

>>DOUGLAS KELLNER: Good afternoon everyone. My name is Douglas Kellner, Co-Chair of the State Board.

Before I call this meeting to order, I want to announce that Governor Patterson at the recommendation of the

Republican party Chairman Mondello has appointed commissioner Gregory Peterson. And we welcome him here.

With Commissioner Peterson's appointment, we also recognize the departure of Helena Moses Donohue who has so ably served it this agency for the last 19 years.

As we welcome the new Commissioner, we certainly recognize that Commissioner Donohue has performed an outstanding service for the people of New York.

That personally I found her to be extremely conscientious and a woman of conscience.

And I will certainly miss her, as many of us will.

Commissioner Peterson has a distinguished record.

He has served as Vice Chairman of the Nassau County Party Organization.

I believe President of Off-Track Betting Corporation for many years-

In fact, during the good years, when it was a very successful enterprise.

He's also very well known attorney practicing on Long Island.

And I certainly have heard lots of good things from many of your colleagues who we have in common.

And I certainly welcome you to the Board.

And I'm very pleased that Chairman Mondalo has made such an outstanding appointment.

And we look forward to working with you.

I call on Commissioner Walsh for I think similar comments.

>>JAMES WALSH: Thank you, Mr. Chairman.

Yes, when I first came out here a few months ago, I mentioned I was here ten years ago and I was here with Helena then.

The quality she brought to this organization showed how devoted she was to the job.

I too congratulate her myself for many years of her service to the State of New York and the voters of our state.

The contributions she's made to this organization in all her questions, her answers, her activity in the debates was second to none.

She will be sincerely missed.

She did ask me if I would read a little note that she sent in her time of reflection.

It's very brief.

It's dated June 16th, 2008.

To all my friends at the Board of Elections thank you for all of the years of kindness to me and my family.

On realize I spent half of my adult life with you all.

It's been truly a blessing.

I'm sorry I didn't have an opportunity to say goodbye and thank you in person, it wasn't meant to be.

Please know that I will always be here for you as you were here for me.

Please don't hesitate to call.
Keep up the good work.
Because of each of you do and the work you do this agency is so special.
God bless you all.
Thank you, Helena.
[Applause.]

>>DOUGLAS KELLNER: I call on Commissioner Aquilla.

>>EVELYN AQUILLA: I thought I was going to be the only one to speak for my dear friend Helena Donahue.
I worked with Helena for over 18 years.
She's smart, friendly.
And she was loyal.
And she was always a good time.
I envy the relationship she had with the County Commissioners, because it was very special.
I know they will all miss her too.
She can always discuss with one another the problems that we had and work towards a solution.
Although we sat, shall you say, on different sides of the aisle, 99% of the time, most of the things that faced us at these Boards were just the same solution for either side.
And I shall miss her.
And I wish her well in her retirement, although she's not retiring.
Be sure she's making the most beautiful flower bouquets in the world.
And over the years I expect to talk to her and see how she's doing.
And I think it's a -
When she was here she gave so much to this Board.
She was a true New York State lady.
And I feel honored to have worked with her. Thank you.

>>DOUGLAS KELLNER: Commissioner Peterson, we welcome you.
If you want to say any opening remarks.

>>GREGORY PETERSON: Probably after all that's been said, the smartest thing I can do is say absolutely nothing.
I know from reputation that this is a fine group I'm joining.
It's a very professional group of people that are dedicated to doing the right thing by the people of the State of New York.
I'm delighted to be here and I'll give it my best efforts to try to add something here and there.
Thank you very much.

>>DOUGLAS KELLNER: Welcome aboard.

>>EVELYN AQUILLA: Welcome.

>>DOUGLAS KELLNER: So on that note, I guess we'll start the formal portion of the meeting.

We'll ask the staff and our guests to identify themselves.

>>TODD VALENTINE: Todd Valentine co-Executive Director.

>>ALLISON CARR: Allison Carr, Special Council.

>>PAUL COLLINS: Paul Collins, Special Council.

>>DEIRDRE HAMMER: Deirdre Hammer.

>>KIM GALVIN: Kim Galvin.

>>BOB BREHM: Bob Brehm, Public Information.

>>GEORGE STANTON: George Stanton IT director.

>>PAUL COLLINS: Paul Collins enforcement counsel.

>>LIZ HOGAN: Liz Hogan.

>>STANLEY ZALEN: Stan Zalen, co-Executive Director.

>>EVELYN AQUILLA: Commissioner Evelyn Aquilla.

>> Bob Warren, Election Operations.

>> Joe --. NYSP.

>>Amy --, League of Women Voters.

>>Brad Williams NYSA.

>> Judd Ryan ESNS.

>> Gene Seats, ESNS.

>> Steve Pearson ESNS.

>> Bob --

>> Rob --

>> Don --

>>DOUGLAS KELLNER: To our guests, welcome.
Thank you for coming to join us today.
The first item on the agenda is approval of the minutes of May 14th, 2008.
Is there a motion?

>> So moved.

>>DOUGLAS KELLNER: Those in favor say aye.
(Chorus of ayes.)

>>DOUGLAS KELLNER: Opposed? Minutes are adopted.
We'll turn to the unit updates.
We'll start with our co-Executive Directors, Todd Valentine and Stanley Zalen.

>>TODD VALENTINE: Briefly on a development of internal control reporting process, Stanley and I met with division of budget.
And we provided an outline for the development of the process.
As they've suggested there's basically a four step process that we started to engage in.
First outlining with each unit their -- what their requirements are or what jobs they are doing within that.
And then an analysis is made on how to monitor that.
And then the reports put together based on that.
So we are in the process of doing that.
Our target -- we don't have a target date on that yet for a completion.
You know, it will be -- it's a general target date at this point depending on other things that may interrupt staff.
But we're targeting on the advice of DOB to take the time and set this up in a manner that you will use for many years to come and try not to rush the process.
So we're really targeting the end of summer, beginning of fall to try to have that completed.

>>STANLEY ZALEN: The only thing I'll add to that is that in order to assist us, the representative of the Department of Budget provided us with an implementation guide, standards to use and forms to follow.
And offered his availability whenever we would need it in order to get us on the right track and be able to successfully do this.

>>DOUGLAS KELLNER: And I understand you're going to make two personnel proposals.

>>TODD VALENTINE: That's true. One is to hire Marie Woodward --

>>STANLEY ZALEN: If I can just mention, that might be --

>>TODD VALENTINE: I was going to say that.
No, it's still the same person.
The title is the typographical error.
I forget what the exact title is.

>>LIZ HOGAN: Associate confidential auditor grade 23.

>>DOUGLAS KELLNER: Associate confidential auditor grade 23.

>>TODD VALENTINE: Yes because that relates to the second hiring -- not hiring because it's actually a change in position.
It's not a new hire.
She would be new to the agency.
And the second hire would be Robert Echoes would be the code enforcement specialist grade 25.

>>DOUGLAS KELLNER: Were those the only ones that we're doing?

>>TODD VALENTINE: Today, yeah.

>>DOUGLAS KELLNER: Those in favor say aye.
(Chorus of ayes.)

>>DOUGLAS KELLNER: Opposed? All right.
That's done.

>>TODD VALENTINE: And just briefly although not on the agenda is an update.
I had attended the election -- the New York County Election Commissioners Association along with other staff from this agency.
That was held in Chautauqua county.
It was a regular update.
Stanley was here holding the fort down.
Briefing them on the status as we'll go through this meeting on our testing and acceptance testing for voting machines as well as special - Bill and Liz Hogan did a special presentation on campaign on the HAVA complaint procedure and always answered campaign finance questions.
And Paul and Allison did kind of a legal update and Commissioner Kellner was there, as well. And Bob.
And the ever-present Bob Brehm was there.
And handling all of the loose ends.

>>EVELYN AQUILLA: Todd, did the County Commissioners seem to be very concerned about what's going -- the moving ahead in the next few months with the new machines and the storage and the training and --

>>TODD VALENTINE: Well, I'll summarize it very quickly.

There's a lot of high anxiety going on through not only at our agency with dealing with these issues.

But at the County level, as well.

To try to open that -- that's why we have these meetings is to try to resolve issues that don't always get sent forward in the formal memos that get sent out.

The counties are copied on the submission that we -- on the status report that we submit to the justice department.

You know, they get hands on training.

They started a series of training for the poll workers that began yesterday.

Then they also -- and other issues that they are dealing with is the hands-on training for campaign finance.

Those seminars are also going on.

But to try to deal with other leftover issues and try to resolve anxiety and issues that we can, Stanley and I have

been undergoing a series of conference calls with the leadership of the County association in addition -- you

know their regular elected leadership as well as all of their regional representatives to have a conference call with

everybody once a month would be unwieldy but to have it with a small group that they can then disseminate amongst their counties.

We think it's helped.

And people have commented a lot that they appreciated that.

But in a word it's anxiety.

Very anxious.

We get it in the phone calls we receive.

And certainly it came across to me.

A lot of nervous people.

>>EVELYN AQUILLA: I've seen that, too.

>>TODD VALENTINE: I'm sure you have.

>>DOUGLAS KELLNER: Could I add one thing, I thought the tenor of the meeting was extremely positive and extremely constructive.

That the County Commissioners understand that there's no longer a debate over what we are going to do.

Everybody understands what it is that we're going to do. And so that the attitude was very constructive in terms of how do we get this done.

I think Todd is correct that there is anxiety, particularly in counties that maybe have -- where the Boards of Elections

are having trouble dealing with the County legislatures and getting them to understand the new fiscal demands

that are being put on the Counties in terms of paying for storage locations and the personnel necessary to operate the ballot marking devices.

But it was very constructive.
We are no longer debating over what we're going to do.
It's just a question of how we're going to do it.

>>EVELYN AQUILLA: I'm sorry I couldn't be at the meeting.
I had a wedding in my immediate family and it took me away.

>>DOUGLAS KELLNER: The County Commissioners also put on two presentations that I thought were particularly helpful, and illuminating.
They brought in the Director of Elections for the province of Ontario, who explained how they operate with the dominion equipment.
And they brought in the County Commissioner and the Director of Elections for Indiana County Pennsylvania,
which is a rural county Pennsylvania that has been using the ESNS M 100 machines for a number of years.
And each of them went through step by step their election operations.
And illustrated for everybody the forms and the procedures that they've been filing.
And again, it was a very constructive, helpful presentation that the conference was very worth while I thought for those who attended.
Is there anything else on the Executive Director's reports?
With that then, we'll turn to Allison Carr for the legal department.

>>ALLISON CARR: Thank you, Commissioners.
Since our last Board meeting we received two court of appeals decisions.
Both on June 10th and both somewhat similar in nature.
They both deal with election law 6-120.
And the ability of state committees to create their own rules allowing them to issue Wilson Peculas in local races.
The cases were a little bit dissimilar but both dealt with the same statute and both affirmed the appellate division's decision.
So those two are in.
They will be added to the legal update.
And they've been circulated here.
And I think they should probably go out to the County Boards, as well.
HAVA.
In the HAVA case, you mentioned high anxiety among the County Boards.
We have a bit of high anxiety with the Department of Justice, as well.
Which we are dealing with.
And they are being understanding about the issues that we're facing with vendors making changes, changes --
discrepancies being uncovered at the acceptance testing site that then need to go back and be fixed and acceptance testing done again.
And the lapse in the delivery schedule the severe lapse that we have in the delivery schedule right now.
It's gotten to the point where it's not just the status report going to the Department of Justice each week.

It's also the most current delivery schedule.
Sequoia should be delivering more than 4600 machines by July.
They've delivered 1300 successfully so far.
And they are behind schedule.
And the Department of Justice is keeping an eye on it.
Now, since the plan with the court allowed vendors to deliver up until July 31st.
We're still hoping that the vendors can catch up and meet that July 31st deadline.
But if they fail to, we're going to have an issue.
After July 31st.
So you should just be aware that we are sharing the delivery schedules with the
Department of Justice,
the County Boards also requested them at the conference on Tuesday.
So starting today we will start sharing the delivery schedules with the County Boards so
that they can get an idea of what's going on, as well.
County Boards seem very pleased with the fact that they are now getting copied on the
DOJ status report that goes out every Friday morning.
It's giving them a lot of information that they didn't have before.
And our next conference call is scheduled for tomorrow morning at 10 a.m.
And these are the consistent topics, what's going on with delivery mainly.

>>JAMES WALSH: Can I ask a question

>>ALLISON CARR: Sure, absolutely.

>>JAMES WALSH: The production is that far behind, is it physically possible to meet
the deadline and the number
of machines they have to do or is this a production problem or is there something else
behind us?

>>ALLISON CARR: I would answer that except that Kim Galvin is going to give the
report today on the current delivery schedule.
She's got it all laid out.
I think she can answer you far better than I can.
So if you don't mind, we'll leave it to her report.

>>EVELYN AQUILLA: May I ask just one question to that.
In the 1300 that they delivered, are they complete?
Are the machines got every piece to them that's supposed to be there? Because --

>>ALLISON CARR: These are completed.

>>EVELYN AQUILLA: Okay.
That's 30%.

>>DOUGLAS KELLNERL: Those are deliveries that are completed.
Kim will talk to what's past acceptance testing so far, which is a different question.

>>EVELYN AQUILLA: Okay.

