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## Board of Commissioners Regular Meeting

[BEGIN AUDIO]

**JAMES WALSH:** I'd like to welcome everyone and convene today's meeting. Can we have the staff introduce themselves.

**TODD VALENTINE:** Todd Valentine.

**KIM GALVIN:** Kim Galvin.

**PAUL COLLINS:** Paul Collins.

**JOE BURNS:** Joe Burns.

**ANNA SVIZZERO:** Anna Svizzero.

**PATRICK CAMPION:** Patrick Campion.

**JOHN CONKLIN:** John Conklin.

**GEORGE STANTON:** George Stanton.

**VIKKI GONZALO:** Vikki Gonzalo.

**CHERYL COUSER:** Cheryl Couser.

**ROBERT BREHM:** Bob Brehm.

**JAMES WALSH:** Our guests, please.

**TARRY BREADS:** Tarry Breads, Election Operations.

**JOHN FERRI:** John Ferri, Election operations.

>>: Nils Ekberg, NYSTEC.

>>: Rob Zeglin, NYTEC.

>>: Tom Colonie, Citizen.

## Approval of Minutes

**JAMES WALSH:** Thank you, everyone. The first item of business...the minutes of the September 16<sup>th</sup>, 2010 meeting.

**DOUG KELLNER:** I move that we approve the minutes as drafted.

**JAMES WALSH:** Second?

**GREGORY PETERSON:** Second.

**JAMES WALSH:** All in favor?

>>: [Chorus of Ayes].

**JAMES WALSH:** Opposed?

>>: [No response].

**JAMES WALSH:** Carried.

## Unit Updates

**JAMES WALSH:** Unit Updates. Our Co-Executives, Bob Brehm and Todd Valentine.

## Executive Unit

**TODD VALENTINE:** You want to start?

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**BOB BREHM:** You can go first.

**TODD VALENTINE:** All right. Well, we're all busy getting ready for the election, of course, and –

**EVELYN AQUILA:** That's an understatement, Todd.

**TODD VALENTINE:** That's an understatement. You know, there are several fronts going on, obviously, you know.

**DOUG KELLNER:** Let's start with MOVE, I guess, right.

[LAUGHTER]

**TODD VALENTINE:** Yeah, okay, we can start with MOVE. That's probably the highlight or lowlight, depending on whose side you're looking at it.

**EVELYN AQUILA:** I don't mean to interrupt you, but it'd be nice if you'd explain what MOVE is –

**TODD VALENTINE:** Right.

**EVELYN AQUILA:** - for people who don't know what it is.

**TODD VALENTINE:** Yeah, one of the major fronts we're focusing on is implementation of the Military & Overseas Voter Empowerment Act, which is designed to increase participation for voting by military citizens and their families, as well as citizens, New York residents who are overseas.

**EVELYN AQUILA:** Right.

**TODD VALENTINE:** We often refer to them as UOCVA voters, which is the Uniformed Overseas Citizen Voting Act. Our other shorthand for the overseas voters is Special Federal Voters, because they're no longer residents here, but they're still entitled to vote for federal offices, which are obviously the two U.S. Senate officers, as well as any Congressional office that they may have been eligible to vote for from the address before they left the United States. So they continue that same tie, so they had moved from, you know, wherever they'd moved from, they would continue to vote for that Congressperson.

But part of that federal legislation required that the State had to – is, under the federal law, should have

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mailed their military ballots out no later than 45 days before the election. But there was a provision within that, dealing with states such as ourselves and others, that don't have their primary until September, which means it's impossible to get the ballots out in 45 days, so it's a waiver provision which allows us to comply with our 32 day statute. But our system for military ballots has a 45 day structure – 32 days - - mailed out, and then 13 days they're allowed to receive, so there is a 45 day transit period. Unfortunately, there were a number of counties that were unable to meet that deadline. There was a variety of reasons.

**DOUG KELLNER:** A relatively small number.

**TODD VALENTINE:** A relatively small number.

**DOUG KELLNER:** Yeah, because right – 53 of the 58 counties –

**TODD VALENTINE:** Yeah.

**DOUG KELLNER:** Met the deadline.

**TODD VALENTINE:** By and large, we had complied; the counties had done their job. But that's not full compliance in the eyes of the federal government, so they brought suit against us, and obviously, you know, the fact of the matter is, they didn't get mailed when we said we would mail them – or the counties didn't mail them, and we had come to – an – in order to remedy that violation, not to steal Kim's report's thunder...

**KIM GALVIN:** My entire report.

**TODD VALENTINE:** Well, they asked.

**KIM GALVIN:** I don't care – go ahead.

**TODD VALENTINE:** In order to remedy that, because we couldn't turn the clock back in time. The only way to try to at least provide some remedial application to that was to extend the time that we would receive the ballots after the election, from 13 days, add an extra 9 days to make it – which is the

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Wednesday before Thanksgiving – to 44 days, and that seemed to be – that’s one element that satisfied the federal government.

But the MOVE Act also has another part to it where – and this was new this year – which we’ve been struggling with. And Bob and I have done a lot of work trying to get the contracts in place and the vendors in place to allow the ballots for the first time to be transmitted by downloading from a specific secure website to the voters in the field, so that they can get their ballots there electronically. And that is up and running. All of those ballots were uploaded, and they’re available to anybody who’s eligible to vote for those, across the entire state at this point, and they can just simply print it out, fill in the appropriate bubbles, and mail it back. And everything still has to be post—everybody still has to vote before Election Day.

That is something that we really couldn’t give on.

But also part of the remedy made sure that we spread the word out, as wide and far as we could through press releases, as well as public service announcements, which we posted on YouTube – for whatever that’s worth [CHUCKLING] – and links out to publications that military voters and their families would see – predominantly “Stars and Stripes” that is, as a global reach to the target audience, so to speak.

At this point we’re gathering information from the counties as to exactly what they sent on which dates. I’ll leave that to – I have not been looking at that on a daily basis, but that’s – Kim has been collecting that, with Anna’s help, from a lot of the counties to get that information back. As you may know, we ask counties; we don’t always get responses back right away, so sometimes it takes a little prodding, so to speak.

So overall, our compliance has been good, and ultimately, you know, the goal of the entire MOVE Act was obviously to increase participation. We’re not really going to know the answer to that question until after the ballots come back, you know, we see reports of the ballots that are returned, but you know,

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we're not going to know that until after the election, whether it actually functioned as they intended it to, you know, that it did increase participation.

So we'll see, but –

**EVELYN AQUILA:** May I ask a question? How do you deal with all the court cases – between – the candidates, you know, all of that? When they go to court does the judge know this is immediate and we have to get back fast, or – I know that holds us up all the time, so I'm - -

**TODD VALENTINE:** You know, litigation is always a problem. I've got to be honest with you – this is the worst year I've seen for late litigation and lawsuits from a number of parties attacking – and it's different things; it's obviously not, you know – if it was coordinated, we could actually address it that – but it has forced us to tap into resources that, you know, since I've been here, we haven't had to do. We've had to go to outside counsel because the Attorney General had issues with conflicts of interest, so they couldn't represent us, and we certainly didn't have the resources in a couple of the cases. That's why Liz and Bill are out dealing with one issue out in Buffalo, because we had to hire outside counsel because the Attorney General couldn't represent us and there's another case like that.

