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Jim Walsh: Good afternoon everyone. My name is Jim Walsh. I'm going to be the Chairman of today's meeting. I'd like to introduce my fellow commissioners and everyone around the table and audience if you would please and then we will commence.

Douglas Kellner: Douglas Kellner

Evelyn Aquila: Evelyn Aquila

Gregory Peterson: Gregory Peterson.

Todd Valentine: Todd Valentine

Paul Collins: Paul Collins

Tom Connolly: Tom Connolly

John Conklin: John Conklin.

Dave Loomis: Dave Loomis

Joe Burns: Joe Burns.

Bill McCann: Bill McCann.

Liz Hogan: Liz Hogan.

Bob Brehm: Bob Brehm.

Josh Ehrlich: Josh Ehrlich State Senate

John Lento: John Lento, ES&S.

Tarry Breads: Tarry Breads, Election Operations.

Bob Warren: Bob Warren, Election Operations

Jim: Thank you all very much. Our first order of business will be the meeting of the board of canvassers. I would like to call upon Kim for, where is Kim? Do you have anything you want to say while we're waiting for Kim?

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Todd Valentine: This ah yes, this members of the certification is a result of votes that need to be canvassed with regards to the court action that was raised in 2010. These are ballots that were otherwise should have been canvassed but for some issue in the county board they were not so to the court order, the boards canvassed the ballots and the results have come in and it was a very small number of ballots so there was no change in the overall result in any race but so that the votes are accurately recorded which was part of the court order, we need to amend the canvassed other votes.

Jim: This doesn't require a vote, just requires signatures?

Evelyn Aquila: One more to go, two more to go.

Doug Kellner: I move that we accept the restatement of canvas as prepared by this staff that we're signing.

Jim: All in favor?

All: Aye

Jim: Opposed? Carried.

Doug Kellner: Kim you want to just briefly explain why we did the recertification?

Kim Galvin: Sure. Back in 2010 the United States Department of Justice sued us for noncompliance with the mail-in deadlines for the UOCAVA ballots. It's been an ongoing process of negotiation and surveying the counties which we thank them for their cooperation. The judge's order and earlier this year I believe it was February 14th of this year required that the state board continue to work with the counties to ensure that the 2010 ballots were accurately reflected in county certifications. The end result was the changes that you just recertified and basically ends that particular...

Doug Kellner: There were 7 ballots that were determined that should have been counted that

Kim Galvin: Nine

Doug Kellner: Nine okay.

Kim Galvin: Seven from one county, two from another. There were 7 ballots in total statewide.

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Doug Kellner: So we've changed the totals for the final result of the 2010 elections by 9 votes?

Kim Galvin: Would just lead me again to you know

Doug Kellner: Out of 4 million?

Kim Galvin: To warn, not warn the counties but impress upon the counties that you know we do have another mailing deadline coming up for the general elections, yeah on the 22nd of this month and in order to avoid further exercises such as the one we just completed, that it is labor intensive and time consuming, we would just encourage the counties to once again make sure they meet that deadline.

Jim Walsh: I thank you all. We've had the motion made, seconded, voted on and approved. That will conclude the meeting of the Board of Canvassers. We will now proceed into the regular meeting of the Board of Commissioners. The first item of business is the minutes of the August 7th meeting. Could I have a motion?

Doug Kellner: I move that we adopt the minutes as drafted

Greg Peterson: Second.

Jim Walsh: Opposed? Carried.

Item 2, executive updates Bob Brehm, Todd Valentine.

Todd Valentine: Well you know the primary is tomorrow so we continue with our operations for that. The results with regards to the independent petition filing period are the challenges before you and we are following up with the counties as far as their preparation to mail out as required under our court order surveying that they make sure that they tell us if there any issues with regards to mailing out the military ballots next week. Those results, those surveys are due back Friday and then we're ready to follow up with them on Friday or Monday if we haven't heard from them.

On the administrative side, we are looking to move out of our rented storage space at the end of this month. Actually the movers are coming next week for a number of this stuff and then our intention is to pick up some of the materials and of course will be archived over the summer and now its time to do that. So that would consolidate all our, all our operations into one building. Weird, I don't think we've ever had that so. And the upside of that is that that will give a grand total where we spent approximately \$6000 a month on rent on the rented space so that's that's another savings to the state so that's an

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improvement there. But that also has forced the storage space in our basement is not quite as large as the storage space we have now, but we have accumulated over the years a large, a lot of garbage or just stuff we didn't throw out because we had the space, so its forcing the units to go through and purge things that you otherwise leave. I know we have an old level voting machine down at the warehouse, several other voting systems that and the vendors won't come and pick them up and we just haven't gotten rid of them because once they never went through a certification just sitting there and boxes of other stuff. So nothing surprisingly nothing really down there exciting. I found some nice cool rubber stamps that I don't know what to do with but from days gone by when we used rubber stamps approved on it.

Doug Kellner: EBay Todd?

Todd Valentine: Maybe

Doug Kellner: Somebody may want a lever voting machine.

Todd Valentine: We have reached out to the state museum with regard to the lever voting machine and understand the historical nature of that, but Nassau has a whole warehouse full of them.

Doug Kellner: So does New York City and it cost \$750,000 a year.

