Table of Contents

Board of Commissioners Regular Meeting

[BEGIN AUDIO]

JAMES A. WALSH: Good afternoon everyone, welcome to our meeting. My name is Jim Walsh, I'll be the chairman of today's event; I'd like to introduce our fellow commissioners and to my right...

DOUGLAS A. KELLNER: Douglas Kellner.

EVELYN J. AQUILA: Evelyn Aquila.

GREGORY P. PETERSON: Gregory Peterson.

JAMES A. WALSH: And around the table, Todd?

TODD D. VALENTINE: Todd Valentine.

KIMBERLY GALVIN: Kimberly Galvin.

JOSEPH BURNS: Joe Burns.

PATRICK CAMPION: Pat Campion.

JOHN CONKLIN: John Conklin.

GEORGE STANTON: George Stanton

WILLIAM MCCANN: Bill McCann.

ELIZABETH HOGAN: Liz Hogan.

BOB BREHM: Bob Brehm.

SPEAKER: Tarry Breads

ROBERT WARREN: Bob Warren.

SPEAKER: Lorraine DelCostello

MARY ELLEN WALSH: Mary Ellen Walsh.

BOB GRONCZNIAK: Bob Gronczniak from NYSTEC.

Approval of Minutes

JAMES A. WALSH: Thank you everyone, and welcome; the first item of business, the minutes of the December 13th meeting.

DOUGLAS A. KELLNER: I had one revision that I asked to be retyped, which was to add at the end that we received the report from the League of Women Voters from Aimee Allaud. So I'll move the adoption of the minutes with that revision.

GREGORY P. PETERSON: Second.

JAMES A. WALSH: Second, all in favor.

(Chorus of ayes)

Opposed?

(Silence)

Carried

Unit Updates

JAMES A. WALSH: Unit Updates, Executive: Bob Brehm and Todd Valentine.

Executive

TODD VALENTINE: Shall I go first?

BOB BREHM: You can go first.

JAMES A. WALSH: Todd Valentine and Bob Brehm.

TODD D. VALENTINE: No, it's--this time of year is moving towards, you know, getting ready for the next cycle,

so to speak. So it's time to start getting back to the projects that by necessity are placed on hold, because of the elections so... And then getting ready in anticipation of what should be a relatively light year, being an odd year before the Presidential year. So it's trying to get everything in order for that and then we await to see what the Governor comes out with his budget when it comes out in the beginning of February. So it's just hard to say, I mean it shouldn't directly impact us as far as spending is concerned, but the programmatic issues that come out of that are what are going to be the challenge. So and obviously we don't know that, we won't know that until - - that, so we put into the dollar amount and cover what we need to cover. And then we'll see from there and then now we have several conferences we're going to, the County Election Commissioners have their winter meeting next week. It's for - - people on the staff are attending.

EVELYN J. AQUILA: I plan on going too.

TODD D. VALENTINE: After that Bob and I are going to the National Association of State Election Directors meeting in Washington, and Bob has another meeting after that for the Standards Board, and so he's on that.

BOB BREHM: -- 25th and 26th of February.

TODD D. VALENTINE: And then behind on all that and - - details getting ready for our own April conference at the end of April, so a lot going on.

JAMES A. WALSH: Uh-huh, thank you, Bob?

BOB BREHM: We continue to work with--and probably George will mention it a little bit--you know, last year was the patch for the MOVE Act; this year we were targeting to be able to integrate it more into the work that the counties are doing. So that would mean we'd have to create purchasing procurement issues that allow us to touch the County Voter Registration System, so that when they get the application from the military and overseas voter they put it into their system and they kind of work their way through NYSVoter to Scytl's system, so that the counties don't have to handle things twice and do things manually. In order for that system to succeed we have to find a way to improve the work product, just because those deadlines are pretty severe for getting those ballots out and we have to find a way to automate it as much as possible. So I know part of that is one of the resolutions you're looking at today to pay the bills, and the other is efforts in early February to put together the technical requirements to actually make those changes. So I'm sure we'll come back a few times

with updates on how that's working.

JAMES A. WALSH: Thank you. Legal, Kim Galvin.

Legal

KIMBERLY GALVIN: Thank you, Commissioner.

We filed our report, Paul unfortunately is out sick today, so there's really very little to add to the report except for I thought that I would clarify one of the bullets in it. One of the bullets indicates that we've been working with Anna's unit, and particularly Phil Jorczak in that unit, to do some follow-up with the Department of Justice regarding the military ballot consent decree that we had in place. One of the requirements in reporting was that we report back to them any and all ballots from each and every county that was received post 11/24 and the reasons therefore. So that's taken quite a bit of time, and then the Department of Justice has asked us a lot of questions and we provided clarification. As always Anna's unit is very helpful and particularly Phil, in this case, has been very helpful to us as well.

DOUGLAS A. KELLNER: Kim, on that issue are there ballots, I mean...?

KIMBERLY GALVIN: Not many at all, a lot are coming back undeliverable, so the receiving--the Board is getting some of them back for various reasons.

DOUGLAS A. KELLNER: Yeah, in other words ballots that we mailed out that are being returned?

KIMBERLY GALVIN: Right, but none are coming back voted that just weren't counted, because they were received [SOUNDS LIKE] to date. Some are coming back--

DOUGLAS A. KELLNER: I'm sorry, you said that there are no ballots that - -

KIMBERLY GALVIN: -- From what I saw, I think I saw two that we were requesting clarification from whether or not it was--there's some confusing things like "received late" that we're assuming are they meant postmark was late and that's why they didn't count it. But we're doing the follow-up with the counties to ensure that, but as far as I can tell if it's not zero it might be one or two very--things, we're still gathering that information.

I think it's--my guess is, none is going to be the ultimate result that don't have an explanation as to why they're not being counted and were received after 11/24.

EVELYN J. AQUILA: Kim, could I ask you one question too, I'm sorry to interrupt you.

