

>>: DOUGLAS KELLNER: Good afternoon. Calling the meeting to order.  
My name is Douglas Kellner, co chair.

>> NEIL KELLEHER: I'm Neil Kelleher, cochair.

>>: ELEANOR DONOHUE: Eleanor Donohue.

>> EVELYN AQUILA: Evelyn Aquila.

>> DOUGLAS KELLNER: I'll ask the board staff to introduce themselves. I remind everyone that we have this new camera behind the dias so they can look this way.

>>: Peter Kosinski.

>>: Todd Valentine.

>>: Allison Carr.

>>: Paul Collins.

>>:

>>: Dierdre Hammer.

>>: Anna Svizzero.

>>: Lee Daghlian.

>>: Bob Brehm.

>>: George Stanton.

>>: Bill McCann.

>>: Liz Hogan.

>>: Stan Zalen.

>> DOUGLAS KELLNER: I ask our guests  
Let's start with Amy.

(Guests)

>> DOUGLAS KELLNER: Thank you all.

First item on the agenda is our meeting as the board of canvasses to certify the results of the last general election.

### **Is there a report?**

>>ANNA SVIZZERO: We are preparing a report for the Commissioners.

However, the report which should be coming up any moment is absent figures from Suffolk county for the offices of Supreme Court justice and also absent results from the statewide proposition, Suffolk.

Suffolk county is in court litigating other races and are enjoined from certifying this election.

If the Commissioners were inclined to certify, they would be certifying absent any figures at all from that county.

We are preparing that document as we speak.

>> DOUGLAS KELLNER: All right.

Do we have a copy of the injunction that Suffolk county claims prevents them from certifying?

>>: It was requested but has not yet been provided.

>> DOUGLAS KELLNER: We have had some, I have had some discussions with staff people about this.

I am extraordinarily troubled by this.

This is the second year in a row now where we have been asked to certify the results without the county's providing the results as the statute requires.

And I realize that none of us feels that there is any doubt about the outcome of any of these races that we're being called upon to certify where Suffolk county is involved.

First of all there's no problem certifying the results in those judicial districts outside of, what is it?

The 10th judicial district is Nassau and Suffolk?

>>: Yes.

>> DOUGLAS KELLNER: For the statewide proposition on the ballot for the amendment to the constitution and for the tenth judicial district races, we are required to have the returns from Suffolk county.

The statute is very district about this.

9-216 says that we must go and get the returns from them if they don't voluntarily deliver it to us.

And I don't believe that it's appropriate for a judge to enjoin them from certifying the results in the first place.

And that we should not act passively to this.

This is an issue that I have talked about repeatedly since I have become Commissioner.

We need to have agreed procedures in place and we need to apply them on a nonpartisan basis according to the procedures that are in place.

And that we should not acquiesce in allowing judges to write new procedures that override the statutory scheme for how we administer elections, because it undermines the integrity of the process.

And while there is no doubt about the outcome of this election in the 10th judicial district,

I feel that we are committing a grievous error in acquiescing in allowing a Supreme Court judge to undermine the statutory scheme.

My guess is that the judge is doing so innocently.

That no one has gone to the judge and pointed out: Your Honor, there is a statutory scheme here that requires certification by a date certain.

The statutory scheme provides for amendment of the certification if there should be a determination later that there was a mistake in making that

determination.

And that our failure to insist on the compliance with the literal words of the statute is a major mistake on our part, even where it doesn't make any difference in a case like this,

because if we don't get in the habit of insisting on compliance with the statute as it's written, then when it really does make a difference, it suddenly will become a partisan dispute because one side is going to be saying: Oh, we should comply with it.

The other side is going to be saying: Oh, so many times in the past we've looked the other way and why are you changing that now?

So I would like to put out on discussion that we need to take affirmative action to enforce 9-216 and that involves two things, in my view, right now.

One is that the statute is not discretionary.

The statute says that if we don't get the canvass in a timely manner from the counties, then

Let me read the exact language.

I'm sorry.

9-214.

>> DOUGLAS KELLNER: If any noncertified copy should

On or about the 25th day following the general election it shall dispatch a special messenger to obtain such certified copy and the Board of Elections

immediately upon demand of such messenger at his office shall make and deliver a certified copy to such messenger who shall forthwith deliver it to the State board.

It's mandatory. We don't have it.

Does the Supreme Court judge in Suffolk county who signed the alleged injunction, which we don't have either, know that that's the statute?

And if the judge doesn't know that, then I believe that the second step is required, that counsel needs to contact the Court and to inform the judge that this is a major, significant, grievous problem with

Grievous problem with an election administration.

And that we're asking the judge to direct or to at least allow the Suffolk county Board of Elections to comply with their legal responsibilities with respect to the statewide races.

And the race for the tenth judicial district.

And if the Court does not modify it, I believe that we should litigate the issue, even though it is not of any consequence in this case.

If we don't stand for the adherence to our procedures when it doesn't matter, then it's going to be an even bigger problem when there is a partisan dispute and it does matter.

All right.

Again, I apologize for the long speech, but I do feel very strongly about this, that after the second year of facing this that this is not something we should turn a blind eye to.

That if the county doesn't provide a timely certification of the results, we need to take aggressive steps.

>>TODD VALENTINE: What if they haven't certified the results?

What is the situation here?

We can't demand what they don't have.

>> DOUGLAS KELLNER: Well, not that we can't demand.

We are absolutely required by the statute to demand it.

The statute is not discretionary.

It says: The State board shall dispatch a special messenger to obtain such certified copy and the Board of Elections immediately upon demand of such messenger shall make and deliver a certified copy, who shall deliver it forthwith to the State board.

If the county board is not complying with that requirement, then we need to immediately take legal action to compel compliance.

And you know, I accept at face value even though I haven't seen the document that the county Commissioners say that they are enjoined.

But has the Supreme Court judge who enjoined them been informed of this statute and been informed

statute and been informed of the serious policy issues underlying the statute that we should address to the Courts and appeal if necessary?

To me this is similar to what happened when the city, New York City board faced this issue where the courts wanted to change the canvass procedures that were set forth in the statute for the

2001 general elections and the city board went to court and challenged that deviation from the statutes and the appellate division reversed the Supreme Court and wrote a very helpful decision that makes it clear that the courts should not be overruling the statutory scheme for canvassing ballots.

>> EVELYN AQUILA: May I speak?

My only concern is that, do we have, do we have rights over the judge?

Or only does the appellate division have a right over that judge?

What is our, what is our

we can just say we are going to go by the law.

Can we do that if the judge has enjoined them?

Does that affect us in what we do?

That's the only thing.

I'm not sure what our role is.

In the past very few times this has happened, but when it has happened and they have been enjoined, we have gone ahead and certified.

If it was clear who the winners were.

I just don't know what our, what we're involved in having to be able to do.

That's the only thing I'm concerned about.

And can we say we are going to go ahead and do it anyway even though the judge has said no?

And the judge has said

He hasn't exactly said no to us, but he said it to them.

>>TODD VALENTINE: I think the problem that the county is in, a legitimate proceeding was brought.

The statute provides a proceeding to determine the ballots, the determination of the county boards.

That was brought, I think, in the town election.

16106 allows a challenge to any kind of board elections.

Here under the CPR they issued a restraining order to the board preventing them from taking a statutorily required action.

Now, that in turn has affected us because those results have to come to us under the 9 114.

So the problem that you have is that you have two providings of the statute colliding pretty much head long.

This happens, you know, periodically.

It's not every year.

Happens to be two years in a row, but this does happen on a repeated basis.

I'm not sure that us developing a procedure would prevent parties from utilizing 16.106 to make challenges to canvasses or challenges to ballots.

>> DOUGLAS KELLNER: I'm not suggesting that people shouldn't use the ballot challenge process.

It's where the courts step in and change the statutory scheme.

So first of all, there's no challenge, I understand, to the count with respect to the statewide proposition or to the tenth judicial district.

So why is the Court enjoining the Suffolk board from certifying those results?

Secondly, there is a procedure by which, you know, under 9 218 that we carry out the Court order to correct the certification.

But that doesn't mean that the certification should be frozen and should not occur.

And my biggest concern is that this may be unfair to the judge.

That no one has

I don't know, because I haven't seen the order, but that no one has spelled this out to the Court of what the implications are.

For all we know, the judge was presented with an order to show cause that had a temporary restraining order in it and without hearing the implications for state election administration, the judge signed that order.

And that this has not been called to the Court's attention.

Paul, I'm sorry, you had your hand up for a while.

>> PAUL: I understand that which you're saying.

In all likelihood what did happen is someone presented to a justice of the Supreme Court down there an order to show cause with a TRO in it.

As all of those who are members of the legal profession in this room know, one of the lynch pins of the TRO is irreparable harm.

It would seem that 9-218 would mitigate against any claim of irreparable harm.

If indeed there is a problem on the state elections, it can be fixed by this board at a later date.

Now, I respectfully, Commissioner, disagree with your analysis of the function of the Supreme Court.

It strikes me that probably because they are called upon to be an expert in all facets of the law which is very fair, it may well be that no one has brought to the attention of the justice who issued that TRO 9-218 and the possibility that if indeed there is an issue here that needs to be fixed, it can be fixed at a later date.

Now, when we discussed what our role is, perhaps it's as simple as advising the Court.

In an advisory capacity, advising the administrative judges throughout the various judicial districts in the county that with respect to state offices and state ballot propositions, 9-218 does exist and would seem on its face to preclude any irreparable harm and, therefore, we have to move forward here because we fight in this, in these two, in this

The fight in this county isn't about that which we have to certify.

Rather it's about a local election.

And I understand that there's kind going to come a day where we may have a disagreement as to a state election or a State ballot proposition.

And you're probably right that staking out a board procedure at this juncture probably makes some sense before it becomes a political issue when everyone has a different horse in the race.

But clearly, you know, there appears to be no viable claim of irreparable harm vis a vis the State canvass in view of 9-218.

>> EVELYN AQUILA: When they inform the counties and they bring things like this to the judge they say, you know, we need the result.

The judge has to be within a certain time period because of the law?

They have to get an answer back to them and

In 39 days, say?

Because we meet in 40 days?

would that be better?

>> PAUL: Commissioner, in a very real sense, much of what we do here on a staff level is responding to questions from various county boards of election and on the off chance occasionally you'll hear from a county attorney.

Maybe an educational process whereby we advise them of the viability of 9 218

would work.

>> EVELYN AQUILA: I think that we should inform the counties in the few you are.

Just say to them: You know, there is a time limit that we must certify by and, therefore, anything that is going to court has to be brought within

what do you call it?

You go to court and say there's only two weeks.

Isn't there such a thing when the judge has to give you an answer in a smaller

>> PAUL: It's very difficult to compel a judge to exercise his or her duty in a particular time frame.

What we would seek to avoid is where there is a dispute as to a non state election or a non ballot proposition, that the judge not hold up the certification of that which is required under 9-214, to us.

>>: Doug, are you suggesting that we should take a more affirmative role, like go into court and ourselves explain this to the Court rather than relying on the county to explain this to the Court?

>> DOUGLAS KELLNER: At this point I am.

>>: See, I don't know what went on down there.

You don't either?

As far as why this judge held up the entire cert rather than lifting out the singular office.

Our proposal would be you lift out this office, prevent the county from certifying that office, but allowing the county to certify everything but that single office that's under dispute.

>>: The judge did lift, because the board has certified receivers of taxes because they begin in early December.

The judge did distinguish some offices.

Whether one of those offices was in this town

>>: How do you know that?

>>: The Commissioner told me.

I was kind of asking for some background.

>>: You haven't seen any papers?

>>: No, I'm just telling you what I was told by the board.

>> DOUGLAS KELLNER: I'm a little troubled that the four of us have come from Albany, come here to certify this, when, you know, the law says that December 1

Am I right?