Todd Valentine: And I know the Smithsonian has them already so it's not like a lot of museums are really chopping to get them

Evelyn Aquila: What I wanted to ask you Todd, if any of this stuff that we have down there, do we have a time limit on it? Do you know what I mean?

Todd Valentine: We do. That's a good point, we do have record retention scheduled, we have, we were again this is a good exercise to go back and see what our record retention schedules are through the state archives. And a variety of things so some of them are quite long for example campaign finance records are permanent so when they leave our possession we hold on to them for quite a long time because we often go back to refer to them. And it's easier to refer to them if we have them in our possession. We then send them to archives so they are going to have to schedule to pick up that. Petitions that get on the ballot are only saved for a 2 year period or 4 in the next cycle if it happens to be a much longer office, but generally is 2 years so we destroy those at the end of the calendar year from 2 years afterwards so little more follow the instruction date. Court cases unfortunately we're stuck with saving for a minimum of 10 years or as long as the case is still alive so that can mount up you know you're stuck with those for quite a while for

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petition cases but that's the record of retention schedule so. And we're cleaning those out but yeah we have revisited those and we can revise those if we need to but I don't know if there's anything we have to really worry about at this time.

Bob Brehm: I think one of the other items the state Attorney General's Office has a Civil Rights Bureau, they have sent a letter out to 10 of the counties asking how those counties are planning on complying with the voting right portion of providing instruction materials, the ballots in all the languages, mostly these are Spanish language counties. So we've heard from some of the counties. We did hear from the Attorney General's Office. What we did was make a list of all the items that we have already translated and provided to the counties that are voting rights act counties that already had copies of everything in Spanish, just to help them not have to invent the wheel. They're already done, here's the material we already have.

Evelyn Aquila: We have many different languages especially in the City that, I mean Chinese and you know several different dialects and...

Bob Brehm: We'll we've we've translated them in all the other languages but in this instance it was Spanish language so we we made sure that the counties had that information so that they can help role it out as early as possible for these elections and that's been helpful.

One other item, I know Todd touched on it and Kim and probably will until it's completed, but we've sent three reminders out to the county, one a guide and then you know there have been several phone calls in request for clarification on the Judge Sharp's requirement that we timely send a ballot with federal offices by not later than September 22nd. The state portion of the ballot will not be completed until our deadline which is October 1st. A number of issues go into that. You know the primaries have to be completed, the judicial conventions have to be held, any local you know propositions, there's a deadline that needs to be filed. So those military voters would see a second ballot for state and local by that October 30, 2 days before the election deadline. So we updated information sheet that will go to the SCYTL website with the instructions for military voters that download a ballot, when they, you know when that they should look for a second ballot, to why are they getting a second ballot? And how to send them both back so that they are timely and can be counted. So we did that work for the SVYTL side, came up with you know two different envelopes so that the board would understand it's not a duplicate, they're supposed to have two. This is the one that has the federal ballot; this is the one that has the state level offices. So we provided that instruction from the co-executive director and everybody else who worked on it to all the counties and then we've had several iterations of why can't I do it some other way? So we've been consistent. No they can't do it another way, this is the way to do it. This was part of

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Judge Sharp's order. It's it's the guidance that we've given to them, one to help make sure that it's done, that the military voters have all the choices and can accurately get them back to us. So until its done you know, we're all, we're all doing the reports to make sure that we comply with Justices reporting, that it's done and how many are there.

Evelyn Aquila: We reported and sent a copy of that to Judge Sharp.

Kim Galvin: We do continually, we do reporting to Judge Sharp.

Evelyn Aquila: Yeah I think he needs to be you know...

Kim Galvin: He's requiring it.

Evelyn Aquila: Oh he is okay good to know. You work so hard, you people work so hard I'm very proud of you all.

Jim Walsh: Legal Kim Galvin please.

Kim Galvin: Thank you commissioner. The unit has worked with the operations unit to review the documents and finalize them and share the reports that we're going to get to later in this meeting. As I said before earlier, we've had continuing and constant conversations with the Department of Justice both in finalizing the 2010 ballots that you just resolved, and also the continued monitoring of compliance as we seem to have quite a few elections this year requiring all reporting requirements and the counties have been complaint with us. And Tom has done a great job with that. We have you know obviously monitored the regular case load that we have before us. We Paul argued in the appellate division on the Nassau County voting machine case that was held September 5th and we're awaiting a decision on that. We have specifically Paul has made several pre-clearance requests that have to do with the various cases and sign-ins and voting screens that voters may see in the upcoming elections and in addition, we have spent a great deal of time most recently on discussing and negotiating and conversing with the plaintiff's on both the over vote, the double vote litigation cases. If you recall and for those listening, we entered into consent decrees in September of 2010 and I think it was February or thereabouts in 2011 requiring certain screens to be in place for the

Bob Brehm: 11 and 12

Kim Galvin: 11 and 12 for the 2012 general election. And that I believe are contained in the certification software upgrade that we're going to discuss so I don't know if we can discuss those commendations more fully when we get to that particular item on the agenda. But they were a great deal of time and energy building wide to draw up the plans

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for those cases. It has taken a lot of time. And other than that, you know we answer the many calls that you have leading up to a primary in the state which is soon, tomorrow. And, I lost track there for a minute. And that's about it.

Doug Kellner: That's quite a bit.

