documentation does not strictly conform to the rules of the voluntary voting system guidelines, but again they don't affect the actual operation of the program and code right?

Bob Warren: It's more of a programmer styling issue. I mean the VVSG wants the programmer to follow certain styling of the code, and there's a few instances in there where the ES&S programmer didn't follow that styling but it doesn't affect the functionality of the code. It's more for maintainability so that if we were ever to if ES&S went out of business and the code was given to us, everybody knows how to look at that code that it follows these standards so that if it's all the same, somebody could sit down and potentially be able to work on the code. .

Douglas Kellner: I did review each of the findings that were contained in the report and I concur that none of them even remotely affect the actual operation of the system and so I agree with your recommendation that we not further delay the implementation of the upgrade particularly since we have the upgrade involves accomplishing the settlements of two of the pending law suits, and I also note that you had a couple of dozen items that we had left open when we initially certified the DS200 in December, 2009 and all of those security issues have been either satisfactorily resolved, or the security people have reviewed to explain why the VVSG does not properly address the issue, correct?

Bob Warren: Yes, that's correct.

Douglas Kellner: And that, so there are some very technical changes that we've alerted the election assistance commission about that should be corrected in the VVSG. I guess an example is one that we, as laymen are easier to explain, although some of these were technical source code security issues that in the course of our tests, the VVSG sets a maximum volume for the sound on the Automark, and the maximum sound makes sense if there's no other sound in the room. But if you're in an auditorium, or gymnasium or cafeteria where there's a huge amount of ambient noise, that maximum volume set by the voluntary voting system guidelines is not high enough so that you can hear the voting machine over the background noise in the room. And so obviously, that guideline needs to be changed and it would be a mistake for us to just slavishly adhere to the guideline where the guideline itself appears to be wrong. And there are a couple of technical issues that I believe that NYSTEC and Wiley and the vendor have all raised concerning some of

the technical source code documentation issues. Am I correct in explaining it, or do you want to add anything to it?

Bob Warren: No, that's correct. There are things within the VVSG that probably leads to like interpretation of what the regulation is, it's not quite clear or there's issues as Commissioner Kellner just said where they fit in a perfect world but not in a real world and so those have to be hopefully addressed at some point.

Anna Svizzero: We took the Board's direction to heart that when we had to make that kind of interpretation, we did it with some common sense. For example, the decibel testing that you mentioned, the sand testing was related to tanks in a desert. It wasn't related to stuff that falls out of ceiling tiles. I mean the tests just didn't make sense in the world in which these systems were used. So we did take the Board's direction to heart when we explored all of those issues so that we didn't burden the process with testing dynamics that just could not ever be achieved.

Douglas Kellner: Well I still think we should be very proud, that I think the testing system that New York State has used is the best that I'm aware of, of any jurisdiction either nationally or internationally in terms of the thoroughness of the testing that these systems have undergone and I want to thank the vendor for their cooperation in going through this process. I think they have an excellent product that they should be proud of. Thank the staff here for their efforts in sticking with this and also insisting that the guidelines be adhered to the extent that they should be and also our friends at NYSTEC who have provided such valuable assistance, as well as our testing laboratories.

So on that basis, I'm prepared to have adoption of ...

Anna Svizzero: We have one correction to make to the record.

Bob Warren: The two screen changes you referred to are not in this version, they'll be coming in a version early spring. We're going to be getting another version. We're getting this version

Douglas Kellner: They're in part of the report. Okay go ahead.

Bob Warren: They are going to be coming in a version that will be hopefully released to us in April of this year that we will quickly turn around.

Douglas Kellner: But New York City needs this version now for the presidential primary right?

Bob Warren: That's why we wanted to get this out quickly.

Douglas Kellner: So those in favor of adopting the resolution say aye?

All: Aye

Douglas Kellner: Opposed? Resolution is adopted.

Evelyn Aquila: I think we saw a lot of good things when we were out too in the counties. We saw a lot of good people and good operations of machines.

