

>> COMMISSIONER JIM WALSH: I would like to ask commissioner Aquilla to introduce herself. Because she and I haven't seen each other in 10 years.

We sat here together as commissioners. So we'll start with her and work our way across here.

>> COMMISSIONER EVELYN AQUILA: I'm commissioner Aquila and may I just take one moment to thank everyone in this office and so many friends, who, while I was sick, sent me flowers and cards and so many people who were kind to me, and send me their best wishes and I truly thank them all.

>> COMMISSIONER DOUGLAS KELLNER: Douglas Kellner.

>> COMMISSIONER HELENA DONOHUE: Helena Donohue, and I'm glad you're back.

>> TODD VALENTINE: Todd Valentine, Co-Executive Director.

>> PAUL COLLINS: Paul Collins --

>> ANNA SVIZZERO: Anna Svizzero, Director of Election Operations.

>> Greg -- NVRA Coordinator.

>> BOB BREHM: Bob Brehm public information.

>> LIZ HOGAN: Liz Hogan, Enforcement Council.

>> STAN ZALEN: Stan Zalen, Co-Executive Director.

>>TERRY PAIN:State Board of Elections

PAUL PARREY:Elections Committee

>> COMMISSIONER JIM WALSH: First item of business the approval I'm sorry did I miss someone?
I'm sorry.

[Introductions]

>> COMMISSIONER JIM WALSH: Thank you.
Introduction of guests are completed, approval of the prior minutes the minutes I have in my attachment go back to this

and I think they're for informational purposes and the minutes for the 2/15 minute are not ready yet because Lee is out with shoulder surgery.

If there's no question on those minutes we'll go to unit reports and the co-executive director's report, Todd, and then Stanley if you wish.

>> TODD VALENTINE: Just briefly, from a high level, the units will get to their report, obviously we had the special election yesterday, I don't think the outcome is any surprise to anybody, if they didn't notice.

Although, they weren't just a report and Anna can echo this if she has information, there were no reports of any difficulties in the election itself, despite the late change Monday night with the

court of appeals decision which Paul can elaborate on, as far as the election itself is concerned, it functioned.

There were no reports.

Obviously the testing for the ballot marking devices later on in the meeting with a full report, there is one thing for high level.

We are expecting approval by civil service for positions in the campaign financing unit as expected next week.

Expected.

We've been expecting it for a while but Liz will elaborate on that more. That's the high level stuff I have.

>> Can you folks speak up so we can hear you?

>> COMMISSIONER JIM WALSH: Thank you, I did hear your request and I have the same feeling.

I don't hear something from that end. This room I don't think is conducive to public speaking.

>> We've been asking for microphones for many, many, many months and that would improve the ability to let the public participate.

>> COMMISSIONER DOUGLAS KELLNER: Thank you. Legal - Paul Collins?

>> PAUL COLLINS: Thank you, commissioner.

As a result of the inability of the board at the meeting February 15th to select the Federal Court has issued an order selecting

by Liberty in connection with the decision of Judge O'Connor dated February 4th.

At the return date of that proceeding I had asked that it be discontinued against Commissioners Kelleher, Donohue and Aquila.

Certainly Commissioner Aquila didn't participate but it was discontinued against those respondents, it continues against Commissioner Kellner and the board.

We filed final responsive papers, I did, on the 25th.

On the 15th of February, Liberty brought yet another order to show cause seeking to hold the board and Commissioner

Kellner in contempt for a purported violation of a February 4th order to show February 6th, rather, order to show cause which was served on this office at about 4:19 p.m.

and directed the board and the commissioners, apparently, to undertake certain actions by 5 p.m..

I am in the process of responding to that and there would be an affidavit from Commissioner Kellner and from myself going through the procedural history of it, the deficits,

and in the application itself, in the appellate division and so on.

Additionally the appeal taken by Commissioner Aquila and Kellner with respect to the February 4th decision and judgment

of Judge O'Connor, in the Liberty case, we withdrew the the appellate divisional allowed a withdrawal and it is now on the court calendar on an unspecified date.

Which means you have 9 months to perfect it or ultimately it will be deemed abandoned.

Since the Liberty decision we have received, I think, the board was told about the decisions in Avanti and ES&S as well.

So they're all out there and the thing that is most pressing is, of course, as always, the Department Of Justice litigation, on our HAVA compliance and we have made weekly reports to the

Department of Justice but we still have a weekly conference call and that's pretty much where we stand in terms of legal activity for the since the board last met.

>> COMMISSIONER HELENA DONOHUE: When do you expect the written determination of the last proceeding?

>> PAUL COLLINS: That would be the contempt proceeding by Liberty that was brought by order to show cause on February 6th and returnable on February 11th.

The judge allowed Liberty till the 20th to supplement and allowed me to supplement my response which I did on the 25th, so I must tell you, Commissioner, that under the court rules the judge has 60 days to make a determination.

I must also advise you frequently it's a rule more honored in the breach. That's pretty much it on that. I can't give you a better answer than that.

I would also hope that Judge O'Connor would determine all of these contempt applications at the same time.

Because they're all sort of interrelated and the one that was brought on the 15th, that is returnable on this Friday.

I'm now preparing the papers in response to that.

>> COMMISSIONER JIM WALSH: Election Operations, Anna?

>> ANNA SVIZZERO Thank you, Commissioners. Yesterday was a special election. The prelude was a lot worse than the event itself. Other than the snow in all three of those counties.

I think those three counties deserve a lot of credit for getting the job done. I talked to one at a quarter to 12 I talked to another at 3 in the morning and they had done excellent work in getting the

voting machines programed to reflect the order of the court and also exchanging all of the paperwork - canvas sheets and the emergency ballots and et cetera.

I think they all deserve to be commended for get that done and the day pretty much went without a hitch other than the weather impacting those things.

There was an inpound order that was brought up by both Todd and Paul and I don't know what the outcome of what that will be.

The unit has been busy collecting the results from the

presidential primary, we are hoping that those will be done by the end of this week a couple of boards have not sent those

results to us, New York City's were certified yesterday by the cities board so those came up to us last night.

The Office of the State Comptroller has approved all the contracts for voting systems so we're happy that that happened on time with regard to our timeline. There is a link that is

available on the website, we shared that link with the county boards. So if anyone wants to see those I'd be happy to share the link with you. I don't recall it, perhaps Franklin --

does but if you go to the OGS website you should be able to navigate to it fairly well.

We have received the reports from the independent testing authorities for the interim certification of ballot marking devices.

Those will be on your agenda for review.

We have been responding to a significant number of requests for voter registration but we've been getting assistance from other units in the agency to help with us those so that

presidential activity has indeed started to manifest itself, especially in our unit. Other than that, I think the rest of our tasks are pretty much routine.

>> COMMISSIONER JIM WALSH: Do you have a resolution -- ?

>> ANNA SVIZZERO: Yes, we can do it under new business if you like or whatever the pleasure of the board is?

>> COMMISSIONER JIM WALSH: We'll do it under new business. Remind me please. Thank you. Does anyone have any other questions of Anna?

If not, Bob Brehm is filling in for Lee on Public Information responsibilities. Bob, please?

>> BOB BREHM: Our unit continues to respond to inquiries from the public and press, like the election operations unit,

NVRA's are busy with receiving and sending large numbers of voter registration applications, we are very busy leading up to the presidential primary but it's definitely picked up from our

normal, as we would expect in a presidential year and we are getting assistance from other units on our floor to help with the volume and it's moving well right now.

Our county funds grant program our staff spends a good deal of time every day working with the county boards to make sure that they have their completed plans and contracts and help with

vouchering in our order to improve site access and help get them started in the voter education pole workers training component of our work, especially now as we start to roll out the ballot

marking devices and that is still making progress on that.

We had a way to go to get everybody on board but we work at it every day.

The poll worker training voter education, I know we have a little update I know in our program here. I can give you that update as to where we are going and with that component and one

other item that we worked on, I know, Greg for our unit has been working with the disability community on accessibility issues and I know he can give us a brief update.

>> GREG: Good afternoon commissioners.

We have heard back from the two boroughs in New York City and 12 of the 15 upstate counties.

Still waiting on essentially two responses from two counties, and then there is Erie which we didn't request a response from since they haven't turned in their surveys to us yet.

We told them to incorporate these issues into their survey, one county is Clinton which is working on it it and Jefferson which has been tied up with a special election.

>> COMMISSIONER JIM WALSH: Any questions?

>> COMMISSIONER DOUGLAS KELLNER: Does that mean there are no outstanding county disability issues other than getting the two reports?

>> GREG: That is correct, sir.

>> COMMISSIONER DOUGLAS KELLNER: That's great news.

The issue also is the status of the voter registration audit process. Any progress made on that since our last meeting?