Evelyn Aquila: It sounds so easy when you're just talking about it but...

Doug Kellner0: Now have we already discussed Judge Prudentie's letter? Is that; did that come up at the last meeting? I don't think so.

Evelyn Aquila: No we didn't not...

Doug Kellner: So maybe you or Paul could just talk about ...

Kim Galvin: Well I could take a shot at it, I wasn't at the meeting but I believe that Paul and you Commissioner Kellner attended a meeting with Judge Prudenti in which a directive was given statewide to the courts on ex parte and impoundment orders and their requirement to give notice to the Board and relevant parties. And so while I am not anticipating an impoundment order coming today or tomorrow, certainly we would advise all that we talked to you that would need to be notified if there is one. I don't know if that, I wasn't at the meeting so I don't know

Doug Kellner: Well she wrote an excellent one-page memo to all of the elected and acting justices of the Supreme Court throughout the state reminding them that the, that the court rules require that there be notice before there is a temporary restraining order so that when people apply for orders on election day, that would affect the administration of the election that they have to do that on notice. So the county board should you know alert their county attorney's that that is the requirement. And I appreciate what's involved as the state board policy which is that we have taken a more active position now when we get these orders if the orders actually change the statutory scheme and ...

Kim Galvin: It is difficult and as you know a lot of them come well historically have come already executed and so that's leaves us in a bind but I know that we've put forth decisions on a variety of things that we've reached consensus on.

Evelyn Aquila: We are being involved more and more. I can remember a time when I first came on this board, it was we'd sit here for 20 minutes and get over the work and it was nothing to it, anybody could follow it. But we are being involved more and more by the courts, by the state in the elections in this state and I think it is to make elections safer and sounder and you know sometimes they can get us crazy. But there's an awful lot of

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work and I congratulate this staff for taking on all of that because it's not easy. And I don't think Judge Prudenti's order is, I think its pretty sound in a way. I may be...

Doug Kellner: I am I am grateful that she said that...

Evelyn Aquila: I really think that that is very good you know. And of course she's a woman judge, let's note that.

Doug Kellner: Noted

Evelyn Aquila: As the only woman on this board, let me just say thank you Judge Prudenti.

Evelyn Aquila: The voice of reason is heard.

Jim Walsh: Any further questions of Kim? Thanks Kim.

Election operations, Joe Burns

Joe Burns: Ah you have a written report. A few items beyond that. We had 24 total independent nominating positions filed this year. The Asset Management Project which I'm sure everybody's heard about for many years now is moving forward. Anne and I did our final executive scores on Monday and sent that over to OGS immediately afterwards. We are, the ball is now in their court. Tomorrow of course, we have the primary election. Our staff will be, will be here early and will be going home late fielding calls from counties. Hopefully it will go well but the staff will be here I believe the whole, the whole day. As we're wrapping up the testing with the upgrades, we'll be turning our focus now to the central count testing. Finally on usability, we've been receiving ballots from the county boards of elections. Unfortunately we, I can't say we have 100% of the counties that have gotten us their primary ballets, but Phil Jorzak and I will be working together before the general election to make sure we get every counties ballot in a timely manner. And oh and actually this might be the most important thing I mention. It wasn't mentioned last month, but we've had one of our staff members leave us, Frank Bongiorno who is a terrific member of the election operations staff and more importantly a terrific human being, but, unfortunately he had some health issues that he had to take care of. So we've very sorry to see him go. If there is a silver lining, we've been able to bring on Charles Smith to the staff in Frank's place. Charles, we originally met I think about 3 to 4 years ago when he was a Kelly Temp working with the staff, and he's continued on really since then, and he's a he's a terrific person, really understands the issues that we're dealing with and we're very happy to have him on board. And he is doing, he has been doing a, he was doing a fabulous job as a temp and he's doing a

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fabulous job as part of the staff now. So he's heard us welcome him before, but I'm sure he's watching so welcome, welcome again Charles.

Doug Kellner: Joe could you report on on what you're doing on ballot usability issues with respect to the general election ballot?

Joe Burns: We like with the primary, we'll you know we're anticipating in the next couple of weeks receiving ballots from the counties and taking any calls or questions or inquiries as to advice on how to get the font bigger. We're going; Phil and I will be discussing how we can get them in a more timely manner so that we're not scrambling at the very end to to get ahold of them. But that's really it in a nutshell.

Doug Kellner: And would you briefly summarize what we're doing with respect to the testing and post election audit grant and the project with clear ballot?

Joe Burns: Bob do you want to say anything.

Bob Warren: Well we, we're continuing to work with Clear Ballot. They made substantial progress in recognizing our ballot layouts. We had two of the staff go to Boston 2 weeks ago to see a demo of it. We brought a test tech with us. They were able to read it in, produce the results and it's really turning into what looks like would be a nice tool to do an independent verification of the voting system because it takes, all's it takes from the vendor is the PDF. They register the PDF in their system and then they scan in the ballots, it generates images from the actual ballots and it produces results of those ballots. It gives you a visual of the votes and it gives you totals of the votes and you can compare that to your tape to your reports that come out of your voting system or your EMS system.

Doug Kellner: If that system actually works, it will be more accurate than the hand count audit that we do now because it's much less likely that people would fudge the results based on ambiguous marks on the ballot.

