

[BEGIN VIDEO]

JAMES A. WALSH: Everyone welcome, my name is Jim Walsh, I'll be conducting our meeting today and I'd like to begin by having our Commissioners introduce themselves.
On my right--

DOUGLAS A. KELLNER: Doug--

EVELYN AQUILA ----- I'm sorry, I just - - Commissioner Aquila.

DOUGLAS A. KELLNER: Doug Kellner.

JAMES A. WALSH: And Greg Peterson left, and continuing on down Todd.

TODD D. VALENTINE: Todd Valentine.

KIMBERLY GALVIN: Kim Galvin.

PAUL COLLINS: Paul Collins.

JOSEPH BURNS: Joe Burns.

ANNA SVIZZERO: Anna Svizzero.

TOM CONNOLLY: Tom Connolly.

JOHN CONKLIN: John Conklin.

GEORGE STANTON: George Stanton

WILLIAM MCCANN: Bill McCann.

ELIZABETH HOGAN: Liz Hogan.

BOB BREHM: Bob Brehm.

JAMES A. WALSH: Our guests, please.

KAREN REEVES: Karen Reeves.

ROBERT WARREN: Bob Warren.

JAMES A. WALSH: Our first order of business will be to convene the meetings of our Board of Canvassers to certify the results of special elections held on September the 13th to fill vacancies as follows: in the 9th Congressional District, Bob Turner; in the 23rd Assembly District, Phillip Goldfedder; in the 27th Assembly District, Michael Simanowitz; 54 Assembly District, Rafael Espinal, Jr.; 73rd Assembly District, Dan Quart; 116th Assembly District, Anthony J. Brindisi; 144th Assembly District, Sean M. Ryan.

Can I have a motion?

DOUGLAS A. KELLNER: I move that we approve the Canvas Report prepared by the staff.

GREGORY P. PETERSON: Second the motion.

JAMES A. WALSH: All in favor?

(Chorus of ayes)

Opposed?

Carried, and that concludes the Board of Canvassers meeting and we will now go into our normal scheduled Board of Elections regular agenda.

DOUGLAS A. KELLNER: Let me take a minute to sign this.

JAMES A. WALSH: Yes, and we are going to take a few seconds to do the necessary signatures for these reports.

JAMES A. WALSH: No, the state really doesn't have enough money to put ink in these pens.

EVELYN AQUILA: Hey, we got the pen anyways.

JAMES A. WALSH: Oh, thank you.

EVELYN AQUILA: The signature looks so much more important with this real black ink.

JAMES A. WALSH: Do we have to use that type of a pen or does it matter.

BOB BREHM: Anna--I think whatever one you have.

DOUGLAS A. KELLNER: Here, this one works.

ANNA SVIZZERO: -- I'm sorry--no, no.

BOB BREHM: We might need to do a special budget - - to buy a couple of pens.

JAMES A. WALSH: Well, I can get my first name very solidly.

JAMES A. WALSH: All right, we'll continue with our agenda.

Item Number 1, the minutes of the July 28th meeting, do we have any additions, deletions, corrections?

If not I'll accept a motion to approve.

EVELYN AQUILA: Motion.

JAMES A. WALSH: A second?

DOUGLAS A. KELLNER: Second.

JAMES A. WALSH: All in favor?

(Chorus of ayes)

Opposed?

Carried, Unit Updates--Bob Brehm and Todd Valentine?

Unit Updates

Executive

TODD D. VALENTINE: Do you want to go first?

BOB BREHM: You can go first.

TODD D. VALENTINE: Well, we're progressing--a couple of things just to bring you up to date. You know, obviously we're preparing for next year's budget and the call letter; it starts with a request from the Governor's Office for us to submit the numbers from last year. So we're reviewing last year's narrative, which explains the projects that we have undertaken and why we need more money than they ever give us. It's true, and begrudgingly they'll often give us things so we're in the process of doing that.

Unfortunately as you may have read, you know, with the Professional Employees Federation voting down our contract that many agencies, ours included, were required to lay off two people. So we had to give notices to those people yesterday; those are effective in three weeks. You know, it's a bad situation but our numbers were in line with other small agencies of a similar size, so we were fortunately the same but still it's difficult when you already have a small staff to start with and that can be very painful.

And on top of that, although this is more of a happy note than a sad note, I just wanted to highlight--because he's here today--is George Stanton. He's our head of Information Technology Unit; he has decided that he would like to retire at the end of this year just before Christmas, so we wish him well on that.

(Chorus of well wishes)

EVELYN AQUILA: Congratulations. [APPLAUSE]

TODD D. VALENTINE: And then as we go forward through next year, you know, and not to go into the court cases, but for planning purposes as far as our conferences and agendas working with the County Board of Elections we can really only work through the January conference, because after that we don't really know. Our own conferences we really can't do, because of the Presidential Primary because of the counties in the time leading up to that--we can't move it forward, because the counties are getting ready to send the ballots out for the Presidential Primary.

And we can't really do it immediately afterward, because well they're finishing the votes from the

Presidential Primary in those two weeks, three weeks immediately following--and then to go beyond on that, if the Primary doesn't move then you're bumping into the ballot access period and the petition circulations for the next election.

So what we're doing is partnering up with the county boards--since they already have at least the January conference scheduled--to, you know, provide those things that we normally would have done at our regular conference to get time set aside for that, so we can do the case updates that occurred through this election cycle. We can do our usual updates regarding a voting machine, the status of the changes to that sort of stuff, and try to work as a partnership with them. We had an initial conference call with the Executive Committee and conversations prior to that at their last conference, so as far as planning for us is concerned as far we can get through January for that conference and that's--I don't remember the date.

BOB BREHM: It's on the 17th.

TODD D. VALENTINE: 17th and that is scheduled in Ithaca, the City of Ithaca and I don't know the hotel name, but it's on Cornell University.

BOB BREHM: Statler.

TODD D. VALENTINE: Statler, and then April of course is the Presidential Primary and we don't have our ballot, we don't have the calendar out for that yet, it's too early. We're not ready for that yet, but--

EVELYN J. AQUILA: -- It's in here?

TODD D. VALENTINE: Yep, and we'll be putting that political calendar out--

BOB BREHM: Soon.

