

>>JAMES WALSH: My name is Jim Walsh. I'll be acting as chairman for today's meeting and I'll ask my fellow commissioners to introduce themselves.

>>DOUGLAS KELLNER: Douglas Kellner.

>> EVELYN AQUILA: Evelyn Aquila.

>> GREGORY PETERSON: I'm Gregory Peterson.

>> JAMES WALSH: And around the table, Todd please.

>> Todd Valentine, co-executive director.

>> Kimberly Galvin, special counsel.

>> Paul Collins.

>> Anna Svizzero, director of election operations.

>> Pat Champion.

>> Bob Brehm, public information.

>> George Stanton, IT director.

>> Bill McCANN, deputy council.

>> Liz Hogan, enforcement council.

>> Stanley Zalen, co-executive director.

>> Terry Green, state board.

>> Bob Warren, state board,

>> Charles Williams.

>> Brad Lane.--

**>>JAMES WALSH: Thank you, everyone. Unit updates, co-executive director Stanley Zalen and Todd Valentine.**

>>STANLEY ZALEN: Thank you, Todd. As we all know, since the last meeting, SysTest certification has been suspended by the EAC. And as you also know, this will be agenda item for further discussion. In addition, since our last meeting, the Governor's office has come down with certain additional checks on state agency spending. In this case, non-personnel spending. And if we get the opportunity, we may begin to discuss that as it is, we have a meeting scheduled for tomorrow to understand the parameters and how this new system will work with respect to our agency.

>>EVELYN AQUILA: Are you referring to November 3rd communiqué from the Governor?

>>TODD VALENTINE: Yes, yes.

>>EVELYN AQUILA: Thank you.

>>TODD VALENTINE: No, no, Stanley I agree with Stanley, this again you see was November 3rd, so we're in the process of meeting with the Division of Budget...

>> EVELYN AQUILA: You mean you didn't stop the election and take care of this, Todd?

>>TODD VALENTINE: No, no, we didn't. Election went on. And I'm sure it's a little early to get full reports on the election, but Anna will have some initial stuff - I'm sure she'll update you in her unit. But, yeah, so we're --We already have the meeting scheduled for the Division of Budget to come down and discuss that with us to see how this impacts the prior changes we put in the place. So, that's going to be a work in progress for some time.

>>EVELYN AQUILA: I saw some of the things in here, computers, I know does that affect us to bring on new people if they need --

>>TODD VALENTINE: Well, it will only --You can't personally --You have to get permission. It's what they've done is. You used to have to- when your spending was over a certain amount, then you had to ask. Now they've lowered the threshold to a much lower level. But, right now we have no shortage of supplies now. It's not a today issue. Any additional personnel or changes in responsibilities for personnel where they need more computing power to become an issue. But our budget as far as that is concerned is you know, we've always trying to mirror the two together because you need support for personnel. So it will add an extra layer of bureaucracy to make sure you're checking yourself before you make those purchases.

>>EVELYN AQUILA: There are things in here that are concerns. And it says no new contracts and things like that. So I suppose we need to make a new contract for someone if SysTest goes away and there's a new company and we need to contract with them. How do you make new contracts?

>>TODD VALENTINE: What have you to do, part of that is what they're providing agency needs do, which is something you should always be doing anyway, is any spending that you do, or any program that you take or any activity that you take it should be tied back to the core mission of the Agency, which always comes from statutory basis. So all they're asking you to do at this point it to reaffirm that this does and show us in writing that this ties back to a statutory obligation, a federal Court Order.

>>EVELYN AQUILA: I saw, that, yeah.

>>TODD VALENTINE: They're asking for that to be reaffirmed. We have very few extra programs we do. Everything we do is literally tied back to a specific.

>>EVELYN AQUILA: Legislation or Court Order.

>>TODD VALENTINE: Legislation or Court Order. So you know, our mandates are broad. We always tie it back to that. We have a meeting with the counties, that's a responsibility under the Statute. We have that obligation. So --And our spending is not --We're not a large agency where you know, if you look at economies of scale a larger agency would have more fat to trim, so to speak. We've never had that.

>>EVELYN AQUILA: We've never had extra money we've always been kind of pressed --Jim certainly remembers years ago we were in a budget crunch and it was tough.

>>TODD VALENTINE: And it will be.

>>EVELYN AQUILA: We'll do what we have to do. But as you said, it might be some things coming up for us that by legislation; we have to go forward and certainly.

>>TODD VALENTINE: Yes, that's right, absolutely.

>>EVELYN AQUILA: We can't, you know, we'll have to put up a fight I guess for what we need, when we need it.

>>TODD VALENTINE: That's what they're asking us to do. You have to fight again. It's not going to be yes. It will be a challenge.

>>EVELYN AQUILA: Thank you.

**>>JAMES WALSH: Thanks commissioner, thank you gentlemen. Legal, Kim Galvin.**

>> KIM GALVIN: I'll set forth what you think and Paul can add anything he thinks I left out. Up until Monday of this week we were still dealing with some of the judicial matters involving the ballots and the election that just took place. And in addition to the legal questions that this board has, we also have been very busy answering a lot of the county board's questions regarding legal matters and challenges they have before them. Other than that, which has been quite a lot, we have been you know, just on the phones answering the basic questions and trying to deal with the SysTest issue that will come up later as well as the HAVA complaint.

>>EVELYN AQUILA: The HAVA complaint, that's another issue...

>> KIM GALVIN: That's another issue and updating and communicate together department of justice, I'll be it a little infrequently we didn't meet with them last week because of the election. But twice the week before in trying to keep them apprised of what is occurring on every front with BMD and testing and it doesn't seem like a lot, it's been busy the last few weeks.

>>EVELYN AQUILA: I bet.

>> KIM GALVIN: Anything we --

>>PAUL COLLINS: Not really, that's the general overview.

**>>JAMES WALSH: Thank you. Election Operations, Anna Svizzero.**

>> ANNA SVIZZERO: Since our last meeting we have been providing guidance, as Kim and Paul both indicated, to county boards. One item that was particularly problematic had to do with a county board's ability to proof read or not proof read ballots prior to getting them in the mail. That's clearly going to be our keynote topic at our next conference. If it doesn't happen in spring It may happen in January. Some county boards have village elections that they run. That's an issue we want to --We want to reinforce with them. But we did help them navigate how to make those resolutions and offer whatever support we

3 could in order to make those changes. The staff responded to calls from the public regarding finding out how they were registered because they had indeed sent forms here to the state board, which was the direction that they followed and we never had a problem with that beforehand we had those phone calls and are prepared to deal with them. Our Election Day support, we had technical staff here from 5:15 in the morning through long after the polls closed. We had Bob Warren and his team available for any ballot marking device or other machine issues that arose that got bounced to us and had other staff available for fielding phone calls. They were for most part, very generic in nature. There were lines at polling places but we didn't get any feedback that people were disgruntled about the lines. I think there was a general acceptance of them in that the turnout had been anticipated to be very high. The problems of the lines were not attributed to problems in the polling place with the machines or the ballot marking devices. On Election Day, our unit alone fielded in excess of 3,000 phone calls.

>>EVELYN AQUILA: How many?

>> ANNA SVIZZERO: 3,000. We're going through some trouble call sheets that we have to see if there's a pattern to any of those problems and anything we can deliver. We just have not had a chance do that yet. But we did track those kinds of things. We are collecting anecdotal information from voters. We had phone calls from the county boards, also from staff here at state board and OGS, who have -- Who used the ballot marking device on Tuesday or who tried to. We're putting that information together so we with can resolve any issues that arose. We did send out as we told the board we would, tip sheets all of the counties with vendor specific information encouraging that participation, making sure that voters weren't asked to qualify themselves as being entitled to vote on the BMD. That message I think is going to take a while to filter down through the inspectors. It's the first year we used this at all of the polling places and the inspectors have had one rain training session perhaps two. So I think, with more training, and more use of the devices, they'll be that facility that inspectors have, as they have with the other tasks they performed. We continued our unit meeting with SysTest and NYSTEC through last Thursday as you all know, they have been suspended, their accreditation has been withdrawn by the EAC and by the labs that initially certified them. And they are responding to the EAC. We received a letter from SysTest indicating that they expected to have all of their issues resolved by December 15th.

>>EVELYN AQUILA: By December 15th?