Bob Warren: Certainly it gives you a dashboard of a view of all your votes as to how much are filled in and how much aren't filled in.

Doug Kellner: So I, I appreciate you know continuing updates on on the progress on that and remind everybody that we do need, if we decide in the final report that the system works, that it will require a small legislative change to the audit provision and the statute to permit this kind of system to be used in in place of the hand count.

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Evelyn Aquila: I don't know if any of you are concerns but I'm very concerned about election day in November because of I just see a lot of people coming out to vote, thank god, and I think we're going to have long lines and I think some of the ballots, especially the one that I got, filling in those little holes, it's going to take time. So I just hope that Election Day moves smoothly but I have concerns about it and I'd like to state it now so that if there's anybody who has ideas. I know we could avoid that, but I'm afraid it's going to be very long lines and people not being too happy. People, who have never used this system before, maybe haven't voted last year. So I'm I'm holding my breath on that. You know I go and visit the polls. I'm not so sure I want to go do it on this Election Day but of course I will. And I think we should look into that with the counties, makes sure that they've got everything on the mark because it's it's going to be a big turn out I really think. I could be wrong, unless of course we get tiny rain or something; I expect a big turn out and long lines. And long lines aren't sometimes can breed a lot of; I've seen people punch people in the nose waiting on a long line just because they thought they squeezed ahead of them. Said "No that was my wife, she was holding a spot for me" thing. So I I'm just saying let's be on our guard about Election Day.

Jim Walsh: Well put. Public Information Officer John Conklin.

John Conklin: Thank you commissioner. You have our written report. I don't really have much to add except one item. Nassau County did finish their little one lingering issue in terms of updating their voter registration files from the redistricting this year. They're finished. It didn't affect their ability to do poll books or anything like that so but it was it was a small issue that was still hanging out there and it has been resolved. So they have completed it. I don't really have much else to add unless Thomas something you'd like to talk about?

Thomas Connolly: Just basically what's been touched on already in executive and legal. We continue to work forward regarding UOCAVA voters and be sure the counties are prepared for transmission of the ballots next vote Saturday is the 22nd, or before then. We continue to work as far as collecting the data that is required of us by Judge Sharpe's order and the federal government as part of some of our grant process. And Dave is going to touch upon some of the updates that we've been making with the various systems in play to better serve those voters and I think lastly I'll just point out we, on Monday we had posted a group of women from the country of Bahrain who are currently in the country visiting a couple of different places just to explore and examine the US electoral cycle and just see how everything kind of works. So we were here for about an hour, John and I spoke with them about a number of their questions. They give them an opportunity about their questions. Bob Warren was nice enough to help show them, give them a demo of the voting machine so they were able to cast the ballots and upload the

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optical scan machines and the BMDs and I think they left here very appreciative of of the visit.

Jim Walsh: Thank you Tom. Campaign Finance, Liz Hogan please.

Liz Hogan: Thank you Commissioner. Just a couple of things I would like to highlight to you to supplement the written report. One is that, of course, we are in the middle of a flurry of filing times. The primary generates the responsibility to file 3 primary reports; the general generates a responsibility to file 3 general election reports all in a very short period of time. Two reports have already been been, the dates have already passed, but the 4 more are upcoming very quickly so I, I just bring that to everyone's attention. You know anyone who might be listening. County Commissioners or county boards to you know assist filers and urge filings you know that need to be made. Because that's a very it's a very concentrated time.

The other thing I just wanted to highlight is you know we've been very busy, our database has two sides to it basically, the FIDAS side, the candidate side and the financial side at this time of year is dependent on the things that happened on the candidate side when petitions are filed and candidates are finalized and uploaded and the same when for the general election. The FIDAS side has to do a lot of things that you know basically require manual work in order to align the financial side in a way that effectuates the mandates of the statute and that is the filing dates. We have to set our system so that the system knows that certain people owe us reports. It has to recognize that. A lot of this kind of thing that we do is very manual and you know IT, the folks in IT are terrific support for us on this and we're also our own unit, you know very, very concentrated effort to get this thing done because it has to be done in a very short time period as well. So we've been very, very busy doing that kind of thing and I other than that what we're doing in our unit is the routine, but relevant things that we do all the time to effectuate you know what we have to accomplish. Bill do you want to add anything?

Bill McCann: Yeah just one significant note, we've had some general conversations with Bob and Todd about IT and campaign financial working together to try to find a way specifically as it relates to our certified mailing requirements to find something that's more efficient use of our staffing. Right now we have kind of an antiquated process where we do under our statutory mandated certified mailings to candidates and committees who owe us filing it's a rather labor intensive process to manually do these envelopes etc. Its one step removed from when you have to put the green label on yourself, but it's not that far removed and when you do it in in essence in the thousands potentially it's rather huge. So we've been looking to explore some procurement options to reduce the cost of certified mailings overall with a more automated process which will save us over \$1.20 per unit and at the same time because of staffing constraints. Because

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when we sent out these letters it's the same time the folks are calling in for assistance. So we have to balance those together. So we're hoping to come up IT and ourselves will be meeting on Friday to put together some final numbers to present to Bob and Todd. We're hoping that we believe we'll make a very good case as to why that's something both for staffing and fiscally will make sense to implement based upon the ever increasing volume of certified's that we have to do in a calendar year. We're one of the largest, if not the largest agency in the state for certified mailing purposes. And then subsequently as is always our big issue is our budget fight to get approvals to have that implemented. But we're hoping to have that put forward and hope to get some progress on that. But it will have a huge impact on staffing and resources.