But do we have any idea what the percentage of the military ballots were compared to how many were counted? What was the percentage of them that were counted, or is that too difficult to know that?

BOB BREHM: That's one of the reports we have for FVAP, but we were waiting for that information to come back. We had done a preliminary part of that report, but then the Justice Department asked for updated information on the number that came back after the 24th, so we were waiting for them to finish that report so that what we give FVAP is consistent with what we've given the Justice Department.

KIMBERLY GALVIN: But from the cursory review that was very few that had come back--

EVELYN J. AQUILA: I gathered that from what you were saying.

KIMBERLY GALVIN: --were not counted.

EVELYN J. AQUILA: Well, do we--

BOB BREHM: But we have the whole list of what was sent, how many came back, by the dates that - -.

EVELYN J. AQUILA: -- Do we--everyone who is registered received it and was sent a ballot?

BOB BREHM: Correct.

EVELYN J. AQUILA: Okay, so this would be a percentage of--when we come to the final number it would be a percentage of those military people who were registered who voted? Just like they give a percentage of us.

KIMBERLY GALVIN: -- And who actually returned the ballot--

BOB BREHM: -- Correct, but there's--

KIMBERLY GALVIN: --and then the percentage of that, yeah.

BOB BREHM: There is a large number just looking at the information that the counties have sent us that--and that's why I think it was mentioned - -.

KIMBERLY GALVIN: -- - - I think she's wondering the percentage of the universe that actually - -.

[MULTIPLE VOICES]

BOB BREHM: --But there's a lot of them that came back undeliverable.

EVELYN J. AQUILA: -- The percentage other than - - yeah.

BOB BREHM: So, you know, received, so it's hard looking at that whether or not the County Board has routinely

been doing what the statute says where the ballot comes back undeliverable in order to put them in an active status and send out the follow-up information.

KIMBERLY GALVIN: But just for clarification, just so I know what you're talking about, if there's a million voters registered in the state - - 40 percent vote.

EVELYN J. AQUILA: -- Say we have - - yeah, say we had 500 registered military people, did 100 of them vote - -.

KIMBERLY GALVIN: -- Okay, I don't know what that percentage is, but we can find that for you.

EVELYN J. AQUILA: All right, I just feel that might be something that would be good for us to know, you know, because that we could understand, you know? I mean, those that fell by the wayside would probably be another number, those that were undeliverable or--

BOB BREHM: -- Yes.

KIMBERLY GALVIN: -- Right.

EVELYN J. AQUILA: --that [SOUNDS LIKE] over counted, but I think we should know the percentage--

GEORGE STANTON: -- - - once the history's all in.

KIMBERLY GALVIN: -- Yeah, I don't imagine that.

EVELYN J. AQUILA: See because the percentage gives us an idea if we need to do something better.

KIMBERLY GALVIN: -- That I understand.

EVELYN J. AQUILA: Is that a good enough percentage or a poor percentage.

KIMBERLY GALVIN: I understand that.

JAMES A. WALSH: Do any military ballots come back undeliverable?

BOB BREHM: A large number.

JAMES A. WALSH: Really?

KIMBERLY GALVIN: --were not counted.

EVELYN J. AQUILA: - -

BOB BREHM: That's the statute, the chapter law last year requires the counties to send out an annual update. It includes, for the first time, all voters. It used to exclude--if you had an active application from the voter you didn't have to send out the annual voters to get the--you know, please update your address if it's wrong.

But now it includes everybody, I think the assumption is if you have an email address it's just you send it out electronically and it gives them one more reminder that if they need to update their address now is a good time to update their address. But, you know, with this report there are a large number and it's hard to know whether or not it's the mobile, you know, nature of military and overseas voters.

KIMBERLY GALVIN: Right, you have mobility, yes.

BOB BREHM: Whether or not it's more military movements, or whether or not it's more special federal movements, and whether or not the counties are doing what they need to do under the statute to not keep mailing to bad addresses, military ballots, year after year after year that just have no chance of getting there.

EVELYN J. AQUILA: It makes me wonder that every state probably has this problem.

And I kind of wonder if the military, once we sent it to what was a real address maybe they had the obligation to know where that soldier or sailor or marine is and to pass it on.

JAMES A. WALSH: Yeah.

EVELYN J. AQUILA: Rather than us, because we have no way to find them, but the military post office should have a way to find them and I think that should be something we should think about. That's why I wanted to know this, you know, this is what has bothered me. I have a nephew, I think I told you before, that's in the Navy and he's in several places. It's not easy to get a hold of him, but he's in a submarine and he was on his sixth months being under the water, because it's nuclear--his submarine--and he got his ballot, because I make him fight for it. And they sent it on and they find him, but I mean it should be--maybe there's something we have to do federally to get that law changed to say that that obligation--if that's a legitimate address where this man was or this woman was, that's now they're obligation, because they know how to send the mail on and for them to send it on.

JAMES A. WALSH: That's a good point, I think that's a statistic that would be interesting.

EVELYN J. AQUILA: Yeah, I think it's important.

JAMES A. WALSH: What number of undeliverable military ballots are there, and why, and what can we do to correct that?

GREGORY P. PETERSON: Especially if you can deliver it underwater, you should be able to deliver it any place.

[LAUGHTER]

EVELYN J. AQUILA: Well, I think he got it electronically to be honest with you. He said his captain came and said to him, "Hey, Cressenberry, you've got a ballot. I didn't get one, but you got one," and it was from New York State too.

JAMES A. WALSH: Can we see that we get an answer back to that please for our next meeting?

KIMBERLY GALVIN: --were not counted.

BOB BREHM: Sure.

EVELYN J. AQUILA: In time, I think it's something we should maybe look into and maybe get our congressmen interested in helping or maybe Schumer would help us; Schumer would help us I know.

BOB BREHM: A large number.

JAMES A. WALSH: He wrote the bill.

EVELYN J. AQUILA: Yes, I know.

JAMES A. WALSH: Along with Congresswoman Maloney.

