

NYSBOE Board Meeting June 13, 2011

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22

23 **Board of Canvassers Meeting**

24

25 *Certification of General Election Results for the 26th Congressional District*

26

27 [BEGIN AUDIO]

28

29 **BOB BREHM:** Okay, we're on and live.

30

31 **JAMES A. WALSH:** Good afternoon everyone, my apologies. We had a simple business that sometimes gets
32 a little bit intricate, and that's what happened so my apologies again. We will start off with the convening
33 of the Board of Canvassers for today and we have, for business--

34

35 All right, I'll read this as to what we're convening here.

36

37 We, the State Board of Elections, constituting the State Board of Canvassers, having canvassed the whole
38 number of votes given for the Office of Representatives in Congress of the 26th Congressional District has
39 enumerated the special election in said state on the 24th day of May, 2011. According to certified
40 statements of said votes received by the State Board of Elections in the manner directed by law do hereby
41 determine and declare and certify that for the 26th Congressional District, Kathy Courtney Hochul was by
42 the greatest number of votes given the said election duly elected Representative in Congress, given under
43 our hand in the City of Albany, New York this 13th day of June, 2011.

44

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1 And is that a motion required on that?

2

3 **DOUGLAS A. KELLNER:** Second.

4

5 **EVELYN AQUILA:** Aye.

6

7 **JAMES A. WALSH:** Okay, all in favor?

8

9 (Chorus of ayes)

10

11 Opposed?

12

13 (Silence)

14

15 Carried.

16

17 **DOUGLAS A. KELLNER:** And then we have sign the certificates.

18

19 **JAMES A. WALSH:** - - -

20

21 **JAMES A. WALSH:** Mission complete?

22

23 **BOB BREHM:** Mission complete.

24

25 **Board of Commissioners Regular Meeting**

26

27 **JAMES A. WALSH:** Thank you all, we'll now continue the regular meeting for today, Monday June 13th.

28

29 **Approval of Minutes**

30

31 **JAMES A. WALSH:** The first item of business is the minutes of April 1st and May 10th meetings; can I have a
32 motion to approve or any additions or deletions or - - ?

33

34 **DOUGLAS A. KELLNER:** I move that we adopt the minutes as drafted.

35

36 **JAMES A. WALSH:** I need a second.

37

38 **EVELYN AQUILA:** Second.

39

40 **JAMES A. WALSH:** All in favor?

41 (Chorus of ayes)

42

43 Opposed?

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1 (Silence)
2
3 Carried--Unit Updates--Executive.
4
5 **TODD D. VALENTINE:** Aren't we going to do introductions first or...
6
7 **JAMES A. WALSH:** Oh, that's true.
8
9 **GREGORY P. PETERSON:** We're making up for lost time. [LAUGHTER]
10
11 **JAMES A. WALSH:** Before we...
12
13 **TODD D. VALENTINE:** - - - another 30 seconds there.
14
15 **JAMES A. WALSH:** Everyone would like to know who the Executive Directors are, so we'll start off with
16 introducing ourselves here and we'll work our way around the table and into the rest of the people who
17 are attending here today.
18
19 **DOUGLAS A. KELLNER:** All right, Douglas Kellner.
20
21 **EVELYN AQUILA:** Evelyn Aquila.
22
23 **GREGORY P. PETERSON:** Gregory Peterson.
24
25 **JAMES A. WALSH:** My name is Jim Walsh.
26
27 **TODD D. VALENTINE:** Todd Valentine.
28
29 **KIMBERLY GALVIN:** Kimberly Galvin.
30
31 **PAUL COLLINS:** Paul Collins.
32
33 **JOSEPH BURNS:** Joe Burns.
34
35 **ANNA SVIZZERO:** Anna Svizzero.
36
37 **PATRICK CAMPION:** Pat Campion.
38
39 **TOM CONNOLLY:** Tom Connolly.
40
41 **JOHN CONKLIN:** John Conklin.
42
43 **GEORGE STANTON:** George Stanton
44

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1 **WILLIAM MCCANN:** Bill McCann.

2

3 **ELIZABETH HOGAN:** Liz Hogan.

4

5 **BOB BREHM:** Bob Brehm.

6

7 **ROBERT WARREN:** Bob Warren.

8

9 **TARRY BREADS:** Tarry Breads.

10

11 **AIMEE ALLAUD:** Aimee Allaud, League of Women Voters.

12

13 **Unit Updates**

14

15 **JAMES A. WALSH:** Thank you, all.

16

17 Now that we know everyone we'll have the Executive Director's Report: Bob Brehm and Todd Valentine.

18

19 *Executive*

20

21 **BOB BREHM:** Do - - go first or do you want to go first?

22

23 **TODD D. VALENTINE:** You go first.

24

25 **BOB BREHM:** Well, one of the--ranking them, I guess in some type of a priority, Todd and I visited the City
26 Board of Election as part of part of our conversation with the senior staff on compliance with the
27 NYSVoter list maintenance provisions. After our last Board meeting Todd and I reached out to Dawn and
28 Pam at the Board; they invited us down to actually have a conversation with them about the functionality
29 of the system. Something we tried to do in 2008 to limited success, but the follow-up from that meeting I
30 thought was very positive compared to some of the other dialogue we've had as a genuine interest in how
31 the system functions and then how we can work together to overcome the outstanding obstacles.

32

33 They shared, Dawn and Pam, a report with their commissioners at their meeting on the 24th and then
34 Todd and I went back on the 31st and actually spoke with the commissioners. And the commissioners had
35 approved--at that time--basically changed a decision that they made earlier that prohibited the staff from
36 engaging in a conversation with us on the subject. And so it was a good sign that we were moving in a
37 more positive direction, and then on Friday George was able to actually schedule and conduct the initial
38 technical communication. You know, we talked about some items that needed to be dealt with both short-
39 term and long-term, but that we couldn't really confirm all of what we described as should be able to
40 happen until the technical people could talk and start to put together what are the technical things we
41 have to overcome, how long will it take for them to make that list, and then how long will it take for the
42 more integrated final phase of the implementation. And then there are a number of steps along the way to
43 start cleaning up the back file that will need to take place no matter what we do.

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1 **EVELYN J. AQUILA:** Bob, may I ask you, was this meeting reported to the Department of Justice?

2

3 **KIMBERLY GALVIN:** Tomorrow.

4

5 **EVELYN J. AQUILA:** Yes?

6

7 **BOB BREHM:** Tomorrow.

8

9 **EVELYN J. AQUILA:** Tomorrow, okay.

10

11 **BOB BREHM:** Unless they're watching right now. [LAUGHTER]

12

13 **EVELYN J. AQUILA:** No, that's important, right.

14

15 **BOB BREHM:** -- So that took, you know--

16

17 **TODD D. VALENTINE:** They knew we were meeting though.

18

19 **EVELYN J. AQUILA:** Yes, I know but I wanted to know if the meeting was reported - -.