LEE: I would like to say yes but the answer is no because both Bill and I were in Senate district 48 yesterday and we're both on that committee

and Tuesday is our regular meeting date to work on that so we have made some progress

>> COMMISSIONER JIM WALSH: Bob, I think I can jump in on that.

>> George gave a report yesterday, progress is being made, actually the template for the audit procedure has been developed based on the business requirements and at this

point what we're prepared to do is, as we did when we developed the database,

I forget the name of the group Policy And Standards Group because the counties are in the audit functioning to get their feedback and suggestions or a view of what we've prepared.

So we are prepared to send that out the end of this week.

There is a meeting scheduled for next week with that group so we're prepared to send that to them and they'll come back.

With a schedule of different capacities of the system get audited at a different time interval.

Some things are daily, some weekly, some monthly.
Different audit functions are ,

[Cell phone ringing]

>> And a review of the results are done by different players in the system.

The actual functioning of the system itself has to be done by the database people as a connectivity to the county's follow up on duplicate resolutions,

that's something we have to monitor, the counties continue to maintain the work on the database. So those roles and the responsibilities and the oversight are all laid out in that memo.

The revised version, I think it came out yesterday, I don't remember.

>> I know I received it on the Blackberry which I couldn't read but our goal is to review it as quickly as possible and there will be a stake holders meeting that includes county participants and

also the voter registration system vendors, whether it be a stand alone county or one of the counties providing support so we can sit down together and make sure it's complete and

we've included their ideas as well as our ideas on how to get it done. I think that meeting is March 4th.

>> It's next Tuesday at 11 and also the vendors for those counties will be there as well.

>> COMMISSIONER EVELYN AQUILA: Is our goal the entire state?

>> BILL: Well yes, Everything the system does we're auditing to make sure its functioning properly.

When we built the system there is a rather lengthy list and we called them , George refers to them as the business requirements, and I guess database speak.

But those are the things that it's supposed to do.
And the audit really is to make sure it does.

>> COMMISSIONER EVELYN AQUILA: Everything is being done properly?

>> BILL: Everything is being done right. And different players have a different role in the system, the counties have a role, we have a role, the vendors,

the people who work for the counties have a role as do the people who work for us that helped put the system together.

>> COMMISSIONER EVELYN AQUILA: That's how I felt it was but I wanted to clarify that for myself.

>> I think Commissioner was concerned last meeting and George said the system we want to see it does what it's supposed to do and he made a comment that as a systems

guy that would be his concern that we want to make sure the voters are getting properly represented, so obviously our goal next week so to make sure that the system works and that

people are being processed within requirements of the law and regulations so that everyone gets treated the way we should.

We're cognizant of that, we have a good committee made up of designees from the board.

>> COMMISSIONER EVELYN AQUILA: It's a big job.

>> Yes, it's an undertaking and we take it seriously and we want to have it work. We're looking forward to the opportunity.

>> COMMISSIONER EVELYN AQUILA: Thank you.

>> COMMISSIONER JIM WALSH: Anymore questions?

Campaign finance?

LIZ thank you, Commissioners, I'll update you and Commissioner Walsh if you have questions on this Bill and I

would be happy to explain to you what we're doing here because we have a series of ongoing things.

The first thing I would like to address is an RFP for final serve and go we received a draft SCOMBred our liaison at OGS

indicated that he was interested in releasing this draft as an IFP on Monday. So we're moving along very well.

>> BILL: I have not seen it.

LIZ it came yesterday.

We're looking forward to having that move along at a good clip.
The scanning project we are making e mails of our filings in

That will then be sent on to OGS. We're meeting with the actual provider of the service which is a company called E Biz docks, and we're going to finalize the issues that E Biz needs to finalize regarding memory, space,

and license purchases to use this. So I think our part of the whole plan should be finished relatively quickly and the company

who is doing the scanning for us feels that they'll be able to start it by the middle of next month. That's looking very good.

The filer that we mail out every spring, this year we undertook a major revision of that handbook.

It was a workable product but it was not there were a lot of faults in it so this year our campaign finance staff has been working on revising the entire filer handbook and we feel that

the form this is going to be in is going to be very helpful and much more user friendly to filers.

At the January board meeting the board approved the language for an amendment to dealing with local filers and the regulation said if a local filer must file with the state and does so they will be relieved from filing a duplicate file with the county.

Bill and I have a meeting set up tomorrow with Gore to get our ducks lined up as to how we're going to proceed and what we need to do to get that approved and to get that published and out for public comment.

Our original goal was to have that ready for the July filing.
I don't know if that's a feasible goal or not but we'll see how we can proceed on getting that moving along but that is promising.

We're work on the coming down to the end Tully of the '06, '07 assembly contribution project. The council report is due to us on the 29th of February and that project is looking very good.

There are very few names on that and we should have that for you at the next board meeting. The annual seminar tour that we do in May and June is being, I think, finalized at this point, Bill, isn't it?

>> Uh huh.

>> It's just up in the air in terms of time and that will start on the 13th of May and it will go through the 13th of June and we will be visiting a number of counties and providing filer information to people.

Anyone who wants to attend, the local commissioners are interested and we have treasurers and candidates who come

and people who are generally interested in the filing requirements and that's looking very on schedule.

I think Bill reported last week when I wasn't or at the last meeting when I wasn't here that there were 478 lawsuits resulted from the failure to file, the January periodic,

so those mailings having gone out are a volume of calls in the campaign finance center and that's cranked up and we are very busy in the call center in relation to that lawsuit.

The '06 corporate review project is I would say that's in the mid stages. It's moving along as scheduled.

I'm happy with the progress on that, especially in terms of the other requirements that the campaign finance staff have on them, in terms of the availability to work on that project.

It's moving along and I wish it were moving along faster but we're doing what we can. It actually looks pretty good.

Also we're meeting with NYSDC tomorrow, and I think it should be the final meeting on the charts on the HAVA Administrative complaint procedure which we are mandated to develop a process for.

We met with a consultant and we have drafted a whole series of charts basically, flow charts that show the different processes in someone bringing a complaint right through an alternative

dispute resolution if the board here is unable to resolve this kind of complaint.

We've developed forms for people to be able to bring the complaints to us and I think we're in the final stages of the actual charts and we will move into the writing of the procedure,

which is an arduous task but it's just the next step, moving along.

>> You want to mention the conference aspect of that?

>> Go ahead.

>> Our plan is to, as part of our campaign finance work is to have a segment on the policies and procedures for the complaint with the counties.

The counties are a condiment group under this and one of our segments at the conference will be that and it's good we have a date certain that we have to be complaint,

we're good with deadlines most of the time but that will be our goal on that project.

>> I think Todd mentioned the personnel issue.

I had a conversation with Pat Tracy and it appears that the personnel items that we sent to civil service were approved

>> So they should be ready next week.

>> They are at the development of the budget.

>> That's something.

>> The other thing that I wanted to touch on and I think we talked about this a couple of meetings ago and Commissioner Kellner was, I think,

especially interested in this was the operating neutral system software package that we have. We had looked at that.

IT did a great job. I had a couple of e mail exchanges with Phil over there and we're going to install a dummy file in campaign finance for the staff to work with this to determine what is the

best configuration and what it doesn't do that we need it to do but that is a nice project that IT provided for us.

Bill, can you think of anything that I didn't touch on?

>> No.

>> That's it for campaign finance.

>> When is the January 13th show cause due?

>> March 13th.

>> COMMISSIONER JIM WALSH: Thank you, Lis. George?

>> George isn't here today.

I think we touched on all of his major issues, so

>> We will be running figures that the IT unit does now and we don't have to collect that information from our county boards any longer and the enrollment cut off in a presidential year is March

1st so we will have new voter registration figures I know that was a project he had scheduled for this week and ramping up for the NCOA process.

>> I think we've covered the major issues.

>> COMMISSIONER JIM WALSH: Resolution on fees for testing of open source software. Discussion?

>> COMMISSIONER DOUGLAS KELLNER: I think the resolution is a good idea.

That we should be promoting the use of open source software by our vendors and that one of the ways of doing that is to provide for this small reduction in the testing costs where the

vendor who provides the open source software shouldn't have to pay for the testing of software that can be used by everyone.

>> COMMISSIONER HELENA DONOHUE: I move we accept it.

>> COMMISSIONER EVELYN AQUILA: I agree with you.

>> COMMISSIONER JIM WALSH: All opposed?

Passed. Next item, proposed amendment of regulations part designating and independent nominating petitions?

>> COMMISSIONER HELENA DONOHUE: I move we table this. I have questions concerning this that I need to get answered before I

>> COMMISSIONER DOUGLAS KELLNER: Relating to that

>> COMMISSIONER HELENA DONOHUE: I've only handled a million petition Nz my life

>> That's what prompted me to say that in 1997, what I found was a copy of the policy that we had adopted at that time,

the procedures, and I'll give you a copy now because I only pulled it out late yesterday.