SPEAKER: Kim, you're still on--

[MULTIPLE VOICES]

KIMBERLY GALVIN: One other thing as well, that may need an update, you'll see that we are still trying to help and monitor the 100th Assembly District that's occurring, and as of this morning there's still no decision on that. They're headed back to some of the counties tomorrow to, I guess still try to discern what the actual number of ballots are in question, it still is they're having a bit of a problem with that race down there for a variety of reasons. So we have no need for the Board of Canvassers today, obviously, but I suspect that that will be--I'd say any day now, but I said that last meeting--so I don't--

EVELYN J. AQUILA: Are they in court still, in the court?

KIMBERLY GALVIN: Yeah, they're in court.

EVELYN J. AQUILA: In the court, yeah?

KIMBERLY GALVIN: They're everywhere.

DOUGLAS A. KELLNER: It's very unusual when the lawyers for both sides don't agree on the actual number.

KIMBERLY GALVIN: Well, I thought that they had stipulated to the number and then the Board's changing--the Board changed the number.

TODD D. VALENTINE: One of the county boards.

KIMBERLY GALVIN: One of the county boards did.

EVELYN J. AQUILA: They found a bunch of ballots over here.

KIMBERLY GALVIN: I don't know if they found them or I don't know what they did, but--

EVELYN J. AQUILA: Yeah, I know.

KIMBERLY GALVIN: So that is still in--and then Paul's cases that he's been handling, I don't believe we've seen any decisions or I know we got some papers in the mail today on one of them, but we haven't looked at them yet.

DOUGLAS A. KELLNER: There appears to be a lot of activity in these various litigations, and Paul's working on them.

KIMBERLY GALVIN: -- But nothing really happening, yeah.

DOUGLAS A. KELLNER: But nothing decisive yet and he's been writing a lot of motion papers.

KIMBERLY GALVIN: Yes, he has and that's it unless there's any other questions.

JAMES A. WALSH: Any other questions for Kim?

KIMBERLY GALVIN: I do have one thing--I'm sorry--I do have one thing that I'll bring up in Executive Session, only because it's pending litigation. Our weekly status reports to the Department of Justice that I just wanted to raise, so just to make that so I'm not hiding anything, it's just the frequency of the reports.

JAMES A. WALSH: Remind me of that when Executive Session comes up.

KIMBERLY GALVIN: Okay, I will.

JAMES A. WALSH: Election Operations, Anna?

Election Operations

ANNA SVIZZERO: Thank you, Commissioner.

Our monthly report was in your packet, I only have a couple of additions and I can elaborate our intent to apply for an EAC grant that will address procedures and policies relating to pre-election testing and post-election

audits. We had a phone call with the EAC, there was a conference call for anyone who was interested in the grant and it was somewhat enlightening. Their website is equally helpful and we do need to send a letter of intent, but it needs to be sent by the agency management. It has to be somebody who can obligate the agency and accept federal funds, so we'll be drafting something for Bob and Todd to sign to send that letter of intent into the EAC. We did hear from Dominion, they're intending to submit their central count system in March, we hope that actually happens. There is, you know, some interest at the county level for central count systems.

ES&S had approached us about a central count system late last year, but we have not heard any more about that, so there will be some certification efforts, testing and functional testing related to those requests from those two vendors. And beyond that I don't have anything else to add to our written report that was in your package.

Joe, do you have anything?

JOE BURNS: (Shakes head no)

JAMES A. WALSH: Any questions? Okay, I have a note on here, an update on the Voting System Certification findings by Bob Warren; is that correct or no?

BOB WARREN: Yeah, as far as the findings go we're moving along pretty well with the ES&S system.

They submitted a source code build to--they're using Wyle Labs to do their source code reviews--they've submitted that back in December.

They're getting close to finishing that up, they should have reports to SysTest by mid-to-late February.

Once those tests have been submitted, the results of that, the report's reviewed by SysTest, if everything is accepted we would then move to getting a trusted build and begin functional testing. On the Dominion side we have finally gotten to the end of the outstanding findings. There were some listed that the vendor had to research, they've completed their research and they have agreed to either fix the finding or to eliminate the--it was all source code related--and they would either remove the source code that didn't pertain to New York State or fix the finding. We worked with NYSTEC, we had a phone call with them a week and a half ago, we have those resolved and they expect to have a build into SysTest at the beginning of March.

JAMES A. WALSH: Any questions?

(Silence)

An update on Ballot Redesign and Usability Project, Joe Burns.

JOE BURNS: Thank you, Commissioner.

Phil Jorczak from our unit, and I, have begun to familiarize ourselves with usability and usability standards. We have obtained a number of sample ballots from other states and jurisdictions; I don't have the exact count, but if that's something anybody's interested we could certainly dig out that number for you as well as the samples. In the weeks ahead we're going to be discussing the search for a usability and ballot redesign consultant and we've had some preliminary discussions about possibly forming a committee of county commissioners to advise, consult and work with us as we work through this project. And that's all I have.

EVELYN J. AQUILA: I think that's good that you form a committee, I hate this - - and let's go on the committee, but I think it's very important. A lot of people are not satisfied with the ballot design, we well know that and I think that any input we can get especially from people from, you know, here or there--all over the state. I don't want it to be a huge committee, but I'm saying if we can get them from the different areas of the state that would be very good, Joe, you know? We need that.

JOE BURNS: As I said to somebody, our county commissioners are on the frontlines, they're the ones who are running these elections and they deserve probably more than anybody else to have some input and some guidance and give us some advice. And they're great people who do a good job and--

EVELYN J. AQUILA: We have to work with them you know, we all have to work with everyone, we have to get some ballot redesigns that are--people can vote on. You know, people can clearly go in and look at and say, "I can read this ballot," number one. I mean, they give magnifying glasses where I come from that you have to put on if you have bad eyes, and I think that's not something we should be looking at as something that's doable. Because most people couldn't even find where the glasses were and then they took their glasses, it was a mess, so please keep working on it and come up with the gems for us.