Jim Walsh: Any questions? Thank you. IT Dave Loomis?

Dave Loomis: Thank you Commissioner. I, my the only thing I want to add to my report is just an updated on the NYSVoter changes that we've made to support the move at data interchange project. September 4th we implemented the changes on our side to allow voter information to be exchanged between the counties and between, to the counties and us and then between us and SCYTL. So after that date of implementation we have been working with SCYTL and the county vendors to complete the integration and the role out into production. We anticipate that everybody from a software and systems perspective will be ready to go by the end of next week. We already have 9 counties that are fully in production and have and have loaded up absentee ballots, the absentee applications for the voters and we'll be sending out an e-mail to the counties hopefully either today or tomorrow to again update them on where we are with the project and what we have, what we see as their role and the different changes they'll see as as the system is rolled down. So that's the only update I have at this point.

Doug Kellner: How are we doing in terms of the New York City upgrades for linking to the NYSVoter system? Are we still on schedule to have that completed by the end of the year?

Dave Loomis: Yes we have the programming changes are completed from the NYSVoter side of here and we're working with Entertotech to test the, start testing the system. As soon as we get the move changes into production completely, then we'll turn our full attention to get make sure those changes also are in place.

Jim Walsh: And how have you found your new job? Are you comfortable or?

Dave Loomis: Yeah very interesting. I'm enjoying it.

Jim Walsh: I was going to say that's a great answer.

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Todd Valentine: Just one thing on IT I just wanted to mention that this last Wednesday one of our staff members Dennis Girard was awarded New York, Best of New York IT Award by the general, the Government Technology Conference. So we all went to a small reception that was held at a tavern nearby and other people received awards too but he was there and it was very nice so. It's nice to recognize, it's nice to be recognized in a field because there's a lot of people in that and arise in a prominent state I think it's very good so.

Doug Kellner: Was there a particular project that?

Dave Loomis: It was for his support on the NYSVoter project and the different the different server technologies that he supports so.

Evelyn Aquila: Congratulations.

Jim Walsh: We have under old business the Independent Expenditure Regulations. Any comments before we proceed?

Liz Hogan: As we left it at the last meeting when this issue was tabled was the original draft regulation which had been submitted for public comment was before the board as well as some language that Commissioner Kellner offered for consideration by the Commissioners. That's where we are today.

Doug Kellner: And so I, I think we've hand this pending for long enough now that I call for a vote on both the amendment and the regulation so I guess the first step is the amendment that I've proposed. The amendment I've proposed as we've discussed before would add language that tracks the federal election commission rule on independent expenditures to include within the definition communications that are functional equivalents of the words that expressly call for the election or defeat of the candidate. So I I've asked that somebody second my motion.

Evelyn Aquila: I second your motion

Doug Kellner: and then we have a vote on it.

Jim Walsh: Motion made and seconded. Are there questions? All in favor aye.

All: Aye

Jim Walsh: Opposed? Nay, nay, nay.

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Doug Kellner: So that being the case, I guess we're ready for a vote on the regulation as a whole. I...

Jim Walsh: Excuse me, motion failed.

Doug Kellner: Sorry. Sorry.

Jim Walsh: I thought the same thing, I had to clarify that.

Doug Kellner: The minutes will have the names of the commissioners. So not withstanding the defeat of my amendment, I think that the draft of the regulations as originally published is still a positive step forward

Evelyn Aquila: Not as good but yes

Doug Kellner: Well I think it's not as clear because I.

Evelyn Aquila: Clear yes I would say that it was.

Doug Kellner: It's my view that the that the law still covers functional equivalence of the express language even though the regulation doesn't expressly say that. But because we don't say that it it may be an issue for litigation in the future. But so I will vote in favor of the regulations.

Jim Walsh: It's a motion.

Evelyn Aquila: I second it

Jim Walsh: Any questions? All in favor say aye.

All: Aye.

Jim Walsh: Well it's getting my aye vote, I do want to mention that we didn't pass over that initial amendment quickly, we have had, as Commissioner Kellner, a great deal of discussion on this. It's had a lot of analysis, a lot of conversation back and forth. So this has been sufficiently discussed. I do vote yes and the motion passes 4 to nothing on this motion Commissioner Kellner just made.

Item B, discuss the election night poll site procedures and ballot redesign.

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Bob Brehm: We had hoped to be a little further along in our discussion internally on that subject, but the last month has been exceptionally busy you know preparing for the primary, preparing for the certification and independent petitioning, so Todd and I and others in the building have had high level talks but we have not yet had a chance to sit down and go through some of the detail work. So we hope to bring that to you at the next meeting or a future meeting depending on when the next meeting is.

Jim Walsh: Okay thank you. We have under new business Determinations Regarding Independent Nominations, Objections to Federal, State and Local Petitions Certificates. Kim Galvin and Paul Collins.