>>ALLISON CARR: Speaking of deliveries, we still have quite a few County Board of Elections who don't have storage facilities yet. Anna and Kim created a survey for the County Board. We got back all of the responses. Like I said we have a bunch of County Boards who are having trouble getting storage facilities for their machines. Mostly because they can't get the funding from their County Attorneys and County Executives. There's some misunderstanding or -- in certain counties there's issues where the County attorney sees our room power storage requirements for these voting machines as being recommended as opposed to necessary. So what the County Boards have asked us to do is for the legal office for special counsel, Paul and I, to send a letter to each and every one of the County attorneys and County executives letting them know how important the room, power and storage requirements are. Why they need to make sure that the County Boards have these storage facilities. That it is part of the implementation of HAVA and if the storage facilities are not adequate the risk that is run if something happens to the machines it will void the warranty. And then the Counties will be left needing to buy new machines at their own expense. We promised County Boards we would have that letter out Monday afternoon. Paul has got a good draft started already.

>>PAUL COLLINS: I had done that on June 2nd. So it's not a problem. It's not going to be an issue. It's a response to the inquiry.

>>ALLISON CARR: It's going to help in applying to all counties. Let's see. What else do I have?

>>DOUGLAS KELLNER: The Capsis litigation.

>>ALLISON CARR: The Capsis litigation? Which Capsis litigation? There are a bunch of them. And they are all confusing. And sometimes they use the wrong index numbers. And you're not sure which exactly case it is. Most recently though in one of the Capsis cases which is venued in Rensselaer County the petitioners have made a request to remove to the District court.

Eastern District of New York.

Petitioners generally can't remove to the eastern -- a defendant --

>>DOUGLAS KELLNER: A move from Rensselaer to the Eastern District?

>>ALLISON CARR: To the Eastern District of New York.

Citing various Federal statutes.

And well, it's -- this is one of those no position cases for the Board of Elections.

>>DOUGLAS KELLNER: That's what I wanted to confirm that you won't be taking a position without checking with the Commissioners.

>>ALLISON CARR: Absolutely not.

>>EVELYN AQUILLA: Who are the petitioners?

>>ALLISON CARR: Jim Capsis and Michael Camardy.
Independence party.

>>EVELYN AQUILLA: I'm sorry; now I understand.

>>ALLISON CARR: Nassau County.

>>EVELYN AQUILLA: I always thought it was the independence party.
I'm not a lawyer, forgive me.

>>DOUGLAS KELLNER: The only reason I asked is I just wanted to confirm because there were rumors around that some of the parties are asking us to get involved.

>>ALLISON CARR: You know, that happens in all these cases.
We are asked to get involved.
But we've taken no position.
And I wouldn't take a position without bringing it to the Commissioners first.

>>DOUGLAS KELLNER: Good.
Anything else?

>>ALLISON CARR: No, not right now.

>>DOUGLAS KELLNER: Thanks very much, Allison.

>>PAUL COLLINS: Commissioner, you inquired at the last meeting concerning whether or not we were subject to the state administrative procedures act and unfortunately, we are not one of the agencies that is specifically exempted.
So that will play out later in this discussion about some of our rules.

You had asked about some sort of verification because of the agency.

>>DOUGLAS KELLNER: I think the issue was to what extent the Governor's office of rules and regulations can either veto or hold up regulations adopted by our agency. So do you want to discuss that?

>>PAUL COLLINS: No, I just wanted to assure you that they have -- the Governor had issued an executive order. I think it's either 30 or 50. It lays out the procedure. And I think we just have to be on their case to move it along. Move it along. Move it along. So that the ball is never on our side of the net. And I think that would cover a multitude of sins.

>>DOUGLAS KELLNER: I guess my issue there is as long as we're doing what we're supposed to do, they can't prevent our regulations from going into effect. Although, we certainly welcome their comments and suggestions to improve them.

>> Commissioners, you had also asked at the last Board meeting and I thought of it when Paul started talking for us to look at the employee handbook. And bring it out, dust it off. Update it. Compare it to the CSCA and PEF contracts to see where the inconsistencies are and try to come up with an employee handbook. The CSCA and PEF contracts are finished. But they are not published yet. And we should be getting them any day now. Pat Tracey is very familiar with them and has offered to sit down with us and point out some of the glaring inconsistencies. And the portions of the employee handbook that are no longer applicable. So we'll work on that, too.

>>DOUGLAS KELLNER: Great. That's certainly an important project that needs to get done. So we'll turn to Kim Galvin for Election Operations.

>>KIM GALVIN: Thank you, Commissioner. Obviously Anna isn't here to do the report. So I've taken a few of the suggestions that she wanted me to advise the Board about. And then added in clearly some of my own. I would like to start with a general update for the unit. Basically we just did participate in the exit review with the Comptroller's Office. With the absentee ballot audit.

We expect final resolution and report some time this fall.
We developed job descriptions and job equal equations for the grade 18 positions that we talked about at the last Board meeting.
Hopefully that process is moving forward.
And in the unit we feel that the filling of these positions is critical to the support of the County initiated ballot program and other County support.
We distributed party calls for all five State committees and counties and readied the unit as best we can for the petition season.
There is some construction going on down there a little bit still.
So it's been interesting.
And the asset management systems should probably come later in the report but I'm afraid it will get lost in the shuffle.
So basically I know that there's been some questions out at the conference about when the asset management interim solution will be deployed for use by them.
We did a survey to see whether or not access or Excel was the preferred technology to use.
And Excel is the winner.
We've been working with NYS tech and they should have their template for use in short order.
My guess is the second week of July.
Now, moving to acceptance testing, I've broken it out into the two sections really.
The SYS-test - the independent testing portion.
And then the building 3 portion.
Because I think that it might be -- I might be able to give some clarity to the process as its divided.
With regard to sys-test we continue to meet with them and NYS tech to review the problems.
Several sys-test deliverables have been accepted by us and included on the web.
Including the master test plan.
Work continues on the voter specific test plan.
But good progress being reported.
Please understand that this is in light of when we get to the section of the agenda where I can talk about the
change protocols, while we're reporting good progress on the voter specific test plans, there are some issues that
are -- have been sent to us for resolution and consensus that may negatively effect these depending upon which way we rule.
So it's critical that we find a way to answer these inquiries in a more expeditious way.
We finalized County receipt procedures.
To do infields, secure upgrades and provide them to the County.
And the test instructions are near final and the plan is being used to put on the web for Webcasting with the
follow-up plan for the County training in person if time and personnel allow for it.
So those are the good parts.
The actual acceptance testing, I've further broken this out by vendor.
Because I think unless someone has an objection to me using the vendor's names.

But I think it's important that we all get a clear picture of where we are.
I'm going to start with is a Sequoia/Dominion.
This is the Sequoia Dominion section.
We had a fairly significant delay with Sequoia about ten days or two weeks ago.
The ATI or controller devices that you need to test the machines for their functionality were not being delivered with the machines.
Those devices by our staff were deemed critical to the testing of the voting system and therefore we halted the testing until we -- until the ATI deliveries caught up with the actual voting system deliveries.
We accepted all of the machines up until we ran out of space.
So as not to cause an actual delivery problem.
But then we had to actually tell them we couldn't take anymore of the machines.
Until they started delivering the ATIs with them.
That is back. The ATIs are being delivered with the machines now.
The testing has resumed.
Unfortunately, however, it has caused an approximate 200 machine gap in the schedule.
And they were working with our people there, Bob Warren to make up the difference in that gap to deliver another 20 machines a day.
But that hasn't occurred.
So we're still approximately 200 machines being delivered behind for the Sequoia machines.
And that is of the April 23rd schedule.
The schedule after we met and everything seemed to be on track.
Now, in addition to that, we have had certain requests for information to us that we've been unable to reach consensus on in the building that may actually cause further delay with the Lot 1 timelines and certifications.
That will lead us into our change in communicate.
I don't know what it's labeled there at the end of the session.
So I can hold those issues for that.
And really I thought it most constructive to break it down just the sheer numbers.
I mean, as of yesterday, they may have -- these numbers may have changed slightly.
But we started acceptance testing at the warehouse on April 3rd.
We needed a couple of weeks to ramp it up.
I mean, the process up there is very good.
It's very smooth now.
And we need to end by July 31st.
As of right now we have approximately 4500 Sequoia machines -- the totally of the universe is 4500 approximately machines.
We have received 1617.
We have tested 1298.
We have had 1260 -- these are, you know, just slight approximations depending upon the day as of right now delivered to the counties.
We have 28 days left.
And we have 3202 machines to go or 114 a day.

And currently we are on a schedule of an average delivery rate of approximately 40 a day.

That's the Sequoia.

Moving to ESNS.

We've had considerable delay with these machine systems, as well.

I think it's more instructive to start here with the numbers.

Because a lot of the ESNS problems surround that.

So we have approximately 2550 of those machines in the universe.

We've received 924. We've tested 345. We've delivered 0.

We have 2205 or 78 per day to go to actually be tested.

And of those 345 that we tested, they were labeled for New York City.

And we know that it is the wrong software on that machine.

So New York City cannot use them.

So. Well, we could move -- for example -- it's hard to separate these out.

But the New York City has a problem with their ballot layout.

They required a certain way from other counties in the state.

They -- we met with the ESNS we had a productive meeting yesterday.

They have provided I'll call it -- probably -- the New York City if fix or the patch to the systest people for testing.

Systest has told us we fully expect it will take seven to ten days for a report from them that says: Okay.

Apply the patch.

The problem is that we have 340 machines that have already been tested with the right test reshrink wrapped, reboxed labeled for New York City.

To undo those machines and reassign them to let's say Erie county will take a full week and New York City has told

us they are not going to take any of their machines unless they are loaded with the right stuff and reacceptance tested by us.

And just to do those 345 machines will take us three weeks and we have 28 days left.

So that's just the ESNS clog.

I would urge the Board to consider allowing the ESNS machines -- New York City has said we're not going to take them.

And they haven't said it directly.

But I get the sense that they are saying and you can't give them away.

That's what we do with the other vendor.

When the County says we're not ready to accept them we move them down the road in an effort to get them out as quickly as possible.

I would urge the Board to consider allowing the ESNS machines to currently that are the machines at the

warehouse or not specifically assigned to be diverted to Erie County while we await New York City's decision as to

the machines currently tested and wrapped with the wrong stuff on them.

And then we can make any upgrades to Erie in the field at a later time.

Because Erie does not need this fix on the machines.

As the machines are currently constructed they can be used by the other ESNS counties.

So literally we're at a stand still until New York City gets us a report, which they said next Tuesday.

And while we think that's only a few days until we hear from New York City and the whole context of what we're facing, it's a few days that we literally -- literally do not have in order to move this process forward.

ESNS and the testing has also suffered some delay based upon their request for information regarding end of life component issues.

That has spurred the conversation which has resulted in the discussion later on of our voting system change protocols.

And so while this message might be a gloomy one, if you add into the fact that the petition season starts in three weeks and then we'll know which counties have primaries, this could potentially add to our woes in what are we going to do if a County has a primary and they are on the end of the machine list. What are we going to do to get them the machines in time. So that's it for election operations.

>>DOUGLAS KELLNER: Um, are there items that we should take action on as part of your report, Kim?
Or should we wait to add them onto new business.

>>KIM GALVIN: I think it would be probably easier to add them onto the new business. Because they all come from discussions and changes a in conversation. And you know -- I think they would fit most easily into there.

>>DOUGLAS KELLNER: Okay.
I had one additional issue that you didn't address, which is the status of approving interim authorization for the one or two counties that want to be the -- run the demonstration project using the scanning machines in place of the labor machines in the 2008 election cycle. Where we've left this is that both ott seeing go County -- Otsego County Commissioners have indicated they would like to proceed with that and that they are prepared to do a 100% hand count audit of all of the ballots cast in order to make up for the fact that they would be using what would essentially amount to be uncertified equipment. Ulster is seriously considering that. And it's possible that Ulster may come back and propose that they do it only in certain towns. My view is that if we have one or two counties that are willing to act as the demonstration project and are willing to put the security safeguards in place of doing a 100% hand count in addition to using the scanning machines, that that would benefit the state by having the experience of some Commissioners in New York having gone through the process.

And in essence acting as the guinea pigs for everybody else in terms of developing the procedures.

I guess the biggest problem is that at this point we're not assured that they will actually have machines early enough that they would be able to develop their procedures. Is that it?

>>KIM GALVIN: That is it.

I mean, they may -- I'm certain -- I'm uncertain whether or not those two counties actually already have all of their machines.

But --

>>DOUGLAS KELLNER: We would still have to get the software to turn on the scanners, which is not there now.

Right?

>> That's what I was going to say.

I think if that's the intent to go forward with that, I'm not sure what the upgrade would be to get those to Lot 1 that I can

check and figure out if it's just a configuration file or if there's more to it.

If there's more to it, I think the Board would have to authorize so we can get the process going that whatever

is required to put on these machines for this demonstration or temporary process that these two

counties be authorized to upgrade their machines to whatever they have.

because if we have to wait until July or August to get that authorization, I think it would be too late at that point.

>>DOUGLAS KELLNER: Well there's no question in my view that the Commissioners must have a formal resolution authorizing.

And you know, I've been asking for it at least for reports on it at the prior meetings.

And I realize everybody has been very, very busy.

But this is an issue that's also covered by the court order where the consent order does require us to work with those counties who are interested in doing this.

And I'm really trying to push this because I think it's come to a head.

From a time point of view, we really need to have this resolution in writing for the Commissioners at the next meeting.

>> Just if I may, Commissioner, what that's -- and certainly we'll do anything that the Board wants us to do and needs us to do.

But what are we going to do when getting Otsego and Ulster up to -- if we pick those -- up to the Lot 1 testing for

the, where are we going to get the resources to pull off to go personally train them?

>>DOUGLAS KELLNER: In my discussions with them, the answer is we are not going to do that.

>>KIM GALVIN: Oh, we are not?