TODD D. VALENTINE: Yeah and typically it will be like six months out, so right around that time for a normal political calendar to come out. I mean, we have a draft, we just haven't released it because it's premature because we're still writing - -, but we are getting requests for that information. So and then, you know, it's not that you want to look through an election, but we have to plan for next year.

EVELYN J. AQUILA: Could I ask you a question, Todd?

TODD D. VALENTINE: Yeah.

EVELYN J. AQUILA: The people who have to be let go because of the budget crunch, if things loosen up will they be the first rehired in their positions?

TODD D. VALENTINE: Well, they would go back on a preferential list yes, if they still wanted to.

EVELYN J. AQUILA: Yes.

TODD D. VALENTINE: If they still wanted, I mean assuming that they hadn't into a position somewhere else but yeah.

EVELYN J. AQUILA: -- Yeah, - - of course, of course.

TODD D. VALENTINE: If they did, it's hard to even tell you yes that's what would happen, but we don't want to give everybody false hope that things could turn around that quickly I mean, we'll know better when we get the call letter and they tell us our target numbers for next year, so we're at a point where I can't tell you what it's going to be like next year.

EVELYN J. AQUILA: -- Right, yeah but I just thought if they did open up there'd be some--

TODD D. VALENTINE: Yes, they would be on a preferential list, no question about it.

EVELYN J. AQUILA: -- Thank you.

TODD D. VALENTINE: Bob?

BOB BREHM: I think the only other significant--I mean, there's a lot of items on the list--but I know a number of us spent a great deal of time working through the issues of the flooding from the various storms. And I know that kind of everybody in the building tried to help and many of us spent the weekend leading up to the Primary on the phone with some of our colleagues or battling the storm.

There was a resolution, series of them later on, but it was one of the big items that we spent a great deal of time trying to work with the counties on emergency responses and many of us spent the weekend trying to help answer their questions and give them whatever support we could. They did a great deal of work, many of the people calling from the counties themselves suffered from the flooding.

And I know--you know, post--that Tom had gone out to the areas hard hit in Broome and Tioga County just to observe first hand and a number of us went to different parts of the state that day. But it certainly was a big effort and I mean, as one take away from it we should at least give some thought maybe for next year's legislative program to fine-tuning once again the section for disaster preparedness.

ELIZABETH HOGAN: Yes.

BOB BREHM: There is a procedure for the General Election; there's not a great procedure in the Primary. So at least from that perspective we can think of ways that we might recommend to you an amendment that we might propose in that area. Other than that most of the work was routine and that's in our report.

DOUGLAS A. KELLNER: And Bob, just to summarize that, I think there was a consensus that 3-108 did not apply, did not authorize the County Board or the State Board to postpone or cancel the primary in advance. But I think there was also a consensus that the Governor, under his emergency powers, could cancel the election but that if he did that based on the precedent of September 11th, 2001 that it would then be up to the legislature to come back in emergency session and restart it.

DOUGLAS A. KELLNER: I just say that, because we had that consensus we ought to, just memorialize that in case this comes up again, at least what we interpreted it to be the current state of the rules.

TODD D. VALENTINE: Yeah, that's - -

BOB BREHM: And there is an administrative remedy for an additional day of voting for the General Election assuming you've started the election; there isn't a similar provision for an additional day of voting in the Primary.

Certainly there's a provision that you can go to court and have, based on irregularity at the Primary, ask the court to call another day, call the Primary over again.

But somehow we should look at, you know, is there of administratively dealing with this--

TODD VALENTINE: It would make sense.

BOB BREHM: --that would provide an easy understanding of what steps to take.

EVELYN J. AQUILA ----- I say though, the work that you and Todd and Anna Svizzero and Tom Connolly put in to help those counties was outstanding and I just would like to say that publicly--really outstanding and I'm sure the people of Broome County greatly understand that.

Also Jeremy Creelan from the Governor Office who helped get us the buses and the transformers that were needed to give some people power and to get some handicapped people to the polls and others to polls.

I think this was all done at 1-2-3 last minute, and you were all great and if there's anyone I don't know about who worked on it please tell me and give that name to me, because I want to add those names to Number C.

But I thank you all, it was outstanding.

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

KIMBERLY GALVIN: Thank you, Commissioner.

Other than what's included in the written report I think it's just worthy to highlight the movement on the Department of Justice request to have Judge Sharp enter permanent relief regarding the 2012 Primary.

Originally our reply papers to their motion were due Monday, the Attorney General requested an adjournment and also I agree to it, making our reply date 11/17--10/17, I'm sorry.

But it's interested, because as you are also aware there also is a waiver application in, we put in a waiver application for the 2012 election that hasn't been ruled on.

So it makes your response interesting if there's a waiver pending and you don't have the decision on that as to what position we are going to take with Judge Sharp.

And we spent a lot of time internally and externally talking about that particular issue and a lot of county questions, a lot of everybody questions on what is the Primary going to be and we just do not know the answer to that yet.

So I would have suspected that the waiver decision would have been forthcoming, but apparently I was incorrect because we don't have it yet.

But that being said hopefully a decision will be made and the legislature may or may not act to move it themselves, so we're just kind of in a holding pattern there right now.

It makes it interesting to say the least.

Other than that everything's in the written report unless Paul has something to add.

PAUL COLLINS: Not really, no.

DOUGLAS A. KELLNER: Well, just to sum up--let's do at least one sentence on each of the pending crises. [LAUGHTER]

DOUGLAS A. KELLNER: The Counsel did an excellent job in the oral argument of the case before the 2nd Circuit, the National Organization of Marriage versus the State Board, which challenges the campaign finance laws.

And so we'll see what the 2nd Circuit does

KIMBERLY GALVIN: With the other cases I made, the Double Vote matter has been resolved and signed by the judge and so the vendors have the screen shots, they're working on those changes. The Over Vote case is very near to completion with the same status, just waiting for a judicial decree. The--what other ones?

DOUGLAS A. KELLNER: -- We have the Germalic case with --.
[VOICES OVERLAP]

KIMBERLY GALVIN: The 2nd Circuit brief was filed in the Germalic case.

PAUL COLLINS: -- That's filed and refiled.

KIMBERLY GALVIN: And we do have the outstanding NYSVoter New York City issue that has laid quiet, probably until I say that out loud here.

KIMBERLY GALVIN: I know, well he asked.
Other than that we have a new lawsuit--

DOUGLAS A. KELLNER: Well, on the NYSVoter New York City initially responded positively to the proposal.