Kim Galvin: Thank you Commissioner. So basically I believe that all of you have before you a packet of reports containing 3 specific pages, one the Prima Facie report, two the summary of determinations based upon objections and three a list of people that failed to file acceptances for the positions in which they were on the petition. Basically what this is operations, Anna and I have reviewed all the paperwork that has come in and these generally speak for themselves I think having touched specifically on them.

Doug Kellner: I move the adoption of the report as prepared by the staff.

Evelyn Aquila: Second

Jim Walsh: All in favor say aye.

All: Aye.

Jim Walsh: Opposed? Carried. Motion carried.

Item B vote on resolution to adopt amendments to 9 NYCRR part 6204 and 6209, Kim Galvin, Paul Collins.

Paul Collins: These are amendments to our regulations having to deal with compliance with section 73 in public officer's law which precludes us from asking about political contributions. The regulation required that vendors submitting voting machines for certifications had to disclose what political contributions they made in direct contravention of 73 of the public officer's law. The other amendment is earth shattering. It has to do with eliminating that portion of our regulation that requires us to select the colors of the cover sheets to be filed with the New York City Board of Elections. These have been published in the state register; a 45 day comment period has come and gone. We have received shockingly, absolutely no comments. So at this point in time...at this

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point in time the Board may vote to amend our regulations we will publish a notice of adoption with the state register and the next law book will show correct regulations.

Doug Kellner: And I just want to add that I believe that we actually adopted this in the middle of 2009 and that it just fell through the cracks that the paperwork never made it into the law books.

Evelyn Aquila: I wouldn't have been able to let of the hat but that sounds right to me that we did adopt this before. I don't know if it was 2009 but if you say so I believe it so.

Jim Walsh: It was an excellent presentation of a very complicated matter. We appreciate you doing that. Do we have a motion?

Doug Kellner: so moved.

Jim Walsh: and a second?

Greg Peterson: Second

Jim Walsh: All in favor.

All: Aye.

Jim Walsh: Opposed? Carried. .

Paul Collins: Was that unanimous?

Jim Walsh: That's unanimous.

Item C, resolution to certify upgrades to ES&S, DS200 voting systems and Automark and Dominion image past voting systems and ballot marking devices. Kim and Joe Burns.

Joe Burns: I think everybody's familiar with this issue. It started last month. These are the resolutions to certify the upgrades for both systems. Kim had something?

Kim Galvin: Commissioner Kellner I think that you may have a couple specific certification issues if that's correct I can wait for my comments on the litigation or...

Doug Kellner: Well which ever you want to do first Kim. My biggest concern is that these are voluminous reports. I don't think the reports have been publicly posted yet on

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the internet, am I correct Tom and John? The testing reports for this round of certification?

John Conklin: I believe these are up on the internet.

Doug Kellner: And I only got them Thursday night at the same time we were served with the task of getting the papers together in the Hispanic Leadership Fund law suit so that I've had very little time to do the due diligence in terms of reviewing the certification test reports. That being said, on a policy point, we've had a lot of discussions in the last couple of weeks whether or not it would be feasible for some or all of the counties to implement these changes this year. And certainly, we have the Commissioners Resolution, the Resolution of the Commissioners Association calling upon us not to implement the new software upgrades until after the November general election. There were some counties however with respect to the ES&S upgrade that indicated that maybe they'd be able to do it and I had suggested that if in fact all of the certification paperwork is in order and we've certified the system, then the statute would allow those ES&S counties that thought that they'd be able to implement that to go forward. And I understand that some people have raised concerns over the idea that there would be multiple versions of ES&S software then that would be available for the general election. But since that time, it's my understanding that New York City and Nassau County and the other ES&S counties have all indicated that none of them would be able to proceed even if we certify today. Is that everybody's understanding?

Evelyn Aquila: That's what we've been told.

Kim Galvin: I was aware of some. I didn't know that it was all, but I was aware that New York City, Nassau County and Rockland, we're talking about big numbers.

Doug Kellner: And I think Erie also indicated.

Kim Galvin: Commission Ward was here last time and

Doug Kellner: Well he initially, my understanding of Erie's position was initially they thought that maybe they'd be able to do it but they weren't sure and they now told us that they advised against it. .

Bob Brehm: At the period of time of the you know Election Commissioners Conference, first couple of days August 1st through the 2nd, you know they adopted the resolution at that time and it was unanimous that it would be a burden at that time and we anticipated getting this work done on August 7th. It's it creates, so some of the counties who thought if we could meet that by August 7th, you know thought maybe we could get that work

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done and in New York City in a conversation thought maybe they could get it done if we had completed that work on August 7th. But by you know not finishing the certification testing in that period of time, any of that prep work that they could have done in the you know pre-primary for those machines that aren't in the primary. For those periods of time where they had staff time that could do some of the work parallel you know the primary work and that you know. We've heard from others that have said we lost that opportunity so now if we had to do it all now after the primary, we just don't have enough time to do it in you know what I think the last time we rolled it out was 9 weeks. It's really really compressed period of time to get it done, finish the primary, get it done and get all the work we needed done for the general.