Is the last day for the counties to provide us with the certification.

It says the 25th day after the general election.

So the last day for them, I think the arithmetic comes out to December 1.

And yet, you know, I heard about this for the first time last night and so, you know, the four of us are in Albany today unable to carry out our duties because this issue has not yet been addressed.

And that's very troubling.

>> EVELYN AQUILA: Well, we can certify.

>>PETER KOZINSKI: I think typically what we've done is certify what we have and use 9 218 to amend in the future when we do get the cert from the county board.

If we change that procedure, which we can do, you know, we could pursue these counties that get these

>> DOUGLAS KELLNER: That's what I'm troubled about.

There's a statutory procedure that says that if we don't have it on December 1, we are supposed to send a messenger to go get it.

And apparently that hasn't happened yet.

And we don't even have a copy of the order that says that we're not

That they are enjoined from giving it to us.

And I'm very troubled by the failure to follow these procedures, even because

If we don't religiously follow all these procedures when it doesn't matter, then it's always perceived as political when it comes up and it does matter.

>>PETER KOZINSKI: I think from a procedure standpoint, you know, we talked to the counties.

That's our procedure and, you know, that could be maybe not enough, but we have been in constant communication with the counties.

I think Anna can attest to that.

We know what has gone on from what the counties told you.

I agree with you it would be better if we had a copy of the order ourselves so our lawyers could analyze it and get a better read of what the order is about.

But I think we have been in contact with the counties.

As far as sending someone down

>> DOUGLAS KELLNER: No one told the Commissioners.

>>: Told you guys, you mean.

>> DOUGLAS KELLNER: I found out about this last night, that Suffolk county did not provide certified results even though December 1 was the deadline.

It wasn't until last night that I found out that Suffolk county hadn't provided the results.

>> EVELYN AQUILA: I had heard it before that.

I knew they hadn't certified the results.

>>: Did they notify you?

>> EVELYN AQUILA: No, they didn't notify me, but I heard it from Stanley, or



one of the other staff.

You said you hadn't gotten the results

>>STANLEY ZALEN: I don't recall saying it.

>> EVELYN AQUILA: Maybe it was you, Bob, maybe it was Anna.

But I remember someone telling me that I spoke to, just on things, you know, are we ready?

They said we're waiting on Suffolk county, so I did know that.

>> STANLEY ZALEN: I think it's my impression that these results, sometimes some boards and counties tend to straggle in.

I think New York may be one of those.

You will have to correct me if that's not true.

Anna stays on top of them.

Even if there is a court case going on, those court cases tend to proceed and by the time of the meeting for the board of canvassers, it's usually resolved.

If you're suggesting if any of those results haven't come in on December 1, either we go to court or we intervene in whatever proceedings are going on at that point so it doesn't get to the day that we meet, then I guess we'll have to have a policy of the board to do that.

It could be multiple counties where this might be going on.

It wouldn't give them timely

>> DOUGLAS KELLNER: I guess I'm troubled by your saying that we need a policy of the board in order to apply a statute.

>> STANLEY ZALEN: Otherwise you've got a court case that inhibits the counties.

>> DOUGLAS KELLNER: You don't even have a copy of the order of the Court case.

You're telling me there's a court case.

You haven't done what the statute requires.

>> STANLEY ZALEN: Wait a minute.

If you're accusing me of something because of what's going on anywhere in the State, then we are going to have to have a policy to check in every board for every case and immediately intervene.

Otherwise if there's a case at the end of the state and you're going to say to me: why didn't you go down there and do something about that case at that moment?

I want a policy of this board.

>> DOUGLAS KELLNER: Stanley, Stanley, I want you to  
(Overlapping speakers).

>> STANLEY ZALEN: If you're going to allege incompetent on my part because somebody got sued in Suffolk county, I want a policy.

>> DOUGLAS KELLNER: You're wording

You're using the word

>> STANLEY ZALEN: If you point, I'll point also.

>> DOUGLAS KELLNER: Read the statute.

>> STANLEY ZALEN: I read the statute.

I even read the right section, which was 9 214, you originally said.  
(Overlapping speakers).

>> EVELYN AQUILA: When a judge asks, he is above us.

When a judge makes a decision, he's above us.

I really think so.

So there's a decision from the Court.

What do we do with that?

How do you enforce the law when the judge says you can't?

>> DOUGLAS KELLNER: Well, if you don't even call it to the judge's attention

>> EVELYN AQUILA: That's what I'm saying.

The judge has to know there's a time frame in which he needs to act.

That's where we have, that's where we have made our mistake.

For years, we should somehow try to inform the counties of

Maybe we haven't been strict enough with this policy because it is something  
that happens eight times over 15 years.

which is a lot, don't get me wrong.

Maybe we have to inform the counties of the procedure we want them to act in  
the future.

This is the past now.

You know, to say it's very good that you brought it to our attention that we  
should be enforcing this more strictly and I appreciate that.

And I think we have to look at this and say maybe we need to have a policy  
that Todd and Bill and Paul will work on, or Peter and Stanley, whoever feels  
they are the ones who should be.

I'm not going to say who.

To make a small policy

You're smiling at me, Peter, like I'm crazy.

A policy that will say to the counties that they can open the book to and say  
when this is happening in your county supersedes the law, you have to know why  
and this is when you go to court.

When you go to court you say immediately Your Honor, we have to act within a  
certain time frame because we need whoever wins the race to be certified 15  
days after the location.

>> STANLEY ZALEN: Do we go to court immediately following December 1?

>> EVELYN AQUILA: If the judge won't pay attention to that, then we have to step in.

Most judges will try to act within the time frame.

>> STANLEY ZALEN: A lot of cases are finalized.

(Overlapping speakers).

>> EVELYN AQUILA: When you have petitions, you go to court and the judge has to act within the time frame and he does.

So I think we have to remind

Maybe it's just, if you think I'm wrong, I'm wrong.

Say something, Peter.

Remind the county Commissioners that there's a time frame here that we need to act within.

If the judge refuses to act within that, then we have to decide the follow up procedure that we will

Do we send someone down there to the Court?

Do we call to the Court and speak to the judge's aide?

What do we do?

You're right, we have been remiss in not having a clear, set thing to give to the counties because most of the county Commissioners are not lawyers.

We also are not lawyers.

I'm not a lawyer.

You can read these things, Doug, with great clarity because you also are an attorney.

I can't.

But I think that you bring to our attention something that for the future we have to have a direct way, direct procedure.

And if it means sending like they say, sending someone down to pick it up, you know, we don't want to

We are a small group here. They have billions of things that they are working on.

To send down on a fruitless journey doesn't make sense either.

I've come down to collect it and we don't have them.

>> DOUGLAS KELLNER: There's a statutory requirement.

>> EVELYN AQUILA: I understand what you're saying.

>> DOUGLAS KELLNER: It is not

>> EVELYN AQUILA: But the judge supersedes a statutory requirement, I always thought.

>> DOUGLAS KELLNER: If the judge.

>> EVELYN AQUILA: They determine the law.

>> DOUGLAS KELLNER: If in fact the judge has superseded it.

>> EVELYN AQUILA: He hasn't given an answer.

>> DOUGLAS KELLNER: We haven't seen an order.

We don't know that the judge is aware of this statute and decided that notwithstanding this statute he's going to order noncompliance.

We don't know.

>> EVELYN AQUILA: Well, we have been, we have been confident when a

when the counties have come to us and said we have been to court, we have an order from the judge, we have believed our county Commissioners.

I don't think any of them would make that up.

The fact that we should get a copy of it, we want to put in new procedures.

If you get an order, we want a copy.

We don't have that requirement of this board right now.

We should make it.

>> DOUGLAS KELLNER: I don't understand why people are saying we don't have that requirement now because we have a statute that says what we are supposed to do.

>> EVELYN AQUILA: But I still think the judge's opinion counts more.

I could be wrong.

>> STANLEY ZALEN: So the question is, how do you want to proceed?

Do you want on December 1 or whatever date it comes out to be 25 days after the election, in every year, for our lawyers to check throughout the state to see if there are any court cases and then intercede at that time so we don't get to this time?

>> EVELYN AQUILA: Let them present that to us.

I don't like to write policy of this board as we sit here without giving real thought.

I think we need to have answers

Four of you here are attorneys.

I want to you

Five or six of you are attorneys.

You tell us exactly what looks like the best policy.

I'm not going to guess what should be.

And I don't want to sit here and draw the law, and draw our policy because that's a terrible way to draw policy.

Policy has to be well thought out and understood and I think that policy has to be looked at by Peter, by you, by Paul, by Todd, even Allison.

Anyone who is an attorney here.

Bill and Liz.

And we get a decent

Dierdre is an attorney, too.

And get a decent policy.

>>: That's the problem, Evelyn, too many attorneys.

(Laughter.)

>> EVELYN AQUILA: First we kill all the attorneys.

(Overlapping speakers).

(Laughter.)

>>: You have been reading Shakespeare again!

>> EVELYN AQUILA: I said it, not him.

All right.

So maybe whoever you two assign to the task is good enough for me.

I don't know if we can correct it at this table or try to write it at this table.

That's not fair and that's not good, that's not good policy on our part to draw up policy off the top of my head sitting here.

>> HELEN MOSES DONOHUE: Let's get back to the initial question.

What are we doing?

>> EVELYN AQUILA: I think we should certify like we always had.

Unless

what do you two

>>: That is the policy.

>> EVELYN AQUILA: Right, what do you think, Paul?

Should we go forward and certify?

Like we always had in the past?

>> PAUL: I'm not familiar with your previous practices.

>> EVELYN AQUILA: Yes.

>> PAUL: Obviously one of the difficulty is is you are certifying a result.

>> EVELYN AQUILA: It's only for one

>> PAUL: If everyone agrees.

>> EVELYN AQUILA: It's not going to change the outcome.

>> PAUL: This election can't possibly change the outcome from the

>> EVELYN AQUILA: That's the only way we did.

We never certified policy where the outcome of the Court could have changed the election.

>> PAUL: It's a county that's not providing a certification.

>> EVELYN AQUILA: This is bi county, Nassau and Suffolk.

>>ANNA SVIZZERO: Excuse me.

We have no numbers from Suffolk.

You don't know the outcome of the Supreme Court race in the tenth judicial district.

>>: That's the problem.

>>ANNA SVIZZERO: And you will into have any numbers in the statewide proposal for what you sign today.

They can amend as you all have pointed out, but the document you sign today will have no Supreme Court justice in the tenth JD and no numbers for the yes and no votes in the proposition.

>> EVELYN AQUILA: Then we don't sign it.

>>ANNA SVIZZERO: If you are so inclined to sign anything, that's what is before you today.

>> EVELYN AQUILA: We'll only sign what we have been noticed of.

>>: Is there a reason why they didn't send us copies of this?

>>: Of the lawsuit?

>>: Yes.

>>: I didn't ask for it.

Counsel's office asked for it and I hadn't seen it when I came upstairs and I asked staff to be on the look out.

>>: There is a problem with communications.

>>: I have been begging

we had several counties under court orders, in fact, on an going and still are.

They certified the results as it stood there in the two areas where we needed them.

Suffolk seems to be not so inclined.

There are some litigation issues still ongoing, but we do have numbers from those counties where that election is taking place, just not from Suffolk.

>>: Do we have any numbers from Suffolk.

>>: No.

>>: Nothing at all.

>>: No.

>>: Nothing unofficial.

>>: No, that's why I was trying to get to.

(Overlapping speakers).

>>: Not even recorded in the press?

>>: Nothing that we picked up.

I mean, I didn't

You know, I offered that we would take even what they posted on on the web site on election night.

Both Commissioners have to agree that we could do that and that was not the case yesterday.

>>: I missed that.

Both commissioners have.

>>: To authorize us to use those numbers.

>>: Something on their web site?