DOUGAS A. KELLNER: I'm interested in the discussion that's gone on about retaining a consultant. At the last three meetings I've raised the issue that we should actually be designating someone on our staff and rewrite the job description to include usability and then to have that person obtain usability training. How has that discussion broken down in terms of what's going on?

JOE BURNS: Well--

DOUGLAS A. KELLNER: That's something for Todd and Bob to answer.

(Silence)

EVELYN J. AQUILA: Nobody wants to - - no?

TODD D. VALENTINE: Oh, there's just several points to the question, that's all. It's formulating that response, well we've identified two options at this point. I know one expert had reached out to us, I guess before a letter of procurement I'll have to be able to obscure with names for possible reasons.

KIMBERLY GALVIN: Yes.

TODD D. VALENTINE: Possible procurement issues, but as well as an expert that we had used in a prior project for the voter registration issue. So it was a question of contacting them to see--because they were locally based as opposed to the other person who was not from this area, so it might be--

SPEAKER: -- - - local - -.

TODD D. VALENTINE: It would be a little bit easier, at least on the East Coast anyway. And then just trying to figure out the amount of what they would be charging, the amount of money that will be available, and what will be the funds to pay for that to come from. The change in the staff--

DOUGLAS A. KELLNER: -- Well, the issue that I've been talking about is that especially now that we are paper-based that there should be a permanent staff person who maintains currency on usability issues, and whose official job description includes being responsible for usability and to serve as a consultant for the county boards when they have questions. And I know we don't have anybody now who has that training, but in the long run this is something that I think we need to have. And I think that there's a substantial number of legislators who have been pushing for this and trying to do it to the extent that they can through legislation, but it's hard for the legislature to pass the bill and say, "You have to have somebody on staff to do this." But I think we need to be responsive and to identify somebody on staff and change their official job description to include this and to make sure that we're sending them to get appropriate training.

BOB BREHM: I think for now that we at least have identified those two staff members--Joe's one of them, and Phil was the person who just walked in and out of the room, for those who don't know Phil--to at least start the

process. It probably will end up at those two people, but right now that's the two that are starting it. I don't think we've come to any conclusion of hiring a consultant, but I think from our perspective we're not sure who the best group of people is to give us training, what kind of groups provide training. I mean, there's a lot of training and usability in general, but training of usability with regard to ballots and the world that we live in. That's a different group of people that have already started to work there so one, we want to look and find out, you know, who's worked in that arena, what kind of training sessions are there, what's the best way to get that training, and how do we procure those groups to pay for it--is always an interesting part of our process. And then also to follow up once we've come to that conclusion, I mean does it really stay with this particular person and what does it entail? I think it's too early for us to actually change their description yet, because we don't know all of the pieces that we need for it, but at least they've started to put it together. I think from a consultant point of view is that's the group to do the training, but we're not sure yet what they charge and what the procurement part of it will be. It's on our list of possible procurements, so that we can at least get ready for it, but right now I think we're looking for who is the group and what kind of--you know, do they hold training sessions, are they multiple days, are they on-site, you know, do they come here or do we go there? We still don't have all those details yet, but that's what we're asking for.

DOUGLAS A. KELLNER: And certainly gathering up the ballot forms that are used elsewhere is a good step, but let's keep talking about this at each meeting so that this stays... To me, this should be one of our highest priorities, because it is something relatively new to us and we need to stay on top of this.

EVELYN J. AQUILA: I don't think it would hurt Doug either if, and I don't know if Bob talked to you about it, but I said we're putting it together. I only say that, and I don't mean to say the other gentleman couldn't do it, but I know you yourself know more about this issue than most people I know.

DOUGLAS A. KELLNER: Well...

EVELYN J. AQUILA: And he really does, you know, God bless him. I know you have a very busy--

DOUGLAS A. KELLNER: But I don't know enough. [LAUGHS]

EVELYN J. AQUILA: I know you have a tremendously busy law practice and it's not fair--

JAMES A. WALSH: Well, we have a candidate for the job then.

[LAUGHTER]

EVELYN J. AQUILA: I hate to put it on your shoulders along with everything else.

GREGORY P. PETERSON: Commissioner/Design - - works.

EVELYN J. AQUILA: But I'll tell you he's got the--he knows how to do it.

GEORGE STANTON: I've got an empty cubicle down in my unit - -.

JAMES A. WALSH: All right, thank you all.

Public Information Officer, John Conklin.

Public Information

JOHN CONKLIN: Thank you, Commissioner.

I only have one item to add to the written report that we submitted. The annual conference in April we had to move two days, it's now going to be Wednesday, April 27th through Friday, April 29th. That was to accommodate Passover, we sent out an email to the commissioners and I believe the vendors yesterday.

DOUGLAS A. KELLNER: But not the four commissioners here!

JOHN CONKLIN: Oh, well.

DOUGLAS A. KELLNER: Please do, I mean that's a serious thing, if there are emails going out to the county commissioners the four of us should be copied on them.

TODD D. VALENTINE: They should have been sent out this morning.

JOHN CONKLIN: Absolutely, I'll make sure that that happens.

DOUGLAS A. KELLNER: Thank you.

JOHN CONKLIN: Absolutely, so that's it for Public Information.

JAMES A. WALSH: Thank you, John.

EVELYN J. AQUILA: One last question, John are we going to have a speaker at all? Any, you know--every once in a while we would have a speaker and I thought it always packed the house when we had somebody outside of ourselves.

JOHN CONKLIN: Well, in the two conferences that I've been involved in since I've been here the speakers have

gotten somewhat mixed reviews. We had the reporter, the local reporter, one year and then the gentleman from the Election Center in Dallas last year whose name is escaping me right now.

EVELYN J. AQUILA: Yes, I know who he is - -.

JOHN CONKLIN: Doug, right?

SPEAKER: Chapin?

JOHN CONKLIN: But we are entertaining the idea of another speaker, perhaps a pollster. There's a couple from around the state, but that's in its early stages.