Kim Galvin: If I could just make a comment on Bob's point, I believe what he's saying is critical with regards to the timing that when August was set initially internally by the staff as a certification date time, we were anticipating that many many counties would have multiple machines that wouldn't be being utilized in the primary in the county and they would be able to upgrade each of those machines in anticipation that when the primary is in fact certified they could complete their work which is substantial. It requires an upgrade to their operating systems and also requires you know, an upgrade to their EMS, their Election Management System. And the problem is what you have is now with this upgrade it's requiring the changes to the operating system and the EMS which disallows a county from parallel tracking these types of items and continuing on with their work for the, on the new software while they still have the old software functioning. So they would actually have to be required to close out their primary elections, assuming everything goes perfectly well which perhaps is two weeks, and then do all that work in an even more compressed timeframe. In light of the fact that the general election ballots for the federal offices are due to go out on September 22nd, you know there is a lot of concerns about. So when we originally had the August date, we were still envisioning what the bifurcated process on the part of the counties, now that it's September, I think internally many of us agree that with the counties that the timeframe has been shortened considerably. And you know they did say in their resolution back then that they, I think they used the word catastrophic, which always gives you cause when the people on the ground doing the work are telling you for presidential and a full legislative election that there's a potential for catastrophic events to occur.

Evelyn Aquila: Right. I think common sense has to do a golden rule on this one.

Kim Galvin: Well just not to speak openly about many of the cases, but in the double vote and over vote litigation as I, as I talked about earlier, you have two sets of plaintiff's and you know one set is questioning the good intentions and the good faith of the Board and you know, as the evidence and the work and I think all of our discussions and all of

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our prior meetings have shown that the intention has always been there to be compliant with the federal court orders. On balance however when you have the people on the ground with the late reports and the inability to really delve into them as directly and the importance, not that every election isn't important, but certainly the magnitude of the upcoming election, on balance it becomes quite the issue.

Jim Walsh: Right. I think our discussion is hopefully indicating for all who are watching this and hearing this that we do have good faith and good intentions here, and this is an election not that any other one is less important but this one is extremely important with the presidential, all the state legislature offices and additional offices that this is not a time to take a chance on anything because you don't have a chance to recover if there's a fumble on this. So I think we're heading in the direction we should be for the good of the voter and the process.

Doug Kellner: If there is a consensus that none of the counties would use this system for the November general election, then I would ask that we lay this over till the next meeting. Because even though the citizen's election machine advisory committee is, have I got the name right? CEMAC has expired, I think the principle is still a good one that that the testing reports out to be vetted publicly so that I would request that we put this over for a month and I would request that election operations and public information coordinate getting the appropriate test reports up on our website so that interested members of the public can review the certification testing procedures and I would point out that every certification is really important so that there was a lot of attention paid in December of 2009 when we did that certification and of course, at that time, we had this Citizen's Election Modernization Advisory Committee in place. Now well I guess there's an assumption that that we know what we're doing in the certification process and therefore it's not subject to as much scrutiny as it was but I think it's still important that we take time to look at these test reports and make sure it's all there.

And I have one question for Bob. If I might. I'm sorry if I'm going on too long but Bob one of our requirements is that there be independent review of the source code and that function used to be done by NYSTEC and I understand that NYSTEC is not the entity that did the independent review of this upgrade, is that correct or can you explain just how this is working now?

Bob Warren: The way it works now is both vendors had submitted all their source codes Wylie Labs which is a certified Lab by EAC. Wylie Labs did a thorough review of the source code for the Federal side to make sure that the source code adhered to the VVSG. Once they completed their review, that source code and the reports from Wylie went to our lab SLI and SLI reviewed the source to see that it matched the New York State

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requirements along with analyzing and doing a sample of what Wylie had done to verify that Wylie had done a thorough review.

Doug Kellner: Now how is it that SLI came to be the independent authority?

Bob Warren: Well SLI was the independent authority because they were reviewing the work that Wylie had done. They did a review of the reports and then they did a review of a sampling. They took a sample of the code and they would go back and look to see that they did do due diligence on the report.

Doug Kellner: Alright. Now the the report that I received from SLI is a very short report. Is there a more detailed report?

Bob Warren: The more detailed report is with the Wylie reports that you can receive.

Doug Kellner: I, I would appreciate going through that because as I say, I think that this source code review and the testing process is very important and at least from my point of view, I'd like to give it as much attention as we did in December of 2009. And and certainly getting these so shortly before the meeting at the same time we're required to work on on the federal law suit and the Hispanic Leadership Fund suit, became impossible to get that done.

Bob Warren: Now we did also go through a NYSTEC review, NYSTEC was involved at the end with this process too so.

Doug Kellner: And um in the December 2009 certification we left open several issues of technical noncompliance with the voluntary voting system guidelines that were going to be resolved or waived. And where do we stand with this certification on addressing those issues that were in the testing discrepancy reports that led us to that conditional certification?

Bob Warren: SLI took the the items that were left open from the prior certification and combined those with the items that they found through this certification so there's a spread sheet detailing all the items from 09 to the present and all the items are closed out.

Doug Kellner: Now I don't know that I've gotten the detailed spread sheet. I got a summary but

Bob Warren: Okay.

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Doug Kellner: And the detailed spread sheet needs to be reviewed whether it contains items that have to be redacted in order to meet our regulations in terms of redacting certain types of security issues. But to the extent that we can, I would like to make, you know, as we did in December 2009 make publicly available the testing reports so that those who are interested would be able to review them and vet them.

Bob Warren: Okay. We can post them; we'll put them on the web under the voting machine section.