KIMBERLY GALVIN: -- They did, they did.

DOUGLAS A. KELLNER: And then they said that--

KIMBERLY GALVIN: -- And then they did submit a request to us to--

TODD D. VALENTINE: They wanted an extension.

KIMBERLY GALVIN: --an extension for some of the work that they were doing, which in my opinion and I think of the Board, we didn't have the ability to give them because it was the Department of Justice motion that was forcing the issue and we haven't heard anything on that, which I thought was nice.

And then we got a lawsuit in the 148th Assembly District that just came in that is returnable next Friday, which is a routine matter.

EVELYN J. AQUILA: -- Would you say it was routine, yes?

KIMBERLY GALVIN: They're challenging a nominating certificate; we don't really have a position on it, it's outside our scope, we'll just bring the papers.

EVELYN J. AQUILA: -- Oh okay, I see that, yeah.

JAMES A. WALSH: Any further questions?

KIMBERLY GALVIN: I'll ask Paul if he has anything else to add.

JAMES A. WALSH: Time's up.

PAUL COLLINS: Not really, no.

KIMBERLY GALVIN: Okay. [LAUGHTER]

JAMES A. WALSH: Thank you Kim, thank you Paul.

KIMBERLY GALVIN: Thank you, Commissioner.

JAMES A. WALSH: Election Operations, Anna please?

ANNA SVIZZERO: Okay, we don't have much to add to our written report although I can update you on additional nominations received for the Supreme Court contests.

We're up to 28 nominations naming 93 candidates to those various positions and we worked though those with the Counsel's office for a review.

All the candidate notifications went out and additionally the Office of Court Administration asked us to include information regarding training, so those have become part of the mail that we send out.

We worked with John Conklin's office to accommodate that request from OCA and that's something we've done over the last couple of years, so we continue to do that this year as well.

The functional testing that we're doing in Election Operations--obviously it's going to be impacted now that we're losing an additional staff person, so we're hoping to proceed with this relatively on schedule and wrap up the ES&S functional testing within the next week and a half to two weeks.

And then we'll be able to begin working on the Dominion upgrades.

I don't have anything else--Joe, do you have anything - - ?

DOUGLAS A. KELLNER: -- Anna, do those upgrades--are you talking about including the process of changing the screens to settle the two pending lawsuits?

ANNA SVIZZERO: We were hoping that software could be rolled into these, but I don't know that that work will be done.

I would defer to Bob for his input on that particular issue.

ROBERT WARREN: These are the upgrades that fix the open issues that were done--left open from the original certification plus some additional changes and fixes that the vendors have put into the system.

But we have made arrangements with them that there'll be another bill following behind this that will have those screen changes in them.

So if a county wants to roll one of these upgrades out they'll just have to be aware that next year there's going to be another upgrade that they're going to have to roll out that will include the two screen changes that we have.

EVELYN J. AQUILA: Are the counties aware of that, Mr. Warren?

ROBERT WARREN: Well, I don't think the counties are--most counties aren't even planning yet.

I heard that New York City wanted to roll this upgrade out for the April Primary, so the vendor was the one that explained that to me.

I told him, "Well, then they better have New York City call the State Board and talk to them, because there will be a second upgrade that they're going to have to roll out sometime after that Primary."

DOUGLAS A. KELLNER: And it's because of the testing of the installation of the upgrades that you're concerned about repetitive upgrades?

ROBERT WARREN: It's the timing, because if they roll out this first upgrade they have a small window.

By the time they would get it, it would probably be in December so they have a small window between December and the April Primary to get it rolled out.

Then after that April Primary depending on when the fall Primary is going to be, if that gets moved to June they have no window between April and June.

They have a small window between June and November to get that upgrade rolled out.

If the Primary stays in September they have a small window from April to September to get it rolled out, so they just have to be prepared as to the manpower.

DOUGLAS A. KELLNER: When you say rolled out what does that mean--I mean, what - - ?

ROBERT WARREN: -- They have all their machines upgraded. They would have to upgrade both their BMD's and their scanners.

DOUGLAS A. KELLNER: And that's just installing - - ?

ROBERT WARREN: -- And their EMS system.

DOUGLAS A. KELLNER: The process of upgrading is installing the new software and then running tests on it?

ROBERT WARREN: -- And running tests on it, so it's time consuming and they just have to be prepared.

DOUGLAS A. KELLNER: -- So it's like an hour per machine or...?

ROBERT WARREN: It's probably a good 20 minutes to half hour per machine for the upgrade and then when they start to run their testing on it by the time they do the [PH] Hasch check and do the [PH] test check on it, it's probably another hour.

So it's probably about an hour and a half per machine.

EVELYN J. AQUILA: -- That's a lot of time.
[MURMURED CONVERSATION]

DOUGLAS A. KELLNER: The other thing, I guess it's appropriate to ask on Anna's report, if you were finished on it?

ANNA SVIZZERO: I was just going to mention the certifications of the three percent audits are coming in from the county boards and we're reviewing those.

Anyone who had to escalate on audit, we'll be reaching out to them to find out why and how those issues were resolved.

Relatively speaking, Primary Day was uneventful as far as scanners went.

We did have a couple of issues--one in Chautauqua and one in Seneca County--but for the most part we did not have any system issues with the scanners that were used for either of those.

DOUGLAS A. KELLNER: All right, and can you elaborate on those two issues?

ANNA SVIZZERO: Again, I would ask Bob to, because he has been in touch with the counties and with the vendor on both of those.

ROBERT WARREN: I think the one issue you're talking about is the Seneca issue?

ANNA SVIZZERO: Yes.

ROBERT WARREN: Seneca called us and notified us that they had had a Working Family ballot that had been cast and it was counted as a Republic ballot.

And it was a little hard to believe at first, so they sent us their tapes and we could see that there were no votes on the Working Family side and they had had 95 ballots cast on the Republican side and they'd only given out 94.

So it clearly showed that there was an issue, so then we had them send us the image of the ballot in question.

And the image showed that it was truly was counted as a Republican ballot, because the watermark on the ballot indicated they were all Republic votes.

So by looking at what they had sent us you couldn't really see too much, so we had them send us the entire election so that we could look at the image online to see what it looked like.

And when you look at the image online you can see that the ballot, as it went in, it's clearly skewed. Somehow it became skewed as it went in the backend of the ballot and that's where the timing mark is that identifies it either as the Working Family Party or the Republican Party.