We've also relied upon the Attorney General in those instances where we simply – our resources are stretched too thin, trying to deal, fend off or address people who come in at the eleventh hour, claiming that there's this problem. And those happen every year, but it's usually just like one. But now it's like half a dozen, and it's been very difficult because any response to those requires a lot of –

**EVELYN AQUILA:** But we read things in the press; they often don't make note of that. They often just say, "Well, this happened, take care of it," you know. I don't think they understand the full scope of what we're dealing with here, that there are court cases, the need for outside counsel sometimes. I mean, the Attorney General is repress—they are taking care of us in some cases.

**TODD VALENTINE:** Yes.

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**EVELYN AQUILA:** But in some cases, they can't because it just – it isn't – they're not able to, and we've had to seek other counsel.

**TODD VALENTINE:** Yeah – no, that's true.

**EVELYN AQUILA:** And I just feel bad about that, that sometimes that the press doesn't take the full scope of what's happening.

**TODD VALENTINE:** Well, a lot of times, you see with the press, the issues are narrowly focused to the story that they're -

**EVELYN AQUILA:** Yes.

**TODD VALENTINE:** That they're reporting on. You know, it's hard to put in perspective the entire election process in a short, you know, 300-word article.

**EVELYN AQUILA:** Oh, absolutely.

**TODD VALENTINE:** It's just impossible. But you know, with the roll-out of the new systems has complicated a lot of this because the –

**EVELYN AQUILA:** Yes.

**TODD VALENTINE:** Litigation that we've often seen in the past towards the end of the election cycle, towards the election – well, you could make late changes for something that could be more easily accommodated in the lever world.

That's not really the case in the optical scan world, in order to ensure the integrity of the system, so – and that's – this is the first cycle we're going through –

**EVELYN AQUILA:** Yes –

**TODD VALENTINE:** That pilot program didn't – these issues did not arise last year.

**EVELYN AQUILA:** Well, I think when you get volume, things arise, you know. And I think that –

**TODD VALENTINE:** Well, yeah.

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**EVELYN AQUILA:** That Bob and Kim and Doug and I, the counties we were in, as the day got later, things got better, - - you know, instead of - you know, six o'clock in the morning, things were not as good as they were, five o'clock in the afternoon, in the different polling places we went to.

**TODD VALENTINE:** Yeah, well the reports, and I don't -

**EVELYN AQUILA:** And we were in about five counties.

**TODD VALENTINE:** I mean, I'm not going to steal Anna's thunder, because she did have a report on that, but -

**KIM GALVIN:** Why not?

[LAUGHTER]

**GREGORY PETERSON:** You're on a roll

[SEVERAL TALKING AT ONCE]

**JAMES WALSH:** Ditto.

**TODD VALENTINE:** But you know, we certainly had, not only ourselves - and I'll leave it to Anna to fill in the details - have analyzed how the primary went -

**EVELYN AQUILA:** Yes.

**TODD VALENTINE:** You know, we obviously had people in the field. But we also saw a report from the Controller's Office, both in New York City and those counties outside of New York City, and the one thing I'll say is I mean, the results in many instances between the three reports, identified problems that we were aware of and were trying to address, but it's part of the pain of going through the transition to a new system.

**EVELYN AQUILA:** Of giving birth to the new system, yes.

**TODD VALENTINE:** Yeah.

**EVELYN AQUILA:** And that's what they were like to me, anyway, going around

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**TODD VALENTINE:** But yeah, that's – that's the problem we're facing. And then you know, it's just the general – we're running the agency in a time right now is difficult as well, because our resources are stretched very thin.

**EVELYN AQUILA:** Yes.

**TODD VALENTINE:** And while we do have some resources from the federal government, in terms of money and support, from the Department of Defense for the MOVE Act, it's very difficult to get everything done.

**EVELYN AQUILA:** I've seen the counties seem to have that problem, too – I know. Their resources were stretched, really, and certainly I saw that in Brooklyn and we saw it in Manhattan and across, you know, as I say. But as the day got – later in the day when more people had voted, as people learned what they had – you know – became more used to what they were supposed to do, things got better – greatly better. - -

**TODD VALENTINE:** Over time, you know, and that's the lesson from other states that we've learned, is that over time, and obviously the rollout is always very difficult, it's new for the voter, new for the poll workers - -

**EVELYN AQUILA:** This is the first - yes -

**TODD VALENTINE:** You know, the –

**EVELYN AQUILA:** First change in 70 years?

**TODD VALENTINE:** Yeah, it's big. - - estimate it.

**EVELYN AQUILA:** So it has to have impact.

**TODD VALENTINE:** It has to have impact, but you know, by and large, the reports that have been produced show that, well, nothing's perfect, but by and large the systems did function as it was intended.

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**EVELYN AQUILA:** Yes.

**TODD VALENTINE:** And there's clearly room for improvement, and some of the improvements we had already made, we had identified in the pilot program, but we know it's a work in progress.

**EVELYN AQUILA:** I'm going to suggest one improvement, I've been suggesting – that the ballot marking devices must be opened up and must be used. I mean, they're simple to use, and they would make a big difference. They're simple, they would move a line, you've got a long line, you have that ballot marking device, it's very quick. I suggest that. We suggest it for all the counties again, and I hope they take advantage of it. Thank you.

**BOB BREHM:** To follow up with Todd, there was a great deal of energy, especially in the last two weeks, with everybody in the agency, on MOVE, in order to try and – learn what happened, talk to the counties, answer questions, deal with the litigation issue, deal with the consent to pre-compliance, and just do as much as we could to provide a remedy that put the highest priority of making sure that people who are entitled to their ballot, get it.

And the new tool of the - - MOVE Act download tool, is just something's that new to us as a new remedy, and we're doing everything we can to educate people that immediately, wherever you are, you can go log in to the system, the link from our website, and tie in to your record, and download your ballot. So even if you intended to receive it by mail and because of whatever reason it didn't get to you yet, today is the day that you can get your ballot. The system is fully functioning and will let them do that.

And I think that's an important message to anybody that's listening, and anyone who is able to help us to communicate that message – that's an important message to get out.

We've all tried it in every communication we've had with the counties, you know, the numerous email messages that they've spent the last several days making sure they get out, the work that John and the Public Information Office did that public service announcement and get it posted on YouTube, to reach

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out to “Stars and Stripes” – wherever we are.

Even the people who are angry with us for failing to get the ballots out timely, we take our lumps, because we admit that they did not go out timely – but you can also help us to communicate to people that the ballots are immediately available to anybody you here from – family members, you know, they all reach out with their own network to their family members overseas.

We want them to know that they’re available immediately.