Kim Galvin: Can I just make one more comment on the certification process? For nothing else but the clarity of the record for perhaps those people that might be watching. For purposes of our law suits that required our consent decrees that required these screens shots we used for the 2012 election. I mean many have asked us you know "why didn't you just do the screens? Why are these other changes?" And I think we heard Sue Cohen at the last meeting I think we touched on it at the last meeting that you know software is fluid. It's constantly being worked on, it's constantly being upgraded. Our current software is operating on a system that is at its end of life so decisions were made

Doug Kellner: Kim, three of those things are not really accurate. Software is not fluid. In the voting system environment the software is fixed.

Kim Galvin: but the development of software is fluid.

Doug Kellner: Yes in a general sense but your remarks could be misinterpreted because in the voting machine context, it's just the opposite. Because we freeze the software. We say "This is what's certified and what's been fully tested and you can't change it without going through this very complex process of testing and analysis to make sure that there are no bugs and that there are no viruses or malicious potential introduced into the code." So, unlike most users of software, we freeze the actual system that's being used and we require basically a repeat of this entire process. And I think that's what you were getting at

Kim Galvin: Well that's not what, I was

Doug Kellner: But what you were getting at was the support system that's separate from the machine software.

Kim Galvin: Right and the vendor development of a variety of county concerns and visibility community concerns. They're constantly working outside of our frozen...

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Doug Kellner: Well they're all of these developments which in a different environment, outside the election environment, you would do all these little minor upgrades. But in the election environment, you can't do the minor upgrades because of the of the risks to the election process that are introduced by the nature of having to keep a secret ballot

Kim Galvin: Without the full certification.

Doug Kellner: Without the full certification. And I know that's what you were getting to but I was just carefully listening to what you were saying and...

Kim Galvin: Nothing we do is fluid and everything is fixed inside, but when we realized we were running a little esque of the timeline we did go back, I think this is important, to the vendors and ask if they could do just the screens into the current system and we were told that the timeframes would be even greater than it was to continue on with the current process. It would not have expedited it.

Evelyn Aquila: And wouldn't be ready for the November election right?

Kim Galvin: Right because of that, you would have to go through the entire full testing regimen again.

Greg Peterson: Our job really is to protect the sanctity of every single vote during any election and it would be irresponsible for us at this juncture to thrust upon the local boards of elections to change the system or try to introduce a system which may or may not threaten that sanctity and as far as I'm concerned, you know we're on the right track, certification process has been laid out very clearly. It's complex. It's not something that's done one, two three or four, five, six for that matter. But it has to be done, redone, readjusted, re-looked at and then certified. And then at that point tested and after tested then goes to the boards to implement. This is a presidential year. We have enough problems facing all of those things. We have enough things on our plate with three primaries. You know in a year, it's a very unusual year and I said there's absolutely no way that this should even be contemplated. The reason we're discussing it is obviously because there have been law suits brought to push us in that direction. But I think it should be clear as far as this board is concerned that the timing is, it's ill time and as far as I'm concerned, I would move that we table this.

Jim Walsh: Do I have a second?

Jim Walsh: I'll second it

Jim Walsh: Other questions on table, all in favor say aye.

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All: Aye.

Jim Walsh: Opposed? Carried.

Doug Kellner: And we are going to post the test reports to the extent that they don't disclose information that our regulations remain confidential. We'll put them up on the internet. Okay.

Jim Walsh: Motion to move table is passed. Before we move on the next meeting date is established for October 16th.

Evelyn Aquila: When is it?

Jim Walsh: October 16

Evelyn Aquila: October 16th okay.

Doug Kellner: And I also think we're looking for one after that on December 10th.

Jim Walsh: December 10th.

Evelyn Aquila: Okay

Jim Walsh: November obviously we're tied up with the elections and Thanksgiving and color of paper. Paul you're going to handle that paper aren't you?

Doug Kellner: So alright, I would move the adoption of the staff report on the campaign finance issues as prepared but I do ask that we have a very short executive session on one other issue for campaign finance enforcement.

Jim Walsh: Second?

Greg Peterson: Second

Jim Walsh: All in favor say aye.

All: Aye.

Bob Warren: Anna is not here but we did receive 2 ECOs for both vendors that she wanted brought up, Dominimus and changes and I know she said they just have to be

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mentioned to the board. One was for changing the memory sticks and the cards for ES&S along with a board that would then give life to the Automark and the other was for component changes to the scanner on Dominion which we've received one of those scanners that we used through out testing.

Doug Kellner: I think we should approve those equipment change order proposals as Dominimus.

Jim Walsh: That's a motion and seconded. All in favor?

All: Aye.

Jim Walsh: Opposed? Carried. Thank you.

Doug Kellner: Alright so I, I have the motion to approve the campaign finance report of the staff.

Jim Walsh: Second?

Jim Walsh: All in favor say aye.

All: Aye.

Jim Walsh: Carried.

Doug Kellner: Alright there's a motion to go into executive session to discuss enforcement issue.

Jim Walsh: Do I have a second of that?

Evelyn Aquila: fine

Jim Walsh: All in favor say aye.

All: Aye.

Jim Walsh: Opposed? Carried. Move to adjourn. There will be no voting on any issue coming out of executive session so anyone who cares to leave may do so.