>>DOUGLAS KELLNER: That those Commissioners have to undertake that. That they have to understand. Now, I have had that discussion with three of the four Commissioners. And I believe they do understand that they will be responsible for training the poll workers. That they are not going to have the written training materials that we would be distributing next spring for everybody else.

>>KIM GALVIN: Clearly that would be a concern of the unit to divert the resources to those two.

>>DOUGLAS KELLNER: Yeah. And I know you don't have that resource to do that. We do have to get them the -- you know, there would have to be the software upgrade to turn on the scanners. Because none of the machines have that software now. And so there might be a couple of hours working out that procedure in Bob's unit in order to do the trusted bill to at least get it out. And installed. Because it is a scanning machine. It's not just a ballot parking device. So that they do have to be some levels -- but we are under Court order to do this. So that it strikes me that this is not something that we can just keep shifting to the bottom of the agenda. That somebody needs to take responsibility for putting a couple of hours each week into this to get that little piece done. This is only -- I realize I'm only one Commissioner. And I often say one Commissioner is like one hand clapping.

>>EVELYN AQUILLA: I think what has to be done -- Ulster County and whichever other County --

>>DOUGLAS KELLNER: Otsego said they really wanted to do it. And Ulster said, well, gee, you know, we do want to do it. But we haven't heard from the state Board in a long time. It's getting a little late. You know, we'll take another look at it. But in any event, even if it were just Otsego, I would feel more comfortable having -- especially if her doing it voluntarily. We are not forcing them to do it. If they are willing to take the time to train their inspectors and go through the regiment of setting up this new system

and be the demonstration County for the rest of the state, I think we'll all benefit by having that experience.
And at least Otsego is a small enough County that they should be able to control that process.

>>EVELYN AQUILLA: I think it would be an excellent thing.
But I think just before we really get deep into this, we better ask them again definitely.
Are they willing to do this?
And these are the things that have to be done.
So then what the steps are.
Rather than them get halfway through it and say we never knew we were going to have to do this much.

>>KIM GALVIN: What if I work with Bob over the next few days and we put together like a checklist or what we think would actually need to be accomplished.
And the feasibility of actually being able to do the various things without our help or whatever.
And we got that to the Board review.
And then maybe if you wanted we could then send it to Otsego and see where we were.

>>EVELYN AQUILLA: I think it's excellent.
I think you used the right word.
The feasibility.
Right.
That's what we need to do.

>>DOUGLAS KELLNER: There were six counties that originally sent the letter to Judge Sharp indicating they wanted to do this.
Three of those counties have already said: Well, we've -- now that we realize what's involved, no thanks.
I guess for the public -- for the County Commissioners who monitor our tapes, I would just say this is really the last shot, if there is another County besides Otsego and Ulster that's interested, then they should get in touch with Kim Galvin or Bob Brehm this week.
Which is what -- this afternoon and tomorrow.
To let them know if they at least want to be considered for the demonstration project.
Bob?

>>BOB BREHM: Any County that decides to go forward with this, they will be doing it with just the one at every poll site.
They won't have additional machines at the poll sites.
They will just have the one that we're putting out.

>>DOUGLAS KELLNER: I haven't had that discussion.
I don't know that Otsego has any poll sites that are above -- I would be very sceptical that Otsego has any.

Ulster might.

Ulster has Kingston.

But also the Ulster Commissioner said that they weren't necessarily going to propose to do it in every town.

That they might do selected towns.

I haven't said to -- yes or no on doing it in some towns.

I can't immediately think of any downsides in doing it in some towns.

But the whole point of this discussion right now that I raised is that Judge Sharp's Court order says that we are supposed to be reviewing this.

I do think that there is some benefit if we can have a couple of demonstration locations of using the scanning.

And that we do need to pay attention to this.

Because we really are at the deadline for making go or no go decisions for that.

And if that's okay with the other Commissioners --

>>EVELYN AQUILLA: I agree.

>>JIM WALSH: Can you see any negative in that suggestion, Kim?

>>KIM GALVIN: In the suggestion, no.

It's -- certainly we can do everything that we need to do to see if it's feasible or realistic for are a very small portion.

I think it's probably more appropriate to do a certain number of towns.

Because maybe the local -- the County Board has a very strong working relationship with those towns.

They can negotiate the communication better.

So I think less is better in this particular case.

But I don't really have a firm handle on what the testing requirements would be. As Bob was talking earlier.

So I mean we can certainly take a very hard look at it in the next couple of days and get out a realistic or a report to the four of you, which I think might be helpful.

>>DOUGLAS KELLNER: As far as the testing goes, I envision it to be minimal because we are going to do 100% hand recount.

So that you know everybody understands that we're going to be working with uncertified equipment.

And had a this is being done as a demonstration project.

And of course the resolution authorizing this needs to specifically provide for those adequate security provisions as part of the authorization for the use of the election.

All right, well thank you.

>>EVELYN AQUILLA: This is just one question, Kim.

And this is not the New York City -- what's that ESNS I think.

Is ESNS producing the five languages that must be produced on their machines?

>>KIM GALVIN: Yes.

No problem.

>>EVELYN AQUILLA: Okay.
I heard there was some.
But the person wasn't exactly sure.

>>KIM GALVIN: If that's a problem, I haven't heard about it yet.
But the ESNS representatives here say that they are producing.

>> That's Mandarin, Cantonese, Spanish, Korean and English?

>> Yes, thank you.

>>DOUGLAS KELLNER: Anything else, Kim.

>>KIM GALVIN: Nothing now, sir.

>>STANLEY ZALEN: Mr. Chairman, if I could, this discussion reminds me that all of you Commissioners should know that we have this acceptance testing operation going on in building No. 3 in the state campus, about a 15 minute drive from here. We have most days about 50 people there under Anna and Kim's direction, Bob Warren has set up a whole simultaneous office of the state Board of Elections to do this work. And it's pretty eye opening to see these acceptance testing procedures going on. And it might be very informative if all of you or at least any of you could get up there and see what's going on at the moment. I think it would be, as I said, eye opening and a helpful thing to see what's going on out there.

>>DOUGLAS KELLNER: And the public is also allowed to go there to.

>> On any given day we have about 50 people.
About five of our own, including Bob.
Another 10 or 15 or so who are vendors representatives through ESNS and Sequoia/dominion and we have about 20 of our own temporary staff.

>>DOUGLAS KELLNER: Thanks, Stanley for reminding us about that.
All right.
Report on public information office, Bob Brehm.

>>BOB BREHM: Hello, Commissioners, we continue to work in our unit on responding to questions and inquiries from the public for both information and for FOIL requests. Our mail intake has started to pick up. And thankfully we had the interns to help us.

At this point it's not quite up to what we anticipate this year in a Presidential Election year which is substantial.

But we've already noticed the increase in that daily activity.

We continue to receive the requests and fulfill the supply orders and the data for NVRA.

In addition to our regular work, we have a few special projects that we participate in which is the County funds,

a program to deal with making sure that the counties have the available resources for access improvement.

I think we can successfully say that as of last Friday we have surveys in one form or another for all of the counties in the State of New York.

They might not all be here yet.

But we know they are all done.

And they are out being reviewed for -- by some of the vendors for what they need to do in order to meet their

compliance with you know bringing their poll sites up to speed.

And we think it's important as we put the ballot parking devices out into the poll sites that the voters can have a

clear path of travel through the entrance to the property and to the room that the ballot marking device will actually be in.

So we can say that we have the surveys, which is taking a great deal.

But they are still an enormous amount of work to go through their applications to make sure that all of the parts are completed.

And approvals are signed off on.

And that the invoices are actually reimbursed.

But we work on that every day.

And the interns are also helping us to sort.

Because as you know, the last couple of counties that we received are not some of the smallest.

New York City, Nassau and Erie counties.

So there's a substantial number of surveys that we've received in the last week that we are going through.

One other area that we do is the voter education component of that grant.

At the previous meeting you approved the money to help pay for the training.

We have started our rolling out of our voter education and poll worker training web based program.

It's one of those things where we've asked the software company that is our consultant SOE to push as fast as we can to get it out in time for this September's primary.

Because we were ordered to do the ballot marking devices.

We anticipate the go live date to be July 11th for our first phase of that instruction or of that availability.

And we introduced the program to the counties at the conference on Tuesday.

And we have a series of training sessions that started on Wednesday in Erie County and will end in New York City on July 2nd.

And participating in the training conference will be SOE software to give an overview of the administrative use of the software tool.

And also participation by the Commissioner on quality of care will be there to give specific instruction to the counties on the use of the device that they select. How to actually use the accessibility features and interact with voters during the course. I participated in the Erie County session yesterday. There were over 30 members of the Erie County staff from the front end people who interact with the poll workers and do the training and get the names into the computer and recruit to the -- you know all the way up to the Commissioner level, you know, the management. And it went very well. It was well received. There's an awful lot of work that we still need to do in order to get all of the portions of that program done. And there's a resolution later in your -- under old business that will help us move a little bit further along. And I think that's mostly what we're doing.

>>EVELYN AQUILLA: Bob, are you in charge of the military voting? Who handles that for the office?

>>BOB BREHM: That's pretty much Anna.

>>EVELYN AQUILLA: Okay. I'm sorry. I just want to make sure we don't have any --

>>DOUGLAS KELLNER: You can ask Kim now if you have a question on it.

>>EVELYN AQUILLA: Do you mind, Kim, if we ask you about military voting.

>>KIM GALVIN: I'm not so sure I'll know the answer for you.

>>EVELYN AQUILLA: I'm just -- I just want to make sure that we have, you know, cooperated every possible way we can to make sure that every soldier, sailor, marine, whatever in New York State has the proper way to vote.

>>KIM GALVIN: I believe we do. I believe this is an issue that's clear and -- near and dear to Anna's heart. And she spends a lot of time with groups to ensure that is accomplished. I on the other hand have not been personally involved. But I will check and if there's anything other than that answer to give you, I will be sure to do that.

>>EVELYN AQUILLA: We did receive something in the things we received about the military voting.

>>DOUGLAS KELLNER: And if I could just --

>>EVELYN AQUILLA: Go ahead.

>>DOUGLAS KELLNER: If I can explain, Evelyn, why those were in there is we did get a request from a group that it was setting up a new web site and a new program to provide assistance for military voters.

>>EVELYN AQUILLA: Yes, I did see that.

>>DOUGLAS KELLNER: And had asked if New York would in effect contract for their services.
And I had asked Anna to look at that.
And I think --

>>KIM GALVIN: She did meet with them.

>>DOUGLAS KELLNER: And I think the conclusion as far as I understand is that New York is already providing all of those services. And that --

>>EVELYN AQUILLA: That's why I was asking that question.

>>DOUGLAS KELLNER: And New York would not actually gain any additional service by paying an outside group.
And there's always a question whether you should pay an outside group to perform election things especially when we're already doing it.
That's my understanding.

>>KIM GALVIN: That's my understanding, as well, out of that particular Meeting.

>>EVELYN AQUILLA: I just wanted to let you know that the Commissioners are really interested that everything is done properly and that we move on.
I didn't think that we should get ourselves involved with this group.
I did think they did a good job, by the way.
But I thought we always had done a very good job at it.
And I just wanted to remind everybody that we had that obligation.
That was all.
Thank you.

>>DOUGLAS KELLNER: Is there anything else for public information? All right.
In that case we'll turn to Liz Hogan for campaign finance.

>>LIZ HOGAN: Thank you, Commissioner.
Let me start, if I may by saying that I left at each one of your places two packets of materials that relate to HAVA complaint processing.
It's informational for you.

The color charts are processes that Bill and I worked with NYS tech on for the past months.

And it follows a complaint procedure from the informal at the counties right through the dispute resolution.

And there's a copy of the forms that we've developed in there for you to take a look at.

The other is Commissioner Kellner you were there at the conference.

And you heard us talk to the County Commissioners about a document we prepared for them to enable them to

understand what HAVA is and how they relate to the HAVA process.

>>DOUGLAS KELLNER: The HAVA complaint process.

I think the counties are fully aware of what the help America vote act is.

>>LIZ HOGAN: Those are there so you can see what we're doing and the production we've got so far.

You don't need to take them.

I'll pick them up.

But it was just information for you.

In the context of that, Bill and I did present at the Commissioners conference the HAVA process.

The complaint process.

And you know exactly what's entailed.

To the County Commissioners at their conference.

And I think it was very helpful.

And it was I thought very informational for them and very important for them to understand their role in this.

I think the next thing I just want to touch on briefly, as I've -- and I'll say this for the benefit of our new Commissioner.

A lot of the things I talk about in campaign finance are ongoing projects.

They take a long time to do.

I try to update the other Commissioners on the process.

And you know what progress we're making.

So a lot of the things that I'll talk about, I've talked about before.

And I just want you to know they are still on the agenda so to speak in campaign finance and we continue to work.

The eBis scanning project the last piece we're waiting for is there had been a dispute -- I don't want to say dispute.

But perhaps a difference of opinion between the OGS and our own IT people as to whether this was a technology project and needed to sign off of OFT.

So once we resolve that, if we do need to do that, we can just very quickly I'll work with George to get the -- whatever OFT requires to sign off on this.

But initially it seemed that they were not requiring us to do that because it was not a technology project per se.

So that came up at the very last minute.

And that's what we'll accomplish within the next couple of weeks and get that resolved.

The process server contract, the low bid had been identified.