We’ve also done outreach with the state Adjutant General’s Office. John reached out to them with that initial press statement, and follow-up to make sure that – you know, because that’s an effort within New York State that could work, on top of all the other efforts that we are doing to get the word out. And they did confirm to us that they’ve sent it through their chain of command, to make sure that anybody who can get a ballot is paying attention.

We’re also working with OVF [Overseas Voter Foundation] and Scytl to more prominently display two additional items on our website. It’s in production and hopefully as soon as they get it done, we’ll see it very soon. One is the link to actually get your ballot. It’s there, but we’ll see if we can make it a little more prominent.

And the other, for overseas voters, there is ‘Express Your Vote’, which is a program that OVF and others have throughout Europe, and the overseas areas, in 90 countries, that allow voters to use that program and promptly – it’s through Federal Express – get their ballots back in time.

So we’re doing whatever we can to get the word out.

“The ballots are available, and here are these other links that help you get them back timely.”

And it has spent a great deal of time working on it, because it’s such an important item.

That being said, we’ve also submitted our budget during this last period of time.

We still have to work on our budget site letter, as we do every year, where at least articulate those items

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where we think we at least need to let people know there are additional responsibilities that aren't covered by the budget - - which has come in at the same level as our [SOUNDS LIKE] fill level is approved, that we're currently out now.

So we did meet that requirement, but we're also working on the site letter, which can go over probably after the general.

There's no real deadline for that, as long as we get it to them reasonably, before December 1<sup>st</sup>.

And that's pretty much the highlights.

**JAMES WALSH:** Anyone have any further questions? Thank you, - -.

**JAMES WALSH:** Legal - Kim Galvin.

### Legal Unit

**KIM GALVIN:** Well, we have been very busy and other than what Todd and Bob have said.

The official report back to the Department of Justice on the MOVE Act consent decree, is due today.

As of this time, two counties have not responded at all to us, despite repeated calls, faxes - we've done everything we could. So just before I came up here, we made one last effort to reach out to them, and if they don't -

**DOUG KELLNER:** What were the two counties?

**KIM GALVIN:** Genesee and Herkimer. And if they don't respond - New York City has also not provided their official written report, but they told us that it's coming, and they have provided us with bunches of information, various things that we could put together.

But Genesee and Herkimer, regardless of many efforts, have not responded at all. So those will be the two that are reported as non-compliant, if I have to do that.

Other than the cases that you're aware of in the Western District, the Southern District, Nassau, and the appeals pending I think Paul will speak to, and the appeals pending that.

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The most recent case was a case filed out in Erie County, two days ago now, I think, involving the Eighth Judicial District and the ballot layout. The candidate is requesting changes to the ballot structure at this point in time. The Attorney General is going to appear for us out there. Anna has been a great deal of help to me, and we are still in the process of getting those papers out to them for service; they have to be served on the opposing parties this afternoon. And also the Erie County Board of Elections has been very helpful in facilitating a lot of the communication with the AG's Office or providing backup documentation. So for any counties that are listening, of all the pending cases, that is the only one still alive – it isn't? There's another one?

**BOB BREHM:** Credico.

**KIM GALVIN:** Oh – Credico...

**KIM GALVIN:** Well, forget it then, - -

**DOUG KELLNER:** And you know, I think we should just reiterate that I think that there's a consensus throughout the agency that it is already past the deadline when we can comply with the court order to change the ballot. And where there is no mistake by the agency, and all we have done is carried out a state law that's been in effect for many years – in the case of the Eighth Judicial District –

**KIM GALVIN:** It's the same.

**DOUG KELLNER:** That ballot format has been the same since 1890, when the government first started printed ballots – and –

**KIM GALVIN:** So, one of the arguments is even if we did what they said, then we're directly in contravention of what the statute specifically orders us to do, and then everybody else can –

**DOUG KELLNER:** Right.

**KIM GALVIN:** Come in and say whatever.

**DOUG KELLNER:** So – and then when the –

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**BOB BREHM:** Credico –

**DOUG KELLNER:** The Credico case that has already been argued before Judge Deery in the Southern District – again, he’s asking to declare unconstitutional, a statute that’s been in place for many decades, and where the Board just carried out its ministerial duty to set up the ballot exactly as the statute applied. And in those cases, it is completely unreasonable for candidates to wait until two weeks before the election. And so –

**KIM GALVIN:** Yeah, we have –

**DOUG KELLNER:** I, for one, will be urging that – well, I don’t even want to predict. I think we should assume the judge is going to do the right thing.

**KIM GALVIN:** Right – reemphasize at every level of every court, that the time has passed. And it just highlights just one last point that I’d like to make, before I ask Paul if he has anything to add, is that what these course cases is done, again, is raised to the forefront the desperate need for certain changes that I can see in the statutory framework, or the time frames or – you know.

This isn’t the lever machines where you can go out and just make a change to these things with a minimal amount of time. These are, you know, extraordinary time consuming changes that require a great deal of effort and time. And fortunately, I think, we’re going to come through this cycle of lawsuits, you know, relatively unscathed in the whole resultant – you know, whatever results. But there is going to be a time when one of these lawsuits and one of these courts is going to make a change, and we are not just going to be able to effectuate it, and we are going to run the continuing problem without waivers from the federal government, being in violation of the federal statutes, as well.

So, I know that this is almost the time of year where we start putting together the legislative packet for the legislature next January or February. So, I would just urge the commissioners and everyone, whoever we speak to, to just re-emphasize again. This is not like, you know, we really should change

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these because it might make things easier. These are things that need to be changed in order that we can ensure that these elections and these candidates are given all the due process that they're deserving of.

So other than that, Paul?

**EVELYN AQUILA:** Kim, do you know how many federal cases we've had, and – just for the public – and how many federal cases did we receive this year, since the primary?

**KIM GALVIN:** One, two, three, four.

Four – four.

**DOUG KELLNER:** - - Six. Southern -

**KIM GALVIN:** Six – Southern – well, we have – yeah, we have the Western District, the Southern District, the Northern District has two kind of pending, and what are the –

>>: Great –

**KIM GALVIN:** Yeah, we have the Western District, the Southern District, the Northern District...

What's the other one?

**EVELYN AQUILA:** Many.

**KIM GALVIN:** Many.

[LAUGHING]

**KIM GALVIN:** Too many.

**EVELYN AQUILA:** Six.

**KIM GALVIN:** Too many where we've had to just break up and certain staff – I mean, like Todd said, you know, Liz is in Buffalo; Paul's been watching some parts of the state; Todd's been watching the other.

**EVELYN AQUILA:** I know you have.

**KIM GALVIN:** I've been dealing with the Consent Orders and State cases, and you know, Bob and Anna

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and everybody else have been involved in doing whatever we need to do to get it done.

So it has been busy.

It's been fun, but – you know, it'll be nice when it's over.