>>: I did not look, but yes, there always is, in both of those counties.

>>: I gotcha.

So there's unofficial results?

>>: Yes.

>> EVELYN AQUILA: So we shouldn't certify?

Speak up.

>> PETER KOZINSKI: I don't know what you want to do.

I will say in the past we have done this.

We certify and amend it later when we got them.

I guess that's the position we're in.

Certainly I guess your option is to adjourn your meeting and have us pursue numbers from Suffolk in a more aggressive

I have no clue if anybody does what the Court cases' type line is.

We could attempt to pursue it through court proceeding to try to get numbers.

>>: Peter, I spoke with one of the attorneys in the Court proceeding this morning and I have a call in to the other and he has been unavailable.

I'm advised they will be in the appellate division on Monday morning on the merits.

>> PETER KOSINSKI: In the Appellate division?

>>: Yes, because the Supreme Court issued a decision.

I don't know which way it went, whether they countered or didn't counter, I don't know what it was, but they issued a decision and the judge gave an automatic seven day stay of his or her decision and they are in the appellate division and the appellate division clerk advised that Monday they will be heard on the merits.

That's the time frame, to answer your question.

>> PETER KOSINSKI: Thank you.

I guess we'll adjourn until after that meeting.

It sound like the certification

>> DOUGLAS KELLNER: I am troubled by the passive response.

Again there is a statutory mandate that the board take affirmative action.

That the State board take affirmative action when it does not receive certified results from the county.

And I am very troubled that that deadline passed, the Commissioners weren't told that the deadline had passed and that no official action has been taken by the State board on one of the very few statutory functions that the State board has, which is to count the State votes.

And I am very troubled by the lack of concern about it.

And as I say, I'm making an issue of it now because I want us as an agency to get into the habit of following our procedures even where the outcome is not controversial, so that it won't be an issue where we're arguing what the procedures are and the policies are, where we don't have staff saying well, we need a board policy before we can carry out the statute.

Because those things need to be done automatically.

And then if we have good practices and procedures in place, it won't be an issue when there's a partisan issue at stake because we will have already developed our automatic procedures and policies.

(Overlapping speakers).

>> NEIL KELLEHER: What is the matter with Peter's suggestion that we

See if we can identify perhaps what the meat of the problem is here?

I have been sitting here wondering, I sound like an idiot if I say what caused this?

What brought you being called in the dark of the night for what appears to be a very serious problem?

And why?

There is something of a political nature someplace down there in Suffolk and I don't know what it is.

Maybe I don't know, maybe I don't want to know what it is.

Peter's suggestion to adjourn long enough to contact some of these people that can shed some light on it.

Chairman's continuing recitation of the, what the law says, it's clear.

It's extremely clear.



And for us to try to adopt your feeling, Evelyn, that the judges are above us, that's a little frightening with some of the performance of some of the judges in recent years.

I don't see any problem at all in having Peter go along, adjourn the meeting and let's contact those people.

Or you people would have to be involved?

>> DOUGLAS KELLNER: We have no choice but to adjourn the meeting.

But at least with those, with the tenth judicial district and the statewide canvass, but in the meantime we need to do something.

We need to follow through the statutory scheme.

We need to

I think we should have counsel contact the Court and say: Your Honor, were you aware that there's this state deadline for certifying the election returns?

And you know, we are requesting that you contact counsel and left this stay so that the county board can comply.

And if they don't do that, then we should make a formal motion.

>> EVELYN AQUILA: Seems like it's in the appellate

Is it in the appellate now?

We have to call the appellate judge.

>> DOUGLAS KELLNER: It depends on who's stay it is we are modifying.

We don't even know that yet.

And then down the road since staff are saying we need procedures, I have mentioned this both in the summer of 2006 and then again earlier this summer, that I really do think that we should adopt a policy with respect to how we are going to handle all court orders that affect the canvass and have a uniform policy so that

>> EVELYN AQUILA: Procedures.

>> DOUGLAS KELLNER: So it's not on an ad hoc basis where judges take control of the canvassing process. And we do have contradictory decisions of the appellate divisions on the authority to do that.

That's why I think if we adopted a policy in a neutral time where we're not worried about any particular race, that it will benefit us for the future because then, you know, Neil, you're suspicious that I have a motive.

>> NEIL KELLEHER: No, no.

>> EVELYN AQUILA: No, I don't think he

>> NEIL KELLEHER: I'm suspicious that there's something here that would add much more light to the situation.

>> EVELYN AQUILA: I think they're coming up with

>> DOUGLAS KELLNER: It's a Huntington town race, it's one machine.

But it has nothing to do with the State canvass.

And my guess is that it's only a guess because I have no firsthand knowledge at all, is that the judge doesn't even know about this statute and didn't think about it.

And it has become sort of routine for the lawyers that ask for an injunction of the certification or an injunction of the canvass at the beginning of these litigations.

And that as a matter of policy we should be opposing those.

That there should be a very compelling reason before the statutory scheme is set aside.

And certainly, you know, if we are under a statutory mandate to send a messenger down to go get the certified results, then we have to follow that out.

It shouldn't require a vote of the Commissioners to do what the statute says.

>> EVELYN AQUILA: No, if we make a policy that we do what's right, we'll do it.

Is there anything we can certify now and put the rest aside.

>> DOUGLAS KELLNER: No we have the judicial races.

>> EVELYN AQUILA: Put the rest on the side and have maybe Todd go call them up or somebody speak to them, whoever you think?

See if we get some information so we would be able

Maybe if we got some information we might be able to certify?

At least certify and then postpone that

>>: Commissioner, it is my understanding that they are trying to negotiate this morning or today a variation in the stay that would allow the certification of the statewide proposition.

The State offices is what we're concerned about.

>> EVELYN AQUILA: Let them see.

>> DOUGLAS KELLNER: Can we do that now before we leave Albany so we don't have to travel back

>>: Albany is the capital.

Don't you like it here?

>> EVELYN AQUILA: It's Christmas, almost.

You want to try that to see if we can get an answer out of them?

Maybe the two of you

>> DOUGLAS KELLNER: Can we get on the phone now and call the judge?

Call the

>>: (Off microphone.)

>>: I have a call into one of the attorneys.

>> DOUGLAS KELLNER: I'm suggesting.

>> EVELYN AQUILA: Let's hear from Todd, too.

Call the judge.

>> DOUGLAS KELLNER: Tell them that there's a meeting of the Commissioners of the board and the Commissioners have traveled to Albany to do this.

>> NEIL KELLEHER: We are going to pause while we wait for him to contact the judge.

>> EVELYN AQUILA: We can do that at the end of our meeting.

>> HELEN MOSES DONOHUE: Why don't we do that and come back in.

>> EVELYN AQUILA: Let's certify who we can and postpone this until the end of the meeting and go back to it at the end.

Is that all right?

It seems like

>>: Thank you.

>> NEIL KELLEHER: Fine with me.

(Overlapping speakers).

>>: You just need to sign the last pair of each of those two documents.

Those will be the Supreme Court races for which we do have results.

>>: Hi, Allison.

How are you?

(Off microphone.)

>> EVELYN AQUILA: I know his father.

Nice to see his son won the election.

>> DOUGLAS KELLNER: Just two signatures?

>> NEIL KELLEHER: I handed it to you that

>> DOUGLAS KELLNER: I wanted to make sure on the signature.

>> EVELYN AQUILA: This goes to Helena.

And this one goes to Neil.

Is there any more?

Is that it?

Until he comes in?

Okay.

Looking into that, it's really

(Overlapping speakers).

>> DOUGLAS KELLNER: So is this something we should carry as old business?

We'll wait until the end of the meeting.

See what happens.

>> EVELYN AQUILA: Before we adjourn.

(Overlapping speakers).

>> DOUGLAS KELLNER: So the motion now is to adjourn as board of canvassers and to recess as the board of recessers and move on with the regular agenda.

>> NEIL KELLEHER: That's fine.

>> DOUGLAS KELLNER: Those in favor?

>> EVELYN AQUILA: Aye.

>> DOUGLAS KELLNER: First item on the regular agenda is approval of the minutes of November 29.

>> EVELYN AQUILA: Yes.

>> NEIL KELLEHER: So moved.

>> DOUGLAS KELLNER: Those in favor say aye? all.

(All members responded "aye.")

>> DOUGLAS KELLNER: We'll turn to the board

Turn it over to Ms. Svizzero.

>> ANNA SVIZZERO: We have completed to the best of our ability the certification tasks related to this election.

>> ANNA SVIZZERO: For candidates and certain candidates filed petitions for delegates and alternate delegates.

I have a candidate list here if anyone would like them.

There are six Presidential candidates on the democratic side and slates for three of those candidates.

The contract for new voting equipment testing labs, we selected sys test.

The board

Sys test was approved yesterday.

Their contract was at the office of the state comptroller and it does have all of the stage

we have a kick off or initial meeting with them on the 18th.

That meeting is going to be here and it's a one day meeting.

It is a very full day but there's a lot of information we need to share with them and they need to go back in and review it with their own team before they can give us additional direction.

So it's the first of several kickoff meetings that we intend to have.

We have received proposals from three voting system vendors.

who are bidding on both lots 1 and 2, lot 2 being the ballot marking devices.

Those firms are Avante, ES&S and Premiere, the company formerly Diebold.

The ES&S solutions are op scan solutions and Avante is offering scan and DRE solutions.

We have begun negotiations with these, the first session was yesterday and we have one tomorrow and we have one on the 18th.

So we expect to complete the negotiation sessions on time.

We did receive a letter of intent this morning from an additional bidder who intends to submit proposals for both lots one and 2.

That firm is based in Georgia.

They are called image based systems.

IBS is the anagram they go by.

Subsequent to the board's meeting, ruling at the last meeting we have worked with the IT Department to remove the political contribution affidavits that were received hereafter April.

So those no longer appear on the web site.

That work has been completed by the IT department.

We did deliver to each of the county boards two copies of the voting equipment storage and transport guidelines.

We did it in a looseleaf notebook so we could amend that as we need to.

NYSTECH has been helpful in tweaking that as we go along and the counties can add their own information with regard to trucking contracts, et cetera, so it will become an ongoing tool for the county boards to use.

Yesterday we completed the last of our global vendor conference calls.

The conference calls had been a bit daunting and we are focusing now on specific calls with vendors who have actually submitted systems for either the ballot marking component or the lot 1 component of the contract.

The other vendors who are at play in this process still have access to us.

We have contacts through e-mail through our information account and we also have a request for information process, a specific form they fill out and a response process for them to expect answers from us in a timely way.

That is still available to them.

But the concept of a weekly or biweekly phone call seems to have exceeded its life span.

And other than that, I don't have anything else to report.

I don't think.

Allison, do we have anything to add?

>>EVELYN AQUILLA: Anna, do you have the names of the candidates, is this the last day?

Can they keep putting their names in or is it over?

>> ANNA SVIZZERO: The sixth was the last day to file.

This is for the democratic process.

The Presidential candidates are Hillary Clinton, John Edwards, Joe Biden, Bill Richardson, Dennis Kucinich and Barack Obama (in no particular order) and we have a drawing I believe on the 20th for order of the ballot.

As I said, not all of the candidates filed slates of delegates.

Only certain of them did.

We have copies here.

>> EVELYN AQUILA: Is it the same schedule?

>>PETER KOSINSKI: No, no, slightly different.

They have a different process.

The Republican process is not petitioning.

>> EVELYN AQUILA: Yeah, I know.

>> PETER KOSINSKI: It's filing a letter asking to be put on the ballot.

You can be put on because you're a nationally known candidate or if you qualify for matching funds.

>> EVELYN AQUILA: Yeah.

>> PETER KOSINSKI: It's the political process.

>> EVELYN AQUILA: When do they have to be in by?

>> PETER KOSINSKI: Their letters were due by yesterday, yesterday.