And the last that we were told by OGS was that they were meeting with the low bid vendor to make determinations of financial responsibility or -- that may not be the correct term. But it's -- obviously that's -- viability. And so we're waiting to hear from them as to what their determination is so we can go forward with that. It's obviously an issue, you know, for us because we're having a July 15th filing coming up. And therefore, you know, in the early August lawsuit. So that process serving issue is of concern to us. So we're very interested in getting that moved along. We're waiting to hear from them on that. We're working -- continuing to work on the O 6 corporate overcontribution project. We had an internal meeting with IT last week. We were having a little bit problems with our -- the report that we were getting. And I think it was perhaps at the last meeting that I explained to you the issues to getting a report that we can actually work with to identify these corporations. And there's a whole process that has to be gone through by IT. And you know, George could address that if he had to. But I think suffice it to say that it has to be just so in order to pick up the right names. And so we are having a little bit of a problem with that. But we met with IT. And they are working very hard to resolve it. So that's moving along. The new operating neutral software system that we hope will roll out at the end of this year or the beginning of next year, Phil in IT has written that. We've met with him several times. I think we have another meeting scheduled with him, you know, this week or maybe tomorrow or next week. To see what his newest response is suggestions that we had when our unit met with him. That's moving along. And that's a great piece of software. We're very pleased with what they have done for us. The seminars have finished. They wrapped up last week in Downstate. They were very successful. We received -- Bill and I both received a lot of e-mails from Commissioners who said that -- how really professionally they were done. And how our staff represented the Board. So I would like you to know we got a lot of good feedback. In that same context if I could say that while I was at the conference, I was approached by a number of local Commissioners who said that they would like to let us know. And I let you know this. That they were just so pleased with the way campaign finance was running. And how it was assisting them.

And the great feedback that they were getting from our staff, from Bill and myself.
So I was very gratified to hear that.
I think it's very good that the people who work with campaign finance all the time have that kind of a feeling about the -- you know, what we give them.
So I would like to pass that onto you so that you'll know that.
One of the other things I think I mentioned at the last meeting, if not before, was that we are in the process of identifying and writing updates to the procedures for campaign finance as well as trying to create procedures for audit functions in our office.
And that's a very time consume process.
And you know, Todd I think referred to this very issue when he talked about at the very beginning when we talked in the Executive Report about the internal controls.
This is something had a is not just -- you know we're not just doing for some temporary measure.
This is a long term something that's going to affect us.
And we want to make sure it's done right.
So it does take time to do.
But we're continuing to work on that.
We have July 15th of course is the periodic filing.
We are this year in a little bit of a situation.
The last Board meeting I told you that three of the program aids who serve at our call center had left the agency.
And now actually it's four.
It's another person for personal reasons has taken another job in another agency and the others moved onto better positions for them.
So we're sitting right now with -- we have six positions that man that call center.
And we are down to two.
And we had internally talked about canvassing those civil service positions, looking at the list and sending out the canvas letters.
And I had touched base with Pat Tracey early last week.
She said she was working on the letters.
I don't know if they went out yet.
But I'll follow up with her.
Hopefully -- I don't think that these people can be trained to fully respond to the callers subsequent to that July 15th filing.
But I think if we can get people on as soon as possible there are a myriad of different functions they might serve.
Maybe they can't go on the phone or walk people through the filing or whatever.
But perhaps they could serve support functions.
So I'm really in a bind there.
So we're really looking forward to getting that -- those jobs filled.
It's very important for us.
In the same vein as the policies and procedures is that continuing project that I told you about which was the review of our -- our web review process, which means that you know, we will constantly be monitoring.

We have a committee within our unit assigned to monitor.
And review the web site offerings that relate to campaign finance.
And that's an ongoing project, also.
Bill, do you have anything you want to add?

>>BILL McCANN: No, you covered it.

>>LIZ HOGAN: I think that's it.
Thank you.

>>DOUGLAS KELLNER: Thanks, Liz.

>>STANLEY ZALEN: One thing as much for Liz and Bill as for the Commissioners.
The weekly OGS meeting yesterday when you were in Chatauqua County members of
the OGS said by Friday
the process server we're looking for has to submit the requested documents or she'll move
onto the next process server.

>>DOUGLAS KELLNER: Thank you.
Now we'll turn to George Stanton, information technology.

>>GEORGE STANTON: Thank you, Commissioner.
I'll make my report fairly brief since I've been on vacation most of the time since we've
met last.
I'm just getting myself back up to speed now.
As you -- I know Commissioner Kellner got a copy.
Saw that I reran the duplicate processing for the counties.
Less maintenance status.
And the counties for the most part are doing an excellent job in cutting down their
duplicates.
In fact statewide we've cut our duplicates by a quarter from just over 60,000 to just over
45,000 in the last month and a half -- a little less than a month and a half.
The exceptions to that, of course, are the New York City boroughs which still have
thousands of duplicates.
And as you know there's been a letter circulating going around that went out to New
York City.
And I'll let Deirdre talk about that later.
We do a lot of things in ITU which I won't bore you with because they are things we do
every day and have to keep things running.
If we didn't do them things would come to a stand still so I will only hit on the high spots.
We continue monitoring the equipment and software of the NYSVoter the
communications networks.
We've determined it keeps three people on a full time basis pretty busy doing all of that.
We have Dennis down at the DR site today applying patches to machines.
Every time you change, you have to do a security upgrade or an upgrade for this, it
changes everything.

And you start to see errors.

And you have to, you know, since you've got software from multiple vendors running together, you have to make all of the upgrades.

It's really a full-time job.

To do that.

The NCOA files went out.

There were some issues while I was gone which my staff ably handled.

There was a discrepancy in the file format I guess that the NCAO vendor sent back to us. Maureen Cahill who has done NCAO in the past was able to help with that.

Other than the duplicate problem in New York City, we also have the enhancements that were required by everybody to do that they have not done yet.

Those are the ones that allow them to reverify voters, the driver IDs and Social Security numbers.

And also the voter recall function.

ESNS, I just got an e-mail as we sat here from their vendor that said that their enhancements have now been pushed out in all four of their counties.

So they have finished their enhancements.

Obviously it's going to take us a week to test them, make sure everything is working right before we sign off on payment for them.

Other than that, we did send a letter to the division of budget.

That we were going to do away with our contracted help desk with saber.

And to do that, we are going to need to hire a couple of people.

We're in the same boat as Elizabeth and Bill in campaign finance.

We're down one person on our help desk for the July filing due to maternity leave.

Hopefully she'll be coming back soon.

But we're going to need to hire those other two people if we are going to need to take over the help desk for the NYSVoter in September.

Our current contract for maintenance runs out with them in September.

We really need to start talking to them now and negotiating what we're going to do for maintenance.

Because actually on the original contract it fell into one group with maintenance and help desk so if we're going to

do away with the help desk portion, we're going to need to start negotiating with them for our continuation of service after September 30th.

And that's something that we direly need.

>>EVELYN AQUILLA: George, how many calls do you get on the help desk.

>>GEORGE STANTON: On our help desk?

>>EVELYN AQUILLA: Yes.

>>GEORGE STANTON: It varies.

I mean during the campaign finance time, the phone rings constantly.

>>EVELYN AQUILLA: Have you kept any kind of a record.

>>GEORGE STANTON: We do keep a record.
I don't have the numbers on me.

>>EVELYN AQUILLA: Next time bring those.
I would like to just know how many are come in now.
Because we -- Liz gets called.
I mean, Anna gets calls.
And you know how many help desks do we need all around the place?
You know I'm just wondering if there's some way --

>>GEORGE STANTON: I know during campaign finance times we sometimes get 200 calls a day.

>>EVELYN AQUILLA: Just give me an idea of what the exact -- I'm just wondering, you know, if there's some way we could better do help desks.
Say it's not campaign finance time and you're only getting ten calls.
But another at that time Liz is very busy or Anna is very busy.
Maybe there's some way we could consolidate these help desks for a better reason.

>>GEORGE STANTON: My help desk people, they are not just help desk people per se they are technical supportees So when they are not doing help desks answering phones they are setting up computer equipment.

>>EVELYN AQUILLA: That's the first I heard that.

>>GEORGE STANTON: No they don't just answer the phone.
They are busy doing other maintenance efforts in IT when they are not answering the phones.

>>EVELYN AQUILLA: Good.
This is something that's a learning experience for me.
I didn't know that.

>>DOUGLAS KELLNER: George, specifically what are the maintenance functions that saber must perform that your staff is unable to perform.

>>GEORGE STANTON: Well, we have issues with things in NYSVoter that are things that we have to look into on an almost daily basis which my staff is not able to do.
Because quite frankly, this is such a complicated system, I'm not sure we could ever learn to take it over on our own.
There are so many working parts --

>>DOUGLAS KELLNER: George, I wish you could -- I could quote what you told us two years ago.

It's just not in there and and that's just exactly the opposite of what we were told when this system was proposed to us.

And I am telling you right now, I am not going to agree to an unlimited continuation of saber.

At the very least, if I were to agree to it, you're going to have to write up specs and bid it out.

And that's -- and I'm not signing off on that, either.

But I am not signing off on a continuation of saber under the old contract.

>>GEORGE STANTON: Those specs were built into the original contract for three years.

>>DOUGLAS KELLNER: And that's what we agreed to.
That's not an unlimited continuation of that contract.

>>GEORGE STANTON: But if we want help with the help desk, we're changing the terms of the contract.

>>DOUGLAS KELLNER: That needs to be elaborated in chapter and verse.

>>BOB BREHM: There are two things.

There's the maintenance portion.

And then there's also the help desk support.

I think the proposal that George spoke to us about at the last Board meeting and what he's speaking about today is

to recommend discontinuing the help desk support now but continuing the maintenance support for one year.

Because I think that's the question that comes before us.

It's a one year annual extension.

It's an option that we have.

>>GEORGE STANTON: And I projected from the beginning in my budget ongoing expenses of a million dollars a year to maintain NYSVoter.

>>DOUGLAS KELLNER: Yeah, but saber does not have a lifetime permanent contract on this.

And that that has to be bid out.

And we should also be planning or at least evaluating on the long term whether it is better to do this in-house or to contract out for it.

And that there's no assumption that we're just going to permanently have a private vendor run the system forever.

>> No the RFP called for a three year maintenance.

Beyond that we can do whatever we want.

>>EVELYN AQUILLA: When we first got into it, George you said it was such a wonderful system it was so great you were so taken by it that you thought in time that we would be able to handle it all.

>>GEORGE STANTON: It is.

But the problem is with a system this complex I don't have the number of staff it takes to do this.

Unfortunately my three people that I say have to work on this full time don't work on it full time because they have other duties they have to do at the same time.

>>EVELYN AQUILLA: Everyone is really the same way.

Anna's office they do 29 things a person.

It's unbelievable.

And if she didn't know Kim I don't know what she would do.

Blow her brains out.

Kim has come in and rescued at such tough times there.

I appreciate it.

>>GEORGE STANTON: I have staff members that are picking this up and learning a lot of things.

But it is very detailed and takes a lot of time.

>>EVELYN AQUILLA: Listen I am very thankful to the staff we have here.

I know everybody is doing far beyond what we ever thought they were going to have to do.

But I'm just saying I do remember when we first got into the statewide, you know -- what do you call it?

That we would be able to handle it in time I thought.

>>GEORGE STANTON: That was our hope.

And we are not definitely abandoning that right away of the but we're not ready to take it over on September 30th part and parcel I know that.

Especially with the Federal election, our first major election coming up, we don't want to be without the support of the people that wrote the application.

>>EVELYN AQUILLA: Okay.

That's okay.

>>DOUGLAS KELLNER: You know, I would ask Todd and Stanley to at least be monitoring this issue and looking

down the road in terms of both the budget and planning to properly bid it out when saber's three years is up.

>>tODD VALENTINE: We'll be in a transition at that point.

Yeah, we should consider that.

>>DOUGLAS KELLNER: Well, there are options.
Do we -- is it better to hire somebody in-house to take on that capability to actually review and monitor the operations of the information technology staff.
You know, to make sure they are being fully utilized.
And utilized up to their optimum capabilities.
That they are not doing clerical work or work that doesn't make full use of their special skills.
I think you're already aware of these issues.
It's just that I know we have so many things that we have to do.
But this is one of them that we have to stay on top of.
Otherwise, we could be putting the state in a position just because we haven't gotten around to it of spending considerably more than we should for the maintenance operation.

>>GEORGE STANTON: This is an issue, too.
I mean it's reflected on -- it goes back to help desk issue that sometimes when we're at peak calls and calls coming in, I have programmers and supervisors that are making \$70,000 a year answering the phone with help desk because we don't have the lower level technical people to handle them all.

>>DOUGLAS KELLNER: And that may be --

>>EVELYN AQUILLA: It may be a waste of time.
We may have to figure that out.

>>GEORGE STANTON: It's not the best use of those skills.

>>EVELYN AQUILLA: Not at all.
And I know this has -- the statewide database has become much more complicated than we first really grasped the whole.
Because some of these counties have different -- we're using very different companies and they didn't match.
That had to all be brought in.
And corrected.
And I know that I'm not a technical person.
But just hearing the technical problems is more than we grasped.
Maybe -- I'm sure Doug grasped it.
But I certainly didn't grasp the great complexities of the statewide database.
Until we got involved in it.

>>DOUGLAS KELLNER: Anything else? All right.
Thanks very much, George.
So we'll move to the first item of old business.
The status report on NYSVoter auditing process.
Deirdre Hammer?

>>DEIRDRE HAMMER: Thank you, Commissioner.

As you know, this certainly is an item that's near and dear to everybody's heart. And I do want you to know that we've been working very diligently on putting it together.

And like other projects in the building, we want to make sure it's done correctly and done right.

So that it can go on.

For a long, long time.

So it's been probably a little slower and more methodical than any of us anticipated.

But we have come I think a long way.

On May 28th we did send a letter to New York City discussing their failure to purge duplicates.

To my knowledge, they haven't responded.