So as you're when you go to review this and the last time we reviewed this was in 2000, so here is a copy of that memo to refresh those who were here and did it their recollection.

I don't know if that will I don't know that that will change the regulations but certainly it's something that we had adopted

and that was Pat Murray put that memo together in 2000 when we discussed that the last time.

>> COMMISSIONER EVELYN AQUILA: Who put this one together, this time?

>> Commissioner Kellner. And obviously he was not here in 1997 so

>> COMMISSIONER EVELYN AQUILA: Right. I think since this is by I'm not taking that away from you. I think Allison should look this over.

>> Paul assisted in the drafting of that.

>> COMMISSIONER EVELYN AQUILA: Okay. You don't mind we wait until our next meeting?

>> COMMISSIONER JIM WALSH: That's the reason for the movement is to review this and see if there is anything that is useful or not useful and we'll see where we go from there.

>> COMMISSIONER EVELYN AQUILA: Uh huh.

>> COMMISSIONER JIM WALSH: Thank you.

Move to new business. I think we're getting through to Anna's situation.

>> Interesting term!

[LAUGHTER]

>> COMMISSIONER JIM WALSH: Vote on interim certification of ballot marking device for the use in 2008.

>> You have a summary before you of the tests that were conducted by systest..The summary is high level.

We have provided system identification to you. We've provided some information relative to actually how a voter would interact with the system, and we provided a summary of findings.

We have included a report from the committee which Commissioner Walsh served on which addressed in this round of testing, focused on usability of the voting machines,

that the testing that they do is more of a functional nature of testing to certain requirements and it's a lot more linear, if you will.

The disability aspects of the systems and access to those components of the systems were reviewed by the committee

and their finding actually I lifted a quote out of their report appears at the bottom of the first page of your executive summary.

The reports appear there in in alphabetical order and the pleasure of the board is

>> COMMISSIONER EVELYN AQUILA: Did you want to go one at a time, Anna or how are you doing this?

>> COMMISSIONER JIM WALSH: One at a time would be great.
Let's start off with the first line, two models at once?

>> Avante yes

>> They happen to have two.

>> COMMISSIONER JIM WALSH: It's special and will apply to both.

>> COMMISSIONER DOUGLAS KELLNER: The reports were written that way. Is there a draft of the resolution?

>> There is. They are included in the summary.

>> COMMISSIONER EVELYN AQUILA: I thought they did not approve either one

>> In the front of your packet

>> COMMISSIONER EVELYN AQUILA: I encouraged them to get approved. There are a lot of things I like about Avante, but it was not approved.

I think they have to fix several items to get approved and come back to us at that time. That is just my feeling.

>> COMMISSIONER DOUGLAS KELLNER: The proposed resolution says that they successfully meet the required acceptance criteria?

>> COMMISSIONER EVELYN AQUILA: This?

>> COMMISSIONER DOUGLAS KELLNER: No.

>> COMMISSIONER HELENA DONOHUE: I thought it said we were not accepting

>> COMMISSIONER DOUGLAS KELLNER: Todd?

>> I would like to talk to Anna.

>> The Avante tests

>> COMMISSIONER DOUGLAS KELLNER: Am I looking at the wrong resolution? The first resolution in this binder that Todd provided

>> All of the resolutions are written in the positive so that your motion would need to reflect your sentiment,

the finding on Avante was that it fails to meet the criteria of the New York Board of Elections for the 2002 section 301

requirements and the requirements in volume 1, section 3.
And all of the resolutions are in the positive.

>> I see that now and that would have to be amended

>> COMMISSIONER DOUGLAS KELLNER: So what's the proper language for the "whereas" on the second page?

>> Yeah. Page 2

>> COMMISSIONER JIM WALSH: Should we recess to write this or

>> I think this would need to be change and say "successfully does not meet?" Bob? Anna

>> COMMISSIONER DOUGLAS KELLNER: I have an issue with the words "completed all required testing" because we did not have complete testing we had summary testing.

Paul, you have the language from what was Judge Sharp's order on the testing?

>> I understand where you're going, Commissioner and you're correct in your analysis.

What the board presented to Judge Sharp in order to implement his December 20th 2007 directive to have one ballot marking device at every polling place

for the September election was the plan and if I may read from that plan "in order to comply with the court's direction the testing to be undertaken in 2008 may not be full or compliance

testing resulting in full certification at this time but rather testing to ensure that the ballot marking devices meet the statutory requirement set forth in 42 USC 15 481, that's essentially Hava testing.

As testing may not be sufficient, statutory and regulatory requirements New York Board of Elections will pursuant to New York election laws authorize the use in 2008 of ballot marking

devices not formally certified but by an experimental basis to ensure it is possible to have a ballot marking device at every polling place in accordance with the court's directive and the Hava statute.

Our report further went on to say that the time required to complete testing to enable the New York Board of Elections to formally certify such marking devices pursuant to New York

election law as compliant with New York's requirements in 9 NYCRR which includes the 2005 voluntary voting standard guidelines adopted by the U.S. election assistance

commission is dependent upon each system's readiness to comply.

The New York Board of Elections estimated that the time required to test to the standards identified herein is approximately nine months.

So our plan as approved by Judge Sharp is that we would very shortened have a shortened window to see if it was Hava compliant and then the testing would continue to full certification under New York law and reg compliance.

But clearly Judge Sharp indicated that he would like a ballot marking device in every polling place in the state for the 2008 federal elections. So that's where we are.

>> What I would suggest doing is simply the word "successfully meets" should be deleted and the word "failed to meet" inserted because that would reflect the findings of the tests located on page 19.

>> COMMISSIONER EVELYN AQUILA: But Todd

>> The limitations that were described regarding the testing is what this means, the Hava volume 1 and 2 and part of that, the specific tests come out of the BBSG,

the standard is in Hava to actually figure out how you meet the standard has to come from somewhere else and the law doesn't apply the details on figuring out a lot of that stuff.

>> COMMISSIONER EVELYN AQUILA: Just to clarify this one more time, Mr. Reed is here.

Can he stand up and tell us, did Avante's machine meet this test successfully or unsuccessfully?

>> The Avante system has a number of open discrepancies against the system with we also found another random problem for the system

that we couldn't repeat on demand so we couldn't call it an actual discrepancy but there were problems with the system.

>> COMMISSIONER EVELYN AQUILA: Thank you.
I just wanted that clarification.

>> COMMISSIONER JIM WALSH: Your wording

>> COMMISSIONER DOUGLAS KELLNER: Stanley wrote up something here and I'm going through this.

>> I was using this based upon the report.
It came from what the report actually says as opposed to

>> COMMISSIONER DOUGLAS KELLNER: This is what Stanley proposed.

[Microphone noise]

>> There is language that seems to imply approval until you get to this that said "change"

>> COMMISSIONER EVELYN AQUILA: He said "fail" unless you want to change it.

>> COMMISSIONER JIM WALSH: That's the way

>> I know Bob and I drafted the report based upon the findings.

>> COMMISSIONER DOUGLAS KELLNER: What's the resolution now?

>> Todd suggested

>> If you want to put that in that's fine

>> COMMISSIONER DOUGLAS KELLNER: Todd why don't you look at the whole thing and make sure you want to have all the "whereas" clauses in it.

[Silence]

>> You don't need this because it was tested before.
Change it to what it actually says.

>> COMMISSIONER JIM WALSH: Has he seen this?

>> The paragraph is whereas the lab has completed all required testing of the Avante voting system and in its finding the lab has determined that the Avante vote tracker voting system" fails" is it singular or two?

>> That should be "failed to meet".

>> COMMISSIONER JIM WALSH: Failed to meet the requirements.

Let me read it again, "whereas the lab has completed"

>> COMMISSIONER EVELYN AQUILA: Required

>> COMMISSIONER JIM WALSH: "Has completed the prior testing of the Avante voting system and in its findings the lab has determined that the Avante vote tracker voting systems

failed to meet the required acceptance criteria of the New York Board of Elections for the Hava 2002 section 301 A and B

requirements and the 2005 voluntary voting system guideline volume 1, section 3 requirements."

Then it has references to the election modernization report and it says "whereas New York state board of elections took such recommendation into consideration when making their

determination as to whether or not a machine system meets the requirements in section 202 of this title and the federal health America Vote Act" and it should say "resolved" right?

>> Uh huh.

>> COMMISSIONER JIM WALSH: Therefore, be it resolved that pursuant to New York state election law, the New York Board of Elections does not approve for use in 2008 and does not grant

interim certification to the Avante vote tracker independent ballot verification " we should use the same word "the Avante vote tracker voting system."