EVELYN J. AQUILA: Okay, thank you.

JOHN CONKLIN: Sure.

JAMES A. WALSH: Campaign Finance, Liz Hogan?

Campaign Finance

ELIZABETH HOGAN: Thanks, Commissioner.

 The report that I submitted in the Board packet basically summarizes the projects we're involved in.
I did take the opportunity in this report to give you the total numbers of activity relative to campaign finance processing and intake issues. You know, we were very busy this year, you can see we have--we're running around 11,500 of registered committees. Our call center--basically, you know, two people with an additional two doing it part time from other duties totaled 14,600 telephone calls so we were hopping. We had a filing due yesterday, I know that some submissions that came in last night of course weren't posted to the website until this morning, but they should all be up. I think that George could probably address that, but they may even all be up at this point and time, because I know people were looking for reports that were submitted yesterday or last night. And, you know, first thing this morning they weren't up on the website, but they should be now I believe. And that's basically it other than what was in the report; Bill would you like to add anything?

WILLIAM MCCANN: Yeah, we just have some ongoing work that we're doing.

We're in the process of finalizing our Campaign Finance Seminar schedule where we go throughout the state and do those trainings. And we're working on our web update for campaign finance information as well as software

development, so we're hot. You know, we have some good projects undergoing and things are going well.

DOUGLAS A. KELLNER: Could you report on the status of the VOTE-COPE litigation and the subsequent filings that they made and what you're doing on that?

ELIZABETH HOGAN: The VOTE-COPE litigation, the last input that we had had with the Attorney General who is representing us, in that litigation they had requested some materials from us to include in an answer.

I believe they've had a conference with the court and the plaintiff's attorneys and our attorney, who is with the Attorney General's Office, indicated that yes she would probably be calling us again to discuss this matter in the Spring. To sit down again, but I believe the conference with Judge Holmer is scheduled for October, I believe, and so we're waiting for contact from the Attorney General.

DOUGLAS A. KELLNER: And then in terms of their filings they went ahead and filed as a political action committee and--

ELIZABETH HOGAN: Yes, they have that.

DOUGLAS A. KELLNER: --essentially it moots out the litigation or--

WILLIAM MCCANN: No, they have two committees there.

ELIZABETH HOGAN: They do now.

WILLIAM MCCANN: They have one that's an independent committee and then they have their original [PH] PAC. The only other development is they did send us correspondence to state that they were going to, and did, engage in communication with their membership, which is one of the issues in the litigation. So that litigation is proceeding, you know, with the federal court's fast track, but it's not really fast track per se. And then the other ongoing litigation we have in the courts, well on that similar issue, was the National Organization for Marriage and there was a federal settlement conference on that that we did a conference with the attorneys. And they essentially tried to, our understanding is that federal court suggested to them that they might want to drop their appeal, but they were not willing to do so, so that will continue. And with the appeal they're in the process of setting up the schedule to do the appeal papers and what the responses will be, so that is ongoing.

DOUGLAS A. KELLNER: But so far both federal courts have upheld the New York Regulations?

WILLIAM MCCANN: Correct, but I think that it will be interesting to see what the ultimate developments are,

because obviously it could have a marked impact on what the status of the law is and also then depending on what happens with that there would be some fallout. Not in the majority, but we would just have educational aspects that we would have to do relative to committees and, you know, what the requirements would be, etcetera. So first--

ELIZABETH HOGAN: But we don't anticipate any real activity in either one of those cases until the autumn.

WILLIAM MCCANN: Right.

SPEAKERS: (Chorus of thank yous)

JAMES A. WALSH: ITU, George Stanton.

Information Technology

GEORGE STANTON: Commissioners, you got my report also in your packets so I'll just give you the highlights. Basically we shut down NYSVoter during the holiday between Christmas and New Year's and did a complete upgrade of security patches and any functionality patches to all of the hardware and software. We were down for about two and a half, three days, to do that. Liz mentioned the January periodics, we came into a nice surprise yesterday since it fell over the weekend that it was due we came into 1,000 emails waiting for us, and as of this morning they had actually uploaded 1,800 filings yesterday. Some of those were probably amendments, but we've been working with the Office for Technology on switching and converting over from our office GroupWise mail over to Microsoft mail that's the New York State mail system so that all New York State employees will be on the same mail system. We made some web changes that were required, because of the new governor who was sworn in and so forth, got those done on due time and we've been doing what we can to prepare for the MOVE--the final part of the MOVE Act. We're sort of being held up right now by contracts and so forth, but hopefully they'll move along soon.

JAMES A. WALSH: Do you want to explain what that issue is, George?

GEORGE STANTON: The MOVE, the issue with the contracts?

JAMES A. WALSH: No, the issue with the MOVE Act, with what it is that you have to do.

GEORGE STANTON: Well, Bob alluded to it early on, we have to of course make changes since everything is

going to feed from the counties through NYSVoter to the Scytl or to the Overseas Voting Site. We have to make changes to the database of what data we collect, we have to make changes to the web services, which is the interface that talks back and forth to the county, we have to make changes on our end. They're going to have to make changes on their end, which means we're going to have to probably contract with the county vendors again to make the change like we did with the original interface. And it's coordinating, you know, between our needs, the Scytl contractors, the HP contractors, and about four county contractors who want to put this all together. So it's going to take the better part of the year I would guess, to get this all done. Actually procurement is the slowest part of it, of any of it, so if we could just go to work it probably could be done in six months, but since we're being held up by that that's always our biggest issue.