Douglas Kellner: And we're still looking forward to the completion of the testing process for the dominion image scan, image cast

Anna Svizzero: And they've both promised central count scanners which some of the counties have expressed interest in so we have that on the horizon as well.

Douglas Kellner: What is the current schedule for completing the image cast upgrade?

Bob Warren: We're hoping to have it ready for the April meeting. Now their changes, their screen changes for those two court cases will be in that build that we're going to receive hopefully next week to begin our testing.

Douglas Kellner: And have they addressed all of the security issues that were raised in the conditional certification in December of '09?

Bob Warren: We'll know in 2 weeks when we get the final source code review from SLI.

Douglas Kellner: Okay. Alright next is the resolution to post for comments the amendment to part 6200.10 of the regulations regarding independent expenditures. Liz and Bill do you want to just explain briefly what the agency is proposing?

Elizabeth Hogan: The agency is proposing as we had been directed in chapter 399 of 2011 that we create a regulation that reflects the existing law regarding the reporting of independent expenditures. So what we did was to create a document that we hope fulfills the mandate to be an educational source. As you look at it, you see there are topical headings and we feel it's in a logical presentation about what has to be done in order to make a report, an independent expenditure. And it's ready to be posted for public comment and be sent through the process.

Douglas Kellner: Any questions? Those in favor of the resolution say aye.

All: Aye.

Douglas Kellner: Opposed? So the resolution is adopted.

Robert Brehm: We have one item we wanted to add to your consideration. This leaves, technically it leaves our building and it goes to a new group that's called The Regulatory Review Unit. It replaces the former GORR Governor's Office on Regulatory Reform. Governor Cuomo rescinded that earlier executive order that created that agency and now regs go through the Deputy Secretary, the Council and this review unit. So it will go to them and all we're asking is aloud if there are any nonsubstitutive changes cause often at this level there would be very minor grammar numbering kind of issues that we need to clean up just to get it posted. So if you would allow us to make those changes to keep it going

Todd Valentine: After public comment

Robert Brehm: you're going to have to make the ultimate vote to accept the final document after the process, as opposed to coming back to you for any of those nonsubstitutive changes before we can post it.

Douglas Kellner: Does everyone agree with that?

Male: I have no problem with that.

Female: No problem.

Douglas Kellner: We have preliminary determinations on campaign finance enforcement issues. I understand that there is a proposal to lay aside 12-04 and so we'll be, unless someone wants to discuss this, we'll be voting on 12-02, 1151, 1147, 1140, 1138, 1130, 1126, and 1124. Is that okay. Those in favor of adopting the proposed reports say aye.

All: Aye.

Douglas Kellner: Opposed? Alright so those reports are adopted. I don't believe there is any litigation that we need to discuss in executive session. So we just need to discuss the date for our next meeting.

Robert Brehm: You said after the 21st and before March 1st. So after February 21st and before March 1st so that we can get the certification done on time and in that period of time is Ash Wednesday is the 22nd. So either that or the 28th if we need more time for you, into the next week.

Todd Valentine: We're scheduling the drawing for ballot position on the 28th.

Robert Brehm: we could do it the 23rd, 24th, 27th, 28th or 29th. But it has to be done, we have to certify by March 1st.

Evelyn Aquila: Okay so March 1st would be no good. Is this a Wednesday?

Todd Valentine: the 29th is a Wednesday.

Evelyn Aquila: Wednesday is hard for me. If we have to do the 28th we have to do the 28th, the pastor will just have to teach them that's all. I teach on Wednesdays. I don't know which one is which. I don't know where I am fourth grade and third grade.

Douglas Kellner: It'll get there, it'll come, it'll come.

Evelyn Aquila: This is a step to the future.

Douglas Kellner: Now I can file a campaign finance report on my back.

Evelyn Aquila: Are you running?

Douglas Kellner: No. It's been six years right we're trying to get that system in place. Alright my calendar. February 28th is fine.

Evelyn Aquila: That's a Tuesday right.

James Walsh: Tuesday, correct

Douglas Kellner: So we agree those in favor?

All: Aye

Douglas Kellner: Alright we stand adjourned until February 28th.