But in the letter we did say that we would run more numbers in about 30 days to make sure that they are

complying with what they originally were to comply with, which was to start purging duplicates.

We also met -- the Steering Committee met.

And we sent out a letter to all counties about election law 5210, which governs registrations enrollment and change enrollment.

And it says that counties must verify receipt of applications within 21 days, which many counties have been a little lacks on.

So we hope they have gotten that.

And they are obviously starting to process those in a timely fashion.

We are currently working on 6217 regulations, which govern how to process voters who have moved.

And how to process voters -- duplicate voters.

Hopefully this letter should be in final form in our -- by our next meeting, which is next Tuesday.

We meet every Tuesday.

And we should get that out by the end of next week.

So the counties will have a firm grasp of what we expect from them.

I've been working with Vicki, the new girl.

Petrusheal.

And I've been teaching her how to use the NYSVoter system.

Because it's all new to her.

And we're working on a final version of specific auditor duty tasks that she and I will perform on a monthly basis.

And hopefully have in your packets on a monthly basis.

And hopefully this should be up and running within the next month.

Vicki and I both received our DMV access, which gives us better access to the DMV system so that we can compare

registrations that may -- you may find a problem with in our system.

We can log onto the DMV system.

Make sure that all the information we have is correct with DMV.

And all of the information we have is correct from the County Board.
And if there is a problem in our system, we can tackle it then.
We had a separate discussion.
George wasn't sure.
So I'm not -- he doesn't know about it.
But we had a system -- I mean a meeting discussing the possibility of finding a tracking system.
So Vicki and I can track complaints that come in.
I don't know if it's possible.
But it merits more discussion in the next Steering Committee meeting.
And George can tell us if it's doable or not.
And Vicki and I have been meeting.
Like I said, I've been showing her how to use NYSVoter and then -- you know, we find things that we are not familiar with everything in the system.
So we go to George.
And you know we work through them.
So it's all kind of a learning process for Vicki and myself.
And -- but we do hope to have this whole process and system down where Vicki and I will be providing monthly reports I'm hoping in the next month or so.

>>EVELYN AQUILLA: What about the other New York State agencies that you're supposed to use NVRA?

>>DEIRDRE HAMMER: That's a separate issue.
We are not auditing NVRA.
We don't do that.

>> BOB BREHM: NYSVoter interacts with the Department of Health for the death notices and then the city Health Department for the death notices.
And through the office of court administration for individuals adjudicated incompetent or persons who have been convicted with a felony.
So those are more monthly activities as opposed to say DMV, which is a daily activity.
Or instantaneous activity.

>>EVELYN AQUILLA: I would like to see more registrations than people knocked off.
I think anyone with registration is worth to knock off when you die.
I want people to vote in this state.

>>DOUGLAS KELLNER: Any other questions?
And I understand that there hasn't actually been any auditing yet, right? That --

>>Deirdre HAMMER: Not official auditing.
We've gone online and we've picked here and there just so we can learn the system a little bit better.
But we don't have an official report to give.

>>DOUGLAS KELLNER: Okay.

Anything else on this topic?

All right.

Kim Galvin and Bob Brehm on the proposed regulations part 6210.

>>BOB BREHM: Well, I guess this is party 3 -- we met before at the last meeting.

We had to sit down with GOR to go over their few changes.

We've updated the draft with a few comments.

There were not many.

That we received from GOR.

The only substantial comment that we received from GOR our attempt to put the two regulations that we were discussing into one document.

And they clearly told us no.

Other than that, it was minor.

But we have to have -- when we get to the point -- a separate vote on what we call the error numbers, the 6210.

19

Minimum number of voting machines.

Is it's own calendar through this process.

So when we get to that point, it requires a separate resolution.

So we broke them out.

And they are here today.

We did post them to our web site just for continuing to let the public know where we stand in this process.

>>DOUGLAS KELLNER: Is there any further discussion?

I take it that we've sort of agreed to lay them aside until the next meeting.

And give one last look.

>>KIM GALVIN: I think there is some further discussion that needs to be had on the 6210 provisions the auditing

provisions there's still some concerns expressed by the public and Bob and I in all of our meetings we're confident

we can reach resolution and iron them out but that does need to continue I think in my opinion.

>>DOUGLAS KELLNER: This coalition of voter integrity, the government groups that sent the letter last week had asked for an auditing Task Force to be set up.

Have you discussed that at all on whether it makes sense to meet with them as opposed to maybe not establish a formal task?

But hold a meeting.

Or to -- has there been any discussion of this at all.

>>BOB BREHM: I was out at the conference so Kim and I haven't had a chance to talk about it since it came.

Some of the proposals came in the last couple of days.

>>KIM GALVIN: Clearly Bob and I can meet with them.
I'm of the personal opinion that that Task Force just would kind of further delay it.

>>DOUGLAS KELLNER: I guess what I'm really interested in is the actual text of the proposals rather than the generalities.
I think we know what the issues are.
And you know, I've shared some of my concerns, as well.
That -- I guess first is that the comments from the letter seem to separate - they fail to acknowledge that New York has these separate provisions for recanvas and auditing.
And that the functions of auditing and recanvas are not necessarily the same.
The second thing is that I have been concerned that in a serving of caution our regulations may be so overinclusive now that in effect for most rural counties we're requiring 100% hand count through the audit, it would be better off just giving them the scanners and doing paper ballots entirely.
Or you know, that that could be a case.
And I noticed the letter that the coalition sent also acknowledged that.
That they felt in some instances, our audit procedures were overinclusive.
So I would be much more interested in having text of what they are proposing rather than the generalities.
Because I don't think that -- I mean, we've -- what they raised is nothing new in terms of what I've been talking to staff people about.
But we still do need to get regulations.
Oh, I know what -- the last point was that they suggested that the law is not in effect.
And my view is that the law is in effect with respect to the central scanning machines that are used by the city.
And so that we -- we do need regs with respect to those.
Bo, doesn't to say anything as I guess the primary drafter of the letter in a minute or less?

>> Thank you, Commissioner.
Our hope was I know people worry about Task Force.
But our hope was that the public who have been looking at this election integrity could have more of a direct role in working with the Task Force to develop these.
I do understand your point about the central count scanners and the need to audit those.
So perhaps our point about we don't need them until '09 was not correct.
I don't know if there's a way to separate those two out.
But we do believe it's vitally important to get this auditing right in this new world of scanners.
And we really need to pay attention.
And the public, there is a lot of independent investigation going on.
I know Commissioner Kellner and Bob Brehm are part of a national auditing group where this is being discussed.
So the current thinking on auditing is evolving.

We feel strongly within the context of our current statute requiring that 3% that we could really make audits in New York very close to some of the best in the nation.
This is the opportunity to do that.
We urge the Board to do so.

>>DOUGLAS KELLNER: All right.
Well, I would urge you to set up the meeting with Kim and Bob.
Because --

>> I would be glad to do that.

>>DOUGLAS KELLNER: They are willing to meet with you.
Even though Kim has so many projects going on with certification, too.
But -- and also, I'm willing, we can invite the other Commissioners if they are to meet with the city voter coalition in the city if they want to spend a couple hours just to go over what the issues are.
You know, I would be willing to set that up to meet with them in the city.
But what it really comes down to is we need text and we need to eventually make a decision on this.
It's been around for more than a year now.

>> We can do that.
And I'll set up a meeting.
Thank you, Commissioner.

>>BOB BREHM: I think it's important.
They have been -- there are regulations that have been out there for a substantial period of time.
We have received specific text from representatives of the auditing community.
And Kim and I have had several conference calls with them.
And we have been aided by Kate Orzeno and we help she continue to help us to go through some of the formulas they are proposing.
So we do have some text.
Text is very helpful to look at rather than generalities.
So we'll be happy to --

>>DOUGLAS KELLNER: Bob, are there any specific issues, though, to frame to the Commissioners in terms of do you do X or do you do Y?
So that the four Commissioners can start to think about what are the policy decisions we have to make.

>>BOB BREHM: The statute gives us clear indication in 9 to 11 that we have to start with a minimum with a 3% audit of the voting systems that are used.
In the jurisdictions.
That's what's in the statute.

And that State Board has to promulgate rules and regulations.
So we have some leeway to how to put the meat on the skeleton to do that.
The auditing community wants us to disregard the 3%.
Because it's not an effective means of auditing in their view.
They want us to do a statistical power based system, which you would have to look at every contest and determine what is the possibility by looking at this contest that you will -- you know by looking at this number of machines that you have the chance of finding an error that will -- would have affected the outcome of the election.
So in essence, it's kind of mixing into the audit work the recanvas work.
And it's important throughout the country.
Because not many -- we're unique in New York.
Because we have a mandatory recanvas provision.
So before we get to 9-2.
11 in the election law there's the other provision which is recanvas.
So what they want us to do is statistical power.
It's a little bit difficult in our structure to do that for raises that go above a County level.
And the County has all of the information necessary to do -- to audit the statute proposals and also do the audit that the advocates proposal.
They at least have the resources.

>>DOUGLAS KELLNER: The real question I have is if we went to -- we have to follow the statute.

No matter what, we have to follow the statutory rule.

If we were to substitute the statistical power -- and I saw what Howard Stan Slevik had prepared, if we substituted that for the escalation provisions that we have now, would it actually be less work or more work for the Boards?

And I think that's one of the issues.

>>BOB BREHM: We did take their recommendation mostly for escalating.

That's where we saw most of the change in 6210.

19 that we worked on.

To the extent that we thought we had the ability to.

There were some areas that went beyond a County that would cause the State Board to aggregate the totals and make a determination as to what audit -- what machines needed to be audited.

When the raise went for more than one County or portions of the raise such as cases of assembly or County or judicial or state line.

>>EVELYN AQUILLA: Do we need a legislative amendment?

To change it.

>>BOB BREHM: Well to do something less than 3%.

>>DOUGLAS KELLNER: And it might not be a bad idea.
Now that many of the audit provisions of 9-2.
11 were written in there to make use of the voter verifiable
paper audit trail, which was uniquely designed as a security feature for the direct
recording of electronic machines.
But since no one will be using direct recording electronic machines, then maybe the
Legislature should consider
taking out of the statute authorization to DREs.
And then combining 9-2.
11 with the recanvas positions of 9-2.
06 to make a uniformed non-duplicative procedure.
So that's something to look at.
But it's not for us.
That's the for the Legislature to do.

>>EVELYN AQUILLA: Don't you think in-kind DREs will be purchased?

>>DOUGLAS KELLNER: I could say I hope no.
If only for the workload of the agencies.

>>EVELYN AQUILLA: I support the machine.
That's how far back I go.

>>KIM GALVIN: Clearly and with all of the meetings with Bob, clearly also there has to
be an understanding of the
ability for people to actually understand what it is that we're writing and requiring of
them.
In our meetings with the auditors, you know, they told us look at the signed calculators
and I was like okay.
But the powers that we're talking about, Bob and I have worked very hard without -- to
take their recommendations and not, you know, create any security problems.
But at the same time to make it understandable and actually an effective tool for the
counties to be able to comply with.
It's a problem.

>>DOUGLAS KELLNER: I agree with that.
Bo, 30 seconds.

>> I wanted to correct one thing Bob said.
Our proposals does meet the statute.
Because it was a 3% floor.
We understand under the current statute you could not do less than 3%.
I just wanted to clarify.

>>DOUGLAS KELLNER: Thank you.
They are trying to make high school algebra relevant.

Okay.

Bob Brehm, the status report on development of the proposal to prepare Public Service Announcements for voter outreach efforts in 2008 for BMDs and in 2009 for the full system.

>>BOB BREHM: We continue to meet on that subject.

I know Greg feels and I have talked with several individuals who will have a solution. But we have not been able to talk to everyone yet.

I know we had some discussions with OGS about potential contracts that the state already has that we can piggyback on in order to utilize.

Or whether or not we have to go out to do a new procurement.

OGS gave us an answer in the last couple of days while I was out of town that for our existing work we're doing with

SOE, the proposal that's before you today would be consistent with our ability to expand the scope of work we currently have with the contract.

Because we're just adding a language requirement to something that's already in the contract.

So that is consistent.

But to do this work to do the Public Service Announcements to get out to the community might be an expansion of the contract.

So we continue to monitor.

And what our options are and to meet.

And we hope to have a proposal to you very shortly.

Because we know we would like to get something out as preliminarily for the ballot marking devices for this year.

And a wider distribution next year for the use of the whole system.

>>DOUGLAS KELLNER: So there's nothing to vote on now.

>>BOB BREHM: Not for the Public Service Announcements.

Only on the updating of the portal for the required languages for voter education.

>>DOUGLAS KELLNER: Are there any Section 5 considerations under the voting rights act if we don't act immediately?

>>BOB BREHM: I don't --

>>DOUGLAS KELLNER: Well, let's just keep that in mind.

That we have preclearance requirements for anything new that we're doing.

>>TODD VALENTINE: Well, no.

To answer this question what this would do -- right now our statute requires the workers to be able to -- what this

would do is allow the poll workers that are multilingual to see the works it would be above and beyond what the

statute requires we think it's necessary because we do have poll workers who do work in multiple languages.

They should be able to take the phrases in different trainings.

This is a train the trainer.

This would actually be one line of compliance.

>>DOUGLAS KELLNER: All right.

Well, I wouldn't -- you know, keep in mind that at some point all of our training materials have to get Section 5 preclearance.

>>BOB BREHM: The training is not the -- it's the education that is the language.

It's not the training.

The training materials that we propose are in English.

For the development of the curriculum.

But not in the required languages for the training material.

It's the voter education material that we are making available that we believe is required to be in the five languages.

And that's the proposal that's before you.