The other thing that I want to say, because I know you're going to ask about it is the operating system neutral software. It's functionally done, it has been for a few months, we've been just going through and making minor changes that have been suggested by the campaign finance folks. We're still going through that waiting for some final language on some things that I believe has to do with the lawsuit that was--I don't know if it's that particular one, but there's some wording that has to be put in there for terminations of treasurers and committees. So we're waiting for that, then once we get it so that everybody's happy with it we have to do probably a couple of months worth of good stress testing on it in-house and then figure out how we're going to actually roll it out. One of the issues we're going to have rolling it out is we're talking rolling it out to 1500-2000 people now and the last time we made a minor change to our software it was a major undertaking. And we're down--we have three help-desk people, I have one that's indicated she's going to retire this summer, so I may be down to two. So we're going to have to logistically figure out how we're going to do all that, and ideally I'd like to probably put it out to some of the Mac users first there to try it since they're the ones that are waiting for it.

DOUGLAS A. KELLNER: So let's just go through the schedule, so the language issues are not really ITU, they are Campaign Finance that has to get this done. So what's the schedule, Liz and Bill, to get this done so that we can move this four-year-old project to completion?

ELIZABETH HOGAN: Well, we're working--

SPEAKER: I thought it was five years.

SPEAKER: Well it might be five, yeah.

ELIZABETH HOGAN: We're about halfway I believe through the schedules, what we have been doing is we have been conducting kind of a mini-beta project with campaign finance staff. So we've been giving people in the unit the software that's in the works for them to work on to see how, you know, it responds, the usability of it. These people know what our filers ask and what the problems are and how we should structure the software to address those issues. So, you know, what we've been doing is we've been running this little mini-beta. Every week the staff is working on, it depends on if it's a large schedule, or if it's several schedules, and then I believe what IT has asked is that once every two weeks we report to them with our work for that two-week period for them to do updating. I believe we're about halfway through the schedules and, you know, we'll continue. We've been working consistently on this and I--what timeframe we're talking about, how long do you think? A couple of months anyway.

WILLIAM MCCANN: Well, there's a couple of issues also that I think that are tangential, but critical. My understanding is that new Macs are developed or built with the ability to run Windows programs on them with the supplemental chip that's included in the new Macs.

DOUGLAS A. KELLNER: Some of them.

WILLIAM MCCANN: Some of them, and so in the interim that is an opportunity.

But the other issue is it's frankly a resources issue, for instance right now we're in the middle of the filing of the January periodic. Key staff that work on this mini-beta, while they're processing in their regular job, you know, the phone calls and those type of things are obviously not going to be available to do the beta testing. But we do pull them out on a regular basis to do that, we're about halfway through the schedules. According to the staff we're up to like G and H on the schedules and they're working on those and then they'll continue through the process until they get to the point where they're printing reports. The language that I have that's being addressed now is part of another Campaign Finance matter where we're working on the language for a popup. My understanding is that IT's been informed as to where the popup would be and now we're just haggling on what the language, myself and one of our filers, what the language might be constructed to have there. So but the place for the popup has been identified and now hopefully when we come up with that language, you know, that

will just be a plug-in for the language. So our goal frankly, is when our EOT, our Educational Operations Outreach and Training Unit tells us that they're satisfied that the software has been betaed through the group and that they've had their language addressed. Once that's been completed then I think we'll be ready to do the stress test and then bring in some other filers, outside filers to use it and do a more traditional beta testing. So that would be our plan, I know that Liz has suggested that we have a follow-up meeting with the principals to get a status check as to where we are, so we'd have a little bit more of a meeting of the minds as to where we might be, but that's essentially where we are.

DOUGLAS A. KELLNER: Well, I appreciate the report. It might be helpful to get a written timeline with responsibilities and functions and, you know, commitments on the goals at least of when people are going to get these done. It's just because this project has taken so long, and again it's a project in which several legislators have pushed us on this. I think that we actually got money in our budget two years ago for this, wasn't it?

[MURMURED RESPONSES: Yeah, no]

Well, there was a commitment that it was going to get done when they did the expansion of the staff with the Ethics bill.

ELIZABETH HOGAN: But we never had the money, they never gave us money.

WILLIAM MCCANN: We never hired the staff really, - - the vast majority of the staff - -.

DOUGLAS A. KELLNER: So the project is just dragging out and to the extent that we should just get it done.

[MULTIPLE VOICES]

ELIZABETH HOGAN: But it's time consuming and when we have such limited staff now, as Bill indicated, they have certain duties that they have to deal with every day and this we fit in to get it done.

DOUGLAS A. KELLNER: Well, and I think that's right.

ELIZABETH HOGAN: We do the best we can, but it's definitely--you know, what we really are trying to minimize is to have major problems with the reporting. And certainly this isn't something--we want to minimize that as much as we can, we don't want to roll this out for a large--you know, one of the big periodic filings, and have some major defect. So that's why we have felt that almost conducting two betas--one internal with the staff who really knows what problems these people have and second of all, with a select group of people outside is the best

way to go. And while we're all anxious to get it done, and I certainly commit to the commissioners to doing the best we can we have an overriding interest that this be done as best we can right now, because we don't want to have some major--after we do a big push of it, of an educational component.

Because let's face it, you've got 12,000 committees that have to be educated, treasurers and candidates, that's a huge commitment of resources and time. And it's going to be a commitment of money as well, there's no question about it. Right now our education and training staff has tried to do the best they can considering the budget constraints to work within, you know, a very small amount of money to spend on our educational. Even though we have an educational mandate in the statute, but when we do a beta rollout where we have to work with outside people that's going to cost money and the training to use the new software is going to cost money. So that's the--so we don't want to do it twice, so we're trying to do the best we can. I realize that it's frustrating, you know, this took a backseat for a while. You know, the agency had other priorities with NYSVoter and everything, but it's not something we're not working on.

I want you to be aware that we're doing it, but we're trying to do it the best way we can considering everything, and that's not to say that at some point when this thing gets rolled out we're not going to have a problem, but we're trying to avoid that.