So they're still

>> EVELYN AQUILA: They are still out there?

>> PETER KOSINSKI: Well, not finalized.

>> : I didn't even get all the reasoning

>> ANNA SVIZZERO: The ballot drawing is the 18th at 9:00 o'clock, Allison pointed out.

The 18th will be a busy day for us.

The third thing we have on the 18th.

>> DOUGLAS KELLNER: Peter, is there a deadline when the

when will the Republican nominees be officially known?

when does the State board announce who the Republican candidates are?

>> PETER KOSINSKI: I don't know what the deadline is, but I'm sure it will be by next week.

The deadline was yesterday.

I don't know the deadline for announcing it.

>> DOUGLAS KELLNER: Okay.

Anna, if I could, I would like to go through some of the time line issues.

Am I correct that the only time line that we have now is the one that was part of the Zalen plan that was presented to the District Court?

Are there other time lines that we're working off of?

>> ANNA SVIZZERO: No, that was the only one that we, that was out there.

We're expecting a new time line to begin the kick off meeting and that was here they have a shell, they have desks in it.

Some of that information will have to be populated at the kickoff meeting and then subsequently by the NTA.

>> DOUGLAS KELLNER: So what is the current schedule in terms of when this kickoff meeting will occur?

>> ANNA SVIZZERO: The 18th is the initial meeting.

We will be exchanging information, communication trees, et cetera.

>>PETER KOSINSKI: I don't mean to interrupt, but there as a discussion

Technically the kick off meeting is on the 18 because the contract hasn't been signed.

The initial meeting is the official meeting and there's an official kickoff meeting and I'm not sure if that's the official date.

That's more expansive than one date.

>> ANNA SVIZZERO: Yes. The 18th is the first of several meetings that constitute the kick off.

The sys test team was calling it a precontract meeting so we could engage in this kind of preliminary conversation even though the contract did not officially occur.

>> DOUGLAS KELLNER: If I'm reading this right, so that's

And I apologize if there is something that has been actually agreed by the staff as opposed to I'm working off the Zalen plan that was submitted to the Court.

And I see there at the bottom of the first page it says certification testing project kickoff meeting.

Is that the same meeting we're talking about?

Line 182?

>> ANNA SVIZZERO: Basically, yes.

It's the first of a number of meetings.

>> DOUGLAS KELLNER: All right.

What we submitted to the Court had a December 11 date and we're now a week behind that schedule?

Is that the point?

>> ALLISON CARR: If you want the actual explanation of what happened, that presupposed that the sys test contract would be in place by December 7, which was a date that we were shooting for.

Now, there were a lot of sign offs we had to get and we only got approval from OFC yesterday but we realized a couple of weeks ago that with all these sign off that is we needed and not wanting to push OFC too hard,

we weren't going to make the December 7 date and we wouldn't make that December 11 kickoff meeting date.

The problem is that you can't actually start working on a contract until you have the contract formally in place.

We had it formally in place yesterday.

But we wanted to get started so we talked to OGS.

OGS told us that when you don't have a contract in place but you do want to start working as quickly as possible, you can spend up to \$15,000 put it on a purchase order.

If that contract falls through, the company can still get paid.

That was our concern.

Will sys test start working with us not on a contract at the risk of not being paid?

It turned out we were able to assure them that they would be paid as long as they only spent \$15,000.

Now, the kickoff meeting that we really need to have will be at least a three day event.

There's just so much work to get through.

We asked sys test what they can do.

They said what we can do is what we generally call a precontract meeting where we meet, talk about the plans, the goals, the roles and responsibilities.

And at least that way we will be getting some work done.

We said great.

Now that we have a contract in place, I think that the best thing to do would be to immediately contact sys test and actually I threw this out to them yesterday after I found out that there was a contract approved and offered to them the idea

I mentioned it to Anna.

Would they be willing now to change their plans or is it too late?

Could they come in next week and actually do that three day formal kickoff meeting?

I think that would be the best, to start working hard, very hard as quickly as possible and turn that precontract meeting into the actual kickoff meeting.

>> EVELYN AQUILA: It will still be the 18th?

>> ALLISON CARR: It will still start the 18th.

I don't know if it's too late for them to change their plans.

I believe they are ready for this kick off meeting.

If they can stay the extra days and don't have a conflict.



Anna will be here, I'll be here and NYS tech will be here.

>> DOUGLAS KELLNER: A week, though, is pretty close to the schedule.

>> ALLISON CARR: It is.

>> DOUGLAS KELLNER: So that for now, give or take a few days, like a week, the plan A time line that was submitted to the Court is still doable?

>> ALLISON CARR: I don't have that right in front of me.

I don't have all the dates.

What we really need to have are the machines.

I mean, these machines here are complete

>> DOUGLAS KELLNER: The vendors have to provide us the equipment.

>> ALLISON CARR: Each of those bid submissions, they still have items that they need to bring in to us and get the machines to sys test and we need to finalize our ballot marking device requirements so they know exactly what they are testing.

>> EVELYN AQUILA: Anna said that, yes.

>> ALLISON CARR: Sys test tested those ballot devices before.

They are ready to do this.

>> DOUGLAS KELLNER: Along those lines, the question was, is the timetable at least, you know, what Zalen and Commissioner Aquila and I submitted to the Court and I'll ask Anna so I don't put Allison on the spot on this.

Anna, is that timetable more or less doable?

>> ANNA SVIZZERO: I would say so, yes.

So at least give or take a few days we're still on that schedule?

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: Okay.

Now, as far as the actual applications for certification, the certification paperwork, have we received those applications yet from any of the vendors?

>> ANNA SVIZZERO: No.

We sent each person who bid a new application and explained that a new application was required for each system.

Those did go out to the bidders, but we have not received any completed applications in response.

>> DOUGLAS KELLNER: Is there a date for that?

>> EVELYN AQUILA: I'm sorry.

>> DOUGLAS KELLNER: Is there a date for that on the timetable?

>> ANNA SVIZZERO: Actually, no, because we didn't

we thought of the application process after the solicitation was prepared.

So we would add a date in.

We can certainly add the start date as the date we e mail those applications to the vendors.

>> DOUGLAS KELLNER: And when are we expecting that the vendors will submit those applications?

>> ANNA SVIZZERO: We were hoping by the end of the week because the submissions had to be turned in ten days after the bid opening.

We were hoping that the application would kind of coincide with that.

>> DOUGLAS KELLNER: You're talking about the 14th?

>> ANNA SVIZZERO: Right.

>> DOUGLAS KELLNER: All right.

What is the plan now for reviewing the applications for sufficiency?

I guess where I'm headed with that is that everything was very rushed when we went through this process in 2006.

So that we never really got to the point where we determined whether an application was complete or not.

Is there

>> ANNA SVIZZERO: We have a documentation lead in our unit, Frank Bongiorno.

He will be reviewing the applications initially.

If he has issues with whether it's in compliance or not.

He can reach out to Allison and I.

If we have an issue we'll escalate it to the counsels in the office.

The applications will go on the web site.

Copies will be shared with the Commissioners, but there will be, there's a checklist process that they use to go through the application.

There's also a detailed checklist to review the equipment that is submitted to make sure that we don't have that start and stop process that we had, again as you pointed out with the 2006 effort.

>> DOUGLAS KELLNER: So what is your rough schedule on when you will make air determination whether the application was complete as far as the paperwork and the submission to the board was?

>> ANNA SVIZZERO: I don't know that we expect the application review to take more than a day unless they all came in on the same day.

That review should take a day and he will be able to report to Allison and I that the application was complete or he felt there were deficiencies with it.

>> DOUGLAS KELLNER: That would include whether or not we got a technical data package plan.

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: And security plans and all of the list of things that our regulations require?

>> ANNA SVIZZERO: Yes, yes.

>> DOUGLAS KELLNER: Commissioner Aquila, I have a series of questions about ballot marking devices yet, but if you want to follow up

>> EVELYN AQUILA: The only thing I wanted to say is that Franklin is a good person to do this.

He handled it well last time.

I think he saw the deficiencies at that time.

I think that was, it's good that

>> ANNA SVIZZERO: He's a pretty detailed, focused person.

>> EVELYN AQUILA: Yes.

I think he'll get it done on time.

For the most part, our staff has worked very, very hard with this very complicated.

>> ANNA SVIZZERO: We did have some conversation, Allison and I, concerning the technical data package that sys test is of the mind that the technical data packages should be delivered to them.

We shouldn't be a pit stop for that delivery. Once they get it we would get a copies and NYSTEC would get a copy for their component of the engagement with us.

If there was no technical data package we would make note of it, but we discussed this with sys test to make sure we understand what their process is with regard to the TEPs.

>>BOB BREHM: That was a big problem last time with the prior ITA and the PDSG process and even the new bid that we put out there really requires that they do a thorough examination of the TDB before they start testing.

We paid a lot of money to start and stop and start and stop.

They never fully evaluated the TDB.

Even the BGS process requires that they do that first before they develop the test plan and it was, really, one of the big problems we had with getting master test plans out of the previous testing company,

that we really put a lot of pressure to make sure it's done differently by sys test this time so we don't waste vendor money testing equipment that really we are not ready to start testing.

>> DOUGLAS KELLNER: Now, turning to the ballot marking devices, my first question is, Anna, is there consensus among the staff that priority will be given to the certification testing for the ballot marking devices?

>> ALLISON CARR: Priority?

Well, the certification testing

well, the testing, not that it's actually certification.

Testing the ballot marking devices will be done by sys test and sys test has claimed that they don't need to prioritize their work.

They can do it all concurrently.

>> DOUGLAS KELLNER: That's great.

That's good news.

>> EVELYN AQUILA: Yes, it is.

>> DOUGLAS KELLNER: Then turning to the master time line for plan B that was attached to the Zalen submission to the Court, are we on track with these dates?

Or are there dates that are in jeopardy that are on the plan B time line?

>> ANNA SVIZZERO: well, we had a testing phase for plan B that began December I'm sorry, December 3.

And ended January 1.

So we are off from

>> ANNA SVIZZERO:

That test phase window.

By some two, two and a half weeks.

>> STANLEY ZALEN: And counting.

>> ANNA SVIZZERO: At this date.

>> DOUGLAS KELLNER: Is that all we're off is two and a half weeks?

>> ANNA SVIZZERO: well, from

>> DOUGLAS KELLNER: what is necessary to actually start the test phase?

>> ANNA SVIZZERO: We would have to have a test plan from sys test which, my understanding from the evaluation team, is that they are prepared with some test plans that we could review because they have to have those touch screen he is plans approved by the EAC in order to become accredited.

There would be some sample documents that they can start with.

I don't think they are looking at a blank piece of paper.

And both

Not both, but the entire teamist has indicated that they are anxious to get started, are prepared to ask at various levels, ballot marking and planning,

but the test planning for that ballot marking device we have not seen nor has NYSTEC been able to review it and provide input as they did in the first round of tests.

>>BOB BREHM: There were certain delays.

When we put the time line together we based it on where we thought the RFP process for the new voting machines and ballot marking devices were at the time.

There were several week delays in the RFP process that delayed us even receiving the equipment.

Just last Friday was the deadline for receiving the first round of equipment.

They did their inventories and some of the submissions weren't complete.

So the vendors have to go make them complete.

So, you know, the dates are off because one of the reasons because the RFP moved a little bit.

>> DOUGLAS KELLNER: Well, you know, I'm still trying to get down, you know, what's realistic.

Is this plan for implementing the ballot marking devices realistic?

Or have we already blown the dates to make it viable to introduce the ballot marking devices for 2008?

>> ANNA SVIZZERO: The vendor submitting the systems, line 145 on this, is the deadline that we had and the time line was November 30.

The deadline was last Friday.

We're only off by a week in that regard.