>>ANNA SVIZZERO: By December 15th. That - this development seriously pushes our timeline which was somewhat in jeopardy into definite jeopardy. So we do need to discuss at the pleasure of the board, options that we might consider. We've talked about several in-house and we're certainly happy to share those with the board as you feel appropriate. Some may be appropriate for executive sessions and some may not. But it's -- It's at your -- We are struggling with the vendors. Neither of the vendors has deposited funds that we requested into the accounts. That deadline was Friday. This is for work that was performed in August and September. We're obviously going to be receiving an October bill. And I'm not quite sure that we know how to deal with all of this but I think it will come up in conversation as it directly relates to the SysTest scenario. We have identified additional costs that we feel are more generic in nature than originally we were charging to. The vendors amongst those in this instance are the NYSTEC costs but we could and that there would be other costs that this state might be more appropriate entity to absorb those costs. We do have a resolution for you today with regard to NYSTEC and their oversight invalidation obligations as far as SysTest goes and we're happy to discuss that with you as well. We continue to ask our county boards about the number of units they intend to purchase. We have more boards reporting since our last meeting, 36 of them have responded and the 36 that have responded indicate they'll be ordering additional 1400 units. So that has to be built into any timeline discussion because there has to be production time that is provided for and obviously, the time to acceptance test those additional units. New York City is not one of those reported and that will be a big

number. We're compiling specifications for privacy booths and for security seals, NYS Tech has been obliterating the seals we used in the past making sure that we think is of little use, is, indeed, of little use in identifying those and identifying those --Perhaps more substantive and our hope is that OGS can solicit and provide for a state contract for seals and privacy booths. So that other counties can buy off of those state contracts housing HAVA funds rather than having to expend county dollars which in their instances are very short. And then expecting to get reimbursed at the end of the HAVA project. So hopefully we'll get those out in the next week to ten days over to OGS and they can begin their process of securing the state contract. We did prepare a response. We vetted here in house to the controllers audit of absentee procedures here and at the county board level that responses --Response is due tomorrow so if commissioners have any thoughts or changes we'll be happy to take those from you and we're all in agreement here that the issues have been raised legitimately and that there are some areas where everybody can learn obviously. There were a couple of points that we thought the controller's report was off on and we pointed those out. But otherwise, it's a page and a half response. And that is it in election operations.

>>JAMES WALSH: Thank you.

>>ANNA SVIZZERO: **Thank you, --Information Bob Brehm.**

>> DOUGLAS KELLNER: Can I make one comment that I want to say it again, Anna, that I'm very concerned about the number of counties that have continued to indicate that they're not going to comply with the statutory requirement to canvas the emergency ballots at the poll site. And the fact that you know would I ask the commissioners to consider, and we can put it on the agenda for next meeting, but to give fair warning, that I'll make this proposal, is that we give the counties a very clear, unequivocal instruction that they must canvas emergency ballots at the poll site. This is an important election integrity issues. Because you lose an important audit control when the emergency ballots are not canvassed at the poll site. By canvassing at the poll site with the inspectors and watchers present, and then recording that number on the canvas sheet, you now have a paper trail of that record. And, if something happens to the emergency ballots after they leave the poll site, but before they get to the county board of elections for central canvassing, you still have the original record of the canvas on election night. If you don't have that record, you have a potential for tampering with the emergency ballots from the time that they leave the poll site until they're actually canvassed by the Board of Elections. And that statutory requirement has been in there literally forever, since New York --Since New York started using paper ballots in the 18th century. And it is not an option for the counties not to comply with that statutory requirement. Because it does jeopardize the audit trail for those ballots. Now, that was an insignificant feature you know when there's just a couple of --Handful of emergency ballots. So, it does not have to become a major issue. But as we're shifting to going back to being a paper ballot state, we need to insist that the counties comply with the audit controls for the safe-keeping of the paper. Yeah, everybody is friends and everybody trusts each other. That's not the point. There's procedures in this Statute and we should insist those procedures be followed. I'll come in with a formal motion on this for the next meeting, but I thought I should say it now so that --

>>EVELYN AQUILA: As a P.S., may I say when I was very young, I was an inspector in the olden days and we always counted every paper ballot right there. And sometimes you know, in Brooklyn you can have 1,000 people running. It's not a few numbers. But we did it. And we did it at the end of the night. And with the watchers watching us and everyone and it was considered nothing. It was not this big terrible burden. I don't know why today it's deemed a burdensome thing. It will become more burdensome with more paper ballots, true. I think it's a good law. I think there's good reason for. It and certainly it's never the big races we find the tampering it's cousin running against uncle that is where those 14 ballots leave and disappear. I think it's very good that it's done and I know times it meant the

difference of a person getting elected and not getting elected. You know for a smaller office. But those offices are important to the local community. I think it's important they're counted.

>>JAMES WALSH: I think you'll all agree the security of the ballot is primary. If there's anything we're missing we should not be missing we should take every precaution to make sure every voter is accounted for and counted and attributed to properly.

>>TODD VALENTINE: And certainly input from the county board would be helpful on that issue as well.

>>DOUGLAS KELLNER: I'm happy to have input, but know, there are about two dozen counties that have said we're not going to comply with the Statute because it's too inconvenient for the inspectors or it creates too much burden for the inspectors. It's not an option. It's the Statute. It's a law. There's a reason for the law.

>>GREGORY PETERSON: Don't forget back to the 1800s as you said that was paper ballots we're on a whole different page now. You have to put that in perspective.

>>EVELYN AQUILA: In the 1800s I was not an inspector. Let's clear that up right now.

>>DOUGLAS KELLNER: I said 18th century it goes back to the 1700s.

>>EVELYN AQUILA: It was unless in another life. No. But there are plenty of paper ballots at the end of the night despite the fact have you a machine there.

>>DOUGLAS KELLNER: And the Statute does not require that the inspectors do the canvassing at the close of the polls. The Statute provides that clerks can be hired or appointed to do the canvassing at the close of the polls. But it has to be done in front of the watchers right after the polls close. So it doesn't mean if you have 300 emergency ballots then what New York City has been doing is that they will hire clerks to go and takeover the canvassing for the inspectors so the inspectors don't have to stay the hour or two it takes to do the canvas.

>>TODD VALENTINE: But that's the kind of input you would want from county board. We don't have --One size fits all but complying with the Statute obviously is never something you want to deal with but you want to get input on that.

>>EVELYN AQUILA: We were always told the inspectors don't go home at 9:00 they have to work until the last person voted and last paper ballot has been counted, you know. If have you all your numbers down. So I mean, you hate it after a long day I tell you you're pretty tired. But it gets done.

>>JAMES WALSH: We'll have this discussion again I'm sure.

>>STANLEY ZALEN: Excuse me one moment. Do the inspectors sign the canvas book? And then leave and other clerks come in and count?

>>EVELYN AQUILA: I don't know I was never there when that happened...

>> DOUGLAS KELLNER: There's a provision in the Statute. The Statute provides for appointment of clerks to do the canvas if it is necessary.

>>JAMES WALSH: Bob Brehm.

>>BOB BREHM: Hello. October was a busy month for all of us especially --Not especially but in addition in public information and to be honest the entire building chipped in, every person at some way either assisted with the flood of phone calls or more importantly with the flood of the receiving the voter registration applications. Earlier I mentioned in August we had fewer than 5,000 applications received. That jumped up to about 31,000 in September. And we had --over 52,000 delivered in October - considering that the cutoff date was October 10th and the receipt date was October 15th, clearly most of that came in during a one-week period of time. And we worked very expeditiously to receive every application to staple all the parts together, time stamp them, sort them, and get them out of this building on the same day we received them. Shipped to the county boards of elections so that we did everything we could to keep the flow of applications going to where they really needed to be and that's at the county board so they can be processed in time. So that was a tremendous effort and everybody in the building chipped in and we very much appreciate that. And in addition to the mail, it was phone calls and also the very large increase in the responses to --Or the questions asked through the information e-mail address that we have. And we did increase the number of staff members in the building that assisted us in keeping up with those requests, especially as led up to the deadline to register, because most of the people were looking for information on how to do that. So we really put some extra bodies on to make sure that if people went to us for information, on how to register, we answered them in a timely manner so that they had that opportunity and that --You know we threw additional resources to get that accomplished. Also during October we completed right up through Election Day the voter education media campaign. It ended on Election Day, to inform people the vote-ny.com Web site was available. I know I heard from people that heard the radio advertisement. We did meet with the representative from the New York broadcasters just leading up to the general election to get a monitor of how that was going. Greg and Patrick and I and we will sit down with them again after the things calm down to look at the final numbers just to see whether or not we thought it was helpful and whether or not we want to recommend you know making changes as we go forward. But it certainly helped to drive people to that education site. It also helped to recruit poll workers, there's a poll worker recruitment effort there and we did have over 150 individuals indicate that they wanted to be poll workers and we took that information and forwarded on to the counties. Anything they with do to help recruit poll workers we tried to keep that moving. The poll worker training program was up and it was completed. We mentioned that here at the last meeting. It was a little tight because it led up to the election. But, one of the key components was the off-line version and also the off-line videos and we made sure that we with assistance of the IT department to make copies of all that material and get it out to the county board so they could use it. It we heard from a number of county boards that use today and I know it was very close to the election. So we'll have to you know, see where it was used and what the reactions, so that program especially as we go forward to try to increase awareness for the county boards to use that as a tool to train their poll workers and anything we do to make that job easier is a good idea. We also worked within the building to complete the paperwork for the 6210 regulations after you voted at the last meeting to get those off to the various state agencies to keep that process moving. That material went out last week or early last week I think it was. So to put all the finishing touches to that. That is out now that we have a few minutes breathe the phones are slowing down a little bit and we can monitor those to make sure that they're moving as quickly as they need to. We also have a major project that both Patrick and Greg work on and others in the building which is to also look at the NVRA monitoring and the NYSVoter monitoring and we did have a number of people calling leading up to Election Day and "where is my form?" and "I went here..." and they tracked those down and responded to all the inquiries we received whether DMV office or WIC office, you know, we will continue to put together a report and work with others in the building just to see you know what were the trends and what can we do through education or monitoring to make sure there are fewer repeat incidents as we go forward.