**EVELYN AQUILA:** Yeah.

**KIM GALVIN:** Paul, do you have anything to add on the Nassau - -

**PAUL COLLINS:** Well, the interesting thing is – it's a nice segue into that – from that, rather, excuse me.

The Supreme Court judge in Nassau County has ruled to move the case from Nassau County to Albany County, where it should have been brought. What happened is that it was a two-tiered case, if you will – an Article 78 proceeding, and a Declaratory Judgment proceeding.

And Nassau admitted - - the statute, and that the Article 78 proceeding had to have been brought in Albany, and the Declaratory Judgment proceeding, we felt should have been brought in Albany, as well. To make a very long story short, Nassau then sought to sever the case and have just the Article 78 come up to Albany, leaving the Declaratory Judgment action in Nassau. Judge Woodard correctly ruled, in our opinion, correctly ruled, “Now wait a minute; you're not getting two bites of the apple here; we're not running two cases on essentially the same concept.”

And apropos Commissioner Kellner's comments, Judge Woodard sort of gave Nassau the back of her hand on the argument that, “Well, wait a minute, wait a minute, to send this case to Albany will cause a delay.”

And frankly, the judge correctly pointed out, “The statute that you're challenging is five years old – where you been? So don't speak to me of delay.”

And she moved the case to Albany County.

There is another case in Suffolk County, that seeks essentially the same relief – to stop the use of the new machines, and we were not a party to that litigation, and we were directed to have been joined, and

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the plaintiff still hasn't joined us. And Suffolk County went into the Appellate Division, because the judge had scheduled a hearing on a preliminary injunction, to enjoin the use of the new machines. And they got a stay from the Appellate – they got a TRO, a Temporary Restraining Order – pending the court making a determination. That is returnable this morning, and I filed papers in that as well, in support of the continuation of the stay of the proceedings in the court below.

But it all speaks to the same thing – people running in at the eleventh hour, challenging things that everybody knew, sure as God made little green apples, were coming.

And that's – that's where we are on those two cases.

The Nassau case also involves an issue of the confidentiality of the technical data package of the vendors. The judge granted the application of ES & S for a Confidentiality Order, after having refused our argument in that regard, and issued an actual Confidentiality Order that we supplied.

Nassau has taken an appeal from that, the granting of the Confidentiality Order. We had previously filed an appeal of her granting discovery in this case at this time with motions to dismiss pending, etc., notwithstanding the transfer of the case itself to Albany County.

Those two appeals will continue to reside in the second department, and I suppose it will have to do - - to join them and go forward.

Everybody seems to have a better way than the State legislature.

**JAMES WALSH:** Thanks, Paul. Thanks, Kim. Election Operations – Anna?

### **Election Operations**

**ANNA SVIZZERO:** Thank you, Commissioner. We don't burden our monthly report with the minutiae of what we do, but maybe I should have because I'm pretty much left without a monthly report.

[LAUGHTER]

**ANNA SVIZZERO:** It is what it is; it's not an easy process. Anybody that thought that this first year

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rollout was going to be without incident, really underestimated what goes into making this happen. We are working closely with boards. We do have a Help Desk that answers call day and night from home. Boards are working around the clock, and our staff is available to them.

They all have our email addresses and if they contact us, we'll get back to them and work through their issues with them. Our concerns of late are with test decks.

We have some people on site monitoring boards and their understanding of the test deck process.

We're going to be following that up with an email and setting up conference calls or video conference calls with them, as necessary, to make sure that they understand how a test deck is to be compiled and also performed, because that's the key to everything working well on Election Day.

So that is a focus of ours right now.

The primary report from our on site visits does speak for itself. The issues remain people oriented. I'm happy to tell you that every county in the state except one – and the one is not New York – has reported the completion of their 3% audits. And every single one of them, and not – and not a single one to the audit have to be escalated beyond the 3%. These scanners are working the way they're intended to work, and any anomalies that the Board has had, they have been able to attribute to a printing error, bad marking pens and things like that. These scanners do work. What it takes to get a ballot together to make the scanner work on Election Day is yeoman's work. And you can't recommend economies of scale to Boards or shortcuts in any of that unless the Boards go through the process and really understand the magnitude of what they're doing. This is a new responsibility for them, and it's not easy work. But it's important that they do it; that there is no vendor intervention in that process.

So with them having done it in the primary and now in the general election, we'll have a chance to work with them region by region, look at their issues, and see what we can do by way of training or working with vendors to perform more training or enhance the training materials that they do provide, or the

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sessions that they've conducted to date.

That's important to us.

I think these Boards need all of that support on all of those levels, and they've clearly paid for it.

And again, without realizing what it's like to go through this the first time, there are no shortcuts to be had.

Our focus, again, as a result of the comments from the on site reviews that we conducted on Primary Day are people based – the font size, the contest delineations and things like that.

We are committed, I think, as an agency, to visit these issues and focus on ballot usability and engage whatever kind of support we can to review those issues. Clearly, there might be statutory issues that have to be addressed, because our ballots are built the way the law tells us to, so if we want to build them any differently, we have to start with that framework.

And so we'll be working with our colleagues in the legislature at the staff level, to let them know what our concerns are and see what suggestions that have for what might be changed and what we will continue to live with.

Other than that, the report after today's Board meeting, will be available to John to put on the website, and we can have copies for you if you want, and we can send it electronically, as well.

And I am happy to answer any questions that you have, other than those that have been raised so far.

**EVELYN AQUILA:** Is there any really big concern that you have for Election Day, Anna?

[LAUGHTER]

**EVELYN AQUILA:** I know – we all have them, don't get me wrong.

**ANNA SVIZZERO:** Acts of God, I think – I think we try to –

**EVELYN AQUILA:** We could, you know, in any way help you with.

**ANNA SVIZZERO:** I really don't think so. I think this has to play its course and it's – we're just trying to

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make sure that the Boards have dotted if not all the i's and crossed t's, then as many of them as they can think of, and we can help them think of. And there's where I think reviewing with them the test decks, other issues come up in those conversations, so there's more than just test decks to learn about from that, so we have four or five of our team downstairs working on that right now.

Other than that, I just think, as I said, these Boards have done tremendous work; they've never done this work before.

**EVELYN AQUILA:** I know.

**ANNA SVIZZERO:** And they've really taken on a lot. Some of them have been more aggressive than others – they've cowboyed up earlier, you know, they have really done an awful lot of work.

And I think other Boards have tried to do as much as they can.

They have limited resources – limited staff and limited technical skills available in the staff that they're allowed to hire at the dollars that the county's making available for those positions. So – yeah, there's a whole triage that goes before building a ballot and running an election, and maybe in –

**EVELYN AQUILA:** Some of those counties were held back on money, too, weren't they? I mean - -

**ANNA SVIZZERO:** Absolutely. I don't think the counties have understood how serious this is, and I don't know that they understand that maintenance of effort, you can't use all this federal money to do it; it is the county's obligation already in the statutes. So you know, there's a learning curve there for everybody. But I think once the county Boards have gone through this so they can quantify the kind of work that's gone on and the hours they've put in at the staff level that doesn't get paid for those hours, that when they share that with the counties, you know, maybe there's some accommodation they can all come to.