[Silence]

>> COMMISSIONER JIM WALSH: Now, I think I will pass this around but I have questions for you before we vote on this.

Can you enumerate the specific discrepancies where you have found noncompliance opt of each of the Avante systems?

[Talking among themselves]

[Microphone noise]

>> On the Avante systems we have

>> COMMISSIONER JIM WALSH: Can you either walk into the middle of room or speak up louder, please?

You're welcome to sit at the table if you want.

>> There are a total of 16 open discrepancies remaining right now in this system.

They start out with some of them are printing issues with cables that are blocking the printer.

We also have problems with the foot pedals that do not work on the smaller machine.

>> COMMISSIONER JIM WALSH: Is the first one directed to both machines?

>> It would also be on the SPR.

>> COMMISSIONER JIM WALSH: Let's deal with just the SPR and go back and deal with the other one.

And if you're read from something maybe you can tell us what you're read from and we can follow along.

>> The attachment B on the report, "discrepancy report."

>> COMMISSIONER JIM WALSH: The issues in discrepancy?

>> Yes.

If you look at No. 2 we have issues with the printing candidate names on the SPR, and printing the ballots for candidates names are not fully visible.

That would be No. 2.No. 4, scanning does not display language, the scanning is displayed in English only, the audio is in English only.

>> COMMISSIONER DOUGLAS KELLNER: Would appendix B on the report be

>> Yes.

>> COMMISSIONER DOUGLAS KELLNER: How do you make that available?

>> COMMISSIONER EVELYN AQUILA: You gave us the report, and let's attach that to the minutes if you want to do that.

>> I think that's how it should be.

>> COMMISSIONER EVELYN AQUILA: We all have the report.

>> In the event of any court action we have evidentiary and I believe the appendix give us the indication that it passed or failed and the requirements

[Talking over one another]

>> COMMISSIONER DOUGLAS KELLNER: I'm looking at appendix D here and I see the "passed" but not the "failed."

>> She said.

>> COMMISSIONER EVELYN AQUILA: She said appendix B.

>> The two columns on the right hand side distinguish between the two systems, SPR is the smaller system and is in the far right hand column.

>> COMMISSIONER EVELYN AQUILA: I would seriously suggest we attach this to the minutes.

>> COMMISSIONER JIM WALSH: So all of these test reports are being put up on our website?

>> Oh, yes.

He have and he have you might want to attach this one to our minutes because it might have to go to court?

>> There should be two supporting things for each system, obviously the text of the resolution that describes this report as well as the other report that we received, which is

>> COMMISSIONER EVELYN AQUILA: Right, right, that would be a good idea.

>> So you have three elements to read

[Talking over one another]

>> And all of those will be public documents.

>> COMMISSIONER EVELYN AQUILA: And then we have all of this together here we've been down this road seems like four years we've been looking at these machines.

>> Commissioner Walsh so the record is clear I have required of the representative of the lab as to the meaning of the word "disc" which means discrepancy, not the real disc. Just so the record is clear.

>> COMMISSIONER JIM WALSH: I ask that we vote on the resolution as amended with the handwritten attachments.

All in favor?

Opposed?

Passed.

No. 2, ES&S AutoMARK.

>> The incidence of testing appears in the summary by way of operation and the findings in the report is that it does meet the testing requirements as are defined in each of the reports.

The lab explains that the testing was abbreviated due to the Court's direction based on meeting the Hava requirements.

If you have questions about the report we're happy to field them for you.

>> COMMISSIONER EVELYN AQUILA: It passed?

>> Yes.

>> COMMISSIONER JIM WALSH: Ms. Garcia, I went through with you yesterday some of the issues that I think are identical

for both the ES&S and the others, would you explain how the initial discrepancies got resolved in the testing process for the AutoMARK?

>> How the discrepancies were resolved.

>> The discrepancies were resolved by sending the report to the vendors and having them respond back on how they were going to fix certain items.

There should be a vendor response column in all of the discrepancies.

Any issues that were reported

>> COMMISSIONER JIM WALSH: Would you go through the discrepancy report for the AutoMARK?

I'm not sure I have it in the packet here.

>> There should be a full binder of that.

>> COMMISSIONER JIM WALSH: Anna, are the discrepancy reports in the binder?

>> Yes, it should be the last three pages of the ES&S report.

>> That should be in the full binder.

This is only the I don't think it's in here.

>> COMMISSIONER JIM WALSH: First of all there were several languages used there were in the discrepancies where initially

questions were raised about the ability to translate party names and also the Chinese use of the word "okay" to push the button.

Did you want to explain how that got resolved?

>> The use of the word "okay" we reported it, it went to ES&S.
And they responded back with they believed that this was universal.

We then contacted the State of New York and we were notified that it was "acceptable."

>> COMMISSIONER JIM WALSH: And Anna did you want to explain the project in your office to make that decision?

>> We reached out to the New York City board of elections who has translators and staff full time and we spoke to the Korean and Chinese interpreters and they all agreed that the term was

understood throughout the community and in daily language et cetera, that "okay" has come to be understood internationally,

but if it were in the context of a sentence they would prefer it be translated but if it's an action or on a button they addressed their concerns by the community.

>> COMMISSIONER JIM WALSH: And there was a translation issue on the names of the political parties.

Did you want to go through and explain how that got resolved?

>> The names of the parties were translated in the Asian language because they're character driven and that needs to be understood by the community.

The Spanish translations don't appear that way because they use the same lettering that the English language uses and the community itself, the newspapers in those various

communities identified candidates and parties using the English terms and not translating them into language

so they're understood by the voters to serve that purposes so there wasn't a need to make that translation on the ballot.

>> COMMISSIONER JIM WALSH: Ms. Garcia can you tell us how many modifications went into the ES&S?

>> I believe they wound up with a total of 3 from the beginning to the end. ES&S I believe 4 but I need to double check.

If you go to figure 17 there were five on ES and SD and ES and S and 3 on premiere.

>> COMMISSIONER JIM WALSH: Did you test all of the requirements to the last that each of the companies

>> No on the last one we did not.

We tested a group of voters and each voter had a large amount of requirements but it did not have every one of the requirements but we tested six voters out of 18 which

>> COMMISSIONER JIM WALSH: So how do you know that the last set of firm wear didn't have new glitches that would have undone the results of the prior tests which you had made?

>> The very for the very last I would say that we did test them, not the majority but we felt satisfied that nothing else was broken.

>> COMMISSIONER JIM WALSH: So it is possible that there could still be glitches in the previous ones you tested after you did this?

>> I would say there is always a possibility, no matter what.

You always have a possibility that something could happen but for the Hava requirements we feel comfortable with what we tested.

>> COMMISSIONER JIM WALSH: So in other words you're standing

>> COMMISSIONER DOUGLAS KELLNER: In other words you're standing behind the recommendation in the report?

>> COMMISSIONER EVELYN AQUILA: It's possible but you don't think it's much of a probability?

>> Yes.

>> COMMISSIONER HELENA DONOHUE: Will all of these be fully tested later?

>> We will run a deeper test it's going to be yes, exactly.

>> COMMISSIONER HELENA DONOHUE: I think the board is interested to know

>> The same test case will be reran but more introduced at that time.

>> COMMISSIONER JIM WALSH: Did the Citizens Election Advisory Committee have anything to say other than recommending approval on ES&S?

>> No.

They're here if the board has questions of them, but they clearly broke out what they thought should be approved by this board separate from what shouldn't be approved.

They didn't provide details

>> COMMISSIONER JIM WALSH: Who speaks for the committee today?
Mr. Jones?

>> I can address any issues that you want addressed.
Our recommendation was for the tests we we cannot go into detail other than to note
general areas where we found the

machines compliant and in our paragraph we speak to that, we provide all of those, for
privacy and independent verification of the ballot which we found acceptable.

>> COMMISSIONER DOUGLAS KELLNER: Did you test the independent verification
for the auto marks?

>> Yes, we tested all of them.

>> COMMISSIONER DOUGLAS KELLNER: Okay.

>> COMMISSIONER JIM WALSH: Ready for a motion?
Motion approved.
Next item Liberty Mark BMD?

>> COMMISSIONER EVELYN AQUILA: I have a slight problem with Liberty and
that's on the verification of the ballot and I understand

I think we should go ahead and certify them but tell them it's an emergency for them to
verify that ballot, because when you put it

in the machine, if it has more than 6 votes on there, it won't register, it fails to register.

We were down there for half an hour with the poor girl driving her nuts.

If you have 5, it will take a full ballot and register but not a partial ballot and Liberty has
to get that cleared up pronto, as soon as possible,

because that's important that the ballot can be verified and I will vote in favor because
everything else seems to be in place, just that they need to fix that.

I will vote in favor but they have to look at that verification of the ballot and I'm sure it's
something they can probably clear up with no problem.