>>EVELYN AQUILA: Bob, two questions and don't know if they both belong to you. Number one is, now that we have so many young people so interested in elections and wanting to vote and everything, I wonder if there's any way we can have some kind of advertising campaign to engage them in wanting to be --To work at the polls and being involved. I don't know if we would get the money or what, but it's such a tough budget time I hate to lean on the Governor because he certainly is doing his best. But, if there was some way to have that, and then number two, anybody keep any record of what happened with military ballots. Were they all received at the right places in time to be counted and you know there's a lot of stories in the newspapers that the military ballots were not --Not New York state but a lot of places were never received or --And that I'm very concerned about.

>>BOB BREHM: With those two items can I say that the second one first, I know in election operations, that it's part of their routine follow up audit questions that they asked the County board how many military ballots did you issue application and how many did you issue and what are the reasons you know if you didn't --Weren't able to count them. Was it because it never came back or was it late or --So it's part of our audit that we already --

>>EVELEYN AQUILA: You could report on that at the next meeting?

>>BOB BREHM: election operations conduct that.

>>EVELYN AQUILA: Would that be possible?

>> ANNA SVIZZERO: Yes.

>>EVELYN AQUILA: We need shore that up or do it better.

>>ANNA SVIZZERO: The solutions are the ones legislature has been unwilling to embrace other than electronic transmissions. I have to tell you I spoke to soldiers in the field and in Afghanistan and Iraq and they get supplies dropped and mail dropped but nothing gets picked up. So it wouldn't matter if you got them a ballot. It's near impossible for them to vote one. And think that is something we raised at the federal level and they don't seem to have embraced that solution. There are a number of states that accept electronic transmissions of ballots from voters in those areas. And we don't. So I think that's something our legislative package --

>>EVELYN AQUILA: Yes, I think----- If we have real high figures that we know are really happening we should say something and get something in our legislative package. Because certainly they're the first people that should have their votes counted. Not to be excluded.

>>ANNA SVIZZERO: We do monitor that very closely and we're in constant contact with the pentagon and any issues they find or raise we get on right away. As I said, they --It's frustrating to talk to somebody in that scenario.

>>EVELYN AQUILA: If they're New York state citizens it's --I deem it as our problem. It's not fair that we sort of shove them aside and say let the Pentagon handle it or something. I want --No you didn't say that. I know that. But I'm saying we really should have to --I heard that they dropped the ballots into Afghanistan and the poor guys could never get them out. So that is not something because they don't -- They're in places and in spots where they're being shot at and helicopter can drop things but it's difficult to pick things up. So, I would like us to see what we could do to make that better for our servicemen.



>>ANNA SVIZZERO: We can certainly get you those numbers. I will point out I don't know when you next meet.

>>EVELYN AQUILA: Maybe if it's not --

>>ANNA SVIZZERO: Military ballots aren't due. They're allowed additional travel time. Everybody else's have to be back within 7 days. Military have 13 days.

>>EVELYN AQUILA: Which is unfair. The elections are over and get your ballot counted that's not fair either. We have to do something.

>>ANNA SVIZZERO: They're part of the certification. It's just not a number --They have additional time period to return ballots because they're coming from so far away.

>>EVELYN AQUILA: I know that. Yes.

>>ANNA SVIZZERO: That additional time is going to affect New York State --

>>EVELYN AQUILA: New York State, I think at one time had military commissioners that did nothing but took care of the military and they did away with that maybe 20 years ago because I guess we weren't in that many wars then or something. But I don't know. I'm not saying they reinstate that office by no means but there should be some way to handle that problem a little better. I don't know.

>>ANNA SVIZZERO: There are options and they need to be explored in the building and put in legislative package.

>>EVELYN AQUILA: When you have nothing to do and you're sitting around with nothing to do -- Maybe we could get a person that would be able to --Allowed to have somebody that would do nothing but handle that problem with us. I don't know. I don't know the solution Anna or Bob I'm just bringing up the problem.

>> We'll put together ideas for that package of legislation.

>>EVELYN AQUILA: And next thing what I said about attracting young people to get involved.

>>BOB BREHM: We certainly will look at you know what we can do through college-age poll worker recruitment and anything that will help to do that.

>>EVELYN AQUILA: I saw enthusiasm of my own grandson, he's 18 and couldn't wait, you know --

>>JAMES WALSH: I think it's a great idea. It's one of the most difficult positions to fill are some of these poll workers you have.

>>EVELYN AQUILA: Some places in Queens didn't have but only two people were there should have been four or six.

>>JAMES WALSH: That is a good idea and should be pursued.

>>EVELYN AQUILA: And the people on-line were marvelous by the way, weren't they, just marvelous?

>>**JAMES WALSH: Campaign finance, Elizabeth Hogan.**

>>**LIZ HOGAN:** Thank you, commissioner. The election has presented campaign finance with some challenging work also in the context of the election. We require six additional filings. For the 9400 filers we have it creates a huge workload for staff. A lot of increased telephone calls. And, of course, for non-filers of those required report come the other side which is the lawsuit. The lawsuit then engenders as I whole separate workload for enforcement perspective in terms of processing that and addressing all of the people who called panicking and trying to get their filing done, which, of course is our whole purpose. So we work with them as best we can, it's a lot of work. But our unit has done a very good job with that. And we --I wanted to just briefly touch on, if I could, because we had discussed it at the past couple of meeting, the filling of those program aid positions and the commissioners had been on board with doing that. And I would like to report to you that with the economic situation, the state, the Agency, has a mandate to do some additional work to submit to the division of the budget in reference to filling those positions and so we're working on that. I wanted you to know what we were doing because they're important positions for us. And just very briefly, our units are very involved and they're very busy working on a variety of projects. Our educational and training employees are working on recreating some new forms, registration documents and schedules to make it easier to --For filers to use. They're working on starting to work on the --Any kind of additions that need to be made to the handbook which as you recall we had a major revision of the handbook last year. So this year we're working and starting early and hope to have the 2009 handbook actually out in January of 2009 this year. They're working hard on that. We --You know our audit staff continues to work on the products as I discussed them with you at other board meeting and I realize you have other commitments here today. I don't want to go on about those. I want to assure you there's a steady movement on the products assigned there. And I think the last thing maybe I'll just touch on is that scanning project that I talked about for it seems like forever. I just wanted you to know that that contract is actually at the Comptroller's Office. It has gone through the whole vetting process. It was approved by the Attorney General and certainty to the comptrollers and we're waiting for that to be approved. Bill, would you like to add anything? --Oh, one other thing commissioner Kellner this morning did ask me again about the 6200 reg changes that he brought up at the last meeting and I had indicated that we would bring it to the top of our agenda Bill and myself to look at it. And I --The thing that Bill and I have talked about in terms of that reg and amending it and it has to do with the local filing and duplicate obligation to file locally and here at the state board and you know, we're certainly on board with that. We talked about it in the context because there's a huge educational component involved in that reg if a filer has to file here at the state they can be relieved of filing at the local board under certain conditions. And so there's a big educational component so that people know where they have to file and they know who this reg applies torso, our discussion internally between Bill and myself was that a big part of this educational push for us would be at the winter conference of the election commissioner's association to make them aware of how this reg would affect filers with them and the other is the one time of year that we have interaction with all of our filers and that is when we put out the filer update packet which we give them new information and let them know of things happening and no new requirements and those kind of things so. We intend to deal with that. Reg change in that context. I wanted to touch on that. Because Commissioner Kellner did ask me about it today. Would you like to add anything?