The planning for the testing, so the ITA can begin testing on or before December 7 is obviously not going to happen now.

We won't even be meeting with them initially until the 18th.

I don't know how soon after the 18th they can begin the testing.

They claim it would be fairly quick.

>> DOUGLAS KELLNER: Talking about line 148?

>>: 146.

>> ANNA SVIZZERO: 145, 146 would be the planning for the testing.

>> DOUGLAS KELLNER: All right.

So what is your estimated end date now?

You had December 11.

>> ANNA SVIZZERO: Wow.

>> DOUGLAS KELLNER: We're changing that to ... to what date?

>> ANNA SVIZZERO: I would be hard pressed without even talking to IT.

We haven't had a chance to discuss that with them.

But I don't know that that January 1 end date would work.

That might be, maybe a January 2 could be a start date.

That would be pretty aggressive.

If we are able to meet with the ITA for a longer kick off meeting than we initially planned.

>> DOUGLAS KELLNER: Talking one/26 start date, start date of January 2.

The end date would be more like February then?

>> ANNA SVIZZERO: Right, yes.

>> DOUGLAS KELLNER: Which is starting to create problems.

>> ANNA SVIZZERO: Yes.

>>PETER KOSINSKI: Can I?

I'm sorry, can I ask a question about the

There has been some talk about the submissions of the vendors.

So my understanding is that they had until last Friday?

Isn't that what the bid said?

That when they submitted their bid anybody had ten days after submission of the bid to actually deliver a machine

A complete machine to us?

>> ANNA SVIZZERO: Yes.

>> PETER KOSINSKI: What is the status right today by the submissions by the vendors.

>> ANNA SVIZZERO: We are waiting for, as Allison pointed out earlier, on a few items on the AVANTE and the Diebold.

>> PETER KOSINSKI: What does that do to the bid?

So I understand.

If I submit a bid and I don't complete that task within the ten day window that's given, does that affect my bid or am I just able to sort of submit it whenever I feel like it?

Is there some impact then that I failed to submit within the ten days?

>> ANNA SVIZZERO: OGS requires that you rebid but you supply a cover letter telling OGS there is no change to the document itself.

It's being resubmitted so the ten day clock can start again and they can submit within the ten day clock.

They have been told they need to submit

>> PETER KOSINSKI: That would actually force the bidder who failed to submit a full system within the ten days to resubmit.

>> ANNA SVIZZERO: They are calling it rebidding.

>> PETER KOSINSKI: That would then start that ten day clock yet again so that potentially then they are given another ten day window to complete their submission; is that correct?

>> ANNA SVIZZERO: Right.

>> DOUGLAS KELLNER: Peter, the way I hear that is that that bidder in effect would probably get knocked out of the competition.

>> PETER KOSINSKI: That's what I'm trying to understand, right.

If we've got three bidders in, you say, yet two of the three failed to meet the ten day window bid or ten day submission bid

>> ANNA SVIZZERO: Right.

>> PETER KOSINSKI: Then there's really only one bidder who has

Let me finish.

If I'm wrong, please tell me.

>> ANNA SVIZZERO: No, you're not.

>> PETER KOSINSKI: My understanding, there's only one bidder who has actually completely met the requirements for the first round of bidding; is that fair to say?

Not fair to say?

>> ANNA SVIZZERO: I mean, it was, for example, yesterday morning.

Yesterday Avante deliver what had they were missing but they didn't understand that they had to rebid.

They were advised by OGS yesterday that even though they supplied what was missing yesterday they need to in this formal way submit the same bid over again with this cover letter on it that indicates that there's no change in the substance of the bid,

only that they are providing the additional items that were missing in their system delivery.

>> ALLISON CARR: Then yesterday afternoon we found out that they were missing a couple more items and we had printers to deliver.

Technically they can rebid today, resubmit their paperwork, turn in those printers tomorrow and be done with it.

Although they still have a full ten days to complete their submission, they could be done tomorrow.

They could be done today.

>> DOUGLAS KELLNER: As of today, ES & S, precise voting, and Avante

I'm sorry, premiere, thank you

That ES & S, premiere and Avante are still all in the competition for having M.D.es that we might be able to certify soon?

>>: Yes.

>>BOB BREHM: What Peter says is true.

OGS continues to

It's a continuous improvement.

The way to cure the fact that we rejected you is to fix the issue and rebid and then you're in queue.

And you will be in the next line.

>> DOUGLAS KELLNER: As Peter was leading into and I think I'm in sync with Peter on this, at some point if one of these three vendors isn't ready to go,

that they may get dropped out of a process that has very tight deadlines on it if we are going to have a product or products ready for certification by the counties in a time early enough where the counties will be able to make a decision and implement it.

>> PETER KOSINSKI: I agree with that, but my other issue is I don't want

people to presume that because someone submitted a bid that that means they truly submitted a bid.

what that may mean you gave me a piece of it, you told me you're bidding but I have a series of other obligations as a vendor that I have to complete as a vendor that may or may not have actually been completed.

So the fact that you submitted a bid doesn't mean, what some people may think it means, oh, goodie, we have a product that we are now able to go forward and test.

We don't.

The fact is you submitted a bid, but the product that has to be, you know, given in conjunction with that has not yet been submitted.

So I just want to make sure that people understand what these terms mean and what is actually going on, which may be something different from, you know, what it appears

>> EVELYN AQUILA: What it sound like.

>> PETER KOSINSKI: Yes, what it sound like.

>> ANNA SVIZZERO: It's a way to harness what didn't go right last time.

We had systems here.

We were missing pieces of it.

When it got delivered to the labs, they are were missing pieces of it.

Yet we allowed certification to begin.

Seemed like we were playing catch up since day one.

We are paying the price now and we don't want to have to do that again.

Submitting and bidding

>> DOUGLAS KELLNER: So we are all agreed that we are going to identify these deficiencies in the initial submissions as quickly as possible.

So they can either be immediately cured or the vendor will be taken out of the running, at least for the immediate round so that we will get done whatever is possible to get done by February.

>> BOB BREHM: The survey last was

>>: What Anna says is correct, we specifically tried to fix the problem last time when we did this bid over.

There are mandatory items in the lot 2, for 2 reasons.

We didn't have a lot of time to wait so we specifically put in there ten days, ten business days after the bid opening.

That vendor, whenever they submitted their bid, within ten business days there's a complete list that is laid out in the RFP that they need to give us all these items.

There's a check off sheet and the staff goes through the check off sheet to make sure they understand it.

If they don't understand it, at the call the vendor to say we can't find this thing and maybe the vendor can explain this is how they comply with it.



We have to give that information to OGS to make sure we've gone through the check off sheet and we can tell them these items mandatory in the bid are here or not.

If they are not, then the vendor is notified that they have not complied and they have to if I can it.

When they fix it, that starts their clock again.

>>STANLEY ZALEN: Can I ask a question,?

Anna, you said something before and I think I heard it wrong.

I wanted to double check.

I thought I heard that you, you say that the master test plan has to be submitted to the EAC for certification.

I couldn't have heard that right.

>> ANNA SVIZZERO: Not our master test plan, but the vendor, the ITA in order to become a certified lab has to prove they are capable of producing these sorts of documents.

>>STANLEY ZALEN To the EAC?

>> ANNA SVIZZERO: Right.

>> STANLEY ZALEN: Do we know that they have done that?

When they are doing that?

>> ANNA SVIZZERO: They had to do that in order to become accredited.

The team saw some of these master test plans in your site visit.

There's information that they have that they've already created that would enable us to hit the ground running rather than sit around a table and try to figure out what they are going to do and start out with a blank piece of paper.

We're giving them system requirements at this kickoff meeting.

They obviously have access to the web so they can see what our solicitation said and identify the initial ballot marking device requirement separate from our regs and the statutes.

So all of that is something that they would consider in, and compare if you will to the existing test plan to see how that could be tweaked to help us get moving quickly.

>> STANLEY ZALEN: The EAC has approved these vendors test plans?

>>BOB BREHM: If you want EAC certification, the requirements is that they be submitted to, the test plans be submitted to the.

(Overlapping speakers).

>> STANLEY ZALEN: We don't have certification.

>>BOB BREHM: We simply require that our IT A submit the law to the regulation and the 2005Ee SC.

We don't have to wait for our purposes to await the EAC to approve these products as far as we are concerned.

If it happens, fine.

If it doesn't happen, we don't have to wait for it.

>> STANLEY ZALEN: Okay.

>> ANNA SVIZZERO: My point is that they have plans, drafts of test plans and the script.

>> DOUGLAS KELLNER: I have a few more questions about the time line and hopefully to move it along quickly, we'll put them all together rather than break them down.

Anna can you quickly run through lines 151 to 158?

159?

Of the Zalen plan B time line?

And just roughly tell us where you think we stand right now.

Is it basically you just add three weeks to those dates?

>> ANNA SVIZZERO: If we were able to start testing it in early January, then

>> DOUGLAS KELLNER: What is the condition on that if?

Why wouldn't we be able to test in early January?

>> ANNA SVIZZERO: I guess we would have to know that for a fact from meeting with the ITA rather than assume that they can meet with us on the 18th and start testing two weeks later.

We want to see that test plan.

We would want to review it ourselves.

We would want NYSTEC to review it as well to make sure that our requirements matrix is accurately reflected in it and the ITA is going to do the kind of testing that we feel meets the ballot marking device requirements, if that's our initial focus.

>> DOUGLAS KELLNER: So that's the goal.

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: It to have that start January 2?

>> ANNA SVIZZERO: We'll get the answer on the 18th knowing

we will be sharing that information with them and they will be able to meet with NYSTEC face to face to talk about how that review of the master test plan would work.

>> DOUGLAS KELLNER: If we do that, then what happens to the rest of these dates?

Lines 151 through 159?

>>BOB BREHM: I think for some of the equipment, you know, as Allison said, sys test has done work with some of the ballot marking devices.

So to the extent the ballot marking device is familiar to them and not changed drastically and it's here and we have it and it's complete, we might be able to move forward quicker.

Because

>> ANNA SVIZZERO: Maybe even test

>>: Then we don't have to do the Delta.

To the extent they haven't even seen it yet, I don't know.

>> DOUGLAS KELLNER: Okay.

So I'll accept the I don't know.

Let's go then right to 159.

>> EVELYN AQUILA: One what?

>> DOUGLAS KELLNER: Line 159 is the date that we were going to give the list of machines to the counties.

And we had proposed January 21 of '08.

What is the best possible date now?

>> ANNA SVIZZERO: I think you're almost a month off.

I would say it's a good three to four weeks for changing that end date.

>>BOB BREHM: Some of the machine tests that are required are 28 day tests.

That's the longest test for a machine test.

Whenever we start with that device into that room, the earliest we could do anything is 28 days later.

>> DOUGLAS KELLNER: I'm very concerned about that because we are now getting up against what I regard as the borderline date where it starts to become impossible in order to orderly implement a ballot marking device at every poll site in 2008.

That if we have a February 15 date for certification, then with difficulty and imposing on the counties, I think it's probably still possible,

but if we lose any more time beyond that date, my own view is that that does not leave sufficient time for the counties to do what they have to do in order to complete the process.

And that we need to stay focused on those dates.

If we have any hope at all of achieving that.

>>BOB BREHM: I think just one of the other things that is starting to come up is our assumption when we drafted the time line of how long it would take the vendor once they received a purchase order to actually ramp up.

We don't know all the answers yet because we haven't heard from all the vendors yet, but some of responses are not exactly along the lines of what we were thinking.

So it might take them a little longer to actually

>> DOUGLAS KELLNER: You're saying some of the vendors won't be able to produce enough product in a timely manner?

>>BOB BREHM: We won't know how many orders they will receive, but they suggested it would take them a couple of months to order parts and they can

start building, but it depends on how long it takes them to get a certain quantity of them done.