20

21 **BOB BREHM:** -- That took a great part of that period of time and other than that I think there was
22 a MOVE Act implementing. The Uniform Law Commission met in Albany and we attended that session;
23 they're attempting to promote a Uniform Law throughout the country that would deal with compliance
24 issues with the MOVE Act. There's very few states that have actually signed on to that program yet, but we
25 had discussions with--we participated in that session as part of our ongoing compliance with the MOVE
26 Act. Other than that I think it's just the ongoing fiscal and end of legislative session conversations that
27 we've been holding, and routine staff issues.

28

29 **TODD D. VALENTINE:** Well, one thing I want to highlight is there we had--and George I don't know if
30 you'll get to that, but just since it's in front of you--is we had two retirements in the last couple of weeks.
31 Both from George's Unit in IT; we mentioned this in our report but it's worth saying, because they retired
32 and went on to--I don't want to say greener pastures--but different pastures. Both Dennis Caro and
33 Monica LaGue, and we had done a nice little send-off for both of them, each in their own way. But again we
34 want to thank them for their services; it's one of those things that we don't always - - highlight but it's nice
35 to see.

36

37 **EVELYN J. AQUILA:** But Todd, could I ask one more question? I'm sorry to be asking questions, but how
38 many federal bills are we trying to comply with at the present time?

39

40 **TODD D. VALENTINE:** I don't know that we count them.

41

42 **DOUGLAS A. KELLNER:** Hopefully all of them. [LAUGHTER]

43

44 **EVELYN J. AQUILA:** -- I know, and I think that's very good news - - I wondered if you could give me the

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1 exact number of them if you know, because it seems like we have to let people go, let people go and all
2 we're doing is getting more and more things that we must carry out.

3
4 **TODD D. VALENTINE:** -- Yeah, well I mean our federal--you know, it's hard to enumerate that, but if I try
5 to think in terms of chronological stuff I mean with the Civil Rights, the Voting Rights Act and their earlier
6 incarnations, something we always have to work with, the National Voting Rights Act (the NVRA) is
7 something we continue to monitor as well as the more recent Help America Vote Act and the Military and
8 Overseas Voter Improvement Act.

9
10 I mean, those are the main pieces of legislation that we have to comply with on the federal level.

11
12 **KIMBERLY GALVIN:** -- State statutes.

13
14 **TODD D. VALENTINE:** But, you know, they're all implemented not just on the federal level, but as Kim is
15 pointing out on the state level as well.

16
17 **EVELYN J. AQUILA:** -- Absolutely, yes I know.

18
19 **TODD D. VALENTINE:** So, you know, we have our own state legislature. You know, they see a need and
20 they ask us to develop programs to implement whatever enforcement, whatever area they want to
21 enforce. And it's not done in a vacuum I assure you; certainly they hear it from many sides not just from
22 the agencies but people outside of the agencies. So, you know, we try to make it clear whenever a mandate
23 is placed upon the agency whether it be to the federal government--although that tends to fall on deaf
24 ears--or comes with money--it's one or the other, it's never in between.

25
26 On the state side the money is a little harder to come by; I'm not saying it falls on deaf ears but they do
27 hear it, but they put agencies in the position of having to prioritize goals because it gets to a certain point
28 where it becomes impossible to do everything or to do it immediately. So you have to restructure the time
29 frame in which do that and that's the reality.

30
31 **EVELYN J. AQUILA:** -- I wasn't asking that really for myself to be educated, because I know - -.

32
33 **TODD D. VALENTINE:** Yeah, I understand.

34
35 **EVELYN J. AQUILA:** But I think for the public to know that also we're implementing the new voting
36 machines over these couple of years too, and these all take people and money and energy. And I think
37 people get the idea sometimes that the Board of Elections, "Oh, two days a year they're busy," you know?
38 And I just think we have sometimes made the picture a little larger so that people understand that
39 there's far more here than they can imagine.

40
41 **TODD D. VALENTINE:** Yeah, I mean we have to be cognizant of that. I mean, we're part of a larger--yeah.

42
43 **EVELYN J. AQUILA:** -- So just saying two people leaving, you know, or whatever--you know, it hurts--it
44 hurts.

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1 **TODD D. VALENTINE:** Yeah, it does. I mean, while we appreciate that it's good for them that they--

2

3 **EVELYN J. AQUILA:** -- And that's the point I'm trying to make.

4

5 **TODD D. VALENTINE:** --you know, served the state well for these many years. And will, unfortunately,
6 given the existing state economy, be very difficult to work with those holes in our staff.

7

8 **EVELYN J. AQUILA:** Thank you.

9

10 **BOB BREHM:** One item I forgot to add to the list: you know, we had over a period of time last year
11 undergone the Federal EAC Audit of the spending of the Help America Vote Act. There were three items in
12 their audit that at least two of them didn't take us by surprise: one, they responded in the audit that we
13 needed to have the five percent match at the time we received the federal money and the five percent
14 match had to be in an account earning interest. So they had--OGS had calculated the money that went in
15 and what the lost interest was and we have that number now.

16

17 The second item they wanted us to have certain documentation to the staff members that were either full-
18 time or part-time on HAVA. We had learned that--you know, it was one of those programs by the time we
19 received the federal money to the time they gave us advice on how to do the program there was an
20 overlap. So by the time they gave us the instruction on how to comply with the program from that point
21 forward we had the records the way they needed them, and then we documented for those individuals
22 with information after the fact that said what work they did. The auditor pointed that out; it's something
23 we have to deal with the EAC itself.

24

25 And then the third item--and George has updated the report--was the Fixed Asset Audit for the equipment
26 that we bought to run - -, so all three of those we have a positive answer and that answer will go to the
27 EAC this week as part of our mitigation.

28

29 We have collected enough of the five percent match where we had other in-kind state expenditures. When
30 we pay a state employee here, you know, out of state funds and they keep track of the project that they
31 worked on related to Help America Vote Act we get credit for that as well as a few other programs that the
32 State of New York does like the Poll Site Access. So we have more than accounted for the missed interest
33 money, and that will be in the report that goes to the EAC this week.

34

35 So I think it's a positive report; I think we've overcome the issues but generally we respond and hopefully
36 by August it'll all be resolved.

37

38 **JAMES A. WALSH:** Thank you Bob. Thank you Todd.

39

40 Legal please, Kim Galvin.

41

42 *Legal*

43

44 **KIMBERLY GALVIN:** Thank you, Commissioner.

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1 Just to touch on a few things about the Department of Justice that Commission Aquila has already
2 mentioned--they do pay quite a lot of attention to us even though there's nothing generally active. We
3 have several fronts that they either make formal or informal inquiries on, on a rather relatively regular
4 basis.

5
6 They have the NYSVoter situation with New York City and any updates there too.

7
8 And as I said they scheduled our next update to them tomorrow, so that we would be able to talk to the
9 commissioners without any outstanding issues that we had before we reported back to them.

10
11 And then we also have another branch of the Department of Justice still calling for some military voter
12 statistical information from the last general election. And this is the same group that calls about moving
13 the primary and any progress or lack of progress that we on those issues. And they haven't started to ask
14 about the presidential primary yet, but I can assure them that we're paying attention to that as well.

15
16 And all of those have, you know, have the consequences that they have at a state level, but they certainly
17 have the federal implication as well. So we're doing our best to keep everybody informed and keep the
18 wolves at bay, if you will, for a little longer until we see what ultimately comes out of this session.