>>**BILL McCANN:** Yeah, I mean, it's --Again you addressed the topic that we frankly don't have the resources to do it the appropriate way. It comes down simple as that. We understand there's a dynamic of duplication of effort on behalf of filers. On the other hand, how we parsed out the proposed regulation would be very specific but at the county level can I tell you that even now with the change in the law in 2006, there are many people that believe County has repository with the County and they file with the state. Again, until we get a system that works it's for the identification and capture of local filers, it will

be a virtual impossibility to have an effective system. So that's really the lynchpin. We can pass the regulation but at the end of the day we don't have the resources for everyone filing centrally around the state. Because one of the biggest components of that is identifying who falls within what niche because there Ray lot of filers who a lot of people open concept, well it's just electronic information. That's great. Except electronic information you have to provide people with the method to do that. Have you to intake and process them and give them filer IDs and pins and determine whether or not they fall within certain exceptions within the election law and do they live in a city with 10,000 and how much raising in spending. There's a myriad of issues that go around with that. The administration oversight of that is huge. Like I said at the last meeting, we will 30 of the 62 opportunity to provide us with list of candidates that potentially have to file with us. I had been you know, cautiously optimistic that it was somewhere in excess of double the filers. Just in those 30 counties alone you may look at additional 16,000 filers. Not people that would give you loads of information but people you have to account for and be able to process in one way shape or form. Because even someone who only races or spends less than 1,000 dollars if you say, we have to still provide with you a service. We have to tell you what you have you to do and what you don't to do, that volume is immense. We don't have the ability to do that. So while a degree in one sense it's good to say we want to relieve filers of a burden we just don't have the ware withal to do it.

>>LIZ HOGAN: It's a difficult situation. We could have the reg on the books but how effective it would be and how efficient it would be is up in the air.

>>DOUGLAS KELLNER: I find that report troubling because what it really amounts to is staff notification of a decision the commissioners already made. And I mean we already voted on the regulation. It was sent for publication to the Governor's Office of Regulatory Reform (GORR). Eight months ago, nine months ago. And what you're telling me is that not withstanding a vote of the four commissioners, that the deputy --And without really consulting us, either, because I've never been asked, is it okay if we hold off or bury this regulation that you already voted on, because we think it's too much work for us --And that's just not the right way that a government agency should operate. Now, I can start to argue the merits of the regulation with you. But obviously, the problem here is it doesn't make any differentiation because the four commissioners can say do it and it --And if the two of you decide you're not going to send it off to GORR what I have to get myself and mail it off to GORR? The problem is that most of these filings are already required. And the real goal of this is to eliminate the requirement that they file at the county in addition with us. And I understand that there's an enforcement problem right now to enforce the current Statute and the current regulations because we don't have yet in place a system where the counties notify us who the candidates are. But, that's already the law. And what I want to do, the main goal, is to eliminate the local filing. Now if the regulation has not been drafted to accomplish that. If the draft of the regulation that the commissioners voted on is overbroad, then it's incumbent on you to come back to the commissioners with a revised draft. But not to the bury the draft that we already voted on and directed you to send to GORR.

>>LIZ HOGAN: We did that, commissioner. We followed up on your directive that we send that. And all we're really saying is that we're reiterating what we discussed I think months ago.

>>DOUGLAS KELLNER: Has it been published by GORR yet?

>>LIZ HOGAN: No it has not.

>>DOUGLAS KELLNER: Why not, it's been months and months and months? What?

>>LIZ HOGAN: We have had back and forth with them and suggestions from them.

>>DOUGLAS KELLNER: But they don't have the right to bury an agency regulation that's been adopted by the commissioners.

>>LIZ HOGAN: I'm not suggesting they are.

>>DOUGLAS KELLNER: Certainly not without consultation with the commissioners.

>>TODD VALENTINE: It's a good point, but every regulation has to be approved by the Governor's office before published.

>>DOUGLAS KELLNER: Approved, they do not have the right to veto --And would I think the republicans would be more concerned about that right now than the democrats. That the Governor's office does not have the right to veto an agency regulation. They have the right to recommend drafting corrections and review for drafting built we have as far as the four commissioners are concerned we certainly should be getting the report back from staff and not staff nullification of a regulation that we already adopted. And that's what I see going on here. To me, it's unacceptable.

>> Maybe I have a slightly different perspective on what Liz and --I am not sure it's nullification I think they're looking at the next step to implement the regulations and hurdles involved. I see there's a delay. No question about that. And I think the Governor office of regulatory form does take a hard look at any regulation that they've --That they review. Sometimes there are often delays.

>>DOUGLAS KELLNER: Anything in writing from the Governor's office of regulatory reform.

>>TODD VALENTINE: I'm not sure I have not seen all the details.

>>BILL McCANN: I Can I tell you right now it's not an issue --

>>LIZ HOGAN: No, they're not trying to hold us up.

>>BILL McCANN: I'll also say this we've addressed this issue to the commissioners on many levels. Even I think at the time where we put together the draft regulation which was very esoteric because it went to certain type of filers it didn't apply --

>>DOUGLAS KELLNER: We voted on it and approved it. If you want to --If you want to now to say that the regulation that was voted on has problems with it, then have you to come back to the commissioners and get a vote of the commissioners. You can't nullify a decision of the commissioners by just deciding, well, we're not going to send it to GORR or we're going to tell GORR that that at a staff level we have reconsiderations without come together commissioners with their proposal.

>>BILL McCANN: Well I will take exception to that from this standpoint. We had interaction with GORR at the inception and agree the board voted on this as far as the concept and the language.

>>DOUGLAS KELLNER: Not a concept we had a draft and we approved it.

>>BILL McCANN: I understand that. I think the issue was and we've all along expressed to the board what our implementations issues were specifically I might add relative to how it would fit within the construct of for instance modifying our software and what administrative burden that would be. We've been candid to the board thought these many no where we thought this fit into the Administration of the

unit and don't think we're holding back saying we don't want to implement the board and we've been candid to the board as to what our concerns were, and I think the board acknowledged those. So I'm a little taken aback because believe me I'm not looking for obstruction.

>>DOUGLAS KELLNER: Right now the regulation and if my only goal is the regulation now requires somebody running for the county legislature for example that spends 5,000 on her campaign to file both with the county and with the state, and I want to eliminate that requirement that they file with the county. It could be the regulation could be as short as to say that every filing with the state is deemed to be a filing with the county. It could be that short. In one sentence. And I would feel that we've accomplished something. And I've been trying for now since January of 2007 to do that. And it's now almost two years and I don't hear anybody disagreeing with me with the fundamental principal that if we file with the state board then they shouldn't have to also file with the county and do duplicative filing and the --County should have to process the paperwork. It's very frustrating that even aft four commissioners unanimously approve something it still doesn't happen. It's very frustrating.

>>STANLEY ZALEN: Commissioner, I'm not disagreeing with you about the benefit of that regulation. I do have to disagree with you as to your assertion that the enforcement unit is taking the position of nullification of the board's actions. None of what I've heard is --Involves anything more than working the problems out with GORR, and I think we'll be able to --

>>DOUGLAS KELLNER: Stanley, what problems with GORR? From what can I tell it has not really been sent to GORR. GORR has not communicated back. We don't have written notification from GORR saying that's why we're not publishing.

>>BILL McCANN: That's not the issue. We sent it to GORR initially and it was after that. We did report to the board we had this administrative issue we're putting it to the context of what the unit was doing. I think we've been candid with the commissioners throughout that whole process so.

>>DOUGLAS KELLNER: Has gone to GORR? Are we asking GORR to publish the regulation approved by the commissioners?

>>BILL McCANN: No, we said that--

>>DOUGLAS KELLNER: Who decided that you weren't going to publish the regulation that GORR -- That --And if you'll go back and look at the minutes, we weren't told that the staff decided not to proceed with the regulation that the commissioners approved, we were told that there were issues with GORR that needed to be resolved.

>>LIZ HOGAN: This is true.

>>DOUGLAS KELLNER: Nobody has told me that the staff has decided that in essence unilaterally withdrawn the regulation for publication.