>> COMMISSIONER JIM WALSH: Evelyn made a motion to approve, discussion?

>> COMMISSIONER DOUGLAS KELLNER: Can we have the text of the resolution
which I haven't seen yet?

>> COMMISSIONER JIM WALSH: Discussion.

Would you explain from a technical point of view what you determined this morning on the testing of the Liberty machine?

>> I think we did do a lot of different test and go one of the things I did find out after you stepped out, we spoke with the lead of the tester for Liberty and we found out there is a discrepancy No. 6, that states that we had the same problem in our office, and Liberty had to send out new paper and once we received the new paper then we no longer had the issue.

We do not know if the paper that's being used here is the same paper we have in the office.

We are awaiting e mails to look at what we have in the office to what we have here.

>> COMMISSIONER JIM WALSH: So based on what you've seen today, will that affect the conclusion that was provided in the report a couple of days ago?

>> I think I'm going to turn that over to Rick.
I don't believe so because I can't say we're using the exact same paper that we have in our office.
That we tested on.

>> COMMISSIONER JIM WALSH: If you don't use the exact paper that you have in Denver it won't work?

>> It doesn't seem it does not seem
[Lost audio]

>> It does not seem to work.
It seems like we had the same discrepancy at one point in the beginning of the independent verification process and Rex has the discrepancy.

>> The issue of paper arises in other systems, the type of paper that is specified by the vendors.

Since you tested them here in the field as opposed to the laboratory conditions you did not have the specified paper as required by the vendor?

>> I'm not sure. That's really the question is do we have the correct paper, and if we could get the correct paper

>> COMMISSIONER EVELYN AQUILA: We want you to check that and make sure

>> COMMISSIONER JIM WALSH: I have a whole bunch of questions and if everybody is in a big hurry, I'm sorry but this is something that's going to take a while.

>> COMMISSIONER EVELYN AQUILA: I'm sorry, go right ahead.

>> COMMISSIONER DOUGLAS KELLNER: First of all, can you describe what the problem was?

>> When I spoke to the tester she said that on the original tape when we were using it it would not always play back the audio,

it was random when it would happen and we saw that today where if it was a small bar code or not.

We also did find out it only had a single bar code in our office so we didn't have Dul bar codes, we only had one.

On the top of the paper and on the bottom, one on each.
And it didn't read all the time, it was random.
Sometimes you could never get it to play.

Liberty sent three rolls of new paper and when we used that, apparently they did not have any problems after that.

I called them and asked them to check a blank ballot for me and run those through Spanish and English and it worked.

>> COMMISSIONER JIM WALSH: What is the difference in the paper and why does it make a difference?

>> I do not have that information right now.

>> COMMISSIONER JIM WALSH: Does the technical documentation indicate the type of paper that has to be put in the machine?

>> I'm not aware of that right now.

>> COMMISSIONER JIM WALSH: So how can you make a conclusion that you're ready to make an approval without that information?

>> I'm going to turn that over to Rex.

>> We simply didn't have time, all we need to do verify was that it met all the requirements.

When we retested with the new paper we verified that it read properly.

>> COMMISSIONER DOUGLAS KELLNER: Isn't that meaningless unless the local boards knew they had to have a particular type of paper to make the machine work properly?

>> I agree but we didn't have the time to come back and test the manual.

>> COMMISSIONER JIM WALSH: Would it indicate that other machines have requirements for a specific paper, too?

Now, if someone takes that machine with that and use other paper then how do they expect the machine to perform the way they indicated it would have specific paper? Aren't they violating the requirement of that machine?

>> Yes.

>> COMMISSIONER DOUGLAS KELLNER: Who gave us the paper for this machine?

>> COMMISSIONER JIM WALSH: I don't think that matters.

>> COMMISSIONER DOUGLAS KELLNER: Sure it does because then you're using the right paper.

If the vendor can't give us the correct amount of paper it strikes me that's a significant issue that we have to pay attention to.

>> COMMISSIONER JIM WALSH: The vendor should read the requirements and use the paper that's required with the machine.

>> And as we found in the beginning our paper didn't work and that's why they submitted new paper and we did not know when they made the change.

>> COMMISSIONER JIM WALSH: I don't find that unusual, if you use the wrong paper in someone else's machine you have the same problem so you follow the instructions that come with the machine, pure and simple.

>> And I think there Kellner is correct that has to be identified to the user.

>> COMMISSIONER DOUGLAS KELLNER: And unfortunately it hasn't been tested yet.

We haven't seen that it's in the manual that says "warning you must use this paper because the other paper doesn't work!"

Which, by the way, is in the manual for some of the other systems.
The Sequoia and AutoMARK both have that language.

>> COMMISSIONER JIM WALSH: Moving on we discussed issues that were raised in the report.

Specifically they raised the issue of the contrast, and we pulled out the BBS 3 and 3.2.2.1 C is the provision that says the contrast has a figure to ground and contrast ratio for text and informational graphics on at least 6 to 1

>> Correct.

>> COMMISSIONER DOUGLAS KELLNER: Would you tell us how you have dealt with that issue?

>> Yes, when it comes to ratios, we have to use a tool and that part is hardware testing. We tested that it had contrast but we did not test the ratio part of it as we need to take that to our hardware lab to verify that the ratios are correct.

>> COMMISSIONER DOUGLAS KELLNER: So that specifically labeled as a lot 1 testing that will be done over the summer?

>> Correct.

>> COMMISSIONER DOUGLAS KELLNER: Okay. Then 3.2.3, Bob, do you have that handy?

>> Yes.

[Coughing]

>> 3.2.3 is the dexterity issue.

>> COMMISSIONER DOUGLAS KELLNER: You want to read the provision?

>> The voting process shall be accessible to voters who have fine motor call or use of their hands.

the machines for voters lacking motor control, They shall report the test results and this documentation shall be included in the technical data package submitted to the EOC for national certification.

>> COMMISSIONER DOUGLAS KELLNER: So Ms. Garcia, I take it you have read the comments that CMA C prepared on the dexterity issues.

>> No, I have not.
I have not gotten a copy, sorry.

>> COMMISSIONER DOUGLAS KELLNER: All right.
Well, would you tell us what you all did to test on the dexterity issues.

>> Well for the one that was just read that was moved to a lot 1 testing because we would need their documentation and test cases and that's part of lot 1 testing.

Any kind of kick dock dock review of the test cases.

There is a form that we fill out and we did not fill that out for lot 2, which was time constraint at any rate and it was not part of the

agreement for lot 2 so it was moved to lot 1 so we can have the time to look at it and see

>> COMMISSIONER DOUGLAS KELLNER: I understand the time constraints is a real problem because we are under that.

I thought the whole purpose of setting up the that the priority in the lot 1 testing was to the Hava requirements.

>> Yes.

>> COMMISSIONER DOUGLAS KELLNER: Particularly the disability requirements, right?

>> Yes.

>> COMMISSIONER DOUGLAS KELLNER: And this provision is one of the disability requirements, right?

>> Yes.

>> COMMISSIONER DOUGLAS KELLNER: So but this issue has not actually been tested for by you at this point?

>> No.

>> COMMISSIONER DOUGLAS KELLNER: So the recommendation does not contradict the concerns that are raised, that this system is not easily used by persons with limited dexterity, is that fair to say?

>> I actually think they complement each other.

Our charter is an independent testing authority is to verify that it meets specific requirements, we say it's passed or failed and

we don't make objective or speculation on, well, it scent work the way somebody wants it to, and I think the committee is helpful there to say for a disabled person impractical.

>> COMMISSIONER DOUGLAS KELLNER: But in this case this wasn't tested for for any of the machines, right?

>> That's correct, it's part of lot 1 that we would verify that we sent to studies.

>> COMMISSIONER DOUGLAS KELLNER: So the only thing we have is the limited information provided by CMA C which raises these questions on whether persons with limited dexterity can use the Liberty system?

>> That's correct.

>> COMMISSIONER DOUGLAS KELLNER: All right.
Then Ms. Garcia, we did spend time with the tape measure yesterday going through the requirements.

I'm looking for my note on it. Here it is. 3.2.4B2 which is the mobility provision. Anna, I think you have the voluntary voting guidelines there.

>> I do.

>> COMMISSIONER DOUGLAS KELLNER: Would you read that?

>> "All controls, keys, audio jacks and any other part of the voting booth station specified under the following subrequirements and section 2 specifically says if the accessible voting station

has a forward approach with a forward reach obstruction the following requirements apply, the forward obstruction shall be no greater than 25 inches in depth,

its top no higher than 34 and body surface no lower than 27 inches. If the obstruction is no more than 27 inches the maximum high reach shall be 48 inches otherwise 44 inches."