WILLIAM MCCANN: Well, I think George is absolutely right. I mean, obviously when we make the decision when it's done to release it, I mean that has to be done strategically, because you do a small initial group. Whether you fit it in based upon what election cycle might be coming up, I think that the staff has an excellent working relationship. I mean, there's key people in both units that are working on the development and that's proceeding. It just takes some time, I think the other thing that we need to be cognizant of is with reform in the air, so to speak, it's hard to say what reform measure might come out of the legislature this year. And if it's anticipated that there'll be Campaign Finance aspects to that, which would be a safe assumption that there'll be something obviously that will impact what we do and potentially would have an impact on this. So I don't know as if a modest delay for the right reason frankly, because they are doing this internal beta to develop the software, may in the long run turn out to be a prudent course of action. I mean, after all at the end of the day— Todd and I actually had this conversation this morning--as it stands now is the system perfect? No, but it works,

people can make their filings, people can search the data, it's made readily available to the public on a regular basis and timely fashion, the IT does a great job in getting information up almost immediately. The system works and it functions--is it ideal and perfect--absolutely not, but it does the job that it was designed to do. Can it be better? Yes, and we're working on that, so in the interim the public has the information, the information is provided to them and they can search it. That, after all, is the primary goal that we have in that regard and we are meeting that mandate.

EVELYN J. AQUILA: Bob, when you are talking to the legislature and yes, I'm talking to you, because I'm concerned about the budget since it was just brought up here about what we will have money to do. I don't know, after we're finished, you know before we go into private session maybe you and Todd could tell us how you feel we might come out of this budget round, because I'm very concerned about it. I don't know if the state has money or doesn't have money or where we are, so--

BOB BREHM: Well, we certainly--I think we've come a long way in our conversation. I know from some of the advocacy groups that proposed, what they think reform should include--I think their message this January at least identified the fact that we don't have the resources we need to do what currently is our charge. And certainly they thing our charge should be more and that we would need those resources.

EVELYN J. AQUILA: Oh, I know.

BOB BREHM: Now, a year ago and before that we were blamed for just not wanting to do it. And I think we've spent a great deal of time talking to a number of people every chance we can to explain who we have and what we're doing and some of the resources that--

EVELYN J. AQUILA: -- I think we've been also.

BOB BREHM: Well, wherever we've gone to the legislators and whoever we've been asked to talk to both in the Executive, the budget, the legislative arena, the advocacy community, we've said the same thing. We were given a significant change to our duties in 2005, the resources that were promised as part of that were taken away--a great amount of it was taken away, because of the budget crisis, but none of the responsibility. So we're doing the best we can with the resources we have, if we get new responsibility that's part of the conversation we believe we'll continue to have to educate on, you know, what we need to bring us up to speed both from a

technology point of view and a staff point of view. And how long it may take to get that kind of a technology upgrade as a minor change--if it's a major change it's taken a number of years, because we don't have the resources to dedicate to that change. If we get new responsibility without adequate resources, you know, what is the time frame that we are going to be asked to implement it.

EVELYN J. AQUILA: I guess that's what I'm asking.

BOB BREHM: -- And that's where we have to sit back and look at, as part of the conversation, whether or not generally if there's--even if there's not agreement between us as to what they're proposing certainly I think we have to speak out on should everything they're proposing get adopted? What is a reasonable period of time that it may take from a--and what are the resources that we would need in order to make that happen.

ELIZABETH HOGAN: But we know we'd still need resources to get back to the mandates from 2005 and 2006, because we don't have those. So then with--as Bob is alluding to--if there are additional mandates from the legislature and the Governor then we're going to have to add and have more. You know, we work on a shoe string, all of us in the agency do, but there's some things when you start talking about procurements and things those things cost money and without money we can't do the job.

BOB BREHM: And from our point of view, the budget is due around February 1st we have to look at what will that budget look like.

ELIZABETH HOGAN: Yeah, that's what I'm concerned about, yeah.

BOB BREHM: And we've been dealing with the situation we've been under for two years, which has been hard and we've seen significant reduction in our resources. But we don't know what's coming yet and I think we're at that point where we've changed so much of what we do to get down to the cost level we're at now with realizing it's not enough. But if they take more away I think we're at the point where we would really have to seriously look at functions that we are no longer able to provide, because I don't think we could continue to provide the level of service we're at now if we take another significant reduction without some change in our mandate requirement.

WILLIAM MCCANN: There's a couple of other factors too, I mean the last statutory enactment for local filing was enacted in July, went into effect in January, there was no money given. We don't have our local candidate

identification and capture process, that would be ideal, that would be an electronic function. And then secondarily, as I like to tell people, the Federal Election Commission which handles federal campaign finance has about 4,500 filers give or take depending on the year. They have over 540 people on staff that do the equivalent of our IT and Campaign Finance Units, which is about 30 people all together. Where IT isn't dedicated specifically just to us I think that's sobering when you think about the fact that we have three times almost the number of filers with a near fraction of the staff to handle that.

EVELYN J. AQUILA: Oh, yeah.

WILLIAM MCCANN: So I think we do actually a great job with what we have, you know?

EVELYN J. AQUILA: Well, I do too. I was saying that--

DOUGLAS A. KELLNER: We agree with that, Bill.

EVELYN J. AQUILA: Absolutely, I think probably Commissioner Walsh and I remember when it was very different in this office.

EVELYN J. AQUILA: And he was here back then and there were not these--I'm glad for the things that I have initiated, - - the legislature and ourselves, they're very good. But I think from the very beginning we never got the dollar figure that we needed for any project that we were asked to begin with, the projects are all great and good and they make this what we should be doing better, but I'm concerned. I think this is going to be a very bad budget year, and I think you just look around the whole United States, you don't have to look at New York State. And I think the Governor said he's concerned, you know, he doesn't want us to go the way of California and certainly we don't. And I really think that it's going to be a budget I think that its real unrealistic to think that we're going to get more money, completely unrealistic. And I think what is more realistic is that we fight for the least cut that we have to get and can live with more than getting more money. Well, the smart thinking might be to fight for more money, so if you don't get--you know, I'm not an expert on budgets certainly, but I'm very concerned. And everyone at this table who's given a report, and I know a lot of you for many years, gives more than, works for us harder than anybody should have to work. And I appreciate that, but I think we have to be—it's going to be sobering when we get our budget and we should keep that in mind.