>>LIZ HOGAN: We haven't. What are on the table are suggestions that GORR made to us of changes. And all we're trying to do is tell you commissioner, you know --

>>DOUGLAS KELLNER: I haven't seen any of those changes.

>>LIZ HOGAN: They're not final form. We're still --

>>DOUGLAS KELLNER: Has GORR --I haven't seen --This is all conversation and nothing in writing with GORR?

>>BILL McCANN: I'm tell you right now this is not a GORR issue. I can speak from my perspective. My perspective the unit has reported to the commissioners where this fit within the construct of what the unit was doing. We brought commissioners up to date as we went along. And I didn't get any sense that they disagreed within the administrative construct of what the unit was doing that this was a problem. Obviously it's a problem. And I am happy to address it.

>>DOUGLAS KELLNER: I raised it two meetings in a row, three meetings in a row.

>>TODD VALENTINE: What's the expectation of the publication?

>>DOUGLAS KELLNER: And nobody has told me it was not going to be published. They've all said, oh, we're working out these little issues GORR raised.

>>TODD VALENTINE: That's all you need to do is provide an estimated date for the publication date. Contact GORR and find out when they can get the draft. We need to get the ball rolling --

>>LIZ HOGAN: Our main component is the educational component, as I've tried to say, it kind of keys into that - the meeting and our filer update packet. It's an important communication tool with the filer.

>>DOUGLAS KELLNER: I know you're both very conscientious about trying to get this --

>>LIZ HOGAN: For us to get this on the books --

>>DOUGLAS KELLNER: And you can't just keep telling me that it's GORR.

>>LIZ HOGAN: We've never said that. And we denied it at the last meeting when it was raised. Commissioner, you suggested that and we said "no" - that they had suggestions for us. My biggest concern is how to figure out who has to file here and who's relieved from filing at the county board. Because we're concerned, and this keys in to what Bill's concern is, there are a whole group of people out there, we don't know who they are, but they're not going to file anywhere. That's our concern. And so we were trying to figure out the best way of putting out the educational component so that the county boards and our filers understand exactly who will be relieved from filing with the county board.

>> BILL McCANN: I agree. I've spoken with commissioners. Some people, right now, believe "Oh, everyone just files with the state." We're trying to, based upon our administrative abilities, try to delineate - like you said - and I agree with you if in fact you file with the state board that's a de facto file we agree in principles that's perfect. It's all that goes with it. That's where the delay is. And from that standpoint I'll apologize. But I think that looking --The totality of what we do we agree, we need to relieve filers of that burden. On the other hand we have parochial concerns. If we're not conveying that appropriately --

>>DOUGLAS KELLNER: Then that's good and I appreciate that and I want you to pay attention to those concerns. We have to get this moving. It's almost two years now. It's too long.

>>EVELYN AQUILA: Bill can I ask you something from the local boards indicated they would prefer the local people to file with them rather than with us?

>>BILL McCANN: There's no question every single filer in the state would file with the state board and not locally and have it available.

>> EVELYN AQUILA: Yes, I'm sorry. Saying have the local boards indicated they don't like giving that up?

>> BILL McCANN: No.

>>EVELYN AQUILA: I didn't think so.

>>LIZ HOGAN: And if we had a good process in place it would not be --Plus the fact a huge number of people that came here administratively I don't know we can absorb that workload. We can't figure out who those people are in order to take that burden.

>>DOUGLAS KELLNER: You say the workload but that's all ready right.

>>LIZ HOGAN: Not if all filers have to come to the state.

>>DOUGLAS KELLNER: But our reg --That's not the reg, right? That's not the reg.

>>LIZ HOGAN: No.

>>DOUGLAS KELLNER: All I want to do is say if you filed with the state then --

>>EVELYN AQUILA: You don't have to file locally.

>>DOUGLAS KELLNER: You don't have to file locally twice.

>>LIZ HOGAN: It has to say if you have to file with the state, and you do it, right? It doesn't say you can file --That's our concern.

>>DOUGLAS KELLNER: That's fine let's get it done, please. It's two years.

>>BILL McCANN: You're right. It's a very esoteric regulation.

>>JAMES WALSH: I think we wore that out. Thank you very much.

>> BILL McCANN: We do take it very seriously.

>>**JAMES WALSH: Don't open it up again, please. ITU, George Stanton.**

>> GEORGE STANTON: Good afternoon. It's been pretty exciting the last few weekends here anyway. We've been really busy downstairs as you know since the first of October we've taken over the level one part of the NYSVoter help desk so that instead of the counties and so everybody calling SABER for help desk support they call us directly now. That's going fine. We're able to handle it. We have obviously registered about 700,000 new voters. NYSVoter I can report has done everything it was built to do and did it well and although we obviously had to work many hours monitoring and things like that. We had no breakdowns of any kind. The only hitch in the works was when social security shut down for a weekend. Our verifications backed up and when I came in you know, well I actually started on the holiday of Columbus Day, there were like I think 25,000 social security numbers backed up. So

basically took us a couple weekends working between Shaikh from SABER and myself And DMV folks and AMBLER monitoring the system 24 hours a day we got everything caught up about a week and a half. I was pretty happy with that actually. It was not without issues. We flooded DMV. Sometimes their system would burp and we would have to call over there. They were very receptive to getting things back up. They actually made system modifications during the process which helped to speed things up and by the end of the process we really had things pull ago long very well. We were NYSVoter was handling probably over 100,000 transactions every day, 20,000 of them being new voter registrations and updates and audits and so forth. And it handled them without a problem. Our Web site over the past week or so has averaged about 100,000 hits a day and our voter lookup site and voter registration lookup site and poll site was hitting 200,000 a day for the last few days and we had no problem with those either. So I think we built a very solid infrastructure and it paid off in the long run. So in addition, we've been doing those six financial disclosure reports that are created by the elections, handling most helpdesk calls and loading the files and doing all the things related to that the technology plan got filed and now they're looking for an ATP amendment survey like 32 pages long that I have to work on now this is OFT doing - you know crunching numbers for the budget and that kind of thing. And I'm waiting for Pat Murray to look it over and give me numbers. Some of it is going back into last year. And it seems like...

> TODD VALENTINE: Pat Tracey.

> GEORGE STANTON: What did I say?

> TODD VALENTINE: Pat Murray.

> GEORGE STANTON: No, Pat Tracey. So that since I get numbers from her, which she has been overburdened too and is work on that today I'll start working on that survey. There seems to be a lot of this -- Well it seems to be duplication of efforts everybody asks for numbers on what you're spending and doing instead of one central process go gather it all, so it makes a lot of work for agencies. And that's about all I've got. Unless have you questions.

> JAMES WALSH: Anyone have any questions? I think generally, to everyone who has given reports it's appreciated by the commissioners and voters of the state. You've done an excellent job here at the New York State Board of Elections and difficult challenges and enormous turnouts, and enormous challenges to your operation and the whole structure itself. You held up very, very well with some hard challenges.

> GEORGE STANTON: I still have paper cuts and staple punctures all over my hands. And the rest of my staff. They keep all this stuff going and they also pitched in with everyone else in the agency for about three days just opening mail.

> JAMES WALSH: -- Please pass that on to your fellow employees, that thank you for a job well done.

> EVELYN AQUILA: Yes, I agree.

> GREGORY PETERSON: I agree.

> DOUGLAS KELLNER: Thank you.

> **JAMES WALSH: Old business? No old business? New business? And if I may --**



>>EVELYN AQUILA: On old business may I ask something? I want to know where are we with the New York City HAVA complaint? Or should I not mention that?

> PAUL COLLINS: I can answer that. I can answer that. But I think it's probably --

> DOUGLAS KELLNER: Executive session.

> JAMES WALSH: Better in executive session.

> EVELYN AQUILA: Yes, I'm sorry, yes, it's a legal problem. Yes. Excuse me.

> **JAMES WALSH: Thank you. New business, do we have a resolution here? We want to act on this resolution.**

> EVELYN AQUILA: Yes, Anna's resolution, yeah.