19
20 To that end we continue to monitor and speak with our friends up the hill regarding any legislation that
21 they pass that does, in fact, affect us. For example, I'm sure Liz will mention it today, on their agendas is an
22 ethics bill that does require the State Board of Elections to do a variety of additional things. And so, you
23 know, there's a lot of monitoring and comment on those sorts of things.

24
25 The cases that we've been moving along on; I mean the main ones are as you refer to them: Double Vote
26 and Over Vote. The Double Vote case is near the end of negotiation I think with the terms of settlement. I
27 know the Over Vote case has had a flurry of constant activity; Paul can update you on that.

28 And then I'm not sure about—

29
30 **DOUGLAS A. KELLNER:** -- When you say--I mean, we're very close to settlement on those two cases—

31
32 **KIMBERLY GALVIN:** I know we're very close to the Double Vote one; I think we're close to the Over Vote
33 one as well.

34
35 **DOUGLAS A. KELLNER:** But there's no actual signed settlement that - -.

36
37 **KIMBERLY GALVIN:** -- No, in the Double Vote we have a final consent decree that was forwarded to us.
38 Believe it or not I'm having a conversation with Bob Warren about pixels versus font size or things that
39 are just absolutely incredible to me, but I think that case for the most part is--you know, you agree on a lot
40 of things then you find out they don't use font size, they use pixel size. But anyway I think that they're all
41 moving towards the end and for two seemingly small issues you would think they really have taken an
42 exorbitant amount of time.

43
44 And the county, you know, is dealing with petition circulation and every possible permutation of ballot
45 access inquiry that you could ever have. It is pretty crazy, some of the various scenarios that you hear out

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1 so we've been doing our best to keep them, you know, up to date with the best information that we have.
2 And I think--did I forget anything--if I forgot anything I'm sure Paul will fill you in; other than that, that's
3 what we've been doing.

4
5 **PAUL COLLINS:** We're still waiting for word from the State Supreme Court here in Albany on our motion
6 to dismiss the Nassau County challenge to the implementation of the new systems. We're still waiting on
7 another federal case challenging the constitutionality of using any type of voting machine.

8
9 And there's another case, another brief that's got to get filed in the Circuit, having to do with the ban on
10 out-of-state petitioners which some circuits don't accept and the Second Circuit apparently has never
11 precisely ruled on it although on a district ban they did strike it as unconstitutional. And that's it, and
12 the—

13
14 **KIMBERLY GALVIN:** And the AG is appearing for us today on - -.

15
16 **PAUL COLLINS:** -- There is a case challenging the redistricting of the Nassau County legislature, which for
17 some reason we were named as a defendant in. And the reason we were named is they allege in their
18 complaint that we set the political calendar of the State of New York, which is probably news to the State
19 Legislature. So there's a conference call on that at 3:00 o'clock today and I just would like to get out of that
20 case; we don't belong on that case and hopefully we can get out of it without spending a lot of time and
21 energy.

22
23 **JAMES A. WALSH:** Thank you.

24
25 **PAUL COLLINS:** But this is the time of year when we get all of the calls on petitioning and what have you.

26
27 **DOUGLAS A. KELLNER:** And legislation.

28
29 **JAMES A. WALSH:** Any further questions?

30
31 (Silence)

32
33 Thank you, Election Operations, Anna please.

34 35 *Election Operations*

36
37 **ANNA SVIZZERO:** Thank you, Commissioners.

38
39 Aside from the report that we have filed with you that's in your packet, clearly we prepared the
40 documents following up to our election support on that special election that you just signed to certify the
41 new congressional member from the 26th.

42
43 We also have an update on voting equipment. We did conduct acceptance testing in Oneida County last
44 week; acceptance testing has to be done at each county board now. That doesn't make sense to do such
45 small numbers centrally and require the boards to pay all of that additional shipping, which means we're

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1 paying our staff to travel to those sites. But we did do 27 units in Utica last week, most of them for Oneida
2 County. There were a couple of units for some neighboring counties who came over to Oneida and
3 cooperated with the testing there and they appreciated the hospitality that Oneida provided and also the
4 services that our staff provided.

5
6 We have an update to the certification notes that are in your packet--ES&S's update software is expected
7 to be here tomorrow. We're expecting Dominion's by the end of the week, so we'll be able to review those
8 and wait for--we do have some testing criteria that has to be defined yet by SLI and by NYSTEC, but we're
9 prepared to move forward with the functional testing that we'll be doing here to mitigate the costs of this
10 testing effort.

11
12 This morning Dominion Central Count System was delivered here; we're waiting for new equipment that
13 corresponds to this new software as well. ES&S is coming tomorrow to begin training using their new
14 software and I don't have anything else to add.

15
16 Joe, do you have anything?
17

18 **JOSEPH BURNS:** Just on the ballot redesign and usability we have our session, our workshop, scheduled
19 with our expert Dana Chisnell for June 20th right here in the board room.
20

21 **KIMBERLY GALVIN:** You know, Anna's birthday's tomorrow.
22

23 **EVELYN J. AQUILA:** Oh, happy birthday Anna. [LAUGHTER]
24

25 **ANNA SVIZZERO:** Tomorrow, tomorrow.
26

27 **KIMBERLY GALVIN:** Yeah, that's what I said.
28

29 **EVELYN J. AQUILA:** She said tomorrow, she said tomorrow.
30

31 **ANNA SVIZZERO:** -- Thank you, Flag Day, thank you.
32

33 **JAMES A. WALSH:** Make that part of our permanent record for this day, congratulations.
34

35 **ANNA SVIZZERO:** Thanks for that parade yesterday, by the way. [LAUGHTER]
36

37 **JAMES A. WALSH:** Okay, we have that session, we'll go on to the NVRA/Public Information, John Conklin
38 please.
39

40 *Public Information*

41
42 **JOHN CONKLIN:** Thank you, Commissioner.
43

44 Just a couple of things we'll talk about in addition to the written report, the Annual Report is completed

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1 and has been posted to the website and Tom's going to talk a little bit about the MOVE Act and the 26th
2 Congressional District.

3
4 **TOM CONNOLLY:** Well, we did get our pre-election and post-election surveys back from all our counties,
5 all seven counties; they were very cooperative in doing that so obviously I'll thank them for that. And
6 looking at the numbers that came back we seem to be doing very well. Even though it's not an apples to
7 apples comparison, comparing to the 2010 performance of the state we have improved in every segment
8 both in how many ballots we get back, how many of those ballots actually get counted, and decrease the
9 number that get rejected. So and that was pretty much across the board, so it was really good to see that
10 and I think that's it unless anyone has any questions about that.

11
12 **JAMES A. WALSH:** Campaign Finance, Liz Hogan.

13 14 *Campaign Finance*

15
16 **ELIZABETH HOGAN:** Thank you, Commissioner.

17
18 Just a couple of points in addition to the report that is in the packet, obviously that report just continues to
19 give you an update as to the day-to-day operations of Campaign Finance and Enforcement.