So that's what caused the problem, then it became an issue of trying to figure out how did that get skewed so badly?

And the only report we have gotten is that one of the poll workers had explained that they remember somebody attempting to pull their ballot back out as it was being sucked in.

So it's being assumed that this is the ballot; we don't really know and I don't think we're really ever going to be able to find that out but the cause was due to a skewing of the ballot.

DOUGLAS A. KELLNER: And what was the issue in Chautauqua County?

ROBERT WARREN: Chautauqua County had gone out and they purchased memory cards locally, just inexpensive memory cards that they used in the machine.

And there were, I think, four of the cards that had gone bad during the election.

They weren't the vendor approved memory cards, they were their own that they had gone out.

Now whether it's vendor approved or their own this could happen anyways; I mean a memory card could go bad.

However the quality of the memory cards that the vendors have approved are of a higher quality than these, so it's less likely to happen with the vendor approved memory cards than the Staples or Walmart's or wherever they're going to buy it.

But it could happen, so you always have to have a backup which would be to immediately hand-count the ballots but you'll lose the results.

EVELYN J. AQUILA: -- Bob, do the counties realize that?

ROBERT WARREN: Pardon?

EVELYN J. AQUILA: -- When they use the memory cards do they realize that?

ROBERT WARREN: They do realize it, but I think the issue for the counties is that when they go to the vendor to buy these cards they're probably \$100 a piece. When they go to Staples or Walmart or wherever they're like \$15 a piece, so I think some of them are taking a chance and this may be the result if they do that.

EVELYN J. AQUILA: -- Yeah, all right.

DOUGLAS A. KELLNER: Well, so we should at least pass on that information.

EVELYN J. AQUILA: -- Right.

ROBERT WARREN: Yeah, I've asked the vendors to send out a message to the counties that using poor-quality cards could result in this issue.

BOB BREHM: Hopefully, will they give out the standard of what cards they should be buying? I mean, I don't want to necessarily say they have to buy the vendor card, but are there prospects available so that they can - -

ROBERT WARREN: They have the model numbers--yes, we have the model numbers, the vendor-approved cards, yes.

BOB BREHM: Good.

EVELYN J. AQUILA: I was going to say can they be encouraged to lower the price of the--\$100 a card is a lot of money, especially when we get to the presidential election.

ROBERT WARREN: Well, initially I think they were 150 a card; we got them down to 100.

PAUL COLLINS: Commissioner Aquila?

EVELYN J. AQUILA: Yes?

PAUL COLLINS: While \$100 a card is very expensive as opposed to the \$10 cards you can buy at the drugstore it's probably cheap insurance on the warranty issues.

ANNA SVIZZERO: I would like to point out that once again, if the boards follow our procedures, their ballot reconciliation process is what brought this to light so that they knew that there was a problem and everyone was prepared to try and deal with it. Rather than a crisis situation, I think it was approached rationally so again that's another advisory to boards that if they follow the procedures they're not perfect, but they certainly have proven in several instances with Test Deck and now with this, that they serve their purpose.

ROBERT WARREN: Yeah, because the Seneca issue can't really go undetected. In a Primary when you reconcile the number of party ballots that were given out, when you compare that to the tape it's going to show a difference. In a General, the number of ballots given out by ED compared to the tape will show a difference, so as long you're reconciling everything it can't go undetected.

EVELYN J. AQUILA: The only reason I worry is because in this economic time we're in, you know,

it might be people may be drawn to buy the \$15 card.

ANN SVIZZERO: We did tell them in several of our conference calls through the last election cycle--and certainly through the spring this year, through village elections etcetera--that if they have HAVA money left they can certainly use it to buy cards so that they have them on hand.

They don't ever want to get caught short.

You know, you can only spend that money on certain things, so why not spend them on the insurance that you need to know that you can keep functioning through election cycles.

Especially with the presidential election cycle coming, you're going to need to be burning for archive purposes what's on those memory cards and reusing them.

They might be better served to just add extra cards to continue to use, but again we make them aware of these issues as they come up and hopefully they're taking them in the same vein in which they are intended.

Joe, did you have anything to add?

JOSEPH BURNS: Just to mention on the usability of ballots is I've been receiving Primary ballots from the counties and Phil Jorczak is taking a look at what they've produced.

And will in the days and weeks ahead, be working on an email to the counties, reminding them of certain principles that gone through and things for them to take a look at for their General Election ballots.

That's it.

JAMES A. WALSH: Thank you Anna and Bob and Joe.

ANNA SVIZZERO: Thank you.

JAMES A. WALSH: NVRA/PIO John Conklin.

JOHN CONKLIN: Thank you, commissioner.

We're whittling down our NYSVoter review process with the counties; we just have six boards left: Niagara, Orleans and Genesee in the western part of the state and then it's Nassau, Suffolk and the New York City Board.

So we're hoping to get Niagara, Orleans and Genesee out of the way before election day--do something in October--and then we'll just have the three boards down state to deal with, which hopefully we'll tackle by the end of the year.

Other than that there's just the written report, unless Tom has anything to add.

TOM CONNELLY: I think the only thing I'll just add is that we have finished up the last of the trading sessions that had gone on throughout the state for the Chapter 505 compliance with poll site accessibility.

I'm going to be sending out a survey to all the people who attended it just to get their feedback on it and then I'll probably prepare a report for the next month's meeting.

JAMES A. WALSH: Thank you gentlemen--Campaign Finance, Liz Hogan.

ELIZABETH HOGAN: Thank you, commissioner.

The written report that I included in the packet to the Commissioners was in--has kind of become standard practice, because so much of what we do in Campaign Finance is very routine and it's really just a matter of keeping you updated as to, you know, the volumes and things like that.

But it would be ridiculously time-consuming for me to put in this unit report the details of what we do, but I would like to say should any of you wish any more information relative to any specific thing that we do I would be happy to add that.

I would just ask that you tell me.

You'll see that I indicated that the Council and staff are working on a draft regulation, that Chapter 399 of 2011 mandated that we prepare--and that has to do with independent expenditures in political campaigns--so we are working on that and we're in the stages of a first draft on that.

I'd like to add that we are--Bill and I are in the stages of negotiated terms of settlement in the case of Pelada et al. versus the Board. I just wanted to update you on that.