> ANNA SVIZZERO: I eluded to this in my report. Kim and I have been talking about ways to try to address the costs of the certification testing --Policy testing --Astronomical. We thought that there were some tasks that we --Were being preformed about by NYS tech that were more appropriate for the state board to absorb. The oversight the work they do on the test plans and test cases et cetera, even though that's individual vendor related very specific work, it is still part of the test creation and their oversight, their independent review of and their validation of, if you will, that work that's being done by SYSTEST. We thought it was more appropriate that we observe those costs. I'm not anxious for us to absorb the cost of NYS tech participation in any vendor phone call. Kim and don't agree on that particular point so that would have to be clarified for us by the board. But other than that, these costs to date are running about 60,000 so far for each of the two vendors. So we would credit the vendor's account for those costs to date and move that money from vendor money to pay NYSTEC and from this point forward those costs would be borne by the state code. We would expect they run in the same range but it depends what kind of work ends upcoming out of this whole SysTest scenario and what happens in the future. We've been talking about it back and forth an awful lot. I think it would be a huge relief. I'm sure the vendors don't agree. It's as good as we can get. If we think we should pay all of the NYS tech costs we can certainly amend this resolution to reflect that as well.

> DOUGLAS KELLNER: Well I don't agree we should pay all of the NYS tech costs because the Statute makes the vendor responsible for the cost of testing. I think we have discussed in the past this policy that this resolution seems to be consistent with that policy, which is that we're- really costs that are more appropriate to the certification program itself As opposed to testing of any particular vendors that the state would pick up that expense. I believe it was some money in the budget for this.

> ANNA SVIZZERO: Yes.

> But what was the --What was the --What was the budget amount that the legislature authorized and how much of that has been used already?

> ANNA SVIZZERO: The budget amount was \$5 million for this generic sort of testing. And I am looking for --I think \$1.4 on this date and some encumbered because we're sitting on two invoices.

> DOUGLAS KELLNER: So what is the number that you recommend to fill in the blank?

> ANNA SVIZZERO: We originally thought 250,000 for this resolution. But, I would expect that --

>>PAUL COLLINS: If you want to increase that --

>>ANNA SVIZZERO: It will be increased because there's more work by NYS tech and in an effort to validate we're only looking at several of them so far.

>>TODD VALENTINE: What would you recommend?

>>EVELYN AQUILA: Not to exceed what?

>>DOUGLAS KELLNER: You have to put a number in the resolution.

>>ANNA SVIZZERO: Yes, we do, \$500,000 is a lot.

>>TODD VALENTINE: It's in the budgetary constraint and should not exceed that. You want to --

>>EVELYN AQUILA: There's always room for resolution --

>>DOUGLAS KELLNER: It should be clear the intent of this is to cover the costs of setting up a certification program as opposed to costs that could be on or about associated with any particular vendor. So I think I do I agree with Anna that if NYS tech is spending time explaining procedures to a vendor, then that's really tied to testing the vendor's product.

>>KIM GALVIN: The only issue I had with Anna and our discussions and I clearly --If NYS tech is on a call respecting us and explaining our position, with regard to what it is that the board is requiring, because there's a breakdown in communication, and they can translate that for us, if they're acting on our behest as opposed to you know the routine vendor calls where they're going over discrepancies are one thing but if we have a problem with a closed network or have problem with an encryption of entire board and they're now going back to them for us to explain it technically, those are some --I said, those issues would be very difficult to distinguish with regard to where you allocate the charts. So I always thought if they were our agents acting on our behalf we should do what we could do absorb --Clearly not having interaction about discrepancy and they're working through vendor specific issues. But --

>>EVELYN AQUILA: Why don't we leave that issue open to you people to decide when it's appropriate?

>>DOUGLAS KELLNER: Yeah, but the problem with this is that we may be setting up a legal right for the vendor now to challenge the billing and by saying that.

>>KIM GALVIN: Whatever we say can and will be used again us in a court of law but --

>>ANNA SVIZZERO: I also didn't want to get into the situation where the vendors are using SysTest to do quality control and now that SysTest is off the grid now they use NYS tech to do the same thing. These vendors signed affidavits that said their products were ready to go. I don't want to diminish that for NYS tech to say yes we were serious we wrote a reg and standby it.

>>DOUGLAS KELLNER: And that's clearly my intent also is that I do not want this resolution to be become an issue where the vendor is then going to be able to come into court and say --

>>KIM GALVIN: I agree.

>>DOUGLAS KELLNER: We're not responsible for that part of certification and testing because it falls into the category of --That we're you know allocating state funds for.

>>TODD VALENTINE: I think it's an issue we need work on ad hoc but I think what we need to do is as you know we look back or move forward and certainly look back to the past working with NYS tech to try to establish an accounting system so that when a certain event occurs this falls into this category verse this category.

>>Kim Galvin: Or tell vendors we authorize these calls based on the facts they pay.

>>TODD VALENTINE: And know that --

>>KIM GALVIN: Like a preapproval sort of thing.

>>TODD VALENTINE: But make it clear to the vendor --

>>DOUGLAS KELLNER: I like that approach.

>>EVELYN AQUILA: Make it clear to all parties.

>>BOB BREHM: Generally you know the agenda for the meeting and the request for participation by NYSTEC. So when you know they're working through a policy that is coded the way Todd suggested it's a state-paid-for policy and when we know the agenda items we're going through anomaly report well that's the vendor testing program.

>>KIM GALVIN: And we can figure out a way to do that proactively.

>>TODD VALENTINE: We can do that if we move forward. It's managable. Are you on board. Do we have a motion?

>>ANNA SVIZZERO: NYS tech is here if we're concerned about how they can apportion these costs. They can chime in if you have questions for them.

>>EVELYN AQUILA: I make a motion that we --A resolution to approve the state board of elections funding for generic voting system funding certification cost incurred by NYS tech.

>>JAMES WALSH: Second.

>>DOUGLAS KELLNER: And the number is 500,000.

>>EVELYN AQUILA: And the number is 500,000.

>>JAMES WALSH: Right. Do we have a second?

>>GREGORY PETERSON: Second.

>> Aye, aye.

>> JAMES WALSH: Opposed? Carried.

>>ANNA SVIZZERO: Thank you.

>>EVELYN AQUILA: You're welcome.

>>JAMES WALSH: Item two. Discussion of effect of SysTest decertification by the United States Election Assistance Commission. Floor is open.

>>TODD VALENTINE: Let's start where we are today. And again I alluded to it earlier based upon the report of their initial report was that they were recommended for decertification. There are two steps to decertification of testing lab by the federal government. The first is they have to be approved by the National Voluntary Laboratory Accreditation Program NVLAP, and it is that group run by the National Institute For Standards, NIST --Recommended that they be decertified based upon site visits and reports that they made. They made that report. We were apprised of that report initially. Based upon that report, the election assistance commission EAC, notified us that they were at that point intending to decertify SysTest as a laboratory and once we received that information, we acted prudently to notify SysTest we needed to suspend their contract because of that intention. It's a requirement under their contract but they maintain that laboratory certification and that think have that laboratory certification and maintain that once they fall into the category of being recertified we now have a contractual problem, because they don't meet the terms of their agreement. We send a notice - a stop work order, so to speak, because we needed that quickly and prudently to kind of put the stop in the process. Subsequent to that the EAC did take their actions and we included that notification in the packet to the board indicating what actions the EAC has done regarding decertification. They as expected took the recommendation of the NVLAP program and now, SysTest is in the process of responding as Anna eluded they're expected to respond by mid December to the EAC and they're hopeful they indicated to us they're hopeful they'll get their certification back. And that's where we're at right now is trying to ascertain how we --Certainly this does put in jeopardy the original timeline that we had with the court when is in jeopardy any way because of other delays in the past, and now, what we have to do is try to utilize this time to do two things I think anyway. First, is to as we talked about previously, at least on a staff level S. the voting machine vendors have been having issues with resolving the discrepancy. We talked about the concept of time out or moratorium or stop work. Since we're being forced to stop at this point we don't have say tester, I think it's certainly prudent if not doing so the vendor should work trying to resolve those issues. On the other side, the other part of that aspect is to try to we have to somehow discuss continue it SysTest, if they get their certification back in a reasonable amount of time. Do we go to another testing vendor?

>> GREGORY PETERSON: Are regular testing vendor who are certified at the present time?

>>TODD VALENTINE: There are.

>>DOUGLAS KELLNER: Ironically Cyber is one of them.

>>TODD VALENTINE: Ironically, a prior testing vendor is certified that we're in litigation with against prior payments and still under contracts.

>>EVELYN AQUILA: Yogi Berra said - déjà vu all over again.

>>TODD VALENTINE: Kind of. The other two vendors are IBETA that bid on the original contract which we did not select and another company called Wiley which is actually a subcontractor for SysTest to do hardware testing and they were also a subcontractor for Cyber but they're fully certified as I vendor. There are four --Well, three plus SysTest.

>> EVELYN AQUILA: They're all the same people practically though.