20
21 We are still waiting for the new reg, 6214 to go into effect, which establishes the higher contribution limits
22 based upon the calculations pursuant to the cost of living increase. We're still waiting for that, I had hoped
23 that we might see it by now but we have not.

24
25 Additionally, it's my understanding that there's language before the legislature today to be voted upon.
26 I just want the commissioners to be aware that in the context of that ethics bill, as Kim mentioned, there
27 are some additional responsibilities given to enforcement here at the Board.

28
29 First, let me point out that it's my understanding that the proposal in this bill relative to campaign
30 finances that define the civil penalty for a non-filing will go from a maximum of \$500 to a maximum of
31 \$1,000 should this pass and be signed by the Governor. And it is a program bill, so we're anticipating
32 that'll happen.

33
34 I'd also like to tell you that there is a new provision that potentially will come here that has to do with the
35 failure to file three or more financial reports in an election cycle relative to that candidate. The penalty in
36 that is not to be in excess of \$10,000; it's another lawsuit that we would have to bring.

37
38 Additionally there's a provision that relates to a candidate or someone acting on a candidate's behalf or on
39 behalf of the political committee of that candidate who accepts in excess of the contribution limit and does
40 so with intent to violate the statute. If that were to happen it's subject to a lawsuit brought by the Board
41 and the penalty would be the amount of the excess plus up to \$10,000 in penalty.

42
43 And then there is some language that appears in the Article 16 of the Election Law, which is relative to the
44 enforcement proceedings that we bring in the Supreme Court. And it provides some interesting--shall I
45 say some interesting factors that now have to be considered by the court relative to non-filings and the

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1 actions we bring there too.

2
3 I would say that that is anticipated to go into effect and so I just want you to be aware that those are
4 additional responsibilities that we will have.

5
6 **WILLIAM MCCANN:** [WHISPERS] When is it effective - - ?

7
8 **ELIZABETH HOGAN:** It's effective immediately upon signature of the Governor.

9
10 I would also just like to discuss with you, and I believe we'll do that in Executive Session, Bill and I both
11 want to talk to you about several pending litigations that we're involved in that we would like to bring to
12 your attention for some discussion.

13
14 Bill, did you want to talk about the independent - - go ahead.

15
16 **WILLIAM MCCANN:** Sure, one of the other requirements in the bill of concern is the Board promulgating
17 regulations relative to independent expenditure disclosure. What's an interesting aspect of that is that it's
18 unique in that our current regulations don't, you know, spell out every specific iteration of what would
19 trigger an obligation to file a campaign financial disclosure. The regulation language is rather short, but
20 depending on how you read it, it does raise issues as to what level of specificity you have to go in the
21 regulation to spell out disclosures of independent expenditures, which would be in effect by January of
22 next year. So obviously we anticipate that that will pass and there'll be some future discussions with the
23 Board and among staff to determine the implementation or what the scope of that language is and how to
24 best implement it. But that is of significance and so you'll be hearing a lot more about it then.

25
26 **ELIZABETH HOGAN:** There is one other aspect to the ethics bill that does it go to a responsibility of the
27 Board in terms of enforcement or campaign finance issues, but directly? But it does affect us and it
28 provides that this new commission that's being established as JCOPE, that they provide an educational
29 component relative to the Election Law, which concerns me a bit, because I really don't know what that is
30 supposed to encompass or how that meshes with our position on providing an educational component
31 relative to the Election Law. So that's an unknown.

32
33 **WILLIAM MCCANN:** Well, I mean I think the big concern there is, you know, if someone attends one of
34 those trainings and they say, "Well, they told me X," and maybe we don't what the X is. You know, it's an
35 issue of coordination and to what extent that would need to take place, so this raises some other aspects
36 that we may want to look at.

37
38 **ELIZABETH HOGAN:** That's all I have.

39
40 **JAMES A. WALSH:** Okay ITU, George Stanton please.

41
42 *Information Technology*

43
44 **GEORGE STANTON:** Good afternoon.

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1 In addition or in summary of the printed report that you have IT has still been working with the staff from
2 Enforcement on finalizing the new EFS software. We've been getting down to the point of fine-tuning it
3 now, so they've had the latest version for a couple of weeks I guess, and in between their training sessions
4 and so forth in the field they've been going over that and coming up with any tweaks that we need to do to
5 finalize that.

6
7 We've also, now that we've got HP back on board, they've been looking at what needs to be done to fix the
8 NYSVoter System, so we can receive the new party information--the Green Party information--and the
9 other couple of parties that we have to track now. And we'll be getting a handle on how long that's going
10 to take here in the near future; it turned out to be a little more complex than I thought it was.

11
12 Also we'll be working on the MOVE system with Scytl to decide what data has to go back and forth
13 between the NYSVoter System and the Scytl system to make all that work. And also what modifications
14 have to be done to the communications between the county and the NYSVoter to collect the data we're
15 going to need to pass along. So we'll be getting to work on that shortly I'm sure.

16
17 As Todd mentioned we did have two retirements in my unit: one programmer and one help desk person.
18 That's a loss of a third of my help desk staff, so it's going to be - - with the largest filing we get on July 15th
19 where everybody has to file. It's going to be interesting to see how that all works out; I'm sure they're not
20 going to be able to keep up on a real-time basis with the calls, so people may get a little frustrated with the
21 waiting times. We'll do the best we can.

22
23 The other thing is we did meet with the New York City Board of Elections technical staff to talk about
24 catching up their file maintenance to do a short-term file maintenance for felons and deceased. We
25 decided that we're going to, just to make things more expedient, send them a list of the current matches
26 for felons and deceased voters so that they can work that list and cancel those that they find to match.

27
28 We don't have a plan for doing the same thing yet with the duplicates, the moves, because we need some
29 input from both their execs and our execs before we go ahead with that. But we're talking about doing
30 something like that similar to what they did a couple of years ago where they send out letters and cancel
31 people.

32
33 The issue with everything, all three of those areas, is the fact that we--with the batch process like that--we
34 have no way to handle the non-matches. So they're just going to remain in the system for the time being
35 and they'll continue to show up as possible matches until we get a more permanent solution. And we've
36 talked about, you know, what's possible--permanent solutions are. Of course, New York City is concerned
37 about doing their bipartisan approval on every transaction that takes place. So we've talked to their
38 vendor about the possibility of instead of the processing take the place the same as everybody else it gets
39 sent back to their Avid system, which has that logic built into it for the bipartisan sign-off before it comes
40 back to us and cancels the person and so forth, so we're just taking a look at that.

41
42 They're taking a look at it on their end and we're taking a look at it on our end to see what, if any kind of--
43 well, I know on their end there's going to be a lot of processing that's going to have to take place. And I
44 think we're going to have to make some modifications too, but we're just looking at that from a high level

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1 right now to see where we can go to make that happen.

2
3 **JAMES A. WALSH:** Thank you, under Old Business an update on the - - Suffolk County Board of Elections
4 Pilot Program efforts, Anne and Joe.

5 6 **Old Business**

7 8 *Update on request by Suffolk County Board of Elections Pilot Program efforts*

9
10 **ANNA SVIZZERO:** We finally received a request outlining the pilot project that Suffolk conditioned for
11 using uncertified software to accommodate a 30-inch ballot in the Dominion voting system.