>>DOUGLAS KELLNER: Or will be.

>>BOB BREHM: Will be.

As soon as we get to the next item.

>>EVELYN AQUILLA: New York City I give a lot of credit to.

Every single place you go to vote as you know Bob and Stanley we've gone together so often they have the translators right there at tables.

It's unbelievable.

Tables with just translators.

That reflect the community.

I'm not saying if you go into a Spanish community you're going to have Mandarin and Cantonese.

But they fill up the translators all over the place.

Probably in your County, too.

>>DOUGLAS KELLNER: Okay.

The resolution on the -- to transfer a portion of the HHS grant money to the state account for SOE to enhance voter

education online portal and to include all of the required languages.

That's Tab 4.

Now, is that being proposed for a vote.

>>BOB BREHM: Yes.

>>DOUGLAS KELLNER: Any discussion.

>> So moved.

>>DOUGLAS KELLNER: Those in favor say aye.
(Chorus of ayes.)

>>DOUGLAS KELLNER: Opposed?

It's a adopted.

Next is the selection of hearing officers and the update on the HAVA complaint.

And is this also the same as item 5?

That had been proposed for executive session?

Look at the agenda.

Look at the bottom.

It says agenda -- it's the same item.

Is there anything that needs to be discussed in executive session with respect to that complaint?

>>LIZ HOGAN: There's a potential.

>>BILL McCANN: A potential depending on what your response would be and following up with that.

But if you have a discussion we can go to that issue.

>>LIZ HOGAN: It's according to your guidance.

>>DOUGLAS KELLNER: I don't see any need to discuss it in executive session.

But if you want to, that's fine.

The --

(Offrecord discussion).

>>DOUGLAS KELLNER: All right.

So we'll discuss everything in open session.

And if you want to briefly -- I mean, my understanding of what you were talking about is New York City had suggested that they might not appear at the hearing.

And I understand that as of yesterday -- I'm just repeating for the public what I just told the Commissioners so that nobody is arguing that we are keeping anything publicly.

And yesterday apparently a phone call was it to you, Stanley?

>>STANLEY ZALEN: I received a call from Steve Richmond indicating that he would be here for the hearing.

>>DOUGLAS KELLNER: So I don't know that that's even an issue anymore.

And even if it were, I mean, we can't a make them come.

We can only order them -- you know, we can grant relief.

>>EVELYN AQUILLA: The gentleman from Staten Island will be there I presume.

>>DOUGLAS KELLNER: All right.
So Bill and Liz, why don't you just make whatever proposal that you want the Commissioners to vote on right now.

>>BILL McCANN: The statute calls for when a hearing is requested and scheduled that the Board each of the major parties or the two Commissioners must be there.
A point of hearing officer.
From amongst the Commissioners from each side.
Senior staff, one from each side.
So we're proposing the Board do that today.

>>DOUGLAS KELLNER: Specifically I think you're proposing that Allison Carr and Paul Collins be the hearing officers is that correct?

>>BILL McCANN: That's correct.

>>EVELYN AQUILLA: Are they comfortable with that.

>>ALLISON CARR: Yes, ma'am.

>>DOUGLAS KELLNER: So that's the motion is that we designate Allison Carr and Paul Collins as the hearing officers on this complaint.

>> So moved.

>>DOUGLAS KELLNER: Those in flavor say aye.
(Chorus of ayes.)

>>DOUGLAS KELLNER: Opposed?
All right adopted.
I understand that the overcontribution report is almost ready.
But that there were one or two tweaks yet before it's presented is that correct.

>>LIZ HOGAN: That's correct, Commissioner, yes.

>>DOUGLAS KELLNER: Thank you for getting that moving.
And I guess it's time to start on '07s here.

>>LIZ HOGAN: I can't believe it.
We're actually doing it in conjunction.

>>DOUGLAS KELLNER: Good.
Thank you.
All right.
Now -- oh, this is a big bear.

Okay.

New business.

Discussion of voting system change protocols for both Lots 1 and Lots 2.

And Kimberly, they put your name on the agenda for this.

>>KIM GALVIN: I think I drew the short straw on this one.

Well, just for the sake of clarity perhaps for the new Commissioner and the people that are in the room that

maybe don't know, if I could just summarize the current process.

And then I have not been privy to conversations with any of the Commissioners directly.

So I will summarize what I believe the new change protocol is to be.

Okay.

The current process for change to the machines, it's my understanding from working with them that any request for

a change to the machines needs to be made through the Board by application, tested, approval for application onto the system.

And then acceptance tested upon arrival at the warehouse.

Now, we seem to have run into a bit of a problem.

In that there's a lot of industry standards I think that would allow for the changing out of an end of life component to a

much less structured process than we had originally set up.

So we found that the vendors in the lab and I'm talking and I'm going to minimize for the sake of clarity but it's pretty

clear that these issues are the changing of a washer to a particular screw.

Or an off the shelf processor -- that's a bad one because it sounds important.

But in this case it wasn't.

They ran out of them.

So they get them from a different supplier.

Or a screw that meets the same specs has been changed out.

So when we realize that all of these things were happening, we kind of stopped it.

We advised the vendors that this is the process.

They then submitted what they believed even end of life issues to us for consideration.

And then we had a problem because now the Board only meets monthly.

And now we're stopping things because a screw gets changed out.

So what happened if we -- at the staff had a variety of conversations in which we are proposing for your agreement.

And to be honest, I still have reservations about this that I will express to you.

But the agreement as I think we understand it is perhaps tier the process.

The initial process being a clearly diminimus change such as the screw change-out.

Perhaps the co-executive directors would then be able to authorize the testing and the application of this to the machines.

And then continue the process of acceptance testing at the warehouse.

We clearly -- clearly there's no effect on functionality.

Clearly there's no -- predominantly no tests are ever even needed to verify that this change is a positive one.

Second tier would be -- and this is where we always get a little fuzzy -- a minor change would -- perhaps then the executive directors would speak with the respective Commissioners.

And explain to them what the change constitutes with the testing labs report that it is in fact minor.

And then they could authorize the application to the machines.

The machines could go back to the warehouse tested.

And the process could keep going.

Clearly without any Commissioner saying oh, time out, I think that's more than you think it is, we need the full Board or we need to do something.

More substantial.

Then the third would be clearly there's a problem with this.

We need to change it.

It affects the functionality.

The Board needs to both approve the application, the testing and the upgrade to the machine.

The problem with the third one is, these are the most significant that would require the Board approval, which

would in essence cause the most delay at the front end seeing as though we only meet monthly.

So -- and then any change that was made pursuant to the first two levels, there would be a certification report that would be made to the Board.

And the Board would accept the report.

The problem being that the change is already made and the machines have already moved through.

Now, I have personal concern that when we get into anything that's gray, it creates -- I mean, we can say a

minor change, what will that require?

And I say to myself: Well, we could come to gridlock again.

I mean, ESNS for example had sent us a letter requesting end of life authorization June 12th and June 13th that we just got approval to them last week.

So for example, the New York City ballot issue, now, we know that's coming.

We know that we need it.

We know they have to make it so it works.

It's at sys test.

Where does this fall?

Is this in level 2?

Is this level 3.

Because I would be requesting that the Board say to me Kim when you and Anna get this report from sys test that

this change is approved, you need to let us know and we can sit here today and say put it on the machines and test it.

Because if we wait until the next meeting of July or whatever, we're in a world of trouble.

So that's the problem.

And that's I guess the proposal where we are.

We need to create some sort of -- and I've spoken with both the vendors.

And you know, I think the will to get this done is there.
But we need to create fluidity or flexibility in a process without compromising security,
without allowing things to
go through without security that allows us to be more flexible in the application.
And the movement.
Because I think theoretically we're breaching a frozen system and this is not frozen.
And I would fully expect regardless of what they tell me that there would be more
changes like this coming in the
recent weeks that we're going to need to have an understanding of how to change.

>>DOUGLAS KELLNER: Is there a written proposal, Kim?

>>KIM GALVIN: I did not write one.
I could write one when we go into executive session.

>>DOUGLAS KELLNER: No.
This is the last item.
There's no executive session.

>>KIM GALVIN: Oh, there we go.

>>DOUGLAS KELLNER: This is -- I thought I had mentioned this to Anna yesterday.
I mean, Anna has sent me a couple of e-mails.
But this is too serious an issue that I would vote on without a written resolution.
So that's the first answer to your qualms.
I apologize to my fellow Commissioners.
But I feel a speech coming on.
Yesterday the voting system industry association delivered a very substantial report to the
election assistance commission that I found to be very interesting reading.
One point they made that I very much agree with them is that the cost of certification
testing is substantially greater now.
And they are talking about the Federal certification testing, which is significantly less
rigorous than the New York State certification testing.
The report is very misleading, however, because they say
the Federal certification testing is five times as great as what May said certification
testing was.
But they forget to remind everybody that NACED ever did effective certification testing
and that virtually every
equipment that they certified that has been subsequently reviewed has shown to have pass
their certification.
Notwithstanding substantial significant defects in failure to follow the standards that
NACED had allegedly certified them to have passed.
The report then goes onto identify very significant problem.
Which is that the current -- they complained about the current Federal registration saying
nobody is applying for certification.

And in fact there are only two systems that have active Federal certification applications going now, which just happened to be the same two systems that are in New York.

There are three or four other minor systems in addition to the dominion and ESNS applications.

But the ESNS and dominion applications before the feds are the two major pending applications there.

As well as before us.

And they go onto point out that the -- between the cost of certification and the rigors of certification, we're going to

drive the industry -- we're going to thin out the industry to the point where there won't be any competition left in the industry.

And that is the sad truth of where this is headed.

But the other side of this is that NACED certification was literally a joke.

It was meaningless.

And that anyone who relies on NACED certification is a fool.

And I say that directly to the other 45 states or so that are operating with in quotes NACED certified equipment and

that have not followed the examples of California, Florida, and Ohio and Colorado.

To essentially decertify everything that NACED certified and to put in place their own certification processes.

Next is the example of what we found in New York again where ESNS and dominion have both the brought us

equipment that has not been quality control tested before they brought it for certification to New York.

That literally thousands of defects in failure to comply with the guidelines have been identified.

Many of which have already been resolved.

But Sequoia still has more -- I believe under the last report still has more than a thousand defects in failure to

comply with the voluntary voting system guidelines outstanding.

ESNS is now down to under 1,000 defects I believe that were outstanding.

And you know, these will be gradually resolved.

But the problem is is that as they are resolved with fixes, then we have the question of really can we be comfortable

that the system shouldn't go through recertification all over again.

So that we are certifying a single system.

And this is a very troubling problem for me because they are manufacturing and designing this product on an ongoing basis, which is not a standard security operation.

If you go and look at the gaming industry on how it's designed and tested, the slot machines that are being

used in gaming parlors have better security and better certification standard testing than what we have for voting equipment in New York.

This is the fault of NACED for the system that they set up in the 1980s and 1990s and I guess their defense to this is they are

saying there was nothing in place before we started our voluntary certification and they are correct.

There was literally nothing in place before that.

Again there was not electronic equipment in place where we all knew what the risks were of lever voting systems or

punch cards or of the other systems that were being used for voting, including just paper ballots.

It was the introduction of electronic voting that was advocated in the 1990s that were advocated by the same leadership of NACED

without being oblivious to the security issues that finally got the public excited about the need for security on voting equipment.

And if we're going to be using electronic systems that operate in a manner that aren't fully transparent to the

public then the flip side of this is there will be this very costly certification process that's going to require a single

consistent product on the part of the vendor that is frozen in time until the vendor is ready to come up with the next iteration of the product.

And they can't keep adding screws and changing lines of code because the process by which it's counted is invisible.

And therefore, because it's not a transparent process, we have to substitute for the transparency the certification process.

Now, all that being said, we're talking about ballot marking devices right now that are not voting counting systems.

And ballot counting devices have very different security concerns than the scanning equipment that's actually going to be used for counting votes.

So I don't have a problem with relaxing the standards for ballot counting equipment -- I'm sorry; -- strike that.

Just the opposite.

I don't have the problem with relaxing the standards for the ballot marking devices.

I do have lots of grievances with the vendors that if I weren't aware that I've already taken five minutes of my

Commissioners time I would go into those issues on how ESNS sold New York City a system that doesn't comply

with the election law requirements for the New York City ballot.

How could they have done that?

And -- but it's only a ballot marking device.

It's not the end of the world.

Because all it puts out is a ballot that's going to be counted by either hand or by a scanning machine.

As to the scanners, vendors don't even think about doing that.

If you move a screw, you have to apply for a certification amendment.

And it's going to have to go through that process.

And it's going to be expensive.

So don't do it.

And you should come to us with your final product.

If in fact the product that you have now submitted for certification isn't ready to be used, step up to the plate and tell Judge Sharp that it's not ready to be used. So that we don't go through this process which is just a game where you don't have a product that complies with the current standards. And it's being changed every day because of additional problems that are found that don't comply with the technical guidelines.

>>EVELYN AQUILLA: Could I say something.

>>DOUGLAS KELLNER: Yeah, I'm sorry for going on so long.

>>EVELYN AQUILLA: That's okay.

No. 1 in the United States of America no vendor is going to walk up and say: My thing doesn't work.

Because, you know, let the buyer beware.

We learned that in the fourth grade.

That's the way it works.

No. 2, if we have small little end of life things that break and have to be replaced and they are the exact same

thing only a better screw, you know, everybody wants the best mousetrap.

We let them put in their better screw.

We let our people on had this staff use their judgement in what's Lot No. 1.

And Lot No. 2.

Now, Lot No. 3 is a different story.

Because that is to the heart of the project.

That is a much more serious change.