>> COMMISSIONER DOUGLAS KELLNER: So there were two features we looked at on this, one was the independent verification reader, which was just propped up on the side of the

machine. You want to tell us what your conclusion was with respect to that?

>> Well, I think that you and I with our tape measure found that if the independent verification hung on top of the machine, the top of the face or whatever, it was too high.

It has to be put down on a table next to the voting machine in order for it to meet the height requirement.

>> COMMISSIONER DOUGLAS KELLNER: Okay.
So it can't be hung on the machine and meet that legal requirement.

>> Correct.

>> COMMISSIONER DOUGLAS KELLNER: Okay.

Now the second issue, which I think was also raised by the by CMA C is the slot that generates the ballot and did you want to tell us what you concluded with that?

>> Well, the Liberty system allows the voter to hit the "cast" button twice and it will drop the ballot on top of their machine so it's within reach.

But if you do the measurements all the way up to the top it is not but because they can drop that ballot down it's within reach.

>> COMMISSIONER DOUGLAS KELLNER: Those are the technical issues that I wanted to raise in the CMAC report but I wanted to ask the CMAC members who are present if they have any other issues they wanted to address to the commissioners.

>> Yes, thank you for the opportunity

>> COMMISSIONER DOUGLAS KELLNER: Greg, why don't you stand up, if you don't mind?
I'm sorry.

>> I'll prop myself up at the table if that's all right.
In evaluating the machines, we did use evaluation criteria set forth in package D to the report.

Apparently most important, usability features, one of which you covered about the reach requirements, the slot on the machine,

I think that everything that we've looked at we haven't looked at the bottom line of the requirements which state that the

equipment should be usable or accessible to people with disabilities, especially those who are blind.

I think that's they're specifically mentioned in the legislation itself and those individuals in particular should be given the opportunity to vote independently and secretly.

To make a long story short, this particular piece of equipment, I think in all of our opinions, those individuals that have actually looked at it,

that this would not meet those requirements as far as use ability is concerned.

The features may be there, but essentially in fact I'm going to give you my experience. When I was using the machine I've used it a couple of times now,

a couple of things become readily apparent. If you are blind,

and you're trying to find the ballot, when you're done voting, you would have to feel around on the back of the machine to actually find out where that slot is.

If you push the button twice, that was mentioned earlier and the machine spits the ballot out, the fact that the full face ballot sits underneath it at a slant,

what was happening was that the ballot would be spit out, slide down and on to the floor.

If you couldn't see to catch that ballot you wouldn't know where it went.

The prompts that were given an audio component were difficult to follow, and it would be extremely difficult for people, again, who were blind or with cognitive disabilities.

The fact that you have to take the ballot for verification and put it into the meter, if you will also presents some difficulties.

In the test that we had yesterday I happened to be on one side of the room and it would be difficult, if not impossible,

for an individual who is blind to independently find that piece of equipment without asking for the assistance of a poll worker

and the fact that the verification equipment that the ballot has to be put into the scanner, if you will, in a particular way,

that would likewise pose problems for people with vision impairment or who are blind.

My personal conclusion and I think the conclusion of several of those individuals that looked at the machine was that in this particular piece of equipment you would need a poll worker

there poll worker there throughout the entire experience because if you lose track of where you are on the ballot, it would be difficult to get to where you were

and I found I had to ask for assistance a number of times as I was watching others use it they were having the same difficulties.

So I think the bottom line here is that although people who are blind mentioned specifically in the legislation,

this piece of equipment is essentially not usable by the element that is the target of that particular piece of legislation.

>> COMMISSIONER DOUGLAS KELLNER: So Mr. Jones did you make a specific recommendation?

>> Yes, personally and on behalf of my office we could not support the approval of the Liberty machine.

>> COMMISSIONER DOUGLAS KELLNER: And do they need to discuss whether or not to recommend or object to the approval of the machine?

>> Yes, we did either by phone or personally we did and I think that the report I think it should be mentioned that report of the committee was unanimous,

not the majority in the sense that everyone who did participate did come to the same conclusion but there were two individuals who could not be reached and cannot participate in the "vote"

if you will, and the directors we did not include in the voting process, which we felt was appropriate. So, really, the report of the committee was essentially a unanimous report.

I think we all came to the same conclusions that, in fact, the Liberty machine was not usable particularly by those people who have manual dexterity problems and the "reach" problems,

which is something I didn't mention, I know you can reach and have the ballot spit out, but someone in a wheelchair could not reach that slot to pull that out themselves.

>> COMMISSIONER DOUGLAS KELLNER: And, again, sorry to keep repeating myself but it was unanimous.

In other words, no one except for the two commissioners who did not participate in the committee meeting and the two

executive directors, all of the committee members had that same recommendation that the Liberty machine be rejected?

>> As well as the disability organizations that I contacted.

I have we have been going through this process for the past five years,

as you know and we have been in close contact with the independent living center and other organizations and I think that they, likewise, feel the same way.

I think it's a unanimous consensus that the Liberty machine does not receipt the usability portion of the Hava requirement.

>> COMMISSIONER JIM WALSH: It sounds as though we have given this a good discussion, we have heard both sides of the issue

>> COMMISSIONER DOUGLAS KELLNER: I'm not finished, but if you insist on rushing that through

>> COMMISSIONER JIM WALSH: You admitted you're repeating yourself so if you want to go around in a circle we have other business to conduct. Do you have other questions?

>> COMMISSIONER DOUGLAS KELLNER: This is one of the most important issues we've done. We've spent countless hours in court on this

>> COMMISSIONER JIM WALSH: You're welcome to ask questions but as you said you're going around for a second time, please, I'm not shutting off your ability to ask questions.

>> COMMISSIONER EVELYN AQUILA: I would like to clarify in fact, I'm going to vote in favor of Liberty because we're giving interim certification not permanent certification,

interim and when we ask this tech to go through these machines they have supported Liberty and said they should get interim certification.

We can't have different rules for different machines.

We've got to be fair and just if we're going to put Liberty under the light for all of these several issues all of the rest of the

machines should have had but we didn't test for usability, we did not test for usability and everyone should know that.

I'm going to go along with our experts, they told us which way to go and I think that's fair and just.

I ordered these issues I'm glad these issues are on the table and these vendors need to all take care of the issues or they won't get permanent acceptance.

We have to give them a chance.

>> If you're talking about the accessibility of a particular machine for, that should be a requirement people with disabilities,

that should be a requirement that trumps all requirements because the statute requires that the machine be not an

accessible but usable in particular to people who are blind or have vision problems. That is the top priority here considering this.

>> COMMISSIONER DOUGLAS KELLNER: Mr. Jones did you test all the models or just the Liberty.

>> Yes, I tested all the models.

>> COMMISSIONER DOUGLAS KELLNER: Mr. Reed you heard what Mr. Jones said from the advisory committee and I want to ask you again if in your view the reports are inconsistent or,

in fact, complementary the fact that you've recommended that they passed these tests doesn't mean we should accept these

>> I agree completely.

If it passes the interpretation of the BBSG and the Hava requirement we say it's passed.

And I appreciate your committee that comes in and does the usability testing.

>> COMMISSIONER DOUGLAS KELLNER: And if the committee, based on usability is recommending rejection, then based on taking the two reports together what conclusion should the commissioners be making?

[Audience groans]

>> I don't think that's our place to say that.

>> COMMISSIONER DOUGLAS KELLNER: Once again

>> You have the facts

>> COMMISSIONER EVELYN AQUILA: Let's have a vote.

>> COMMISSIONER DOUGLAS KELLNER: You're saying that your recommendation that they meet the technical specifications has nothing to do with the usability recommendations that CMAC is making?

>> I think the reports are complementary, and technically they pass the requirement. Whether it's usable or not we would lose our independence if we were to present a subjective report on that.

>> COMMISSIONER DOUGLAS KELLNER: I would like to hear the comments of the other commissioners on why we should ignore the CMAC report that the Liberty machine does not meet the usability requirements of Hava.

>> COMMISSIONER JIM WALSH: Let's put a motion on the floor and we'll discuss it and take a vote. The motion to approve the Liberty machine?

>> COMMISSIONER EVELYN AQUILA: I make a motion.

>> COMMISSIONER JIM WALSH: Second.
On to questions.

Discussion?

>> COMMISSIONER EVELYN AQUILA: My discussion is I believe it's an interim certification.

I think that the committee did a great job but we have to now put all of their ideas and test them on all these machines to be fair and honest.

I know they tried other machines but we have to do this in great length to see if they do meet the needs of the disabled community.

This was not the testing that we asked for.
The testing we asked for was Sys Tech.

I am voting for the companies that he they said we should.
I have said when the technical people and the people that we hired to examine these machines I will vote the way they tell us or recommend we should.