**EVELYN AQUILA:** I even know New York City didn't get the money they requested, all the money that they needed and requested. So it's been difficult, no two ways about it. Money's tight all over right

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now, you know, so it doesn't help.

**JAMES WALSH:** Commissioner Kellner.

**DOUGLAS KELLNER:** Anna, on the audits, if I understand you, that all but one of the counties had no escalations of audits, but the counties did identify issues where the machine acted correctly but the ballots may not have been counted, or the count had to – the hand count would have been different because of things like printing issues and the way voters marked the ballots.

**ANNA SVIZZERO:** Yes.

**DOUGLAS KELLNER:** And I wanted to emphasize that that's an important part of the audit process, to identify those issues because we all learn, then, more about how the machines are working and more about what we need to do with our voter education, right?

**ANNA SVIZZERO:** Yes, Sir.

**DOUGLAS KELLNER:** And is that going to be collected up and put into a report so that the details will be available for everybody to review?

**ANNA SVIZZERO:** What we get from the county Boards is a certificate signed by the Commissioners, and to the extent that they've appended their information, as these two Boards did. We can compile that and share that with you. But the Board that was still doing audit reports when I prepared this, was Erie, and they had – I can't recall now and I don't want to misquote them – but they did have a couple of scanners left in their audit process. They had encountered no problems to date, so I have no reason to think that they will as they complete that. We just don't have their certificates in yet, but we will prepare a report that describes the situations that the Boards shared with us.

And again, in conversation we may learn more than they've documented in those certificates, so we'll include that anecdotal information, as well.

**DOUGLAS KELLNER:** Well, I would appreciate it and I think that we should, you know, provide as much

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information from the audit process as possible, that will help in the learning process.

**ANNA SVIZZERO:** We can certainly send them an email and include a form that they can document when they do their 3% audits from the general election, and we'd gather – obviously, more voters will be out.

**DOUGLAS KELLNER:** Right.

**ANNA SVIZZERO:** There will be more information to share, and I'm sure the counties won't mind telling us a little bit more about what they're doing.

**DOUGLAS KELLNER:** Well, and we'll hear it anecdotally at the next conference.

**ANNA SVIZZERO:** That's true; that is true.

**DOUGLAS KELLNER:** Thank you.

**JAMES WALSH:** All right, anyone else? Thank you, Anna. Public Information Officer, John Conklin.

### Public Information / NVRA Unit

**JOHN CONKLIN:** Thank you, Commissioner. My apologies for not having a written report in your packets. I missed the deadline for this month, so you're going to have to listen to me go through the whole thing. I'll try and be quick.

We sent out a press release reminding the public about the voter registration deadline for October 8<sup>th</sup>. It received very wide coverage, at least upstate, and I heard it was reported on most upstate radio and television stations, including this area, I saw it frequently, so that was a great help to us.

We sent out a press release on the Consent Decree with the Department of Justice, concerning the measures taken to ensure that the military and overseas absentee voters were able to handle their ballots and have them returned and counted. The release was distributed nationally, as well as to the International Herald Tribune, Stars & Stripes, USA Today International, Military Times, and through the National Guard, through the cooperation of the State Adjutant General's Office.

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Also in compliance with the Consent Decree, we've written a radio and TV PSA for distribution throughout New York State, aimed at any family members of military personnel, and non-military overseas voters who can alert them to the extended deadline.

That began playing on Tuesday – the radio started on Tuesday; the TV started yesterday. We worked with New York Network, which is part of SUNY, and our friends at the New York State Broadcasters Association to do that.

We also posted that PSA on YouTube yesterday, so we'll be linking to that very shortly, so that the State Board's website will be able to show it or at least link to it, and then we'll ask the local counties to do that as well.

We've made some updates to the Subject Matter List on the website as required by the Freedom of Information law.

We posted the transcript for the September Board meeting.

We posted the official results of the primary for those offices that filed their petitions with the State Board.

We posted the official certified general election ballot.

We posted the special election calendar for the 29<sup>th</sup> Congressional District.

We completed our research on a selection for the annual conference for next spring.

We contacted five hotels in the region and our recommendation is to use the Desmond.

It meets our needs for availability, vendor space and conference space, so I need to thank Donna Mullahey in helping me in doing that.

The dates for the conference are going to be the 25<sup>th</sup>, the 26<sup>th</sup>, and the 27<sup>th</sup> of April in 2011.

There continues to be heavy call and email volume of inquiries from the press and the public regarding all of the things I've mentioned here, and tomorrow will be the 11-day pre-general for campaign

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finance reports, so there will be another influx of activity from that, as well, for our office.

Just quickly – oh, and we’re also going to be running an ad in Stars & Stripes on the MOVE Act that will start Wednesday and run through the day before Election Day.

And just lastly, for the NVRA Unit, we had a significant increase in the voter registrations leading up to the deadline on October 8<sup>th</sup>.

The unit processed those in a timely fashion, with some help from the other units in the building, particularly Campaign Finance, and the Counsel’s office staff.

And lastly, we conducted the semi-annual NVRA Agency training in New York City, and that was completed on September 16<sup>th</sup> and 17<sup>th</sup>.

Any questions?

**JAMES WALSH:** Okay.

Thank you, John.

**JOHN CONKLIN:** Great.

**JAMES WALSH:** Campaign Finance?

### Campaign Finance Unit / Enforcement

**CHERYL COUSER:** Good afternoon. Campaign Finance has submitted our written report for review.

We’d just like to let everyone know that tomorrow the 11-day pre-general report is due, so people who haven’t filed, if you could promptly do so. And that’s our report for today.

**JAMES WALSH:** Any questions?

**JAMES WALSH:** No. Thank you. ITU, George Stanton.

**DOUG KELLNER:** And thank you, Cheryl. Of course, Liz is in Buffalo now on the big lawsuit brought by National Organization of Marriage, to challenge the constitutionality of the requirement that there be reporting by political action committees. Your office has spent a lot of time working with Buffalo

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counsel on that lawsuit, and I just didn't want to let it pass because it has been a major effort that I think all of us here have been committed to defending the New York statute that requires political action committees to file and report, and that's been very important.

And of course, there have been a number of other activities going on in the Campaign Finance Unit, including that you've timely gotten out, I think the largest filing in the history of the Board, in terms of the number of committees filing for this year's general election.

And they've gotten out on time the prosecutions for the non-filers.

So the system is being held together, even though I know there's so much more that we could be doing there if we had the staff.

**JAMES WALSH:** Thank you. And, my apologies, I should not have let that brief report slip by so quickly like that, because I do forget there are people watching this who are not in this room today and there's an enormous amount of work being done in your department. And we've heard from other people that the legal work that's been going on and the lawsuits and – just an enormous pile of work that had to be done. I know you're always sitting in here, so your report was as short as it was – my apologies for not explaining why.

Thank you, and thank you for your department's work.