>>TODD VALENTINE: That presents a --Another set of problems as we had learned with replacing Cyber in the procurement process under New York law and having a vendor being selected or reselecting that. We can't simply --It's too late to go back to the original procurement we did for SysTest and do that on the list. A lot of time elapsed. We've been advised by OGS and certainly the comptroller's office would echo this is you can't just go back to such an old procurement. So certainly putting that on the agenda because it's impact on the timelines and we need to start dressings these issues is what we do with SysTest. Now related to that, and this is where NYS tech resolution dove tails well this is that through our own efforts, over the time that they've been involved with us, they've worked very closely with us to understand the process and as Kim had often said we utilized them in a very technical capacity. They're not making program decisions of course but they have expertise developing the certification program and in putting the test plans together. Not the actual testing. They're not certified to do that. They can't do that. We use them as our quality control. We work closely with them. And it's one thing we discussed at the staff level as the vendors and voting machine vendors moved forward to address the discrepancies they have during this time period, it would be incumbent upon us to work with NYS tech and SysTest not for testing but in anticipation that they would get that certification back or since we --The contract to develop those programs with SysTest those test cases are hours, that's part of what the contract is, so as you know we would have that material and it would not be waste it's material we can use if in the event we need to go to a secondary vendor it's something we would have spent time well spent to continue that program. But that also means that we have to --We have to have an end date for that you know, if SysTest is anticipating a mid December on the program date although the AC has never really acted that quickly, except to decertify people, we should anticipate setting an end date of --After they fix the discrepancies the test cases should all be set and we should just one for the record as we call it the vendor should be ready and tester should be ready and record should be rung. But we also need to communicate with the court to this plan. We've said that after the election, we would go back and adjust the timeline, how this --What I don't know I don't know --We certainly can't answer that today, assuming that they run the record on January 1st does that get the testing done in time enough to deploy for both ES&S and Sequoia deploy the equipment they need to run a replacement election with full equipment in 2009.I don't know the answer to that. I have my suspicion it may not be enough time. I think that could be dependent on the vendor's ability to what else they need to roll out. They're not in equal positions.

>> EVELYN AQUILA: Todd, have we talked to His Honor, have we talked to the judge?

>> KIM GALVIN: Before we issued the stop work letter that was in consultation with the department of justice. To be clear for everyone in the room or not everyone in the room the testing we're speaking of was not related to the machines that were just utilized in this past election a few days ago. This is a different set of tests for the ultimate --So there's no misunderstanding that those machines out there now are not the ones that the testing was being done on. And we did --

>>EVELYN AQUILA: How is the Department of Justice about it? Did they understand that this is an unfortunate event?

>>KIM GALVIN: I don't know they would describe it as an unfortunate event, but they did understand that we really had little to no choice but to issue the order at that time as long as we were clear and that we were discussing options that would you know, come to resolution or solution would I imagine they'll have a lot more to say about it now that the general election it over.

>>EVELYN AQUILA: Is the date of 12/15 real? Do you think that date has any reality to it?

>>TODD VALENTINE: I don't know.

>>EVELYN AQUILA: Does NYSTEC have an opinion?

>>STANLEY ZALEN: The SysTest email to us only said they would be ready to present their explanations to the EAC by December 15th.

>>EVELYN AQUILA: Their explanations by December 15th EAC.

>>KIM GALVIN: I don't believe it's a workable timetable. I don't believe it is.

>>EVELYN AQUILA: Our timetable is just kaput.

>>GREGORY PETERSON: We're talking January at the earliest.

>>DOUGLAS KELLNER: I would like to start off first by applauding the U.S. Election Assistance Commission especially since when this happened two years ago I was the first to blast them for their failure of communication with us and their general lack of concern over the seriousness of testing election system equipment and my observation has been that in the last year, there has been a major change in the attitude of the U.S. election assistance commission that they have finally gotten religion about the importance of proper certification testing of voting systems and have started to take that seriously. The other side of the coin has been that there is this basic fact that there is no equipment on the market today, not a single product on the market today, which meets the current standards for voting systems that have been set by the U.S. Election Assistance Commission. And that is say very frustrating situation. New York to its credit said "we're not going to spend 150 or 100 million on replacing voting machines until we have a system that actually meets all those standards and is actually going to be better than what we're using now." And everybody knows our lever voting machines aren't perfect. We do know they work and that the public generally has confidence in them and that I certainly think we made the right decision not to waste the federal funds on equipment that has not been properly tested and certified. So, I strongly support a commitment by the State Board of Elections to continue insisting on full compliance with these standards and testing them to get the vendors to understand that these guidelines are important and that we want to make sure that before we spend this kind of money that the equipment we purchased is going to work and be fully functional without problems. Now, the biggest problem we observed is that historically, the vendors have used testing as part of their program development and so they'll build the equipment and then test it with the idea that they understand that the equipment is not going to pass the test the first time or the second time or the tenth time and they'll keep modifying the equipment until it finally passes. And this is very different from the concept that most testing laboratories would use for approving equipment. It should be on a pass/fail basis. You should come to us with your equipment already tested in-house, where the development is already done, where you know the equipment works, and not use us as the guinea pigs in order to assist in the development of the product. Because these standards are already fairly detailed and you shouldn't be bringing in the equipment without the standards. One of the things that happened historically is that -- Well, I would say that perhaps the best thing we did as New York State in our own testing certification process was to retain NYSTEC consultants to the board and Kim already explained that function. And the services NYS tech provided us to have been absolutely invaluable and I said that many times before and I think that they have been very important for making New York's testing program as good as it is. One of the things that happened is that at the -- In January and February this year, NYS tech identified that the testing plans that SysTest was initially using as part of their testing for the federal election

assistance commission were only testing a fraction of the actual standards that were contained in the voluntary voting system standards approved by the EAC. When NYSTEC pointed that out, to SysTest, you know, Sestet's initial response was well, this is what we're doing for the EAC and they approved and again, to their credit, NYS tech said no wait a minute, here's a list of each and every standard that has to be tested to and you can't show us any test for a lot of these standards. And then to Sestet's credit, SysTest said Well, if you're showing these flaws in our test can we show this is the EAC as well and we said, yes, of course. And when they showed that to the EAC suddenly the EAC responded not with cover up but by saying, wait a minute, we better not speedily approve the testing of these products, that we better reevaluate our own. And I think that was a good move open the EAC because they could have been embarrassed if they certified the equipment and then we had continued with the testing process and showed that right after the EAC had certified it that there were --Well what did we find, literally thousands of discrepancies and failure to follow guidelines. That would have been embarrassing to the EAC. That embarrassment was spared because everybody was working in a transparent environment and what we did observe is that SysTest was using junior employees and really developing these new tests that NYS tech identified that were necessary at the expense of the vendors even at the expense of the New York certification program. And so, I think our own staff has reported that we experience the same kinds of problems that the EAC and NVLAP identified as a reason for withdrawing Sestet's accreditation. Frankly, the vendors weren't ready anyway. So, that, while this delay may be unfortunate for SysTest, if SysTest were actually proceeding with the testing now the vendors would have failed those tests and, therefore, we're not really losing anything by suspending the testing program right now. And hopefully, the vendors will get this message that what we really want them to do, is to be testing internally, work out their discrepancies now so that well as Todd said that we can go through one direct run of the testing that they can pass all of these tests. And that certainly is my hope is that they will be able to develop a product that can pass our tests. And not have to keep repeating the testing process and certainly, I'm not sympathetic about them complaining about the testing costs because they're using our testing programs as part of their development budget. And we are helping them hone their product so that it actually complies. And the one thing we can say is that a company that does get certification from the New York State board of election is going to have a very attractive marketing brand or blessing from us that to be able to say that they were able to be certified by the only state that really insisted on full compliance with all these guidelines I think will be a very attractive marketing tool for them. Now, what do I propose specifically along the lines, I think that because the vendors weren't ready anyway, I certainly think that it made sense to suspend the testing until the vendors could be ready. Based on what I see the earliest that I think that SysTest could have their accreditation restored would be probably early January and I think even that is very optimistic. What I would suggest is that our moratorium goes until January 31st, that adds Todd had proposed, that we continue development of the test so that we are really ready to go in February and that if SysTest has not obtained accreditation by the end of January, that we then consider whether it will be necessary to replace SysTest. Now, I know this sounds crazy coming from me, because I was --Have been for many years one of CIBER's biggest critics but the fact is we have a contract with Cyber and if we can come to a settlement with Cyber on the outstanding charges under the old contract, we could actually use that contract to resume testing without rebidding.

>>TODD VALENTINE: That's true. That's true they're still under contract.