JAMES A. WALSH: Thank you, all.

Old Business

Does anybody have any Old Business?

(Silence)

New Business

Resolution Authorizing Expenditure of HAVA Funding

If not, under New Business we have the resolution authorizing expenditure of HAVA funding for maintenance

and support for NYSVoter by Hewlett Packard (formerly Saber).

DOUGLAS A. KELLNER: I move the resolution.

JAMES A. WALSH: Have a second?

GREGORY P. PETERSON: Second.

JAMES A. WALSH: All in favor?

(Chorus of ayes)

Opposed?

(Silence)

Carried.

Resolution Approving Revised Voter Registration Application

We have another motion to approve the revised Voter Registration Application and NVRA Agency Voter

Registration Application.

Can I have a motion?

EVELYN J. AQUILA: I'm going to vote in favor of--that it's the same thing. You know, it seems like the

applications, all the forms are getting smaller print, smaller print, because they have to include so much more.

I'm speaking for the seniors of America here. [CHUCKLES]

BOB BREHM: Well, this form is really a legal sized piece of paper, but in order to fit in your binder we shrunk it.

EVELYN J. AQUILA: Oh, you did?

[MULTIPLE VOICES]

BOB BREHM: Ours is bigger. [LAUGHTER]

We were just trying to save a little paper to put it in your packet.

EVELYN J. AQUILA: I - - I can read every word on this page, I can, except the Chinese.

DOUGLAS A. KELLNER: Obviously, I also support improving the new form, but the new form reminds us of the issue with the Green Party, that now that the Green Party is--

EVELYN J. AQUILA: A real party.

DOUGLAS A. KELLNER: --a major party again several have raised the--paperwork that arises from the federal lawsuit where we were ordered by the federal court to keep the enrollments of disbanded parties in our computer records. So when the Green Party lost their status eight years ago there were members of the Green Party and the county boards have continued to keep a list of those whose enrollment was in the Green Party. Now I understand that under the New York Election Law they were treated as blanks of not being enrolled in a party and the Election Law specifically provides that after the party regains its status now they have to change their enrollments back. And I raise the question of whether under federal Constitutional Law that New York statute is constitutional, and we may want to discuss this in Executive Session.

But the issue comes to whether or not the people who are already carried on the books as members of the Green Party have to re-enroll in order to sign petitions and vote in the Green Party Primary. And I think that we do need to address this question and advise the counties what to do, because now are we keeping two separate books? People who are newly enrolled in the Green Party who under the New York statute will be recognized as members of the new Green Party, and then we have the old Green party, which isn't really recognized as members of the Green Party. And we need to tell the counties what to do about this and I think we need to make a decision ourselves on what the rule is going to be. If we're going to, in effect--if we as the four commissioners are going to rule that the statute is unconstitutional or whether we're going to invite people to go and bring a lawsuit on that issue.

EVELYN J. AQUILA: I'm just concerned about other parties, how were they treated in the past, that that happened to?

DOUGLAS A. KELLNER: Nobody has come back.

EVELYN J. AQUILA: -- Nobody has ever come back?

DOUGLAS A. KELLNER: So this is the first party - -.

BOB BREHM: This is the first group that came back after that lawsuit.

EVELYN J. AQUILA: Oh, okay. I mean, we'll be making that--

DOUGLAS A. KELLNER: Is this something we want to discuss now; shall we go into Executive Session to discuss it? I mean I think it's something that's timely, because as new enrollments come in--

EVELYN J. AQUILA: So why do we have to discuss it in private?

JAMES A. WALSH: The next item of business is the Executive Session, so do you want to put that?

EVELYN J. AQUILA: -- What do you want to do?

DOUGLAS A. KELLNER: Well, why don't we--

TODD D. VALENTINE: Keep it a litigation issue, I would just - - in Executive Session.

EVELYN J. AQUILA: -- Oh, all right, then yes of course. Then it's in Executive Session without a doubt, it's a litigation issue.

DOUGLAS A. KELLNER: And so we have two issues for Executive Session, we have the federal litigation and then we have this potential Green Party litigation.

EVELYN J. AQUILA: Yeah, and then we have our cases.

DOUGLAS A. KELLNER: And then, well the cases we could do now.

BOB BREHM: We have the NAACP versus State Board Election issue to discuss also.

JAMES A. WALSH: So we need an Executive Session, I guess.

EVELYN J. AQUILA: Okay.

JAMES A. WALSH: Let's do our cases?

DOUGLAS A. KELLNER: Right.

JOHN CONKLIN: Wait, wait, wait, well you didn't take the vote on the form.

DOUGLAS A. KELLNER: Oh, very good, thank you.

JAMES A. WALSH: On the vote to approve the Revised Voter Registration Application and NVRA Agency Voter Registration Application, all in favor?

(Chorus of ayes)

Opposed?

(Silence)

Carried, thank you.Enforcement cases?

EVELYN J. AQUILA: -- We need a vote--we don't need a vote to go into Executive Session?

[MULTIPLE VOICES]

DOUGLAS A. KELLNER: Yes, I move that we approve all of the preliminary determinations and complaints not requiring preliminary determinations as proposed by the Campaign Finance Enforcement Unit.

JAMES A. WALSH: Second?

GREGORY P. PETERSON: Second.

JAMES A. WALSH: All in favor?

23   (Chorus of ayes)

Opposed?

(Silence)

Carried, our next meeting will be on March 3rd, 2011.

Can we have a motion to go into Executive Session?

DOUGLAS A. KELLNER: So moved.

GREGORY P. PETERSON: So moved, or seconded.

JAMES A. WALSH: Okay, all in favor?

(Chorus of ayes)

Opposed?

(Silence)

Carried, we are.

We will go into Executive Session and will take a break to clear the room and commence in a few minutes.

[BREAK FOR EXECUTIVE SESSION]

[END AUDIO]