>> DOUGLAS KELLNER: That's only one or two of the vendors, but not all of the vendors?

>>BOB BREHM: They all take an exception to our 30 days after orders product, yes.

They all have taken exception to that.

>> ANNA SVIZZERO: It's the three that have bid on ballot marking devices so far.

>> DOUGLAS KELLNER: The vendors are all saying well, the question is how much of this should we be telling the Court in order to be completely frank with our presentation to the Court in terms of what is doable?

>>: (Off microphone.)

>>: The reality is.

>> DOUGLAS KELLNER: No, I mean telling Judge Sharp.

(Overlapping speakers).

>>PETER KOZINSKI: I understand, but I think this discussion is very useful and I think it's useful not only in the room but I know from D O J's standpoint they should be aware of this as well.

I totally agree.

You know and I will say this, I have some resistance to giving time frames largely because of our discussion here today.

Our experience has been what we are discussing here today, I do have a question which I'm not clear on myself.

The testing issue.

And I guess I would ask Bob and maybe Allison if they have a sense of this.

When you talk to sys test and I know you did about their ballot marking device testing, which they have done.

So they have some experience.

How long did it typically take them to do a ballot marking device test when they did them in the past?

Do they give you a time frame?

>> BOB BREHM: Yes, we asked.

And we asked all of the IT As when we visited them.

They said it depends on with a our standards are and how different they are and what we require.

But they felt they could do, depending on what that was, it could be somewhere between six to eight weeks, depending on when they got certain items delivered to them, you know,

the machines and then, you know, testing has to go into certain chambers and how to get them through the chambers in time.

>>ALLISON CARR: That was a good case

>>PETER KOZINSKI: Their estimate was six to eight weeks to conduct testing.

>> BOB BREHM: Test planning, knowing that they had a certain, you know

They already know what the requirements are.

They already started work on some of it.

They have done some of the testing, we would have to agree what the final test plan was.

Do the machine testing and the settings, the laboratory settings and then do the, whatever source code testing there is and also any functional testing.

They felt six to eight weeks.

>> BOB BREHM: That assumed that things worked.

>> PETER KOSINSKI: Is that presupposing that the machine is totally sufficient and does not require, for example, an anomaly report, go back to the vendor to have the vendor actually make some corrections or fixes?

And those issues would impact that six to eight week test?

>> ANNA SVIZZERO: Clearly.

(Overlapping speakers).

>> PETER KOSINSKI: Add to the six to eight weeks?

The six to eight week test, as I understand it, if you bring me in a fully sufficient compliant machine and I would test to that and discover if there are interruptions because of anomalies or because there are issues that the machine is deficient in,

that would add to the six to eight week testing regimen; is that it?

>> ANNA SVIZZERO: We also have the consideration of testing that already has been done.

In some cases they've done it.

There's some value or could be value to that kind of testing that would perhaps make up for some of that shifting in those time lines and cut that period up.

For example if the lab tests were done on a, on hardware, for example, and the hardware has not changed, they wouldn't have to do that particular task over again.

So there's the ability to consider that time.

>>: PETER KOZINSKI: So our position is if you bring a machine in and system test has seen the machine in the past and done the tests on it in the ass you will not require them to redo the test?

>> ANNA SVIZZERO: They can consider any previous testing for lot one or two.

(Overlapping speakers).

>> PETER KOSINSKI: These machines they are bringing us in fact are the same machines they have tested before?

>> ANNA SVIZZERO: They have to tell us that.

We don't know that.

>> STANLEY ZALEN: Originally we were going to, if we ran into anomalies, keep going on the other machines.

We weren't going to stop.

We were going to keep going.

>> STANLEY ZALEN: But if we run into anomalies that push this time line further into

It's possible that, if we were ready to go on any one of these machines would be done within the time line unless, of course, things like previous testing and other things managed to keep us within the time line.

If none of those three machines, and there's only three so far, stay within the time line because of anomalies, you are indicating that it would be a tough pull to be able to have them in time for September, maybe even November.

But certainly for September.

So this is clearly a problem.

>> DOUGLAS KELLNER: It is actually three machines, but it's a little tricky, right?

You have the auto mark for both diebold and for

ES & S and you have two different B and D offerings by Avante, right?

>> EVELYN AQUILA: Right.

>> STANLEY ZALEN: Anomaly in one but there might be an anomaly in two.

>> DOUGLAS KELLNER: Right.

>> ANNA SVIZZERO: ES & S has sent both of their models for certifications Both the models of the auto mark.

So I think

>> DOUGLAS KELLNER: I didn't realize there were two auto mark models.

>> ALLISON CARR: It's not much different.

what they did, they flipped over the internal mechanisms so they could do the hash code checking easier.

>> ANNA SVIZZERO: My point is.

>> ALLISON CARR: They just flipped over the guts.

>> ANNA SVIZZERO: My point is, they did it so they could diminish the production schedule.

Now they have more units they can put out if we were to certify both versions of it.

>> DOUGLAS KELLNER: Is the ES&S auto mark submissions different from the premiere auto mark submissions?

>> ALLISON CARR: We don't have premiere's auto mark yet.

>> ANNA SVIZZERO: Premiere

>> ALLISON CARR: Hasn't come in yet..

>> DOUGLAS KELLNER: Premiere is diebold, right?

Originally they were the same, right?

>> : Very close.

>> ANNA SVIZZERO: They have a different number on the diebold auto mark.

>> ALLISON CARR: We still have those.

>> DOUGLAS KELLNER: All right.

I think I'm satisfied. Were there any other questions people have about the time line?

I guess the conclusion of this is that it's still theoretically possible, but we are really at the precipice of whether this is really doable.

>> PETER KOSINSKI: Well, part of that

I don't mean to

Part of that depends on the counties, I mean, no question.

A lot of this presupposes the time frames that the counsel advertises are requiring to put these machines out.

I know we have had discussions with them about what they perceive to be their needs in order to get the systems out there for public use.

And I respect that.

And as you know, my urging has been that the Court needs to consider that in any time frames that are developed here as to what the counties' needs are not just from, you know, a State board perspective as to what we need to get them certified, but then what do they need.

My sense is different counties have different needs.

And what one county may be able to do it faster than another county, even.

I don't know that it is a statewide standard that would say every county needs X amount of time.

My sense is that some counties may in fact be able to do this quicker than others for various reasons.

>>: Staff.

>> PETER KOSINSKI: Size, staffing, all sorts of reasons.

My urging has been and continues to be, the Court needs to deal with that on a county level where if the county says I need six months, the Court needs to understand why they're saying that.

Because I need to understand it.

Or I need three months, or whatever time I give them.

So, you know, to say

To sit here today and say if we don't get these certified by February 15 or

16, that somehow means we can't do this this fall, to me that's an overstatement only because that may mean we can't do everything, I don't know.

But I think you need to look at it at a case by case, county by county basis and say in county A because of their circumstances, maybe they can't do it within that time frame.

But in county, you know, D, maybe they are in a position where they could get them out even though the certification didn't occur until March 1st even or whatever date it actually does occur.

So these are very

I hate to say they are unknown dates, but they are dates that are site or county specific. Really, I hate to sit here today and say gee,

if the time frame doesn't work out all bets are off and New York is not going to be able to do anything this fall. I don't feel confident in saying that.

My view, what we need to do is get these certified as quickly as possible, make them available as quickly as possible and put the counties in the position of doing the best they can do to get out as many systems as they can this fall so that we meet certainly as much of this as we possibly can.

>> DOUGLAS KELLNER: I agree with that.

>> EVELYN AQUILA: Yes, I do, absolutely, Peter.

Just the two dates here that Bob

Maybe I shouldn't even bring it up.

On lines 208 to 211, we talk about the acceptance of the ballot marking devices on June 3, '08.

Now we say, if I understood this right, we're about a month behind with that.

That would be July 3.

Then if we look back at line 206, we say delivery, note actual delivery date will be negotiated.

But we say delivery from the vendors would be at July 10.

And if we move that up a month

I mean, June 10.

We move it up a month, it's July 10th.

We are saying acceptance on the 3rd and delivery three days later.

That doesn't seem doable to me either.

I think what you said is more accurate the way we should be looking at it.

We'll do our best with as fair and honest a time line as we can give them, realizing that it is a very

what should I say?

Nothing we can pin down to reality that harshly because there's too many intervening things that can happen to change those dates.

>> DOUGLAS KELLNER: I see that Todd and Paul have come back.



Do you want to go to that or come through the he is rest of the meeting?

>>: That's fine.

Go through the rest of the meeting.

>> EVELYN AQUILA: That makes more sense.

>> DOUGLAS KELLNER: We'll turn to Lee, then.

>> ANNA SVIZZERO: I have a resolution for you to vote for.

We can do that in new business.

We also have, now that Todd is back, a petition matter that needs to be ruled on by board.

So whenever

>> DOUGLAS KELLNER: I'm going to add both of those items to new business.

The petition is from Pat Tracy on the budget.

That was in the packet.

We'll do the petition ruling then, too.

Well, we still have Todd's report.

Let's go through the rest of the reports.

We'll do the petition in Todd's report.

### **Lee Daghlia for NVRA and public information?**

>> LEE DAGHLIAN: Yes, Commissioner. We are doing a lot of things.

I'm only going to report on two of them.

Any questions you might have, I'll try to answer.

We had a post contract meeting with our vendor

(Chuckles.)

>> LEE DAGHLIAN: For our web based pole worker training program on Monday, despite the weather.

The representative of SOE, the contractor, was here from Tampa.

We wish we could have gone back with them, I guess, but we couldn't.

We had a kickoff meeting with him and with our internal committee.

We worked on timelines.

We worked on what type of contact we would have.

We came out of the meeting with a very good feeling that we could develop a poll worker training program and everything else that goes with that RFP to that contract.

And have it for '08 training purposes, regardless of what the Courts order us to do.

In other words, if it's just BMD's that are in place for '08,

that the component training would be on those BNDs as well as the 11 machines that we have now.

If it's more than that, they can adjust to put any type of content we want in there.

So we feel fairly confident that we can all get this done in time for '08, whatever the requirements are.

We will meet with the advisory committee made up of county personnel at the Saratoga meeting of the association on the 22nd.

And SOE and we will make a presentation to the Commissioners as to exactly what the program is and how we intend to get it finished and what it means to them.

We also, involved in that contract, of course, is voter outreach for any new equipment and how to use it.

That content will also be provided to counties.

And they will have an opportunity to tweak their particular information for the county if they need to do so.

So we felt it was very good kickoff meeting.

As I said, we are confident we can get this done for '08.

Any changes that need to be made for '09 will be also done under this contract.

The other thing is if we want to visit the fair again next year, we need your, I need your approval to put in the application before January 1 to retain the booth space at the fair.

The cost is going to be roughly the same as it was last year.

Unless you have questions on other things we're doing, I would like to ask for your approval to execute this agreement.

>> DOUGLAS KELLNER: All right.

There's a motion to approval participation in the State fair for 2008.

Those in favor say aye.

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: It's adopted.

Lee, I have a question. I understand that you have been receiving the complaints concerning handicapped accessibility?

>> LEE DAGHLIAN: Yes.

>> DOUGLAS KELLNER: You want to summarize what's going on with that and how that's being handled?

>> LEE DAGHLIAN: Right.

We are in the process of writing this week, today, to those counties involved

and to the specific nature of the complaint.

We've researched on our end already those complaints.

We've checked our files to see what information we do have.

We are instructing the counties to check this out as fast as possible and if there's remedial action that needs to be taken, to do two things: Amend the plan they gave us if it's something new and second, get it done prior to the next election, the primary.

Again, that's just the first batch of complaints that came out of the last election.

Once we send out the letters, we will make a report to NYSLK who submitted that list and keep them informed.

>> DOUGLAS KELLNER: Great.

I hope you'll stay on top of that, then, and give us regular reports.