ITU, George –

### Information Technology Unit

**GEORGE STANTON:** Well, the fortunate thing for everybody that I go last is that most everything that we do has been covered, and they don't have to listen to me talk very long.

[CHUCKLING]

**GEORGE STANTON:** But mainly, we've been, you know, like everybody else, concentrating on things surrounding the election cycles – doing all of the campaign filings and printing the letters, five day letters,

those kinds of things; supporting the ballot that's posted on the website.

All of the other web updates that we've been doing with the MOVE and OVF and all of that kind of thing, we've been supporting counties with their - - voter activities at the Help Desk level.

And assisting the PIO's office with a lot of ad hoc reports that people ask for it, and always at this time of year.

We've been proactively monitoring all of the systems that support the whole agency IT area, and other than that, we're just living large and enjoying life down there.

[LAUGHTER]

**EVELYN AQUILA:** How do you mean that - [LAUGHING]

**JAMES WALSH:** Any questions? Thank you very much, George.

### Old Business

### Discussion of Disclosure of Potential Proprietary Information

I have under Old Business, a follow-up on Dominion / ES & S [Election Systems & Software].

Now, I know, Paul you already made some reference to that.

Do you have anything else to add to the comments you made earlier?

**PAUL COLLINS:** Well, what really has to be done, Commissioner, is we have to make a determination of two items -first the items that the vendors have claimed confidentiality with respect, and determine whether they should be exempt from foil, as proprietary information, trade secrets, etc.

Then in accordance with our own regulations, which items, irrespective of their trade secret status or not, should be exempted from public disclosure, under foil, to preserve the integrity of our essential operation here of running these elections using, you know, this software and these new machines.

We have a report on each vendor from NYSTEC, which segregates them, and I suppose if the

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Commissioners were so inclined, we could simply accept that report, and roll it into a resolution, with respect to each vendor, and fulfill our obligations.

I did a draft report, but I suspect you may wish to discuss some of this.

**DOUG KELLNER:** To me, it's more important to get the resolution adopted, to notify the vendors that we don't accept their confidentiality claims, and I'd be prepared to vote on that now, if we can do it.

This has been a matter that's been around for 18 months.

Have you – has this been circulated yet?

**PAUL COLLINS:** No.

**DOUG KELLNER:** Have you – so Todd and Kim haven't seen it.

**PAUL COLLINS:** No. No.

**DOUG KELLNER:** All right, well, I asked at the last meeting – and I understand – the Legal Department has been absolutely overwhelmed since the last Commissioners meeting, so I'm not suggesting that there was any way that you could have done more than what you've done in the last month. But I really would hope that we can circulate a draft, and have the Commissioners vote so that we can get this process going, so that the materials that the vendors submitted in connection with the certification, can be publicly available.

And of course, it's also timely because we have one or two lawsuits – I think it's two lawsuits pending now – where those documents are being produced in discovery under a very extensive Confidentiality Order.

**PAUL COLLINS:** Right.

**DOUG KELLNER:** And in my view, it's really not fair to the plaintiffs in those cases, that they be covered by this really tight Confidentiality Order, when so much of these documents should be made public, under the original understanding that we had, that we would make public everything in the certification

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process, except documents that specifically impacted security, or proprietary claims of the vendors.

And I add that I'm very skeptical of the vendors' proprietary claims, because everything is patented, and when you patent something, you can't retain a proprietary claim on it.

The whole point of patenting it is to make it public, even though it's in very technical jargon when you file the patent, so that people can't really read it. And yes, they had to de-scramble that jargon in the certification process, but I think that we would all be better served by making those materials available to the public sooner rather than later.

And even with the Nassau County litigation, while I certainly disagree with the underlying premise that the State law is unconstitutional, in a sense, Nassau County is performing a service if it's done fairly and properly and without bias, of examining our certification process, with additional experts that Nassau County is funding. And as I say, if it's done without bias and properly, then everybody benefits through that process. And therefore, I think that getting the confidentiality issues resolved sooner rather than later is in everybody's interest.

**EVELYN AQUILA:** I agree.

**DOUG KELLNER:** So can we aim for next meeting, please?

[LAUGHTER]

**EVELYN AQUILA:** Is that too soon, I don't know.

**DOUG KELLNER:** I know, Paul is thinking, how many times is he going to be hauled into court between now and three weeks from now.

**PAUL COLLINS:** That's true –

**DOUG KELLNER:** Maybe for the December meeting.

**EVELYN AQUILA:** We can always aim.

**JAMES WALSH:** Aim is appropriate.

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**PAUL COLLINS:** Aim.

**EVELYN AQUILA:** You can miss your aim.

**PAUL COLLINS:** Commissioner? To quote the old Chinese proverb, a journey of a thousand miles must start with the first step.

**EVELYN AQUILA:** Right.

**PAUL COLLINS:** I have a resolution, we can circulate it, but there are substantive issue that have to be addressed, I mean, if the resolution – someone's going to have to go through the [PH] NYSDEK reports and see, do we agree, do we not agree, etc.

**DOUG KELLNER:** I think I've already sent my comments on it, about two months ago or so.

And –

**JAMES WALSH:** Any further discussion?

**DOUG KELLNER:** All right, so let's – let's circulate it within the agency, get the comments, and get a resolution in front of the Commissioners –

**PAUL COLLINS:** Right.

**DOUG KELLNER:** For the next meeting, if we can.

**PAUL COLLINS:** All right.

**EVELYN AQUILA:** Thank you.

**JAMES WALSH:** Discussion of Ballot Usability – Todd and Bob.

### Discussion of Ballot Usability

**TODD VALENTINE:** Well, we talked – we talked about this before; I mean, it's really just to remind people, particularly in line in a recent reports, the kind of regulation from both the both the Controller's Office and certainly our own report, you know, that this is an issue that – and I know we'll see it again in the general election, because we, obviously, we really couldn't change the entire ballot between the

primary and the general.

But this is a project that there are systemic issues that we need to address at the ballot that are just – we’re starting to see as we transition to the optical scan.

I mean, I’ll just highlight the one that people hit on the most, is certainly the size of the print.

Well, that’s a function of many other things, so you have to analyze that in context with all the other – why is the print so small - well, the paper’s only so big and – you know – all those issues have to be in there.

But you can also look at the other elements that appear on the ballot, and what purpose do they serve, and can they be addressed in a different way that would allow you, within the limited paper size, to then increase the size of the print.

So I mean, that’s just one issue that you have to analyze, but it’s also a whole – it’s part of the process.

So it’s not just ballot design, it is usability.

It’s a slightly broader issue.

**DOUG KELLNER:** Todd, there were two main points that I wanted to make in adding this to the agenda, or continuing this on the agenda. The first time this was put on the agenda was in connection with the over-vote screens. And I want to make sure that we stay focused on the need following the elections, to address the issue, along with a collection of other minor tweaks that we want to make to the programming and the source code in the machines.

That involves a couple of things.