>>DOUGLAS KELLNER: Lot 1 is the scanners.

Lot 2 is the ballot marking devices.

>>EVELYN AQUILLA: Yeah but the changes we're going to make in Lot 1 and Lot 2 are small ones, right?

We are not asking to make -- to say yes to making --

>> I think we are using different terms.

And I think the term that you're searching for is tier 1 and tier 2.

>>EVELYN AQUILLA: Thank you very much.

Because we talked about this.

Tier 1 and tier 2.

I'm sorry; by using lot I confused you.

>>DOUGLAS KELLNER: The problem is how you define tier 1 and tier 2.

>>EVELYN AQUILLA: I'm saying trust our staff who are dealing with this every single day.

But the big changes --

>>DOUGLAS KELLNER: But we have to oversee the process.

>>EVELYN AQUILLA: But if we hold up the certification --

>>DOUGLAS KELLNER: If they are going to change a screw, then they have to explain why they are changing the screw.

And at least write a letter explaining why they are changing the screw.

>>EVELYN AQUILLA: To our staff.

To our staff, I'm not saying everything has to be brought to us.

Because I really think tier 3 things have to come to us.

They are important.

They change the whole makeup of the product.

But if they are doing ordinary cosmetic things, I don't even know if that's the proper word.

But small things that anything -- this could run out of and you need to put a new screw in.

This thing could not work right.

>>DOUGLAS KELLNER: Here is an example of one of the problems that came up all right that we already signed off on because we voted on it.

We just didn't realize the full implications of it.

Sequoia said on the ballot marking device, we're going to move the screen device so that instead of it hanging over

the right-hand side of the machine we're going to move it the back side of it.

But they didn't tell us that the hardcover for the machine would no longer fit on the machine.

And that at least they were going to try to slip it by the counties without giving them a hardcover.

And that the counties would have to substitute a soft cover for the hardcover.

And of course there's a real downside for the hardcover.

Now, Bob has already heard my lecture that staff should not have given that recommendation to us.

Without also observing that it would have impacted the cover.

And that by making that recommendation, that the vendor would then turn around and argue that it no longer had to give a hardcover on the machines.

So that these issues are often not -- sometimes you need multiple eyes to look at each of these changes so that

sometimes the movement of the screw might not be as benign as the vendor represents it to be.

>>EVELYN AQUILLA: Well, I think our staff has to figure that out.

Is this -- is this something that --

>>DOUGLAS KELLNER: I'm sorry.

But come on.

>>EVELYN AQUILLA: I know, you disagree with me.

>>DOUGLAS KELLNER: It's all right.

Evelyn.

I understand where you're coming from.

You're saying if it's a simple thing.

I'm saying with the ballot marking devices, I don't have a problem with that in principles.

Because it's only a ballot marking device.

With the privacy booths I don't have a problem with it.

Now, in fairness to the disability community,

we do want to make sure that the ballot marking devices are actually operational.

>>EVELYN AQUILLA: Absolutely.

>>DOUGLAS KELLNER: And so now the tradeoff is the certification process can help assure that the devices are fully operational.

But if it delays it to the point where the devices won't be available.

Then that's counter productive.

>>EVELYN AQUILLA: I think that's what could happen.

That's where we find ourselves.

Between the devil and the deep blue sea here.

>>DOUGLAS KELLNER: With the scanners I'm not going to get caught in this bargain with the devil.

If the vendors do not have a product that today complies with the guidelines, I'm not prepared to use it.

And I'm prepared to go back to Judge Sharp and to say: Judge, it would be unconstitutional to enforce the help

America vote act by requiring us to replace the lever voting machines with scanning equipment or DRE

equipment or any equipment that does not comply with the current guidelines.

>>EVELYN AQUILLA: They will say judge we just want to change a screw and look at what they are putting us through.

>>DOUGLAS KELLNER: And the answer is: Judge --

>>EVELYN AQUILLA: We have to be reasonable.

>>DOUGLAS KELLNER: Reasonable, yes.

>>EVELYN AQUILLA: That's the answer.

>>DOUGLAS KELLNER: But not oblivious.

>>EVELYN AQUILLA: Never oblivious.
When that happens, that happens by complete error.

>>GREGORY PETERSON: Are we saying then that we are going to pass on a machine that is not certified.
And I think that's what's being said here is that correct?
And very frankly I'm 100% with you.
If it's not certified, which means frankly, you want to put it in another term, it doesn't work the way you said it was going to work.
And if it doesn't work the way you said it was going to work, we're better with a lever just pushing down leavers.
And if the judge doesn't understand that then he's going to have to be made to understand that.
Unless something is certified and it's good and it's right I don't see why --

>>EVELYN AQUILLA: It turns around Gregory and he looks at these machines being used at every state around us fully.
They don't want to hear that.
They want to hear we are on the bandwagon, too.

>>DOUGLAS KELLNER: You don't know that.
Because this argument has never been fully articulated to Judge Sharp and he hasn't been called upon to decide on this issue.

>>EVELYN AQUILLA: I sat over there and tried to say to these three lawyers from the Department of Justice one who still deals with us a book that showed you every machine that has broken down in every state that had been verified.
He wouldn't even look at it.

>>DOUGLAS KELLNER: That's DOJ that's not the judge.

>>EVELYN AQUILLA: They wanted to know nothing.
They just said: We want those machines in here.
Period.

>>GREGORY PETERSON: This is like saying we're at a gas crunch and having an automobile here that can go 90 miles on one gallon of gas but by the way, we can't put safety belts in there.
Time out.
Certification.
What? I'm sorry; you can't put safety belts in there if you're going to do that we're saying the same thing here.
It's a little bit of a different animal.

But we're saying the same thing.
As far as I'm concerned not certified, doesn't work.
Doesn't work no safety belt no safety belt hey judge you want to make the decision to stick it in the people's eye you make the decision.

>>EVELYN AQUILLA: I thought Kim and Anna are asking us if we are just going to make very small changes which any machine or product does --

>>GREGORY PETERSON: I have though problem with that.

>>EVELYN AQUILLA: That's all I'm saying.
I'm not saying make the big changes.

>>GREGORY PETERSON: We're talking about again if it's uncertified or not -- if it's a product that cannot be certified, it doesn't pass the muster, that's a different story.

>>EVELYN AQUILLA: I'm not saying that.

>> JIM WALSH: My turn.
I'm going to be the true politician and agree with everybody here.
I think everyone is making an excellent point in their own argument.
I don't think the two of them are necessarily opposed.
There's two very serious questions here.
One, I'm -- the first note I wrote down was minor.
Who defines minor here which is a very difficult term to throw around here.
I don't want to see us create a bureaucratic log jam.
I don't want to see us create a problem for people that doesn't have to be as a result of our work anyway.
And I would like to ask one more time for another -- Kim to have another bite of this apple.
You've heard all of the debate here.
Can you do something in three or four minutes?
And also, please, I know this is the last -- this is not to be -- this is -- staff will report on the change and the Board will ratify it at the next meeting.
You have some time I presume to do something here.

>>KIM GALVIN: If I can just say that it's not -- it's not like they send this change order to me and I say the screw -- we have to take in on the cover.
And I understand that.
But the staff gets the change.
Our staff looks at it.
Independent testing authority looks at it.
NYS tech looks at it if it's a security risk.
All these eyes are looking at these changes to ensure that it's a nothing diminimus change that we're asking you to allow us to move forward.

But that being said, I mean, we have already allowed changes based upon conversations last week.

And I'm kind of -- I'm kind of stuck because I have the changes that we allowed to make based upon assertions from each side and their Commissioners and whoever they got the word from that have been put on these machines and are tested and are ready to go out.

>>DOUGLAS KELLNER: Ballot marking devices.

>>KIM GALVIN: Yes.

>>DOUGLAS KELLNER: That's okay.
Because they are not voting machines.

>>KIM GALVIN: Do you need -- would you like me to report? Or --

>>DOUGLAS KELLNER: I trust the reports that Anna has given me on those changes. If any of the other -- I don't need the detail.

If any of the other Commissioners do -- but that's because they are ballot marking devices.

And not -- and I don't want the vendors to get into this incredibly sloppy frame of mind. Where they think they can do the same thing for the scanners.

>>KIM GALVIN: I believe the vendor made the assurances to me at least the vendor in the room I spoke to yesterday

that all of the changes for these or the New York orders have been made with regard to the ballot marking devices.

And that -- but we still have the New York City patch issue that I don't know where it falls in the scheme of 1, 2, 3 --

>>DOUGLAS KELLNER: We were going to do that next.

But if you want to do that as part of this discussion, then you need to sort of frame out that issue.

>>KIM GALVIN: We're going to do that next?

>>DOUGLAS KELLNER: Right now we're talking about whether we're going to go along with minor changes in the procedure for minor changes.

And I guess the -- I think we actually are pretty much in agreement, Evelyn, that all four of us are in agreement.

But you need to write it up.

And the hardest part of the write-up will be defining what a minor change is.

>>KIM GALVIN: I hear ya.

I mean, I understand what you're saying.

>>DOUGLAS KELLNER: I don't know if our NYS tech colleagues have any suggestion on how to define that.

If they do, you'll tell Kim.

And Anna.

You know, so I invite you to participate in that process.

You know, you've heard what we all said in terms of our value system here.

And our value system is that at least with the scanning that we have a secure system that complies with the guidelines.

And that that's the priority over being able to expedite changes.

>>KIM GALVIN: I understand that.

>>STANLEY ZALEN: Can I say something?

With respect to certification, I think the staff recommendation is that we don't go ahead, whether it be the scanner or the ballot marking device with making even the smallest changes, let's say it's a washer.

Without it being certified.

You were concerned about certification.

>>DOUGLAS KELLNER: Documented I think it was.

>>STANLEY ZALEN: Well, no.

I think what we were going to document for you is that we were going to -- that we had sent that washer -- that we

had sent that washer down to sys test without you're deciding first in order for sys test to run its test to determine whether it should be certified or not.

We would document for you that we sent the washer down there before you made the decision.

But in the end, sys test still has to certify that that washer -- that that washer still has to pass certification.

So I don't think --

>>DOUGLAS KELLNER: No Kim is shaking her head.

That's not the proposal.

And that's why we need to put it in writing.

So there's no ambiguity as to what we agreed with.

Stanley, if I cut you off --

>>STANLEY ZALEN: That's all right.

If I'm wrong I should stop.

>>KIM GALVIN: That's what I said at the beginning when I said I didn't understand if everybody was on the same understanding.

Because every time we bring up a specific there's a difference of opinion as to what constitutes minor, whatever.

And it's really -- all I can again stress is in my opinion, we have to come to some change process resolution.

Whether it be with all due respect at the Board meet more often or weekly or that we have the ability to -- we can write it down.

We'll write it down.

I didn't realize --

>>DOUGLAS KELLNER: Kim, if we need Commissioner meetings in order to comply with the Court order,

I don't think there's any question the Commissioners understand we have to meet.

>>KIM GALVIN: Right.

I understand.

>>JAMES WALSH: One more comment.

I'm going to agree with Commissioner Evelyn Aquilla.

I know how dangerous this issue is getting into.

The first question I write down is minor but who is going to define minor.

But I do agree with her we have to have confidence in you and the professionals to do the job.

If you make a mistake and you find out what minor is when you do that.

But we have to get that accomplished here.

We can't be nitpicking and meeting every other day because now we have a screw that's going from the left side to the right side.

I think we have to have common sense.

I'm more than happy to give you my confidence everybody around this table do your job and --

if you miss you're only going to get one strike and you're out.

>>EVELYN AQUILLA: I got confused there.

I'm sorry about that.

>>DOUGLAS KELLNER: So you'll get something written up for us?

>>KIM GALVIN: I will, but we still -- I don't know -- I think we have --

>>DOUGLAS KELLNER: Well, give us a list of specific questions you want us to answer.

You have to -- Todd, I mean, I don't give blank checks on this stuff.

Because -- so I want to know precisely what it is that you're asking the Commissioners as a body to sign off on right now.

I don't have any problem in general with what any of the Commissioners have said.

But I'm not giving a blank check.

>>EVELYN AQUILLA: Well, I think that Kim has seen that from all of us.

>>TODD VALENTINE: My only issue is finally deciding that language and time.
Because there's -- that's our factor that's mitigating.
We may have to --

>>DOUGLAS KELLNER: If it was so urgent, there should have been a resolution before us today.
And I thought I made it clear to Anna that I wasn't going to vote on this without a resolution.

>>KIM GALVIN: If I had thought we needed a resolution, I would have prepared one.
Because it's critical.

>>DOUGLAS KELLNER: It's only 2:30.
I'm prepared to stick around until one gets written.
But I'm not --

>>TODD VALENTINE: That was not made clear.

>>KIM GALVIN: If we can break, we can write one.
I don't know.
We can't write one quickly until we define minor.

>>EVELYN AQUILLA: Do you have a lot of changes facing you right now.

>>KIM GALVIN: We have one pressing issue.

>>EVELYN AQUILLA: Put it on the table.

>>KIM GALVIN: That being the New York City ballot.

>>DOUGLAS KELLNER: You have to do it in the technical sense of what is affected and what is not affected.
(Offrecord discussion).

>>DOUGLAS KELLNER: Bob and -- would you be able to come up with a definition of what kind of change would be diminimus or inconsequential?
You know, is there a way of using language sort of like that doesn't affect any other operation or.

>>BOB BREHM: I think the simple answer is no.
It's really impossible to figure out what is diminimus without evaluating that particular change.
One part of internal conversation we had is there is a process that can be followed where a sys test and us and the Board would be reviewing the change submitted.
If it had been previously tested on another machine by sys test for example or requires testing, they would do the testing.