Just to assure us that those issues are continuing to be

Anything else for Lee?

(There is no response.)

>> **DOUGLAS KELLNER: Okay, we go to campaign finance.**

Elizabeth Hogan?

>> ELIZABETH HOGAN: The first I would like to talk about is the process server contract.

I spoke to OGS, specifically Warren Jocelyn, our procurement officer with OGS. He's in the final stages of preparing a document for us.

He told me he should be able to email it to us this week for comment.

We are meeting tomorrow

well, Friday, the 14th, with NYSTEC to finalize the administrative complaint hearing charts that they have prepared for us that addresses the complaint and the hearing stages.

Then, we have a meeting scheduled for the 20th of next week with New York State industries for the disabled.

They are the preferred source for our electronic filing conversion.

We will be able to sit down with them.

They are the parent who has to deal with OGS in terms of setting the contract language and getting price approval to execute that project.

We have a new counsel starting tomorrow in enforcement.

Kim Gabbon.

We're pleased and looking forward to her arrival.

We are having a demonstration tomorrow and George may talk about this in a little bit in his presentation.

We are having a demonstration of, I understand it will be an operating system

neutral filing software program that his people have created.

So we are having a demonstration of that tomorrow for everyone.

Tomorrow we have scheduled an internal staff meeting of the unit and there are a number of things on our agenda.

As I indicated we are meeting with NYSIT next Thursday on the E filing project and tomorrow internally we will finalize what our necessary format is, what we need to execute into the program.

We are going to talk about the 2008 filing handbook update which needs to be done very soon.

We also need to sit down and discuss form schedule for the 2008 campaign finance seminars that we will be conducting in the spring.

We have on our agenda tomorrow to discuss, I know it is of interest and was raised at the last board meeting, the amendment to the regs regarding local filing elimination.

And we will review the stage we are at in the Senate and Assembly contribution and move into the next phase and that's about it.

Thank you.

>> EVELYN AQUILA: That's about it?

That's some agenda.

You have a lot on your plate.

Congratulations.

>> DOUGLAS KELLNER: Any questions?

**Okay, George Stanton, ITU.**

>> GEORGE STANTON: Nothing exciting going on in ITU nowadays now that the database is up and running.

Did go to the CSTB workshop in Washington at the national academies of science a few weeks ago.

Dierdre was there also.

They have a committee who is putting together eight of these workshops.

This was the second of eight.

What they are hearing is they are gathering information from experts in the computer industry,

the election fields, different experts from different venues, looking for ways that they can improve statewide databases.

In fact they were even asking what can we do to improve it in 2008.

And of course, everybody in the election community that was there told them nothing.

It was too short of a time.

But one of the things that seems to be a hot button is the interconnectivity between states now, sharing data between states to identify duplicate voters in different states.

So that's on, that's one of the big agenda items.

And the result of this, they'll put together a report which goes to the EAC and also make recommendations to Congress of any changes that they think could improve voter registration databases.

Beyond that, my unit has finished for the most part processing the 27 day post general filings.

I know that they were getting a lot of calls for help during the previous week.

It seems to have slowed down now.

I'm guessing they are pretty well through them.

We are continually monitoring the database at the VPNs for any problems that we see.

We are getting a chance to run some reports, look through the data to see if there's any data that the counties have given us that need to be corrected to be consistent with the rest of the database, that kinds of things.

And as Elizabeth said, we will be demoing the, a prototype of an operating system independent electronic filing system software from our own

In fact, we are going to demo it on a Mac.

You should come see it.

(Chuckles.)

>> GEORGE STANTON: Also at the same time we are looking at our database schemas for campaign finance to see what modifications we might be able to make

within the database schema to be able to accommodate some of the changes that we're going to have to make when we redo the system to do away with some of the ongoing problems such as multiple special elections and multiple offcycle filings,

for people being able to view data that's been amended but view the data that was given to us before it was amended, those kinds of things.

I guess that is just about it for ITU.

>> DOUGLAS KELLNER: Anything else?

>> EVELYN AQUILA: Great job.

>> **DOUGLAS KELLNER: Go back to Todd on the legal.**

>> TODD VALENTINE: Well, obviously you have had a discussion about the Department of Justice lawsuit.

So I don't think we need to go any more into that.

And on the Suffolk County, you want to go to that now?

>> DOUGLAS KELLNER: Sure.

>> TODD VALENTINE: Great.

We spoke with both Commissioners.

Katz and dire, the democratic and Republican Commissioners.

This is an order to show cause which restrained them from rendering any final  
owe figure count with regard to any voting machine.

Pretty obvious.

What we asked for, though, at a minimum could they at least, based upon the  
determination which was made by the same judge,

made by the Court yesterday which made a determination on the outcoming of the  
election based upon her analysis of the ballots,

apparently there's a problem with the voting machine and the resolution they  
came to that.

In that decision the Court lifted all restraining orders from any of the  
Commissioners from certifying the election for town counsel of the

Town council of the town of Huntington, but what the judge did was stay the  
execution of that order pending

Paul has that, pending further stay from the appellate division.

Which I don't, we don't know if they've gotten the stay, but with a we  
understand is actually the appellate division is going to hear the argument on  
Monday.

So that's on the last page, is the stay of the execution.

The lifting of the order is on page three, the one that Paul just gave out.

So at this point, one commissioner is fine with it.

What we asked for at a minimum is, well, to certify what results you have in  
hand which is the election night results is what we usually ask for.

We know we have other issues, but we would at least like to have something to  
come from both Commissioners.

One Commissioner said yes and the other Commissioner said she would be  
checking with her counsel.

The two Commissioners have separate representation.

Neither one is being represented by the County attorney.

They each have private representation.

So they were reaching out, the one Commissioner was reaching out to her  
attorney.

One had already done that and was ready to do that,

but the other Commissioner was not ready to certify even the election night  
results at this time.

They were going to try to do that this afternoon.

That's what we are hoping to get.

You know, I emphasized that we need to have that, but she doesn't have it, she  
doesn't have it.

>> DOUGLAS KELLNER: Did you try to call justice pines?

>> TODD VALENTINE: No.

>> DOUGLAS KELLNER: I still think that we should  
we're still being a little bit too passive about getting this done.

And hopefully, you know, this could have been done

If the deadline was December 2 and that's when the work should have been done  
and not to wait until the Commissioners are sitting at the table.

But I think the next step is to call justice pines to explain the situation to  
her and ask her if she would get the attorneys on the phone so that she could  
lift the stay of execution so that we can comply with the statute.

>> TODD VALENTINE: We can try.

>> EVELYN AQUILA: Let's see, when does the other one going to call us back?  
Did she give us an idea?

>> TODD VALENTINE: Could be at any time.

>> EVELYN AQUILA: At any time, she said?

>> TODD VALENTINE: Yes.

>> EVELYN AQUILA: It doesn't hurt to reach out to Pines.

>>: The Commissioner is waiting to hear back from her counsel.  
I already had spoken with earlier today.

He is not only going to

>> PAUL: I believe he is going to sign off on doing it, certifying it.

>> DOUGLAS KELLNER: Let's get him on the phone now Paul.

>> TODD VALENTINE: Well, we already tried and we get his voice mail.

>> EVELYN AQUILA: Well, we'll wait for an hour and then ask her again.

>> TODD VALENTINE: Sure, all right.

>> EVELYN AQUILA: Do it at the end of the meeting if we have to.

Whenever we're finished we'll call her and say look, we have to have the  
answer now.

>> DOUGLAS KELLNER: Todd, you had a petition issue for the Commissioners?

>> TODD VALENTINE: Yes.

Anna actually has that.

>> ANNA SVIZZERO: It's a one page Presidential petition.

The cover sheet indicated there were six volumes.

The petition was seriously deficient on any number of levels.

And our recommendation was to rule it invalid.

>> DOUGLAS KELLNER: I move that we

>> EVELYN AQUILA: Yeah, coming around.

>> DOUGLAS KELLNER:

Sustain that recommendation.

Who is the candidate on the petition?

>> EVELYN AQUILA: Mike gravel, GRAVEL.

I don't know who he is, but he has six signatures.

>> DOUGLAS KELLNER: Mike Gravel?

(Off microphone.)

>> EVELYN AQUILA: Both on the ballot?

>>: Only near by.

>> EVELYN AQUILA: I know those streets very well.

Residents all around Brooklyn College.

(Off microphone.)

>> EVELYN AQUILA: Westminster.

>> DOUGLAS KELLNER: All right.

So it's pretty obvious from the face of it that the petition is insufficient.

>> EVELYN AQUILA: It is insufficient.

>> DOUGLAS KELLNER: So the motion was that we declare it invalid.

>> EVELYN AQUILA: Right.

>> DOUGLAS KELLNER: Deficient.

Those in favor say eye?

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: So Mike gravel is going to be taken off the ballot.

>> EVELYN AQUILA: Isn't he the one from Alaska?

>> DOUGLAS KELLNER: Yes.

>> EVELYN AQUILA: I thought so.

The bridge to nowhere?

>> DOUGLAS KELLNER: That wasn't him.

That was the Republicans.

(Laughter.)

>> EVELYN AQUILA: To get tourists up there.



(Overlapping speakers).

>> DOUGLAS KELLNER: I'm just defending senator gravel.

All right.

So I think that concludes the reports?

>> TODD VALENTINE: Yes.

**>> DOUGLAS KELLNER: Old business was our resolution concerning fees for testing of open source software.**

Do we have any news on that?

Should we just carry it?

>> COMMISSIONER DONOHUE: Carry it.

We're still waiting for more public feedback.

>> DOUGLAS KELLNER: Okay.

The next was we had in our discussion at the last meeting we did pass a resolution to have our regulations conform to the new statute that prohibits inquiry about vendor political contributions.

One of the issues that we left open was whether we would make a recommendation to the legislature on this subject, which we think that they never thought about when they enacted the ethics reform act.

I did ask to distribute the EAC, the U.S. election assistance commission policy on vendor political activities.

I don't know, though, that it actually made it into the packets here today.

>>COMMISSIONER AQUILLA: Yes, I'm sure it is.

>> DOUGLAS KELLNER: I thought that might be a starting point for a recommendation that we would give the legislature to put in the statute that would statutorial enact in New York the EAC policy.

I throw that open on the table.

That's something I could support.

Do we need more time to talk about it?

Could we make a motion?

>> EVELYN AQUILA: I think we should have a motion, not by our staff, I can support it too, but I think it's hard to rule on something motion at the table.

I want the motion to be drawn up by staff to be put in the packet for the next meeting.

>> DOUGLAS KELLNER: I assume we will be meeting in January.

>> EVELYN AQUILA: I thought so.

This way we can look at it and see, you know, what we should be saying here.

>> DOUGLAS KELLNER: Great.

If we are on the list of legislation, so we have  
In terms of the to do list for our legal counsel,.

>> EVELYN AQUILA: I'm so sorry.

>> DOUGLAS KELLNER: Once they get over the hurdle for DOJ, which is consuming all their time, and properly,

we have drafting those regulations for conforming what was it, 6209.4 to the new ethics reform law.

That we have drafting a bill to make the EAC policy recommendation throughout New York.

We had talked awhile back about drafting a bill that would change the filing rules so that when people are mailing on the last day of a deadline they would have to do it by express mail.

Is that something, we had talked about it.

I don't know that we've ever done it.

>> EVELYN AQUILA: Kind of makes one more complication for the person filing in a way.

If we get it a day later, as long as it has the right pace postmark

>>DOUGLAS KELLNER: That's what the rule is now.

The idea was, but that does slow us down in are terms of meeting the deadline.

>> EVELYN AQUILA: It does come behind the others.

I leave it up to staff if they.

>> ANNA SVIZZERO: OPS would certainly support It does make that process linger.

And certified mail is the worst.