Anna, this is real important that – I’m really doing this for your benefit – because it’s Operations that I’m really concerned is – just needs the extra push to make this a higher priority.

And I know there are so many things going on.

So number one is that immediately following the election, we need to quickly identify all of the source

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code and machine programming issues, and put together the budget or the plan within the agency, on how we're going to get these resolved.

We still have open compliance issues with the vendors, in terms of a couple of open items- -

**ANNA SVIZZERO:** Right - -

**DOUG KELLNER:** - - on the security issues that remain open.

Those are obviously vendor responsibilities, to correct them at their expense.

To the extent that we're modifying source code because of screens or other programming issues, or new statute issues, that may be our responsibility, and we need to put together a plan and make sure we have HAVA funds available to do that.

And I assume that the counties are aware of some of the issues being raised about the over-vote and double vote issues, that we'd be assembling data on that to see just how significant it is, if only to determine how much it's worth spending to address those issues.

So that was one subject within the topic of usability, which is just to make sure that while we're carrying out our general election duties, we're thinking about the next steps and being ready for that.

The second thing is an issue that we've discussed before, and that Todd addressed, which is the formatting of the ballot, and making sure that the Operations Unit is acquiring expertise on ballot usability and ballot design.

We have the Brennan Center Report that was issued a year ago, and many of the ballots – without being statutorily complied – don't take up on all of the issues that are raised in those guidelines for ballot usability.

And I believe that the U.S. Elections Assistance Commission has essentially adopted that same Brennan Center Report and has been providing it to local jurisdictions.

So one of my suggestions is that it's very important that within the Election Operations Unit, that there

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be staff who get the full training so that they know these usability issues inside out, and that we in turn, work with the counties to make sure they're implementing these guidelines.

And as I say, it's not statutory.

So for example, the big issue in New York City today that hit the press, is the Brennan Center had gone to New York City and said, "Look, you've got a problem with your ballot instructions. Your ballot instructions don't match your ballot."

And not surprisingly, New York City ignored them.

[CHUCKLING]

**DOUGLAS KELLNER:** Actually, I shouldn't say, not surprisingly – because the right thing for New York City to have done when they were contacted with this is to say, "We'll correct the error," instead of saying, "Well, we followed the statutory language," even though the statutory language specifically says that you can change the instructions to match the machine.

**TODD VALENTINE:** - - Yeah.

**EVELYN AQUILA:** Right.

**DOUGLAS KELLNER:** And you know, the specific issue of what they did, is that the instructions say to vote for a candidate whose name is printed on this ballot, from the oval above or next to the name of the candidate.

But ovals are below the names of the candidates.

And you know, I think, "Well, so what?" You know, does a voter need to even read the instructions in order to figure out how to cast the ballot, but if you're going to have instructions, then they should match what's on the ballot.

And I guess the concern, and the reason I'm taking up everybody's time with this, is that this is really important, and I don't think that everybody has fully absorbed just how important this is.

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And you know, another example is the Albany County ballots are also followed by many other jurisdictions – I think most of the jurisdictions that used Dominion in the primary, where they had – where the write-in boxes were just located, in my view, in completely the wrong place.

**PAUL COLLINS:** ES & S.

**DOUGLAS KELLNER:** I'm sorry, it's the ES & S, thank you, Paul – that it was the ES & S Counties, that the write-in boxes were located in a place that was very misleading to the voters, and we've heard back anecdotally that many voters did not correctly cast their ballots because of the location of the write-in boxes.

So again, I turn to Anna and I sort of beg and say, we really need to say, 'Okay, X person in Election Operations is going to be our usability expert' – that that person needs to know the usability guidelines from the Elections Assistance Commission and the Brennan Center Reports, by heart, and how to apply them.

And be in a position to train the counties so that we can get this right.

And then I guess there's a third issue, which is for us to be thinking about – is that should we do a usability study of our own, and straighten out once and for all, which is more usable – the New York City format of listing the offices in the columns and the – I'm sorry, listing the parties in the columns, and the offices in rows; or the format that everybody else in the state follows, putting the parties in rows and the – I've got it backwards.

**EVELYN AQUILA:** I'm almost not too worried about that, Doug. I'm more about the size of the print.

**DOUGLAS KELLNER:** Well, there should be –

**EVELYN AQUILA:** That's my biggest thing.

**DOUGLAS KELLNER:** Well, let me just -- my view is that one form is probably more usable than the other. We should just decide which is more usable and then tell everybody to do it that way, so that

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there's uniformity throughout the state and candidates can, in their advertising then, have the same ballot everywhere instead of having to be concerned which county they're in.

**EVELYN AQUILA:** My concern is the print.

**DOUGLAS KELLNER:** All right.

**DOUGLAS KELLNER:** Now on the print, Todd already addressed that, you know.

We want to – I know I - -

**GREGORY PETERSON:** Supply magnifying glasses.

**DOUG KELLNER:** I don't like the, "I told you so's" on this.

**EVELYN AQUILA:** They do, but it doesn't matter.

**DOUG KELLNER:** But I kept saying we should have 17-inch wide scanners instead of 8 ½ inch wide scanners. And I've been saying this for five years. And we actually got the companies to bid on it, and it would have raised the cost of the machines by 30 or 40%.

**EVELYN AQUILA:** - - Ugh.

**DOUG KELLNER:** All right. Go ahead – Paul

**PAUL COLLINS:** To address Commissioner Aquila's specific concern as to the size of the print, at every polling place in this state, we have a ballot marking device – one of the features of, is that it augments the size of the print on the ballot.

And unfortunately, for whatever reason, many counties feel that that instrumentality is only for voters with disabilities. It isn't – and any voter may use it, and particularly any voter who has difficulty, you know, reading a – and we need to get that message out.

**EVELYN AQUILA:** Well, I had asked Bob to do that, get that message out, to open up, make them say – "Everybody, we have a ballot marking device here, please use it." At the – when we were out on Election Day, that seemed to be the thing that bothered the voters the most. They're not into the technical too

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much. I mean, I'm sure they would like a line across or a line down or whatever, but they weren't as concerned about that – because it was a primary vote – they were concerned about, is reading the name of the person they wanted to vote for.

**BOB BREHM:** Right.

**EVELYN AQUILA:** They come in and they're saying, "I'm voting for Joe Jones."

And they're looking and they can't read his name. That is a serious problem.

And yes, they give you these big glasses to put on so it will magnify, and I saw the people using it come out and say, "That made it worse."

So I don't understand what that was all about.

And I'm very, very concerned, on a day when there will be many more voters than there were on primary day, and the bulk of our voters are always, at least 30% of them, senior citizens – they go in and they look at this ballot and they say, "The heck with this." And they walk out.

**JAMES WALSH:** Um-hmm.

**EVELYN AQUILA:** Because if you can't see who you're going to vote for, you're not inclined to vote for anybody. And to see people try on the magnifying glass and say – I mean, to put them around like big glasses and say, "I still can't vote," is discouraging. And it's very discouraging that you have to say to people, "If you want to vote, put on magnifying glasses." So somehow, I mean – the print is about as big as the print on here, if not a little smaller.