For interim certification since they have listed Liberty to be one of the companies passed, I will pass it I am not going to prejudge.

>> COMMISSIONER HELENA DONOHUE: I'm in agreement with Evelyn and I take the words of the CMAC report. Certainly there is no perfect system available and improvements can be made in each of the systems which I believe should be done.

>> COMMISSIONER JIM WALSH: Personally as a former member of the the CMAC committee for the first day I attended the meeting I was impressed with the composition and the effort put forth and I certainly value your opinions.

At the same time, I also value the work put into this by a manufacturer.

When a state asks a manufacturer to meet certain requirements which were extremely difficult which I think we all agree to that and once those agreements were kept and those

requirements were met and we had proper testing made by an approved independent testing agency and the testing agency indicates that this should be approved and there is no reason

not to, I think you would open yourself to a serious legal situation if you were to refuse to take the recommendation.

I have to go by the professional evaluations made on this

machine by this company and to vote in favor of approving them as has been recommended to us by the independent agencies.

>> COMMISSIONER DOUGLAS KELLNER: I'm concerned that we're ignoring the report of our other experts. We have two experts here.

We have an independent testing authority that has done one set of tests, we have the citizens election modification advisory committee which did a different set of tests or a different

purposes and I think they both agree they didn't do the same tests, that there are different purposes to the tests they've done and they've done all of those tests and I don't understand how

we can just reject the report of our experts, the experts who did the usability tests in the citizens election modernization

>> COMMISSIONER EVELYN AQUILA: I didn't reject it it, every one of the things they have talked about have to be corrected before we give final certification.

I think they came forward with a lot of things these machines should be able to do and they can't do it. This is interim certification.

When we give them permanent certification they better be able to do all of the things that we're asking of them.

But we also have to move along.

We have a state judge telling us we must move and a federal judge telling us we must move and I think we are way behind from where we should be and we can't be delaying at every single stop.

>> COMMISSIONER DOUGLAS KELLNER: If the whole purpose of the ballot marking devices is to have an accessible device for use by persons with disabilities and the disability

community, our own experts on the citizens election ad modernization advisory committee is telling us don't approve it aren't we ignoring that advise?

>> COMMISSIONER EVELYN AQUILA: I don't think so when the state judge and federal judge has told us we should move along.

>> COMMISSIONER JIM WALSH: All right let's vote.

All in favor?

Opposed?

3 1, Harry?

>> Next is the Premiere AutoMARK.

>> COMMISSIONER DOUGLAS KELLNER: I think we've gone through this.

>> COMMISSIONER HELENA DONOHUE: It does meet the criteria of the limited scope of testing.

>> COMMISSIONER JIM WALSH: Is there a written resolution for Premiere?

>> COMMISSIONER EVELYN AQUILA: Along resolutions

>> COMMISSIONER DOUGLAS KELLNER: There was no written resolution for Liberty.

>> COMMISSIONER EVELYN AQUILA: Yes there was a written resolution for Liberty.

>> COMMISSIONER HELENA DONOHUE: I think they required the same one.

>> COMMISSIONER DOUGLAS KELLNER: Didn't have it in front of me. So now we're on Premiere. Right.

>> COMMISSIONER DOUGLAS KELLNER: I move the resolution is printed for preview.

>> COMMISSIONER JIM WALSH: All in favor?
Approved. Next item, Sequoia Imagecast.

>> We find that the ballot marking device meets the required acceptance criteria of this interim certification testing effort.

>> COMMISSIONER DOUGLAS KELLNER: Um, there were several original discrepancies with this machine.
Could we go through those issues?

I don't have a copy of it here. Does somebody have a copy of the original Sequoia discrepancies?

>> Those would be the originals would not be in that folder.
That's the resolutions and the summaries. For he's of reference.

>> COMMISSIONER DOUGLAS KELLNER: Ms. Garcia, there are references to upgrades. Can you tell us how many upgrades there were regarding the testing process?

>> I believe 3. Let me double check. There were 3.

>> COMMISSIONER DOUGLAS KELLNER: And when did you receive the last one?

>> Um... I don't remember the exact date, probably around the 18th or 17th. It was pretty early on. They were one of the first to finish testing. I think somewhere around there. Let me see if it says

>> COMMISSIONER DOUGLAS KELLNER: Look at 17, please.

>> Discrepancy 17?

>> COMMISSIONER DOUGLAS KELLNER: Right.

>> Missing display so all came through.

>> COMMISSIONER DOUGLAS KELLNER: That's why it said it was resolved on Feb 5th by firm wear version 0.19?

>> It was reported on January 24th and the fixes came in on the 6th of February, resolved.

>> COMMISSIONER DOUGLAS KELLNER: So that's the date you would have gotten the new firm wear?

>> Yes.

>> COMMISSIONER DOUGLAS KELLNER: So how much of the testing was done after that version was installed.

>> I believe every voter was retested on that.

Because of how early on we were in our testing we never between each version we never got very far so we had to do the entire test case at the end.

>> COMMISSIONER DOUGLAS KELLNER: So there is no problem here with the regression issue?

>> No, no.

>> COMMISSIONER DOUGLAS KELLNER: All right.

And would you look at discrepancy 4 on the time outs?

Would you explain that and how it got resolved?

>> On 4?

Did you say 4?

>> COMMISSIONER DOUGLAS KELLNER: That's right.

On the time out issue.

>> Oh, okay. This had to do with incorrect instructions and we received updated instructions for audio and

>> COMMISSIONER DOUGLAS KELLNER: Well, I'm trying to get a little bit more explanation on what was incorrect about the instructions and what did the GBSG require and how did they fix it?

>> Okay let me read this real quick.

Okay. So visually you were told to select your next candidate and it did not tell you to select the X to continue forward where the audio did tell you.

So if you weren't listening to audio then you couldn't select the next candidate because it had timed out, so you had to press the "X" to get back in so it was missing the instruction.

>> COMMISSIONER DOUGLAS KELLNER: Would you explain the time out rules?

>> If there is no activity for 20 seconds, it will go into a pause mode. It's not really a time out it's more of a pause and then it will say "are you there?"

"Please select the X"

>> COMMISSIONER DOUGLAS KELLNER: And they require that you reactivate it when it's in that mode but there has to be an instruction on the screen so you would know to do that?

>> Correct.

>> COMMISSIONER DOUGLAS KELLNER: And they put the instruction on the firm wear and that resolved the problem?

>> Correct.

>> COMMISSIONER DOUGLAS KELLNER: That's all I have.

>> Thank you.

>> COMMISSIONER JIM WALSH: Any other questions?
Motion?

>> COMMISSIONER DOUGLAS KELLNER: I make the motion as printed.

>> COMMISSIONER JIM WALSH: Second?

>> COMMISSIONER HELENA DONOHUE: Second.

>> COMMISSIONER JIM WALSH: Opposed?
None, okay.

>> The acceptance testing plan that's in your packet, we have had considerable discussion here with our colleagues,

our consultant, and we determined that the best method for acceptance test to go meet our statutory obligation is to do this centrally.

We found a location here in Albany that's accessible for us, it's a former cafeteria on the state campus available

and it has security and loading docks and ramps and things of that nature that would make testing on a centralized basis more successful.

The alternative was to have voting systems delivered to each county and for us to build a team that would be go around the entire state and do this at every single site.

It was an unmanageable project.

Toward that end, our staff people in the elections operation unit would be the supervisors, team leaders and we determined

that there is a state contract from which we can secure the services of persons at various with various skill levels that would be appropriate to assist in this testing.

We have identified an. Cost for acquisition of that staff available to us only when we needed them, they're available on demand.

There is an amount of training that would have to be done with these persons, but it could be accomplished on their first day of work, it wouldn't have to be training and then they sit at home

because when we actually called those persons in to work it might be possible they wouldn't be available.

We have identified \$312,000 approximately for this effort and we are requesting that it be spent from the federal state operations federal operating grants fund, which was the \$20 million of

original money that was for the state to use in implementing Hava across the board.

>> COMMISSIONER JIM WALSH: Questions of Anna?
Vote on the funds for the 2008 acceptance testing plan?

>> The resolution is the last page of the item that's in your packet.

>> COMMISSIONER JIM WALSH: Motion?

>> COMMISSIONER HELENA DONOHUE: Move that the board pass approve of the request of the above referred which is printed of the election operations unit and authorize the use of

the special funds, federal/state operations, federal operating grants on a sum not to exceed \$312,000 for payment of the

costs associated with procurement of temporary staff to assist with acceptance testing.

>> COMMISSIONER JIM WALSH: Second?

>> COMMISSIONER EVELYN AQUILA: Second.

>> COMMISSIONER JIM WALSH: All in favor?

Opposed?

Carried.

Thank you.

Discussion of SBOE voter education plan for 2008, Bob?