12
13 They've laid out some groundwork; the letters I believe have been shared with all of you. We were unable
14 to reach the appropriate staff to answer just a couple of minor questions for us. The only thing that I think
15 we would add other than clarifying those couple of questions--and they had staff that was off on vacation
16 last week, so they were not available to us--the only thing that we'd add that we shared in an email here in
17 the agency was in that it's uncertified software when we did the pilot project in 2009 we added a feature
18 to the audit that required that there be a 100 percent hand count of any contest where the percentage
19 between potential winning and losing candidates was 1 percent or less. So if the Board is of the mind to
20 include that in the proposal that Suffolk presented to us we have no objections to this pilot project.

21
22 We do want to make it clear however that it is new software, it is not completely developed yet, we expect
23 to see it by August 1st. We intend to do some functional testing here before we will deliver it to Suffolk
24 County. It is not even included in the upgrade software that's being tested right now, it would be in an
25 additional upgraded version at some point next year. So we had that conversation with the vendor to be
26 clear when this was going to be available to other counties. And we truly don't have any issues with it
27 other than getting those couple of small answers to our questions and your consideration of adding that
28 audit feature.

29
30 **DOUGLAS A. KELLNER:** Well, I certainly agree that we should add the audit requirement. Is there a
31 timeline for formal approval by the Board; are you suggesting that we formally approve it today before
32 you get the answers to those questions or that we would formally approve it at our July meeting and you'll
33 have a resolution to submit to the commissioners?

34
35 **ANNA SVIZZERO:** I think that we would prefer that it be approved today; the questions are not make or
36 break as far as the pilot goes, it just clarifies the use of the systems. We were under the impression that
37 every Election District has its own scanner, so that even in sites that are served--one site that serves
38 multiple election districts--you still have to go to your own scanner, you can't go to any scanner in the site.
39 And when we spoke at the conference in April with the Board they kind of represented that that wasn't
40 the case, so we're not sure if they're changing how they deploy scanners. Again, neither answer affects the
41 pilot project; we just wanted to be clear how the systems were being utilized in Suffolk.

42
43 **JAMES A. WALSH:** I think we can probably, you know, approve the pilot project subject to some of the
44 minor modifications or adjustments that Anna is talking about.

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1 **DOUGLAS A. KELLNER:** All right, well if we're approving what's called Suffolk County Extended Ballot
2 Pilot Project Plan Version 6.03--that's what we're being asked to approve?

3
4 **ANNA SVIZZERO:** Yes, with the addition of the audit feature.

5
6 **DOUGLAS A. KELLNER:** All right, and do we have the language? We're going to add that as the third
7 paragraph at the bottom at the first page?

8
9 **ANNA SVIZZERO:** We can do that and I have the language from the 2009 pilot; we can simply copy that.

10
11 **DOUGLAS A. KELLNER:** Well, do you want to read it so that we copy it in and we'll--it's just that I think we
12 need to have approved text and if you'll recall this became an issue in the Chautauqua County election--the
13 exact text of the audit provision was the subject of a lot of back and forth that was eventually - -

14
15 **ANNA SVIZZERO:** Suffolk's plan says they'll do a separate 3 percent audit of just the units that are doing
16 the 30-inch ballot, so that they're not missed in any way because they're part of the bigger picture. They
17 get their own drawing, so we're okay with that. The language from the 2009 pilot said, "A hand audit of all
18 the ballots tabulated by that device, if the outcome does not..." I'm sorry. "If the outcome of the hand audit
19 does not match the canvass report, a 100 percent audit is to be conducted." That, I think we're clear on as
20 far the additional--the break between the units being used that don't need 3 percent.

21
22 **DOUGLAS A. KELLNER:** -- Anna, Anna?

23
24 I'm sorry, but it's very important to me if we're going to vote on something today that we have the exact
25 text that we're voting on.

26
27 **ANNA SVIZZERO:** I have it right here.

28
29 **DOUGLAS A. KELLNER:** So you can't comment on it while you're reading the text, so either--

30
31 **ANNA SVIZZERO:** No, I was just explaining that they're doing the two sections.

32
33 **DOUGLAS A. KELLNER:** No, no, no you can't do that. I'm not going to vote on it if we don't have
34 something--it's not in writing in front of me, which is annoying to begin with.

35
36 **ANNA SVIZZERO:** Well, I have it right here: I can pass it up or I can read it.

37
38 **DOUGLAS A. KELLNER:** You can read it, but then you can't comment on it until you finish reading it.

39
40 **ANNA SVIZZERO:** Okay, I'm with you--"Conduct a 100 percent hand audit of all ballots in election districts
41 when the difference in the result of the election between the potential winning and losing candidates in
42 any contested election on the ballot is 1 percent or less.

43
44 **DOUGLAS A. KELLNER:** So that's the additional language that we're adding?

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1 **ANNA SVIZZERO:** To their proposal.

2

3 **DOUGLAS A. KELLNER:** And that's being added at the bottom of the first page as the third paragraph of
4 addressing risks to the integrity of the election.

5

6 [MURMURED CONVERSATION]

7

8 **EVELYN J. AQUILA:** Yeah, I had wondered - -.

9

10 **DOUGLAS A. KELLNER:** Well, do you want to put it as a--is that a better place to put it as a bullet in Phase
11 5?

12

13 **ANNA SVIZZERO:** We could put it in both if you like.

14

15 **TODD D. VALENTINE:** No, I don't think necessarily both, but maybe a third bullet--you know, a bullet
16 after the second bullet in Phase 5.

17

18 **DOUGLAS A. KELLNER:** Okay.

19

20 **TODD D. VALENTINE:** - - 3 percent - - okay.

21

22 **JAMES A. WALSH:** Is everyone clear on this?

23

24 **KIMBERLY GALVIN:** Yes.

25

26 **BOB BREHM:** And those are the election districts in the pilot, not the EDs outside of the pilot towns?

27

28 **JAMES A. WALSH:** correct.

29

30 **EVELYN J. AQUILA:** And isn't - - something - -.

31

32 **BOB BREHM:** That's in the statute.

33

34 **EVELYN J. AQUILA:** Hmm?

35

36 **BOB BREHM:** That's in the statute.

37

38 [OVERLAPPING VOICES]

39

40 **EVELYN J. AQUILA:** Yes, yes.

41

42 **BOB BREHM:** Here's the actual highlight - -.

43

44 **DOUGLAS A. KELLNER:** Now where it says, "Expand the audit within the universe of pilot project"

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1 machines in the event of discrepancies," what does that mean, Anna?

2

3 **ANNA SVIZZERO:** This is what we understood the Board to say, that the audit would get--excuse me--that
4 there would be a separate drawing for 3 percent of the machines used in the pilot project separate from
5 the 3 percent of the machines that were using the certified software.

6

7 **DOUGLAS A. KELLNER:** So the escalation provisions would apply just to the pilot project, but would be
8 the same as what the current escalation provisions are in the regulations?

9

10 **ANNA SVIZZERO:** Yes.

11

12 **DOUGLAS A. KELLNER:** And then we're adding the additional provision that if the margin is less than 1
13 percent they have to do a hand count.