**GREGORY PETERSON:** It's smaller, - -

**EVELYN AQUILA:** I'm telling you. And I'm concerned about people just not voting when they see that, and people going home and saying to people in their family, "Don't bother to go down and vote," or go up and vote, wherever, "because you can't read the ballot." And that's the last thing we want to do. We want to encourage people to vote. I certainly have said it.

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I said it to the New York Board, and I think they realize it. And I've said it here.

But I think it's a really, really serious concern. And that's something, at least if it doesn't get taken care of for this year, for next year – maybe we can - -

I mean, maybe you give them a ballot that's four pages long.

But at least they can read what they're doing, and they turn the page and go on to the next page.

I don't know. I mean, I'm not an expert in that field. But I know what can't be done. My years in education and things like that – I know certain things, you wouldn't put before an eighth grader, to say, "Read this," this small. If it was a test, you wouldn't. So I'm concerned.

I'm sorry – I voice –

**JAMES WALSH:** I think these are all very serious concerns.

And I think we'll hear, echoed back from all of the counties as time goes by here.

So this is not something that's going to disappear as of today's meeting, I don't think, and for good reason.

**EVELYN AQUILA:** I would hate to pick up the paper the next day and have that be the headline.

**GREGORY PETERSON:** Right.

**BOB BREHM:** - - standards are important for, you know, the ballot design, ballot fonts.

**EVELYN AQUILA:** Right.

**BOB BREHM:** You know, from the word we've heard from people. Certainly you can go – the size of the paper is what you've got to – a certain limit. But then the perforated ballot, if you need to have a certain size type and your contest, your group of contests require a larger piece of paper, then you have to go to a perforated piece of paper. And from an administrative point of view, we continue to hear from counties that go up against, "Well, I can have it to an X-sized ballot, but then if it has to go to a perf, oh, we're going to have to do things differently." They need to all have a uniform standard so that we're

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not shrinking the size of the type just to get to the smaller piece of paper, knowing that people can't use that size – can't comprehend the words on that page.

That's not the way to solve the problem - - the problem - -

**KIM GALVIN:** Of course, cost – cost is a great deal of concern to them.

**EVELYN AQUILA:** Of course.

**KIM GALVIN:** For all of them.

**BOB BREHM:** So if we can deal with, you know, where on the ballot the critical information needs to be so it's there, but still providing as much room as possible for offices and candidates, I think that's where we're going to look – and have uniformity.

**EVELYN AQUILA:** Well, taking the words of one of the candidates for the governor, "It's too damned small"

[LAUGHTER]

**JAMES WALSH:** A good conclusion to that - -

[LAUGHTER]

**JAMES WALSH:** Item four, new business.

**EVELYN AQUILA:** Oh, boy.

### New Business

**JAMES WALSH:** A vote on resolution approved to have a grant administration by the New York State OGS.

### Resolution on OGS administration of Grants

Robert Brehm and Todd Valentine.

**BOB BREHM:** We had the good fortune earlier this year to be visited from the Federal Election

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Assistance Commission staff dealing with grant administration to work with us and to review our program. And it was one of the items that they noted during their review of the support we are receiving from the Office of General Services, that most other states had a certain administrative reimbursement for the work that's done, kind of the back file, to make sure all of the documentation is in place – one, so that when they do come to audit us, we can answer correctly what we've done, but to make sure we're following all the rules.

We were followed up by the actual federal audit, and the federal auditors shook their head at us and actually commented to us during the process, that they were surprised to learn that this didn't happen. For every, you know, we have worked very hard to champion all our HAVA dollar resources as best we can, especially in this climate of fiscal cutbacks everywhere, to make sure that we have the money available for the work that we really need to do.

And OGS has asked us if we would consider reimbursing them for some, not to exceed \$75,000 for the tremendous effort that they do to administer these grant programs for us.

And so we've put that as a recommendation to you to consider it today.

**JAMES WALSH:** Any questions? Move the resolution? Have a second?

**DOUG KELLNER:** Second.

**JAMES WALSH:** All in favor?

>>: [SEVERAL] Aye. Aye.

**JAMES WALSH:** Opposed?

Carried.

Before I proceed, we want to set our next meeting date.

**DOUG KELLNER:** Were there issues about certification deadlines that will control when we need to meet in November?

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**BOB BREHM:** December –

**TODD VALENTINE:** Ah, well it would be December, for –

**BOB BREHM:** I think at the rate we're going, closer to December – 14<sup>th</sup>, 15<sup>th</sup>, would be –

**TODD VALENTINE:** Well, December 15<sup>th</sup> is the deadline, so to speak, so it would be prior to that.

We can meet no later than December 15<sup>th</sup>, in order to certify the election.

**DOUG KELLNER:** That's under State law and it's December 13<sup>th</sup> for Congress?

**ANNA SVIZZERO:** The 13<sup>th</sup> is what the - - House of Representatives sent to us as a guideline.

With these military - - by the 20<sup>th</sup> –

**TODD VALENTINE:** Their schedule is to come back by the 24<sup>th</sup>, so –

**BOB BREHM:** The 13<sup>th</sup> is a Monday. I mean, if we put it too early we're always chasing after these reports in the first place.

**TODD VALENTINE:** Yeah.

**DOUG KELLNER:** Well, maybe we shouldn't set a date right now, then, and just circle the proposals, and when you're ready, then we'll -

**JAMES WALSH:** That's fine.

**DOUG KELLNER:** It's just that our calendars are going to start to fill in if we don't set aside –

**EVELYN AQUILA:** Yeah, in December.

**BOB BREHM:** Well, we'll try to do Monday the 13<sup>th</sup> – there's a time and the date –

**JAMES WALSH:** That's just an idea.

**BOB BREHM:** Something along the –

**EVELYN AQUILA:** Monday?

**BOB BREHM:** Monday, December 13<sup>th</sup>.

**DOUG KELLNER:** And not meet in November at all?

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**JAMES WALSH:** December 13<sup>th</sup> ?

**GREGORY PETERSON:** It's okay with me –

**EVELYN AQUILA:** - - because I deal with the election going on and I - -

**DOUG KELLNER:** Well, I guess we – alright, so we'll set aside December 13<sup>th</sup> and then if we need to meet, we'll –

**EVELYN AQUILA:** In November – we - -

**DOUG KELLNER:** Yeah, - - We'll certainly be busy in November.

**EVELYN AQUILA:** Okay. Yeah.

**JAMES WALSH:** Anyone have a need for Executive Session?

**EVELYN AQUILA:** Yes.

**DOUG KELLNER:** Yes. I move that we go into Executive Session on personnel matters.

**JAMES WALSH:** Do we have a second?

**EVELYN AQUILA:** Aye - -

**JAMES WALSH:** All right, the business of the day has been concluded.

We'll be going into Executive Session, and there'll be no votes taken and no public business.

Thank you all

[END AUDIO]