I'd like to tell you that we also, since our last meeting, have been sued in a law suit entitled Fox v. Barranca, and that is a campaign finance reporting issue case as one of its elements, and there are several other elements that have to do with a Town Board versus a County Constituted Committee. The Attorney General has indicated that they will represent us on that and so we're certainly very happy to have their assistance.

Last month, I was asked to come out to Oneida County to meet with the Oneida County District Attorney relative to a criminal matter that they have pending out there and I'll be returning there next month.

There is a case going to trial there.

And the last thing I just wanted to touch on was that we've made great progress--I know that it has gone on forever and it was interrupted with the mandates relative to HAVA and the machines and NYSVoter and all this, but I know the software issue that we have had going on which unfortunately--well maybe George is going to talk about this--but relative to those tech issues where things get outdated so quickly it has been a real challenge to address creating this new software.

And so even though there were some breaks, because of commitments that IT had to give to other areas, we have made great progress and the IT staff and our own staff have worked very hard to reach a point where there are really just a couple of issues that are on the table now.

And they're really issues that Bill and I are going to talk to George about and we expect that that will be resolved.

So those are the issues that I just wanted to bring to your attention and Bill, if you want about anything, go ahead.

WILLIAM MCCANN: No.

JAMES A. WALSH: Okay, thank you.

DOUGLAS A. KELLNER: And Liz you settled the [PH] Vote Co suit, right?

ELIZABETH HOGAN: Yes, we have worked on terms of settlement for that.

DOUGLAS A. KELLNER: So it's not actually signed yet or...?

ELIZABETH HOGAN: It hasn't--the signed stipulations haven't been transmitted yet, but Bill and I signed them today.

DOUGLAS A. KELLNER: So we've agreed in principle on that?

ELIZABETH HOGAN: We have, yes.

DOUGLAS A. KELLNER: And I think that was a successful--they had initially challenged the

Independent--well, why don't you just explain it again to summarize in one sentence what the case was and what the settlement is?

ELIZABETH HOGAN: -- Well, the case--there were a number of issues in the case. Some of them had to do with what expenditures certain types of committees could make and how committees had to be registered here.

There were issues of financial campaign limits and limits on money into and out of certain types of committees and so there were five of six issues in that case.

Just disclosure and discussion with the members of a union and that kind of thing, so I think we have come to a resolution of that.

DOUGLAS A. KELLNER: And we won the first round--I mean the case was dismissed, right? And then they appealed.

ELIZABETH HOGAN -- Well that - -

DOUGLAS A. KELLNER: Oh, a preliminary injunction was denied.

ELIZABETH HOGAN: --was denied, that's correct, that was last October--September or October I believe--and the merits of the case continued with an amended complaint.

And, you know, we've had significant--we're represented by the Attorney General in this case as well and we've had significant back and forth.

DOUGLAS A. KELLNER: -- But the settlement basically works out a system of understanding of what is required by the statute and it's so that there will be compliance with the independent expenditure provisions of the statute.

ELIZABETH HOGAN: It is my understanding that the plaintiffs in this case do understand what the statutory and board mandates of independent expenditure reporting and spending as well as all the other issues that we've discussed are currently under law and regulation.

DOUGLAS A. KELLNER: So the bottom line is that the Board's interpretation of the independent expenditure rules is still continued.

ELIZABETH HOGAN: That's correct.

DOUGLAS A. KELLNER: Which I think is important, because there's a popular misconception or there's a misconception among some of the election legal community on these's esoteric campaign finance - -

ELIZABETH HOGAN: Yes, it's unchanged.

EVELYN J. AQUILA: -- Obviously not by us though.

DOUGLAS A. KELLNER: After the Citizen's United case people think that these rules have all gone by the side, but in fact the interpretation of our agency has been upheld so far by the courts that have ruled on it.

And of course that's the issue in the National Organization of Marriage case that was just argued in the Second Circuit where they're trying to continue challenging our interpretation of those rules.

EVELYN J. AQUILA: Well, it's good that the public is concerned and listening to some of these concerns.

I have no objection to that.

JAMES A. WALSH: Okay, thank you Liz.

ELIZABETH HOGAN: You're welcome.

JAMES A. WALSH: ITU, George Stanton.

GEORGE STANTON: I don't have a lot to add to what I--

EVELYN J. AQUILA: Yeah, he's leaving. [LAUGHTER]
You just want to say goodbye, George right?

GREGORY P. PETERSON: That's the most succinct thing I've ever heard from you since I've been here.

GEORGE STANTON: I will give you all the benefit of the doubt that that applause wasn't because I'm leaving. [LAUGHTER]

EVELYN AQUILA: That's very good George, very good.

GEORGE STANTON: But no, we've been working on trying to finish up the electronic filing software and doing the filings.

And I did complete a document that I'd been working on with some of the concerns that the co-directors are going to have to be concerned with on the future of IT.

There's a whole lot of things on--coming up in the year 2012 that are going to pose some real challenges and IT is going to be down four people from what it was at the beginning of this year.

So I wouldn't want to be me if I was still here, to put it that way.

There are a lot of things that are going to cause a lot of consternation for whoever takes over from me or whoever or for the executive directors.

However IT continues on there's a lot of things involving not only budget, but the fact that staffing is becoming very thin.

And I like to have at least two people that could sort of do every job, that's not the case anymore.

Down in IT there's one person doing most jobs, for instance if the programmer who did the electronic filing software decided to go somewhere else there's nobody else down in my shop that can do it.

So that's something that's going to have to be thought about along with a lot of other things.

There's just not the depth in people for everybody to have the time to learn everything and that's going to be the biggest challenge for this agency in the IT.

EVELYN J. AQUILA: -- And you leaving it makes it thinner.

GEORGE STANTON: Well, yeah not that--you know, I'm just one broken-down old man. You know, two people retired already and lost one to layoff or will be losing one to the layoff.

GREGORY P. PETERSON: Have you provided an outline of that to the directors - - ?

GEORGE STANTON: I did, so yeah I just finished it too this weekend.

DOUGLAS A. KELLNER: Because we're looking at a possible catastrophe.

GREGORY P. PETERSON: Yeah, exactly and then the finger's going to get pointed at this agency.

EVELYN J. AQUILA: -- Absolutely.

GREGORY P. PETERSON: And saying, "You know, how come you didn't do this, how come you didn't do this?"