14

15 **ANNA SVIZZERO:** Yes.

16

17 **BOB BREHM:** And I think the other question that came up during the pilot, just to be clear is, if the 1
18 percent--they wouldn't have to audit all of the extra part of the audit; it's the contest that's within 1
19 percent or the contests. It's not the whole ballot if they have multiple contests.

20

21 **GREGORY P. PETERSON:** Right, agreed. Subject to the addition of Anna's reading, I'd like to make a
22 motion that we approve the Suffolk County Extended Ballot Pilot Project Program Version 06.03.

23

24 **JAMES A. WALSH:** And a second?

25

26 **DOUGLAS A. KELLNER:** -- Second.

27

28 **GREGORY P. PETERSON:** -- And that that wording be--

29

30 **DOUGLAS A. KELLNER:** As amended.

31

32 **GREGORY P. PETERSON:** As amended.

33

34 **EVELYN J. AQUILA:** As amended, okay.

35

36 **JAMES A. WALSH:** All right, a motion made and seconded, all in favor?

37

38 (Chorus of ayes)

39

40 Opposed?

41

42 (Silence)

43

44 Carried, none, thank you very much Anna.

1 **New Business**

2
3 *Resolution to approve HAVA funding for Scytl MOVE Act*

4
5 **JAMES A. WALSH:** Under New Business, vote on a Resolution to approve HAVA funding for Scytl MOVE
6 Act--John Conklin, Tom Connolly any comments?

7
8 **DOUGLAS A. KELLNER:** I'll move the resolution.

9
10 **JAMES A. WALSH:** -- - - and second; all in favor?
11 (Chorus of ayes)

12
13 Anyone opposed?

14
15 (Silence)

16
17 Carried.

18
19 *Resolution to approve funding for tasks related to pre-election testing and*
20 *post-election audit research grant*

21
22 **JAMES A. WALSH:** Item B - vote on a Resolution to approve funding for tasks related to pre-election
23 testing and post-election audit research grant.

24
25 **DOUGLAS A. KELLNER:** Do you want to just briefly summarize what we're proposing to do here?

26
27 **ANNA SVIZZERO:** We were fortunate enough to have been awarded a grant from the EAC, the amount of
28 the grant is \$230,000. We submitted an application for a blended research project to review the pre-
29 election logic and accuracy testing that we do and also to contemplate any new ways to serve the audit
30 intent in the post-election concepts related to elections.

31
32 That \$230,000 is not paid out; it is a reimbursable funding stream, so we would have to pay for whatever
33 services, travel or whatever's involved in the work that we do and submit those receipts to the EAC.
34 So we're simply requesting that we use HAVA money for those purposes and reimburse the HAVA fund
35 with the reimbursement check from the EAC when that arrives.

36
37 **DOUGLAS A. KELLNER:** So moved.

38
39 **JAMES A. WALSH:** A second.

40
41 **GREGORY P. PETERSON:** Second.

42
43 **JAMES A. WALSH:** All in favor?

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1 (Chorus of ayes)

2

3 Opposed?

4

5 (Silence)

6

7 Carried.

8

9 *Resolution to apportion 100 percent of the 2011 Health and Human Services*
10 *poll site access grant award*

11

12 **JAMES A. WALSH:** Item C - vote on a Resolution to apportion 100 percent of the 2011 Health and Human
13 Services poll site access grant award. This is over \$695,000--any questions we have John Conklin and Tom
14 Connolly--if not we'll accept a motion.

15

16 **DOUGLAS A. KELLNER:** Yeah, this is just the formal apportion - - using the same formula that we've used
17 before. I move the resolution.

18

19 **GREGORY P. PETERSON:** Second.

20

21 **JAMES A. WALSH:** All in favor?

22 (Chorus of ayes)

23

24 Opposed?

25

26 (Silence)

27

28 Carried.

29

30 *Discussion of new affidavit ballot envelopes*

31

32 **JAMES A. WALSH:** Item D is discuss and approve the new affidavit ballot envelopes to include new
33 political parties--Green in particular--and any other changes that may be necessary, Anna and Joe Burns?

34

35 **EVELYN J. AQUILA:** Well, seeing - - so moved.

36

37 **JAMES A. WALSH:** Very well.

38

39 **DOUGLAS A. KELLNER:** Well--

40

41 **EVELYN J. AQUILA:** Do you want to see it?

42

43 **DOUGLAS A. KELLNER:** No, we have this draft here and as we've discussed this has become somewhat
44 controversial, because there are--we've received a number of comments from government groups and

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1 others suggesting that what we really--that the intent of the legislation was to make a single form. And
2 even on this form it is confusing to voters as to why there would be a voter registration form at the
3 bottom, so at the very least I would suggest that we need to add language here below Part C and above the
4 registration form explaining that in the event that there's a determination that you're not validly
5 registered if you fill out this registration form you should fill out the registration form or language close to
6 that.

7
8 But even better, is that one the registration form we have 12 boxes of items of information that we need
9 and many of those items of information are duplicative of the information that's required in the affidavit
10 ballot. For example: name, address and date of birth. So that instead of having a whole registration form I
11 would only put a list of the items that are not already--of the items that are not duplicative of the name,
12 address and date of birth--with an explanation.

13
14 And for that reason I think we're better off waiting before final adoption of the form, but I'm told we need
15 to send something out to the counties for the primary and with the addition of that sentence--well, that's
16 the question, Todd. I would rather work on this to come up with a unified form that more closely tracks
17 the intent of the statute.

18
19 **TODD D. VALENTINE:** Yeah, - -

20
21 **DOUGLAS A. KELLNER:** And to pass it around to the various advocacy groups, so that they can look at it
22 and comment on it and try to have it ready for the July meeting.

23
24 **TODD D. VALENTINE:** I mean, I think the counties would prefer it sooner rather than later as they're
25 doing their print runs, but on the other hand if we circulate the direction that we're heading in which is to
26 try to have a unified form by minimizing any duplication I think you're right. I think we'd be better off
27 taking--because it's obvious people have an interest, more of an interest than I think we expected. I'll be
28 honest with you, I didn't see that coming but that's okay, so be it. We should respond to that though, if
29 people have some ideas we should - - that.

30
31 **DOUGLAS A. KELLNER:** -- The only question is--

32
33 **BOB BREHM:** Pre-clearance.

34
35 **DOUGLAS A. KELLNER:** -- We need pre-clearance and we need something for the primary.

36
37 **BOB BREHM:** And training, the concern is the inspectors have to be trained by July 15th under the statute.

38
39 **DOUGLAS A. KELLNER:** -- But Bob, today why can't we write the sentence—

40
41 **BOB BREHM:** Well, I've written one myself but that doesn't mean—

42
43 **DOUGLAS A. KELLNER:** -- Well, you could read it to us, but then take out the--instead of having a
44 registration form to have the boxes that contain the information that is not already in Part A of this
45 affidavit and—

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1 **BOB BREHM:** -- Well, I mean if we're going to have a - - make a comment, if we're going to schedule a
2 meeting in July--I mean, if we're going to do a form that's going to be temporary for this year while we
3 work for the future. But if we're only going to work on a form in weeks then I don't know that we're able
4 to come up—

5
6 **EVELYN J. AQUILA:** With it in time.
7

8 **BOB BREHM:** And maybe we can here at the table today; I think Anna and Operations, you know what do
9 we do with the poll worker training, at what point? That the county boards need something to train for the
10 use this fall, now seems that kind of time if we kind of tell them what we're going to do and when we hope
11 to have it done.