>> Now that we have approval for certain margin devices we have a meeting planned for this Friday with a steering committee of county select committee of county board of

election and Greg Jones serves on that committee and staff here in the building to update our voter education plan.

Last year we hired a company, SOE.

Now that we can start the actual updating of that training curriculum we are actively reaching out to select the written materials for the ballot marking devices that have been approved and to lay out a plan.

So we will have that steering committee meeting on Friday, we have an advisory group, and if any of you want to log in it's online if you want to monitor how that will take place.

Once we come up with a draft we will have a wider audience, especially people with disabilities to make sure that they can be satisfied and it's our hope to roll this out for services this year

because we have to educate everyone on how to access and use the ballot marking devices and we're going to include the voting machines for this fall.

We will do the same round to update once we have final certification for the systems that will be used in 2009.

>> COMMISSIONER JIM WALSH: Questions?

>> COMMISSIONER EVELYN AQUILA: Bob, did we have an education program in 2007?

>> We updated the curriculum in 2006 which was required by statute and also with our federal compliance plan.
Most of that activity included sensitivity training that we did.

through the commission on quality of care and the Board Of Elections, we had a series of training workshops throughout the state.

>> COMMISSIONER EVELYN AQUILA: I remember that.

>> We updated our education manual.
Nothing changed in 2007. We hoped to be ready but nothing changed so we did not update it besides what we did originally in 2006.

There were educational pamphlets that we produced in 2006 for the use of those interim ballot marking devices and we distributed those to the county and to disability organizations.

They didn't change as of last year so our plan to to update everything and reach out once it's approved to get it out to the community as quickly as we can.

>> COMMISSIONER JIM WALSH: Discussion of intro communication plan.

>> This is in relation to our recent more challenges, which was to have I thought it would be useful ask it became an issue in some of the court cases since we do more electronic

transmissions to make it clear that it's an official board communication quite easily that it might be useful by having a central like an official e mail address so when it goes out it

doesn't get sent out from an individual it gets sent out under the auspices of the board, and we do that now but when it's sent out, sometimes it gets sent out by an individual and they have to plain why.

But when it can come from a central point

>> COMMISSIONER EVELYN AQUILA: It's better, uh huh.

>> It can be clearer when counties and anybody really sends information out such as certification results, ballots, issues any issues we send out like that.

First of all when we get court orders and we seem to be getting Them on a semi regular basis for a board to send something out and have an official board web mail address or e mail address would eliminate that confusion after the fact.

We can say, yeah, look at the e mails.

So this is not really a plan but it's in response to an issue that has arisen recently regarding electronic transmission.

I don't have to talk more about how that operates and deal with the technical aspects, but we wanted to apprise the board it's something that you should consider.

[Coughing]

>> COMMISSIONER EVELYN AQUILA: Sounds good.

>> COMMISSIONER HELENA DONOHUE: At the request of several of the county commissioners, also, there was a lot of discussion about that.

>> Yeah because we do send out a lot of e mail and it's necessary to certainly people, George seeks questions, Anna does surveys, that's not what this is intended to address,

it's to address the final statements and those issues come up.

It been increasing more and it seemed these last court cases it might help solve issues.

[coughing]

>> COMMISSIONER DOUGLAS KELLNER: I'm not convinced it will stop that, because it says has to be a vote of the three commissioners in order to have an official action of the board.

The rest of it is getting bipartisan sign off on whatever goes out, which I think is necessary >> we can address that, when I say "board communications" that's what I'm referring to so it's clearly to the recipients that it's clear.

The way our system is set up it comes from an individual.

And often we have a proxy and I will stand there myself and send it out and when they get it it they wonder who is this from.

It is true that the board itself we do transmit electronically once the determination is made by the board then that's how we disseminate the information.

It's efficient, quicker, but having it clearly indicated when those occur would be, I think, beneficial to try to minimize questions.

>> COMMISSIONER DOUGLAS KELLNER: The statute says "an official action of the board" right now it's not that hard to have two people sign off and send it out as a pdf file,

but I'm willing to consider anything that you propose.

I think the key is that there be bipartisan communication.

>> COMMISSIONER JIM WALSH: You are to be commended for your effort and the door is open for any suggestions to add and delete.

Next item on our agenda, if anyone would like an executive session through discussing courtroom cases we can, if not

>> COMMISSIONER DOUGLAS KELLNER: I had a few minor comments but I don't think they require an executive session.

I can address the comments without exposing anything confidential. On the first one there was a typo.

In the second paragraph so in CMP06 01 in the second paragraph it is "New York county" and I think it should say "New York City" since all of the records

>> COMMISSIONER EVELYN AQUILA: Which one is that?

>> COMMISSIONER DOUGLAS KELLNER: Line 4.

>> COMMISSIONER EVELYN AQUILA: Oh, here.

>> COMMISSIONER DOUGLAS KELLNER: That should be New York City. So with that change on CMP06 01 I move approximate.

>> That would be closed.

>> COMMISSIONER JIM WALSH: Do we do these individually or as a group?

>> COMMISSIONER DOUGLAS KELLNER: Usually as a group.
Could I make that change?

>> COMMISSIONER EVELYN AQUILA: Yes, yes.

>> COMMISSIONER JIM WALSH: Yes.

>> COMMISSIONER HELENA DONOHUE: Yes.

>> COMMISSIONER DOUGLAS KELLNER: The last comment on the is on the procedure. CMP06 CMP06 93, 94, and 98 are all letters that we received from citizens complaining about the

operations on their county boards and that were clearly not complaining about criminal activities or anything other than poor administration of the electoral process and I think it's a big

mistake to open up a docket on these and the idea that we're getting around 18 months later to deal with an administrative problem I agree completely with the conclusion that this

should have been given to election operations in the first instance and dealt with as a follow up, and I would hope that not only do we do these four now but that Bill and Liz,

go through your list and get all of that junk out now because going back 18 months later and saying you made a paperwork mistake is ineffective,

because no one remembers what happened and it isn't going to correct anybody's behavior.

Besides the fact that we had three or four election events that had taken place without if we were going to correct the mistakes, they hadn't been corrected yet.

I would urge that these not be opened up even as dockets. That they immediately be referred to election operations and that whatever is in our backlog that we get out of it as quickly as possible without the need for formal reports.

It looks like somebody spent a couple of hours on each one of these just to buck it over to election ops.

>> COMMISSIONER EVELYN AQUILA: It's a good suggestion.

>> COMMISSIONER DOUGLAS KELLNER: And on CMP06 53 I am recusing myself because of relationship with the parties. So I'll be voting to approve all of the recommendations except that one I'm recusing myself.

>> COMMISSIONER JIM WALSH: Let the record indicate same.

>> COMMISSIONER EVELYN AQUILA: I can't even find it it.

>> COMMISSIONER JIM WALSH: All in favor?
Oppose , carried.
We will entertain a motion to adjourn.

>> COMMISSIONER DOUGLAS KELLNER: Can we set our next meeting date?

>> COMMISSIONER JIM WALSH: Okay.

>> COMMISSIONER DOUGLAS KELLNER: Do we have a deadline for certifying the results in the presidential primary?

>> We're aiming for 15 days, the unofficial results were provided to the secretary this morning by e mail and they will be seeding the winner based on those e mails.

>> COMMISSIONER DOUGLAS KELLNER: Um
>> We can hold that certification

>> COMMISSIONER DOUGLAS KELLNER: I'm asking is there a date by which we must meet to take any votes or can we just say three weeks from now?

>> 20 days to the election.

>> The board has to vote?

>> COMMISSIONER DOUGLAS KELLNER: Do we have to meet to certify the presidential primary

>> The board sent certify the primary results.

>> I know we don't do it on the democratic side, do we do it on the Republican side?

>> No.

>> COMMISSIONER DOUGLAS KELLNER: Are you saying we must vote to certify the 48? If we're two days late is that a problem?

>> No, it's not.

>> COMMISSIONER EVELYN AQUILA: Is this the 48 Senate district?

>> He would have been serving for three weeks

>> COMMISSIONER DOUGLAS KELLNER: So three weeks from today is that okay?

>> COMMISSIONER EVELYN AQUILA: I have to look and let you know.

>> COMMISSIONER HELENA DONOHUE: That would be March 19th.

>> That's not good?

>> COMMISSIONER DOUGLAS KELLNER: Did you want to meet the week before that.

>> COMMISSIONER EVELYN AQUILA: I would prefer to have the three weeks. 26th would be better.

>> When do we
[Conversation regarding scheduling next meeting]

>> COMMISSIONER EVELYN AQUILA: High noon!
Not just noon, high noon!

[CHUCKLES]

>> COMMISSIONER JIM WALSH: All in favor?
Opposed? Carried.
[Meeting ended]