It'd be nice to be able to say, "Well, if you had provided us the people in spite of budgetary constraints we wouldn't have this problem--you know, you've got to look ahead."

I know in my home county in Nassau, tremendous budget problems and yet the county executives said, "No, we're going to beef up and especially in view of the election coming up in 2012 we're going to beef up the Board of Elections down there to make sure that they cover this."

That has to be looked at by this Administration, it's not something to just fritter away and then wind up with egg on our faces.

GEORGE STANTON: Well, I should mention that there's--and you may be aware of it--but there's a big IT transformation project in New York State and they have hired--the Division of Budget actually hired a consultant a year ago who should be finishing up their work.

But they're looking at a lot of centralization of data centers again and storage management, you know. Of course we're going onto the centralized email system in December, but it's going to be a challenging 2012 I think.

EVELYN J. AQUILA: -- Absolutely and I think that Commissioner Peterson is very right. He's very right; we're all very concerned about that.

GEORGE STANTON: Yeah, I'm sure it's not just the Board of Election, it's challenging for a lot of people.

EVELYN J. AQUILA: -- But some of our information is--

DOUGLAS A. KELLNER: You know, we have two key systems.

If the Campaign Finance Disclosure system goes down, I mean that's one of the major functions of this agency right now and--

EVELYN J. AQUILA: -- We're looking at impossible--

DOUGLAS A. KELLNER: --it's certainly not impossible.

And then, of course, we have NYSVoter is the other major system.

GEORGE STANTON: The good news on it, I didn't mention on the Campaign Finance, we were having issues with servers and memory and access to the outside locking up and we bought a new server and that's in place for good, so.

TODD D. VALENTINE: Kicking and screaming we got it.

GEORGE STANTON: Yeah, I mean it's a real screaming demon too; it's a good machine.

ELIZABETH HOGAN: -- But that's just a fix, because of the volume of - - and people using the

system from the outside as well as us using it from the inside.
It's just such a strain on it, the volume.

GREGORY P. PETERSON: Where is the backup and recovery for us?

GEORGE STANTON: Well, it's in two different places actually.
I mean we actually have the disaster recovery site for the NYSVoter system.
The backup and recovery for everything else is backed up to tape and goes to Iron Mountain every day,
so...

GREGORY P. PETERSON: That's physically shipped, not by electronics though?

GEORGE STANTON: Yes, right.

TODD D. VALENTINE: Well, the NYSVoter, there's an off-site in Westchester; State of Emergency
Management has a server - - so that has a different - -.

GEORGE STANTON: NYSVoter is actually backed up in real time, because all of the transactions
that take place on the main site also go to Westchester.

TODD D. VALENTINE: Yeah, and then annually we're testing that, shifting it over or are - - ?

GEORGE STANTON: -- Well, we haven't.
I mean, that's a major disruption, again you've got to be able to have the staff to be able to do
something like that.

TODD D. VALENTINE: Right, and we got that we were--and the timing was good for us, because
they were just developing that site, so we were able to get it.
But really we just put our equipment in there, it wasn't a cost to the site--now will that continue?
I don't know, I mean we're living at the largesse of another state agency so to speak, but who knows?

GEORGE STANTON: And the CIO that worked with me on that is no longer with CMO, he's moved
on to another agency.

TODD D. VALENTINE: Right, so hopefully we don't have to address that either, but we know it's
there.
It's, you know...

EVELYN J. AQUILA: Our concern is how long will it last?

TODD D. VALENTINE: Yeah, hopefully for a long time, because other state agencies also utilize that
as a disaster recovery site as well as the Iron Mountain for the off-site storage for that.
But so it's an issue.

EVELYN J. AQUILA: I feel we're getting fewer people while we're getting more and more things
that we have to do.

TODD D. VALENTINE: Well, I mean it's not as if it's gone silently.
It's like we certainly make the requests and we make it known when the budget comes out, which will

be as I said shortly when we start the meeting.

And these are the things that we put in there and lay out, “Here’s what we need to do, and here’s where we could use help.”

And we know we live in a larger world and it’s very hard, because you have to hit--you know, and it’s really the Governor, the Senate, the Assembly all have to come together and give us the resources we need.

But sometimes we get the resources we get and not what we need, so...

EVELYN J. AQUILA: And we’re living in very tough economic times, which are not getting better at this moment.

TODD D. VALENTINE----- said, yeah.

EVELYN J. AQUILA: -- You have to hope and pray that they do start to get better.

TODD D. VALENTINE: And that’s--yeah.

BOB BREHM: I think from our perspective the budget is never where we get to lay out our project needs.

More recently it’s simply give us either--

ELIZABETH HOGAN: -- Filling in the hole or finger in the dam.

BOB BREHM: --whatever the number is we tell you to fill in, put in there and send it to us.

It’s the budget side letter that is then next step and that’s where we have to identify what the programs, what’s the unmet need, what’s the out year issues that they should consider.

And, you know, the life cycle of the equipment we bought with federal funds is fast approaching.

That’s expensive equipment, so there’s a number of items that will need to be in the budget letter, side letter.

And we don’t have the call yet, but it’s one of those items that will be before our next meeting.

EVELYN J. AQUILA: All right, plus there’s tremendous competition for what funds are out there between housing and education and medicine.

We’re not so high on that totem pole and we can well understand that it’s very difficult, very difficult.

TODD D. VALENTINE: Mm-hmm, it is.

EVELYN J. AQUILA: Thank God I’m not the one that has to make those decisions, you know?

JAMES A. WALSH: Thank you, George when will your last meeting be with us?

GEORGE STANTON: Probably December if you meet before the 26th; if not it’ll be November.

JAMES A. WALSH: Let us know, I asked that because we just gave we--everything has been a little brief today--we gave you a brief thank you for your service, but I think we can be going into a little bit more detail at your last meeting here.

You’ve been a great service to us and to the Board of Elections and the State of New York for that matter.

GEORGE STANTON: Well, it's been interesting.
It's been fun some of the time, not so much fun some of the time, but always been interesting.
[CHUCKLES]

JAMES A. WALSH: Well thank you, let us know when your last meeting is, please.

GEORGE STANTON: Okay.

JAMES A. WALSH: New business--vote on a resolution to authorize the expenditure of HAVA funds for court-ordered voting machine modifications and testing.