>>DOUGLAS KELLNER: That's an option available to us. That would be incumbent on Cyber to show us first of all that we can settle the differences where we were billed for testing that really was not done properly, and the first --In the first instance by Cyber and secondly they actually do have the capability to do this but by settling with New York again it might be incentive for Cyber because to resolve all of that. And certainly, the fact that we have Cyber as an option should be incentive for SysTest to try to get done. And I think SysTest is doing what they can to clear this up. Otherwise, we're in for a real problem with having to go through the contracting process with Wiley or Ibeta and then that would suggest to me

if we were at that situation in February and right now this is really speculative because I guess my hope would be that SysTest would have this all resolved by January, that if we should decide that Cyber weren't a good alternative in February than perhaps the federal court and consultation --In consultation with the comptroller's office and with OGS could work out some emergency contracting process so that we can get this resolved in view of the federal Court Order that is hanging over us. So, again, specifically, I would propose that we suspend testing until January 31st and that we urge the vendors to use this time productively and that they should be doing their own internal testing and developments so the product would be ready to pass certification test when testing resumes in February, and that if SysTest has not received federal accreditation by the end of January, then we would immediately in the first week of February decide which option to use, whether to wait for additional time for SysTest to get their accreditation back and to see if it's feasible to bury our difference with CIBER and bring CIBER back and whether they actually have the capability to do it, or whether we need to do some other remedy in order to get testing resolved by hiring another accredited laboratory.

>>EVELYN AQUILA: I agree with most of what you had to say. I think the number one part of urging the vendors to keep working and improving their product and testing it, is something we have to wonder if will happen. And I'm concerned about that. I certainly want to see that happen if there's any chance there, I don't know. I hate the thought of changing to another ship. We've done that already and we left Cyber and went on to SysTest. Not through any fault of our own and the 1 is 31 I'm glad you said that we were not automatically go to another company but reevaluate at that time would I want a complete reevaluation. I don't know what we'll do if vend vendors say we'll take a vacation until you decide what to do. That would be a terrible thing. If at the time SysTest doesn't get its evaluation but could be two weekends away or three months away there it we have to make evaluation there. And that means sending people out to take a look at I mean if we get back with Cyber we can't take them at face value either we have to take a look and see what they can do and capable of doing which they weren't the last time. Fool you once it's my fault. Fool you twice, you know, it's --So I think we have to take a real evaluation in January 31st and then of course we have the whole question of the Department of Justice and the judge to think about I don't know if this judge can order us to put machines on the market and go ahead and let the counties buy them. I don't know. I think we have to make a very strong argument here with the judge to be on our side on this step and not to just think that the judges want to them come along or department of justice with whatever we want. We'll have to make a good, strong argument with them that we know what we're doing and we see --We see some light at the end of this tunnel if possible.

>>GREGORY PETERSON: I think that I agree with you. It really has to be known and understood I think especially by the vendors that their machines better meet the federal standards. From what I've been told there's not a single machine in the United States that's being used that meets those federal standards. However New York is different and New Yorkers --And this board is going to insists that those things meet federal standards and if they do not meet federal standards I don't care who tells me what I won't vote for them.

>>EVELYN AQUILA: If they were selling to a commercial person or to the banks would the bank want to buy ATMs- you got to know those machines worked. No question. They did the testing and they sold them because they were selling to somebody they felt you know they were in the marketplace. With us they figure it's only the government they have to take whatever we give them.

>>GREGORY PETERSON: They should understand there's standards as far as New York is concerned and we're number one in the nation and we'll be number one in the nation and I agree what Doug said before it's a marketing tool absolutely."We sold the machines in New York and they're happy with them - we hope. And they met federal standards."Right now we don't have that. All the way up to this part we don't have it. From what I've been told by staff we probably wouldn't have it by January. So they --It



behooves them to start working now as diligently as possible over time whatever they have to do to make sure that when SysTest goes back on assuming they are certified again, that they will be able to go through the testing process and come up with a machine that works. At the present time from what I understand there is a good argument that since we have the ballot marking devices in place and have machines that work and have been tested over how many years, a century really, you're talking about, we have a system that works and that does comply and that New Yorkers have faith in. They're going in the booth and know their vote is secret and sacred and that counts basically are what 98% accurate?

>>DOUGLAS KELLNER: More than that.

>>GREGORY PETERSON: And if a machine is broken they have mechanics to come in and fix them. So this has been tested. This is a system that does work. And I for one will not vote for buying something that is substandard in place of something that works. Period.

>>EVELYN AQUILA: I agree with you.

>>JAMES WALSH: Well put, Kim, please.

>> KIM GALVIN: I'm certainly not going to defend the vendors, except to say I believe they're working diligently to fix discrepancies as we speak and sit here. While I agree conceptually with everything the board proposed I think we need another parallel tract with regard to what we do and NYSTEC and does that not or does it involve SysTest as we move forward and development of test cases and test steps. I agree wholeheartedly with the vendor path but I think we need to flush out more fully what it is we're going --

>>DOUGLAS KELLNER: Specifically, what has to be done now? In other words the test cases have still not been fully developed?

>>KIM GALVIN: No. They've been described with some less than favorably adjectives. As they smile at me because I use that often in our meeting right?

>>DOUGLAS KELLNER: Is SysTest prepared to develop that --To do that work on spec that they will get accreditation back.

>> KIM GALVIN: That's something we have to address with them in fairness to them as well, we have to be cognizant of the fact there will come a point where this is not just redoing work that we believe should have been done before but reach a point it's new development or new things that should probably be charged. So, I don't know where that line is. But then there's argument or position should NYS Tech continue with the development even though not certified testing lab but will it cost more for SysTest to come back into the process and reeducated. We reached a general consensus if we could to have NYSTEC work hand in glove with SysTest and further development and finalization of these test plans and test cases which from my understanding are far from complete so that at the end of the process in the unlikely and unfortunate event that SysTest does not regain their accreditation, at least we will then have in our hands the product that we can then transport and take with us to the next testing lab, or different testing lab and start at a much more progressive spot than currently. With regard to what --

>>DOUGLAS KELLNER: Yeah but that product -It really begs the question of why SysTest lost their accreditation from the EAC. That --That and these are observations you and Anna had and maybe we want to go into executive session to discuss this. Because we get into issues of negotiations with

SysTest. But I have a lot of problem. We have already expressed concern before that SysTest invoices appeared to be excessive in some areas.

>>KIM GALVIN: Clearly they're learning --Clearly they're not at the level --

>>DOUGLAS KELLNER: They're billing us for a learning curve on how to really test for the full panoply of standards as opposed to the abbreviated tests that initially they were going to do for --

>>KIM GALVIN: Just as we thought vendor machines would be at a different level coming in I personally, or I think people in the room thought the testing lab itself would come in differently.

>>**DOUGLAS KELLNER: Let's go into executive session not only for this, but I had --All right, well let's make a motion. My motion is that we go into executive session to finish this discussion of the SysTest contract. And second I wanted to go into executive session to discuss personnel matters. And some of our projects and then third is to discuss the New York City HAVA complaint.**

>>EVELYN AQUILA: I make the motion.

>>JAMES WALSH: Second?

>>TODD VALENTINE: Are we going to come back for voting?

>>EVELYN AQUILA: No, I don't think so. I think they're finished.

>>PAUL COLLINS: We have to come back to vote if you make a determination on at least one item that needs to be determined today unless you want another meeting before Thanksgiving.

>>DOUGLAS KELLNER: Which is?

>>PAUL COLLINS: New York City HAVA complaint.

>>EVELYN AQUILA: All right.

>>DOUGLAS KELLNER: So we'll be --

>>GREGORY PETERSON: If we do.

>>DOUGLAS KELLNER: It will be a 30 second vote. I don't think we need to keep the camera crew on.

>>JAMES WALSH: For the purpose ever the public what's going on here number one we attempted to give a great air together subject and I think there was a lot learned and a lot of information exchanged I think excellent opinions have been expressed and I think anybody in here listening to this is going away with that feeling. We have to go into executive session to discuss negotiations which are not done in public as you know and secondly, when we come back we'll be, if we are to vote on this, it will have nothing do with this. If you leave you are not missing anything with the discussion we had.

>>DOUGLAS KELLNER: We said we would vote on formal adoption of our decision on the HAVA complaint but not any public debate on it. So if somebody wants to know what happened to that it will -- We'll put it up on the web.

>>JAMES WALSH: Yes that will become public information. Now, any other questions for the open? If not, motion to go into executive session.

>> Aye.

>> All right. Thank you.