12
13 **TODD D. VALENTINE:** See, I hear the training thing, but I don't understand it, because everybody has this
14 existing process in place now for affidavit ballots.
15

16 **DOUGLAS A. KELLNER:** Except New York City.
17

18 **TODD D. VALENTINE:** Well, but they have some process in place.
19

20 **DOUGLAS A. KELLNER:** They don't, New York City has nothing in place yet and they're saying that they're
21 not going to do--all New York City has is an affidavit ballot form.
22

23 **TODD D. VALENTINE:** Right, I mean that's what I'm saying, they have something.
24

25 **DOUGLAS A. KELLNER:** -- Yeah, but they don't have a voter registration form with the--
26

27 **BOB BREHM:** But we approved that last year and we had pre-clearance on that form last year, so I mean
28 for our purposes we don't have the Green Party, we don't have the right political parties on the voter reg
29 form. If it's until the July meeting I don't know that that's an end all for that kind of an issue.
30

31 **TODD D. VALENTINE:** -- You don't need any training for that, yeah right that's - - .
32

33 **BOB BREHM:** -- If we're asking for the same kind of things it just--
34

35 **DOUGLAS A. KELLNER:** All right, well then I would say let's do it in July and let's try to put together a
36 usable integrated form, you know, so that their—
37

38 **KIMBERLY GALVIN:** Just one thing with your explanatory note is I don't know--I don't have the original
39 legislation in front of me, I don't recall if it says, "Shall--the Board shall use that to register the voter."
40 Because if you give them an option of not putting that in what happens with the Board when they get the
41 information and now it's not complete? So the explanation, it shouldn't be - - that they should just be
42 required to fill in the information.
43

44 **TODD D. VALENTINE:** Yeah, I mean what I would envision is a form that eliminates--it's basically one
45 form, which will have the additional elements of the affidavit portion in it.

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1 **DOUGLAS A. KELLNER:** Right.

2

3 **EVELYN J. AQUILA:** -- The only change it really needs - -

4

5 **TODD D. VALENTINE:** -- And it is really I'm looking at it a different way.

6

7 **EVELYN J. AQUILA:** -- --two forms that have been out for there for years and putting them on the same
8 envelope, and I know people want to change language and things like that, but it's worked for 75 years.

9

10 **TODD D. VALENTINE:** -- And merging into - -.

11

12 **JAMES A. WALSH:** Anna, - -

13

14 **ANNA SVIZZERO:** I was just going to offer that doing this in July, if you even got agreement and got a form
15 in July, doesn't leave county boards enough time to incorporate these few changes. Especially in Part B
16 and actually printing the forms and getting them labeled and packed gives them their supplies for use in
17 the primary.

18

19 **DOUGLAS A. KELLNER:** I understand, so they would be continuing to use the old form until we're able to
20 do that.

21

22 **ANNA SVIZZERO:** But the old form creates issues in court in Part B, because voters are told right now to
23 check one box when truly there could be several reasons for them having to cast the affidavit ballot.
24 That was an issue in several of the post-election - -.

25

26 **DOUGLAS A. KELLNER:** From a Commissioner's point of view what I would rather if we're going to have
27 to do something temporary is to put the instruction and then only the information that's not already
28 included, the voter registration information that's not included in the top.

29

30 And, you know, to answer Kim's question you have 5.210 (5)(m) specifically says that the form of affidavit
31 prescribed by the State Board of Elections for request for affidavit ballot pursuant to the Subdivision 3 of
32 802 shall be deemed to meet the requirements of this section.

33

34 Any application--so I realize that that's ambiguous and bad drafting, because I think we—

35

36 **BOB BREHM:** -- It gets worse when you read Article 5 and read what they amended there, because it
37 speaks to the application on the envelope and they adopted them at the same time.

38

39 **DOUGLAS A. KELLNER:** -- Right, right.

40

41 **BOB BREHM:** So taking the two together is not artfully instructive.

42

43 **DOUGLAS A. KELLNER:** Right, but I think the legislative intent is clearly that there be a single form, not
44 two forms. And the specific changes that were made last time really override the prior, so that I think you
45 take it together that we should do the instruction and then do the additional information. And maybe the

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1 thing to do is to try to draft it this week, circulate it before we submit it for final approval to the Justice,
2 but perhaps the Commissioners could bless the concept and let the staff work out the details. So that we
3 could get something out this week without just copying the form this way, which is not particularly usable.

4
5 **EVELYN J. AQUILA:** - - - -

6
7 **KIMBERLY GALVIN:** - - - -

8
9 **DOUGLAS A. KELLNER:** No.

10
11 **EVELYN J. AQUILA:** -- You don't?

12
13 **TODD D. VALENTINE:** No.

14
15 **DOUGLAS A. KELLNER:** This is very--

16
17 **TODD D. VALENTINE:** It needs work.

18
19 **EVELYN J. AQUILA:** -- Well, I wish it wasn't so - - .

20
21 **DOUGLAS A. KELLNER:** Do you think it's feasible to work on it this week; I mean - - we could start
22 circulating a draft?

23
24 **TODD D. VALENTINE:** -- This week's tough, but it's not impossible.

25
26 **KIMBERLY GALVIN:** In fairness to Anna she has been pushing us on this and I for one didn't pay enough
27 attention to it, because I didn't understand the urgency of the ballot prints but--sorry about that Anna.

28
29 [OVERLAPPING VOICES]

30
31 **ANNA SVIZZERO:** Thank you for that.

32
33 **DOUGLAS A. KELLNER:** All right, so my proposal is that the Commissioners authorize the Co-Executive
34 Directors to put together a revised draft and then submit it to the counties and to the Department of
35 Justice.

36
37 **BOB BREHM:** For comment, for approval?

38
39 **DOUGLAS A. KELLNER:** Well, first to submit--to circulate the drafts both to the counties and to the
40 advocacy groups, so that they can do comments on it. And then once there's a consensus to submit it to the
41 Department of Justice for pre-clearance.