DOUGLAS A. KELLNER: Are we skipping A?

EVELYN J. AQUILA: -- That should be in Old Business?

JAMES A. WALSH: -- Yeah, I thought we weren't going to do that.

BOB BREHM: -- Well that's the prima facie.
[MURMURED CONVERSATION]

TODD D. VALENTINE: We - - want to do it.

JAMES A. WALSH: Are you going to do it?

DOUGLAS A. KELLNER: For

TODD D. VALENTINE: Yeah.

JAMES A. WALSH: Oh, I thought - -

TODD D. VALENTINE: Just the one - -

JAMES A. WALSH: -- Yes, I have that.
I started doing that - - adjust that, okay.

KIMBERLY GALVIN: Basically what you have before is we did receive one set of general and specific objections regarding the Independence Party nomination in the 148th Assembly District. And the specs allege legal issue outside the scope of the Board's determination, so the recommendation is that it be deemed an invalid objection because it outside of our scope for us to rule and that the nominating documents stand with the candidate being on. As you know, as I said earlier, there is a lawsuit challenging that so that will ultimately be resolved in the courts.

EVELYN J. AQUILA: And what Assembly District is this coming from?

KIMBERLY GALVIN: 148.

DOUGLAS A. KELLNER: And we're not going to take any position at all in the court proceedings?

KIMBERLY GALVIN: No, just provide the papers.

DOUGLAS A. KELLNER: Provide the papers and agree that we'll comply with whatever order the court issues.

KIMBERLY GALVIN: Correct.

TODD D. VALENTINE: -- Yeah, - -

JAMES A. WALSH: This is just a matter of information, no vote required by the - - ?

KIMBERLY GALVIN: I think a vote, if you would, would be required on the one spec.
[VOICES OVERLAP]

DOUGLAS A. KELLNER: Right, so I move that we adopt the staff report on the prima facie listed.

JAMES A. WALSH: Is there a second?

GREGORY P. PETERSON: Second.

JAMES A. WALSH: All in favor?

(Chorus of ayes)

Opposed?

Carried, thank you.

Now we go to Item B, vote on the resolution to authorize expenditure of HAVA funds for court-ordered voting machine modifications and testing.

DOUGLAS A. KELLNER: I move the adoption of the resolution as drafted.

JAMES A. WALSH: And a second?

GREGORY P. PETERSON: Second.

JAMES A. WALSH: All in favor?

(Chorus of ayes)

Opposed?

Carried, we vote on a resolution commending the following County Boards of Elections on conducting the Primary Election in light of Hurricane Irene and Tropical Storm Lee: Broome, Delaware, Greene, Montgomery, Schenectady and Tioga County Boards of Elections

EVELYN J. AQUILA: Mr. Chairman, I'd like to expand that resolution if that's possible to include the people of the State Board of Election.

DOUGLAS A. KELLNER: I think what we should do is--

EVELYN J. AQUILA: -- Separate?

DOUGLAS A. KELLNER: --adopt these resolutions and then if you want to make your own resolution - - formally, so that--these county boards went to extraordinary lengths and really went

above and beyond the call of duty to make sure that the elections occur.

And we thought it would be a good idea that they have something to memorialize their efforts, that we will do something formal that we can send them and if they want to frame them that would be nice.

EVELYN J. AQUILA: -- Right, absolutely.

DOUGLAS A. KELLNER: I think it would be appropriate if we read one of them.

EVELYN J. AQUILA: Yes.

DOUGLAS A. KELLNER: Why don't you pick out like Broome or Tioga and just read it just so everybody can hear it?

JOHN CONKLIN: Commissioner, if I may?

DOUGLAS A. KELLNER: Yes?

JOHN CONKLIN: We should also mention that Schoharie County didn't have a Primary Election, but they were also quite severely hit by the Schoharie Creek flooding up into the Mohawk. The county seat was badly flooded, they're just getting back into some of their buildings and their equipment, but they didn't have an election so we didn't include them in with the resolutions. But I think that their board is still working very hard to get their stuff back together and up and running for the General Election, so they should at least be mentioned.

JAMES A. WALSH: - - I'm glad you mentioned that, thank you.

TODD VALENTINE: Are you going to read for Broome County?
He has a nice, deep voice.

JOHN CONKLIN: Sure.

KIMBERLY GALVIN: He should do books on tape.
[MURMURED CONVERSATION]

JOHN CONKLIN: A Resolution Commending the Broome County Board of Elections. Whereas there are 58 Boards of Elections in New York State, one in each county and the City of New York, charged with the responsibility to carry out elections and primaries in which enrolled members of a party may vote for the purpose of nominating party candidates and electing party officers.

And whereas Boards of Elections are not permitted to postpone or cancel elections or primaries no matter what circumstances occur to impede their ability to perform the elections,

And whereas in September of 2011 the convergence of Hurricane Irene and Tropical Storm Lee produced historic flooding in various parts of the Northeastern United States, and in particular, the counties of Broome, Tioga, Delaware, Schenectady, Greene, Schoharie and Montgomery in New York, And whereas in Broome County the Chenango and Susquehanna Rivers merged in the center of Downtown Binghamton where the rivers rose more than 25 feet and exceeded a record set by Hurricane Agnes in 1972,

And whereas more than 20,000 people were evacuated from their homes in the City of Binghamton and

the surrounding communities as roads and bridges were closed or washed away and a State of Emergency was declared throughout the county,
And whereas the Commissioners and staff worked diligently to adapt to the situation by moving polling places where necessary, communicate with poll workers, arrange for alternative transportation to new poll sites for votes, distribute optical scanners and ballots throughout the county and ensure that results were collected and announced on election night,
Now therefore be it resolved that the Commissioners of the New York State Board of Elections commend Commissioners John Perticone, Eugene Faughnan, Deputy Commissioners Mary Pines and Karen Davis and the staff of the Broome County Board of Elections for their resourcefulness, diligence and dedication in conducting and completing the election on Primary Day September 13th, 2011 in the face of significant obstacles and ensuring the mission of all Boards of Elections was performed with competence and professionalism.

DOUGLAS A. KELLNER: And of course, we had similar resolutions for all of the counties and I think we all--

EVELYN J. AQUILA: -- Yes, it was.

JAMES A. WALSH: -- A job well done, yes.

DOUGLAS A. KELLNER: --share that positive tendency.
Move the adoption of the resolutions as drafted.