So every piece would go through the process.
Some of them may not have to go through the whole testing process if it was already tested.

So that the definition of what's minor is difficult.

If --

>> If it doesn't change version number and product number.

>> Some of the changes that have come through already have been on the same problem and have already been tested by sys test on the Federal side.
They just aren't on the machine.

>>DOUGLAS KELLNER: I'm not an expert on the manufacturing process.
But to what extent do vendors of high quality equipment actually track hardware changes?

>> I don't think the process is perfect.
I really don't.
And I would turn to the vendors to talk about their change management process.

>> But their track record --

>> The voting industry certainly seems different from other fields.

>>DOUGLAS KELLNER: Yeah, the voting industry sells crap.
And that's the problem.
So citing the voting industry as a standard for how to track changes is absolutely meaningless or counter productive to me.

>>EVELYN AQUILLA: ATM machines.

>>DOUGLAS KELLNER: Yeah.

>>EVELYN AQUILLA: They are really done well.

>>DOUGLAS KELLNER: Premiere manufacturers ATM machines.
I'm sorry.
I mean, is there a way to write this up?
As I said, I don't have a problem with the system at all for the ballot marking devices.
So if this resolution is going to apply openly to ballot marking devices -- apply only to them, I'm prepared to orally you know just write a sentence.

>>KIM GALVIN: If we could get an oral group it would go a long way.

>> If I may, Commissioner, I don't -- and I've been sitting here listening and the last thing I want to do is jump in this dispute but I don't have a sense as to whether the four Commissioners sitting there seem to say that you're willing to delegate to the staff issues with respect to ballot marking devices. However, with respect to scanners and the like, that's a whole different world.

>>>DOUGLAS KELLNER: That's what I'm saying.

>> Is that the consensus?

That would allow us to move forward with the ballot marking devices in time to have one in every polling place in September.
If that's the consensus --

>>>KIM GALVIN: The Board doesn't want to know about changes to the DMVs?

>>>DOUGLAS KELLNER: Okay.

Now, if you want I can take Anna's memo on me to this and get language.
Or Kim, if you have language that at least you can dictate for the record on what the resolution is that we're passing and apply it only to ballot marking devices I think we're ready to adopt it.

>>>KIM GALVIN: I'll need 15 minutes.

>>>DOUGLAS KELLNER: All right.

I have -- let me read what Anna wrote me and maybe we can do that.
(Background talking.)

>>>DOUGLAS KELLNER: What is it you want us to do.

If you think you understand, then you dictate it.

I mean, if you were planning to have us vote, I mean, what is it that you actually wanted us to do?

What did you put in your summary.

>> I don't have vote in my notes at all.

It was only a discussion.

Plus our own internal --

>>>DOUGLAS KELLNER: For now -- for now you have a consensus of the Commissioners that they have authority to move forward with diminimus changes in the ballot marking devices without going through a formal recertification process.

>>>TODD VALENTINE: And for analysis by sys test.

I understand to confirm the diminimus change.

>>JAMES WALSH: All right --

>>DOUGLAS KELLNER: All right.
Now all we have to do is repeat what we just said.

>> You should preserve the right if an issue does right --

>>TODD VALENTINE: The problem is at that point -- it's too late at that point.
That's why that's not an option for DMVs.

>>DOUGLAS KELLNER: Let me see if I can find what she wrote.

>>TODD VALENTINE: If we can take a short recess, we could probably just get it
together ourselves.

>>DOUGLAS KELLNER: We've effectively taken a short recess.
Without clearing the room.
Todd, we should just dictate what we just -- what we just said, right? Because that's what
we've agreed to.

>> It's on the tape.

>>DOUGLAS KELLNER: Okay.
It's on the tape.
It's on the tape.
So that --

>>EVELYN AQUILLA: Paul's last paragraph in there deals with that I think.
I think in quickly looking at it, I think that's it.

>>DOUGLAS KELLNER: That's what we just said.
Why don't we just agree to the two sentences --

>> Let's agree to it and that's the consensus.

>>DOUGLAS KELLNER: All right.
That we have agreed that the staff may authorize diminimus changes in the ballot
marking devices upon
consultation -- consultation with NYS tech and sys test without the need of formal
certification or -- I'm sorry; without the need for formal certification of the changes to the
device.

>> The diminimus changes.

>>DOUGLAS KELLNER: The diminimus changes to the device.

>>KIM GALVIN: We still have one more issue, though.

>>DOUGLAS KELLNER: The ESNS issue is separate on this?

>>KIM GALVIN: No.

>>DOUGLAS KELLNER: We'll take up ESNS.
So we've agreed on this language.

>>TODD VALENTINE: Yes.

>>DOUGLAS KELLNER: That the staff is authorized to allow diminimus changes on the ballot marking devices on consultation with sys test and NYS tech without the need for a formal application for certification of the update.

>>KIM GALVIN: May I ask a clarifying question?
Does that necessarily mean that the three tiers has gone to two.
So there's diminimus and then there's formal Board application?
I'm sorry; but I need to understand where the Board is so that I can try to help move the process along.
Because we're going to get something that's not diminimus that required one simple test.
And we are done.

>>DOUGLAS KELLNER: I think from the staff point of view the difference -- that the Commissioners in consultation with you will define when they need to bring it to a formal vote of the Commissioners. And obviously you're going to be consulting with the Commissioners to find out where that gray area ends.

>>KIM GALVIN: Okay.

>>DOUGLAS KELLNER: And I think that will work just fine.

>>KIM GALVIN: Okay.

>>DOUGLAS KELLNER: And maybe on things like this we're better served by having Anna and Kim jointly contact all four Commissioners instead of Anna contacting the Democrats and Kim contacting the Republicans.
And not necessarily having the same agreement on everything.
All right.
So there's a consensus on that.
Okay.

Then the last item to deal with is the issue of how to deal with the revisions to the ballot marking devices manufacturing by ESNS for New York City.

And Kim, why don't you frame specifically what it is you want the Commissioners to do then if it's complicated, we'll let you know if we need more background on it.

>>KIM GALVIN: Well, it clearly deviates from the process that you just set up. So I would say that after -- I'm going to ask Bob Warren if he would just describe the change for you.
Once you hear what it actually does, I know it's in testing.
I know New York City needs it.
I know it's seven to ten days out.
If we could get an agreement that based upon a report out of sys test labs and NYS tech reviews it, that the change is a satisfactory approved change.
If we can make that change.
Because I don't think this would be considered a diminimus change.
If we can have that applied to the machines and continue the testing and when the Board meets in July after seeing the reports and orally agreeing for us to allow to occur, can -- allowing that to occur.

>>DOUGLAS KELLNER: Only a ballot marking device.

>>KIM GALVIN: Only a ballot marking device.

>>DOUGLAS KELLNER: Now the problem to me is the issue here is not a security issue.
The issue is does it work issue.

>>KIM GALVIN: Right.

>>DOUGLAS KELLNER: And that's what the city is concerned about.
And you know, a little bit of a scold that you know we approved this ESNS device in January.
And then again in February without anybody alerting us to the fact that it did not comply with the statutory requirements for the New York City ballot.
Now, I understand, you know, we did this expedited review process.
Although, it wasn't that expedited.
It was eight weeks of -- and it wasn't that cheap, either.
It was pretty expensive process.
And for the machine to go all this way without learning that it didn't comply with the New York City ballot requirements,
you know, the city has a gripe and says the State Board let them down.

>>KIM GALVIN: But they did have their testing machine months ago, too,

>>DOUGLAS KELLNER: The city did.

>>KIM GALVIN: Yes they did.

>>DOUGLAS KELLNER: So me missed it, too.

>>KIM GALVIN: They missed it.

>>DOUGLAS KELLNER: The vendor missed it, we missed it, the city missed it until they actually set it up.

>> So did the city's consultant missed it.

>>KIM GALVIN: So --

>>DOUGLAS KELLNER: Well, you know, so again -- the issue to me is not do we need formal Commissioner approval for the change.

That's not the issue.

Because I'm willing to pass on that.

It's does it work?

>> That's what the testing has to determine.

>>DOUGLAS KELLNER: Yeah.

And the city should be involved in that.

We should do whatever the city wants to do to make sure that their product works, especially in view of the fact that we didn't identify the failure previously.

>> To that extent I understand.

>>DOUGLAS KELLNER: Teas my -- I'm not trying to dispute.

>>KIM GALVIN: Yeah, it works.

>> So we could have New York -- we could have ESNS set it up either here or in New York City.

>>KIM GALVIN: They are working hand and glove to New York City.

>> We could send somebody to New York City to look at that machine yet if we're both going to test it to see if it works either our people have to get to New York City or New York City has to get here or to do it on both machines.

>>DOUGLAS KELLNER: Which isn't realistic because it's just software.

>> Which probably --

>>KIM GALVIN: We need to get it out of the testing lab first.

>> We could start working on it immediately if it's put on one machine.
Bob and his point could start it.

>>DOUGLAS KELLNER: The point is we want to make sure it works.
We're not here to expedite it.
To do a quick, sloppy and dirty fix.
We want to make sure that it works.
And that the disabled voters of New York City are going to be better served by this change than they would be if there were no machines there at all.
Because --

>> They can print the ballot landscape on the ballot marking device if we -- that's still an option.

>>KIM GALVIN: As long as the Board has agreed that this change, if it works can be applied we can set it up everywhere and start to test it.
Parallel tracks is not a problem.
It would just in the long run help us move the process that much quicker.

>>EVELYN AQUILLA: I think what he's saying is we need New York City to be involved.

>>KIM GALVIN: They are in the loop.
Believe me New York City is clearly involved.
Just in the follow-up I'm sorry to bring --

>>EVELYN AQUILLA: On Election Day we can't have it breaking down.

>>KIM GALVIN: What do we do with the New York City machines that they refuse to take --

>>DOUGLAS KELLNER: Wait.
To me that's a strictly New York City call.
So the two issues I got a memo Monday or Tuesday saying that there were two options on how to deal with the machines.

>>KIM GALVIN: No not the patch, Commissioner.
The fact that the ones that we have now don't have the patch applied.
But New York City won't accept them.
And we can't divert them.
So we have no more space so we can take no more for the other counties.

>>DOUGLAS KELLNER: Why can't you divert them.

>> We need authorization from the Board to divert them.

>>KIM GALVIN: To Erie.

>> Because they need the patch.

>>DOUGLAS KELLNER: Why do you need Board authorization to do that.

>>KIM GALVIN: We are erring on the side of caution.

New York City has said we're not going to take them and then they haven't told us that we can send them somewhere else.

>> The purchase order process that you approved -- I don't know if you approved. That we set up in the early part and that we shared with the Court was a first in first delivered.

And that is what we have done.

And whenever that has changed for whatever vendor, while we said it can be diverted, we make sure that it's by

mutual consent the County that the machines are being diverted a away from have to content.

It's easy I want my machine.

The County getting it is going to say yes.

But what we didn't want to happen is to take it from all of the smaller counties and give them to all of the larger

counties just because one I want it I have a bigger contract I'm going to get it.

So that's the concept why we put it in there.

I know now we're --

>>DOUGLAS KELLNER: But the Commissioners didn't put that in.

That was just something you guys worked out.

Which is fine.

>> It's early on in the plan.

>> You may be very well correct and perhaps I've misanalyzed the situation perhaps this is the type of thing

the commission would be more comfortable delegating to staff as they may do with it.

Okay.

Very good then.

>> Does the commission accept that concept.

>>EVELYN AQUILLA: Will they have enough machines in New York City.

>>KIM GALVIN: Eventually.

>> What do you mean by eventually?
2009.

>>KIM GALVIN: This isn't going to affect them because these machines don't have the upgrade on them that they can use anyway.
They can't use them.
But the other counties can.

>>EVELYN AQUILLA: They can't be fixed to accommodate --

>>KIM GALVIN: They can't be fixed.
Once we get the report.
Then it will take -- once we have three weeks to do the upgrade as opposed to just --

>>DOUGLAS KELLNER: There's only one other county, right?

>> There's three.

>>KIM GALVIN: Erie, Rockland, Albany, New York City.

>>DOUGLAS KELLNER: Premiere is out now.

>> Yes.

>> So it's all ESNS.
Okay.
So we're all agreed on that.
I think that -- go ahead, Todd.

>>TODD VALENTINE: Next Board meeting.

>>DOUGLAS KELLNER: That's what I was going to ask.
What do you propose.

>>TODD VALENTINE: Right now in order to coincide with two things one the petition process or the ruling on petitions, it's going to have to be some -- right -- and also to meet our obligation of HAVA complaint to resolve that within 90 days in some fashion, we would suggest July 22nd.
That's a Tuesday I believe.
Because that gives --

>>DOUGLAS KELLNER: I think we can go that long without having a meeting.

>>TODD VALENTINE: That's the outside date.
That's a date we have to have it by then.

The filing week is the week of the 7th through the whenever that is the 10th there will be no petition rulings on that or really the next week usually.

>>DOUGLAS KELLNER: It's okay with me.
I would just prefer meeting more frequently.

>> I don't think we're suggesting you don't meet before then it's just we need you to meet at that point for these things.

>>EVELYN AQUILLA: What's the date.

>>TODD VALENTINE: 22nd.

>> You'll have to meet at least then.
If you want to meet before then, that's fine.

>>DOUGLAS KELLNER: Greg, is that all right with you.

>>GREGORY PETERSON: That's fine.

>>DOUGLAS KELLNER: Okay.
July 22nd at noon.
If we need an earlier meeting, we'll get in touch and set one up.
Anything else? Motion to adjourn?

>> So moved.

>>DOUGLAS KELLNER: All right.
We stand adjourned.