42
43 **EVELYN J. AQUILA:** -- I just have one question?
44

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1 **PAUL COLLINS:** -- It's got to be it has to have been adopted by the Commissioners for us to submit it - -?
2

3 **DOUGLAS A. KELLNER:** Well, that's where we're authorizing the Co-Executive Directors to do this, so that
4 when the Co-Executive Directors sign off on it, it'll - -.
5

6 **EVELYN J. AQUILA:** I just have one question for you fellows; is this printing still going to be that small?
7 **TODD D. VALENTINE:** No, it'll be like this--well not quite this big, but--
8

9 **EVELYN J. AQUILA:** No, well the envelope is big, that's what I was going to say.
10

11 **BOB BREHM:** I went to bigger paper when we started to cut and paste.
12

13 **TODD D. VALENTINE:** And that's just a little larger, but an envelope is more like this size.
14

15 **EVELYN J. AQUILA:** Yes, okay because that is much too small.
16

17 **TODD D. VALENTINE:** -- Yeah, that's--only they could use a small envelope.
18

19 **BOB BREHM:** -- I think the one area of the statute that is impossible is it says the affidavit form needs to
20 fit an absentee envelope. And I know that that's just a--
21

22 **DOUGLAS A. KELLNER:** -- Right, you can't do it.
23

24 **BOB BREHM:** --ridiculous impossibility and the Westchester form that they pointed us to is this size, so I
25 don't think anybody's ever used an absentee envelope. You know, to make it that small that nobody can
26 read it just because that's what the statute says. When we get done maybe they can clean that one up too.
27

28 **DOUGLAS A. KELLNER:** Well, certainly that's one of the projects is to rewrite the statute as we do the
29 form. Since we're all looking at it if we have changes to make in the statute it certainly would make sense
30 to put them together now and send them over to the legislature even though the legislature probably
31 wouldn't do it until next year.
32

33 [OVERLAPPING VOICES]
34

35 All right, so that's my motion is to delegate to the Co-Executive Directors the authority to promulgate the
36 form required by Election Law 8-302.
37

38 **GREGORY P. PETERSON:** Second.
39

40 **JAMES A. WALSH:** All in favor?
41

42 (Chorus of ayes)
43

44 Opposed?

NYSBOE Board Meeting June 13, 2011

1 (Silence)

2

3 Carried--before we vote for Executive Session, I want to set our next meeting date, and Todd you said
4 there's some time constraints we have regarding this?

5

6 **DOUGLAS A. KELLNER:** Well, and also before the Executive Session I wanted to just discuss the one item
7 on the Fair Campaign Code that's in our Enforcement Division.

8

9 **TODD D. VALENTINE:** Well, you have your petition, your designating petition filing period is July 11th to
10 the 14th for this year. Typically we would meet about two weeks after the end of that and - -

11

12 **EVELYN J. AQUILA:** I remember there was a time we didn't meet in July, because of that.
13 We would meet the first week in August.

14

15 **TODD D. VALENTINE:** Well, that would be two weeks after - - being, it would actually be the last week in
16 July this time. It just depends on where the filing period - - you're right.

17

18 **EVELYN J. AQUILA:** -- Oh, okay yeah.

19

20 **DOUGLAS A. KELLNER:** So do you want Monday or Tuesday?

21

22 **EVELYN J. AQUILA:** Tuesday, I don't care, either day.

23

24 **GREGORY P. PETERSON:** Well, I can't do Monday so--

25

26 **EVELYN J. AQUILA:** Okay, Tuesday then.

27

28 **GREGORY P. PETERSON:** So the 26th?

29

30 **DOUGLAS A. KELLNER:** No, the 31st--oh, I'm looking at the wrong year, sorry.

31

32 I'm sorry.

33

34 [OVERLAPPING VOICES]

35

36 **TODD D. VALENTINE:** Yeah, I was going to say you could go later, but--

37

38 **BOB BREHM:** August 2nd is--what you said, Tuesday?

39

40 **DOUGLAS A. KELLNER:** Or do you want Thursday, the 28th?

41

42 **TODD D. VALENTINE:** I would suggest Thursday the 28th, because that Friday is the 54th day before the
43 election, so if we're trying to be consistent with having adopted a--well, we're not required statutorily as
44 of today to have certified a ballot. We should try to start--so the 28th would work.

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1 **JAMES A. WALSH:** Is that okay with everyone?

2

3 **BOB BREHM:** And this is our--knock on wood--slower year for filing.

4

5 **EVELYN J. AQUILA:** And it's a Thursday, did you say?

6

7 **TODD D. VALENTINE:** That's a Thursday, yes.

8

9 **EVELYN J. AQUILA:** -- Okay.

10

11 **JAMES A. WALSH:** All right, the next meeting will be Thursday the 28th, the same time around noon right
12 here.

13

14 **EVELYN J. AQUILA:** -- July 28th?

15

16 **TODD D. VALENTINE:** -- Yes.

17

18 **JAMES A. WALSH:** Okay, that is settled.

19

20 Commissioner Kellner has something he would like to discuss.

21

22 **DOUGLAS A. KELLNER:** All right, well in our campaign enforcement cases we have two cases concerning
23 allegations of failure to comply with the provisions of the Fair Campaign Code regarding the filing of polls.
24 That the Fair Campaign Code says that if in any campaign literature a campaign makes reference to polling
25 information that they have to disclose prescribed information about the poll and file it with the State
26 Board of Elections within 24 hours.

27

28 And I think we've observed fewer and fewer campaigns complying with that obligation and indeed the
29 number of polls that have been filed have been either zero or one for each of the last few years. So that--

30

31 **ELIZABETH HOGAN:** -- Well, here --

32

33 **DOUGLAS A. KELLNER:** -- Go ahead.

34

35 **ELIZABETH HOGAN:** -- Candidates or whoever is commissioning the poll has to file it in the place where
36 the candidate has to file financial disclosure forms.

37

38 **DOUGLAS A. KELLNER:** Right, but now most disclosures have to be filed here so--

39

40 **ELIZABETH HOGAN:** --That's correct, but just--

41

42 **DOUGLAS A. KELLNER:** --this is the place where they should be filed. And so I just wanted to note that we
43 do have these two cases that we are proceeding with today that deal with this, and to remind the public
44 that this is an obligation and that we are not ignoring that requirement.

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1 **WILLIAM MCCANN:** -- Yes, but it's 48 hours after - -.

2
3 **DOUGLAS A. KELLNER:** -- I'm sorry.

4
5 **WILLIAM MCCANN:** -- Well, that's okay.

6
7 **DOUGLAS A. KELLNER:** Thank you for correcting me, all right.

8
9 **GREGORY P. PETERSON:** I think that we should probably do something on an informative or educational
10 basis to let the word out that we're doing that whether it be put in the handbook or otherwise to inform
11 not only candidates and staff and so forth, but the parties as well. That this is a requirement of the Board
12 and as a reminder, and I think you'll find that either they'll totally comply and not use it--which is more
13 likely the case--or that they will file it here.

14
15 **DOUGLAS A. KELLNER:** -- Thank you.

16
17 **JAMES A. WALSH:** That's a good point.

18
19 **DOUGLAS A. KELLNER:** -- All right.

20
21 **EVELYN J. AQUILA:** Okay - -

22
23 **DOUGLAS A. KELLNER:** Well, with that said I move that we go into Executive Session to deal with the
24 Campaign Enforcement cases and also to discuss pending litigation.

25
26 **JAMES A. WALSH:** A second?

27
28 **GREGORY P. PETERSON:** Second.

29
30 **JAMES A. WALSH:** All in favor, aye?

31
32 (Chorus of ayes)

33
34 Opposed?

35
36 (Silence)

37
38 Carried, we are going into Executive Session, thank you everyone.

39
40 **Executive Session**

41
42 [BREAK FOR EXECUTIVE SESSION]

43
44 [END AUDIO]