GREGORY P. PETERSON: Seconded.

JAMES A. WALSH: All in favor?
(Chorus of ayes)
Opposed?

EVELYN J. AQUILA: -- I would like to suggest at this time maybe that we have a resolution for our next meeting drawn up for the members of the New York State Board of Election who I think also went above and beyond the call of duty and how they assisted, to see that everybody in New York State, especially those who were affected by Hurricane Irene and Tropical Storm Lee, were able to get to vote.

And that that was through the procurement of buses and transformers, so that there was light in the place, so that there was power, people who were in areas where they couldn't get to the voting place could get to the voting place.

And I know that several members of our staff worked very hard in seeing that that happened and I would like to publicly commend them and I thought we could do that at the next meeting by having a formal resolution drawn up.

Is that all right?

JAMES A. WALSH—— very good.

EVELYN J. AQUILA: Is everybody in agreement?
(Chorus of yeses)

JAMES A. WALSH: Then let it be noted.

KIMBERLY GALVIN: Commissioners, before you move to the next issue if there is a next issue--

I think that may be the last issue--
[VOICES OVERLAP]

JAMES A. WALSH: Just the determinations.

KIMBERLY GALVIN: I was just handed an original document that came in today while we've been meeting, which are general and specific objections again challenging the Independence Party nomination process similar to the 148th AD that we just ruled on. I don't know if the Board would like to consider making a similar ruling on this particular document as well.
It does seem to be outside--

DOUGLAS A. KELLNER: -- Okay, I'll just look at it and I'll do that while we do the other cases.

EVELYN J. AQUILA: -- We have to look at make sure.

KIMBERLY GALVIN: It just came in.

TODD D. VALENTINE: -- I don't know--I got you.

BOB BREHM: That - - ?

KIMBERLY GALVIN:----- just comes in and we haven't really seen it.

EVELYN J. AQUILA: So did I have a vote on that resolution?

GREGORY P. PETERSON: You don't need it until we vote, right?

EVELYN J. AQUILA: Oh, okay. [LAUGHTER]

TODD D. VALENTINE: We don't have it to vote on it yet.

GREGORY P. PETERSON: We don't have it yet, but we will vote on it - -.

EVELYN J. AQUILA: -- Okay, thank you.

GREGORY P. PETERSON: Absolutely.

GREGORY P. PETERSON: We're going to put a resolution before us at our next board meeting, it has to be drafted so...

EVELYN J. AQUILA: Yes.

DOUGLAS A. KELLNER: So this is the same issue.

EVELYN J. AQUILA: It's the same issue as we had before?

DOUGLAS A. KELLNER: While Bob is looking at that can we--I move that we adopt the staff reports on Campaign Finance Enforcement.

GREGORY P. PETERSON: I second that motion.

EVELYN J. AQUILA: Yes.

JAMES A. WALSH: All fine, all right, okay carried.

DOUGLAS A. KELLNER: And then we had discussed the next meeting date?

JAMES A. WALSH: The next meeting date is set for October the 27th, the same time, same place.

EVELYN J. AQUILA: Right, oh really?
We've only been here for how many years?

JAMES A. WALSH: We still have the preliminary determinations to vote on also.

GREGORY P. PETERSON: Yeah, we just did that.

JAMES A. WALSH: We did?

TODD D. VALENTINE: -- We just did that.

JAMES A. WALSH: We just did that - - oh, I spaced that out.

DOUGLAS A. KELLNER: All right, so we just need one minute to look at this.
I think it's the same though and that we can--

EVELYN J. AQUILA: -- What is it about?

DOUGLAS A. KELLNER: It's the same objection.

EVELYN J. AQUILA: Oh, it is, okay.

DOUGLAS A. KELLNER: This is to judicial convention delegates, but the issue is the same and it's based on--

KIMBERLY GALVIN: Basically I'll just restate it again; it's general and specific objections.
The candidate is Michael F. Young et. al, the office is the Supreme Court 5th JD, the Independence Party.

BOB BREHM: So it's the same specific types of issues?

KIMBERLY GALVIN: It's still outside the scope of the Board.

BOB BREHM: No, I don't disagree with what Kim is saying

KIMBERLY GALVIN: So it's invalidating the--they're saying that the nominating hearing was invalid for a variety of legal reasons, which is outside our scope.
So I would be recommending, as we did in the case above it, that it's invalid objections and that the

nomination at this point should stand.

JAMES A. WALSH: Okay.

KIMBERLY GALVIN: You can tell I don't have a spin on it, but - -

EVELYN J. AQUILA: I'm never too comfortable voting on things that were just handed to us.

DOUGLAS A. KELLNER: Well, that's why I read it and Bob is reading it now.

BOB BREHM: Mm-hmm, yeah I - -

EVELYN J. AQUILA: -- I'd like to see it - - just to make sure - -.

BOB BREHM: The cover was just there - -.

EVELYN J. AQUILA: I'll just read the specifics.

BOB BREHM: Yeah it's - -

EVELYN J. AQUILA: -- Yes, okay.

Anyone want it?

No, - - back again.

KIMBERLY GALVIN: So Commissioner, if I could just explain what we did kind of informally. That during the course of this meeting we did receive in the mail, general and specific objections to the Certificate of Nomination for the Independent Party for the Office of Justice of the Supreme Court in the 5th Judicial District.

A review of those objections indicates that the allegations therein are legal and are outside the scope of our Board's authority to rule on.

As such I would ask that the Commissioners find the general and specific objections invalid as they are outside of our scope and that they would rule that the nomination would currently stand as is.

DOUGLAS A. KELLNER: -- So moved.

EVELYN J. AQUILA: -- So moved.

JAMES A. WALSH: -- Well, - - second - - all in favor?

(Chorus of ayes)

Opposed?

Carried.

DOUGLAS A. KELLNER: And again we have the same understanding that--

KIMBERLY GALVIN: -- The same understanding, mm-hmm.

DOUGLAS A. KELLNER: --the Board is not going to take any position in the litigation other than to just appear.

KIMBERLY GALVIN: It

JAMES A. WALSH: If there's no further business we'll accept a motion to adjourn.

DOUGLAS A. KELLNER: So moved.

GREGORY P. PETERSON: Absolutely.

JAMES A. WALSH: -- All in favor, aye, opposed, carried, we're adjourned.

[END VIDEO]