It can take eight or nine days to get from Buffalo to Albany and a lot of filers think certified mail is more secure.

Overnight, they can call and check on it or use the direct tracking system.

>> EVELYN AQUILA: Again, we have to write some kind of a difference.

>> DOUGLAS KELLNER: Tthat's on our to do list.

Put it on for the next meeting.

That's old business.

### **New business**

>> STANLEY ZALEN: I'm sorry, Doug, with old business, I may have missed this, but is there consent by the Commissioners to have counsel draw up a proposed draft motion for the board to consider incorporating E AC policy as I guess model legislation?

>> EVELYN AQUILA: Yes, we just said it, yes.

>> STANLEY ZALEN: You just said it, okay.

There is a

>> EVELYN AQUILA: Yes, we did.

>> HELENA MOSES DONOHUE: But Evelyn asked

>>TODD VALENTINE: The proposal was to come back

>> EVELYN AQUILA: I think it's better if we do it that way, to draw it up, yeah.

>>: (Off microphone.)

>> EVELYN AQUILA: I think it's far better when we know we have good language which I think trying to draw up at the table is not a good idea sometimes.

We leave something out, think of something, you know, backwards.

At least I do.

I prefer to have time.

And when I know that you lawyers draw it up, I can feel comfortable.

>> DOUGLAS KELLNER: All right.

I think the other item we were talking about before on the to do list is to draw up a policy on

>> EVELYN AQUILA: We ran out of tape.

>> DOUGLAS KELLNER: When issues come up in the canvassing

For me it would be both this issue of what happens when the counties don't meet the certification deadline,

but also what our policy is on court orders immediately after the election that impound the ballots or delay the commencement of the canvassing.

which I have been concerned about that we should not be acquiescing in court orders that stop the commencement of the canvassing process.

You remember our discussions about this last summer, Todd?

When I said, the summer of 2006 when lawyers went around getting court orders that held up the canvassing.

And it just seems to me if we get a policy together on this in advance it wouldn't be a partisan issue and both sides,

the Republicans and Democrats can go back to their respective counsels and say this is the policy on this and we get to keep to the schedule.

We don't.

>> EVELYN AQUILA: I know.

>> TODD VALENTINE: It's not our issue.

We get the results.

The certification is the issue, but that's the issue, any delays on that.

>> DOUGLAS KELLNER: Again, if we put together something for the counties, too, so it gives them a little bit of muscle in dealing with the lawyers to hold up

So it's a uniform policy and it doesn't get into this partisan bickering.

>> EVELYN AQUILA: I don't think that has to be prepared for our next meeting.  
Maybe

I know, you've got a lot of work.

>> DOUGLAS KELLNER: Exactly.

I have been talking about it for 18 months.

>> EVELYN AQUILA: Right.

>> DOUGLAS KELLNER: It can certainly wait another month.

>> STANLEY ZALEN: You are right, the dead of winter is the best time to do this because there is no partisan overtones to it.

>> EVELYN AQUILA: Right, which is much better.

>> DOUGLAS KELLNER: All right.

We have the resolution on the budget issue.

Anna, you want to read what your proposal is?

>> ANNA SVIZZERO: Yes just a couple of sentences.

Election operations is what you it should say.

Estimated cost of \$200,000 to be used from the appropriation for non vendor responsibility.

Another term I'm

Not a term I'm completely comfortable with, but it refers to the generic costs.

For initial and generic costs of voting system certification process, costs to be borne by the state and not be distributed among vendors would include the kick off meeting,

development of a master test plan for ballot marking devices master plan for planning voting systems,

master security test plans and to a certain degree generic and administrative status meetings.

As additional expenses are identified for other deliverables which serve a universal rather than vendor specific purpose, we will submit requests to use these funds as needed.

So we are estimating initially this to be a \$200,000 estimate.

>> DOUGLAS KELLNER: Okay. I am troubled by our constant description of this fund as the non vendor responsibility fund.

I know what that means.

That you're talking about the fund by which the state would directly pay some of the expenses of certification that would not be passed on to vendors,

because they were common to all certification issues.

But I would prefer that we called it something other than non vendor responsibility.

>> EVELYN AQUILA: Sounds like the vendors don't have any responsibilities anymore.

>> DOUGLAS KELLNER: In our minutes of the last meeting where there was also a similar

A resolution affecting different funds for the same appropriation we call it the new account established for expenses of voting machine certification.

Is there

>>: It is not appropriate.

>> PETER KOSINSKI: State sponsored

I don't know what to call it.

The idea here is that the State will bear some of the costs.

>> EVELYN AQUILA: Yeah, the new sponsored

>> ANNA SVIZZERO: Call it universal certification deliverables?

>> EVELYN AQUILA: That's a mouth full.

>> ANNA SVIZZERO: Too many lawyers again, sorry.

>> PETER KOSINSKI: I don't care.

>> DOUGLAS KELLNER: How about the State, the state certification fund?

>>: Sounds better.

>> ANNA SVIZZERO: We have the budget representative here.

Is that okay with you, Joe?

>> PETER KOSINSKI: State certification fund?

>> ANNA SVIZZERO: Thank you, Joe.

>> DOUGLAS KELLNER: The motion is to approve the transfer of \$200,000?

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: To the, spent out of that appropriation.

>> BOB BREHM: That way as we meet with the new ITA next week, we clearly identify with a are the types of things that need to be directly invoiced this way and which are the types of things that need to be

specifically invoiced correctly for each vendor so that there's no issues once again as to who is responsible for which payment.

>> DOUGLAS KELLNER: I'm thinking of poor Donna who has to write the minutes.

She needs one sentence to put in the minutes as a resolution.

would either Bob or Anna state the sentence?

And we promise not to interrupt.

This is what Donna will write in the minutes.

>> PETER KOSINSKI: I have a question.

>> DOUGLAS KELLNER: Go ahead, Peter.

>> PETER KOSINSKI: Do you guys, is this the total amount you think will be devoted to this purpose?

Are you expecting you to come back with further requests for the board to approve in addition to the 200,000?

>> ANNA SVIZZERO: I think when the three of us talked we just tried to estimate this based on some of the numbers we saw in the cyber invoices for master test plans.

That's the only guide we had.

Absent any conversation we could have with the ITA, which we couldn't have with the ITA.

>>: The hope is that it will be maybe an annual type of thing so we don't have to come back nickel and diming it every meeting.

It's an amount not to exceed and if we get close, we can come back and say, you know, based on everything we've learned, here is the new number.

But it could be less.

It's hard to know, you know, the problems that we had with Cyber, you know.

Maybe we can do this in a much more efficient way and have it less than this total amount.

>> EVELYN AQUILA: We should say that it's open ended when we vote, I think.

>> ANNA SVIZZERO: It should be one time costs.

The master test plan will be the master test plan.

The ones that come in a year from now, unless some sort of anomaly is manifested in the test plan, but these should be early on costs and one time costs other than the status meetings.

If there's some kind of administrative meeting we have to have about billing or about reporting, something like that, it really isn't vendor specific.

We would pay for that.

So you know, there might be those incidental meetings that would exceed this if the test plans took up most of this money.

>> DOUGLAS KELLNER: Anna, would you dictate the sentence for the resolution that we are actually going to vote on now?

>> ANNA SVIZZERO: Yes.

The resolution is a motion to

I'm sorry.

The resolution is to appropriate \$200,000 to be transferred to a state certification fund to pay for generic costs, certification costs related to voting system certification.

>> DOUGLAS KELLNER: Great, thank you.

Those in favor say aye

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: Does anyone have anything they want to say in executive session concerning the two enforcement cases or can we just vote on them now?

>> EVELYN AQUILA: Pretty

>> DOUGLAS KELLNER: Vote?

Those in favor of approving the preliminary determinations in CMP0552 and CMP05 62, say aye.

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

(There is no response.)

>> DOUGLAS KELLNER: These preliminary determinations are approved.

Is there any other business?

Can we talk about our next meeting date?

>>: What did you decide to do about Suffolk?

>> EVELYN AQUILA: We have to call her back, call her back.

We need an answer in 20 minutes.

I think putting pressure on her gets better results.

(Overlapping speakers).

>> DOUGLAS KELLNER: It helps.

>> EVELYN AQUILA: See if she gives us an answer, you don't have to call the judge.

>> DOUGLAS KELLNER: I'll call the judge.

If the lawyers won't do it, I'll call the judge.

>>: It's not a question, sir, of that.

It's a question of expediency and we have a call into the recalcitrant Commissioner's attorney who I believe, based upon my prior conversation with him this morning, will authorize the certification.

The difficulty is he has not responded to my three calls.

He might, like some lawyers, be in court.

If we were to call Judge Pines, undoubtedly her honor will insist that all counsel be on the phone.

>> EVELYN AQUILA: Of course, of course.

I would call her back and say that if she does not give us the numbers now that none of the people in her county when will be certified until after the

first of the year.

See how she likes that.

You have to put

>> PAUL: That's the recalcitrant Commissioner you're talking about.

>> EVELYN AQUILA: Yes.

You have to put some teeth in it

You can get him on the cell phone.

>> PAUL: I tried three times.

>> EVELYN AQUILA: Well, we have to get better.

Look, the board is going to adjourn.

They are not coming back until after the first of the year.

Your people won't be certified.

See how they like that.

>> DOUGLAS KELLNER: What are the options?

>>: They are going to call, I figure we need a time issue.

How long you're willing to wait.

>> DOUGLAS KELLNER: We have the

I'm sorry, Peter.

I want you to look at the.

>> PETER KOSINSKI: I want you to know we have the machine set up downstairs, if you have a few minutes.

Seems like this is

i.

>> NEIL KELLEHER: Run down and see them now.

>> DOUGLAS KELLNER: New meeting date.

>> EVELYN AQUILA: We adjourn the meeting until ten to three.

>> DOUGLAS KELLNER: Should we talk about the meeting date now?

I'm suggesting January 9. Do we need to meet before that?

>> EVELYN AQUILA: January 9, how does that sound?

>> PETER KOSINSKI: Are you getting objections to the pigs that you have to

>> DOUGLAS KELLNER: Then we would have to come back.

>> PETER KOSINSKI: I don't think so.

>>: What day is that?

>> DOUGLAS KELLNER: Wednesday.



>> EVELYN AQUILA: Oh, I can't do a wednesday.

Give me that wednesday, please.

Because we have to go to the conference at the end.

I went

This is a wednesday.

I can't be so many wednesdays not going in.

(Overlapping speakers).

>> EVELYN AQUILA: When we're away, can we make it ... can we make it the ninth?

Can we make it the ninth.

>> HELENA MOSES DONOHUE: What day is that?

>> EVELYN AQUILA: That's a Tuesday.

What did you

>> DOUGLAS KELLNER: The ninth is a wednesday.

Is that the right year?

>> EVELYN AQUILA: Okay.

I know you don't like Thursday or Friday, right?

>> HELENA MOSES DONOHUE: It's not that I don't like it.

I have very little staff.

>> EVELYN AQUILA: I have very little that I can get away.

May to September, you have every wednesday.

>> HELENA MOSES DONOHUE: We'll do every other month.

>> DOUGLAS KELLNER: If you want to.

>> EVELYN AQUILA: You don't have to

>>STANLEY ZALEN: If you want to wait a couple months, you can meet with the Commissioners meetings in Saratoga.

>> DOUGLAS KELLNER: Not meet in January.

(Overlapping speakers).

>> EVELYN AQUILA: It's a little longer.

>>: It's only the 12th now.

It's a long time.

>> EVELYN AQUILA: It's not the end of the world unless something terrible comes up.

>> DOUGLAS KELLNER: Meet the 22nd you're saying, meet in Saratoga?

(Overlapping speakers).

>> EVELYN AQUILA: We could go to

>>: What does that mean, Peter?

>> EVELYN AQUILA: The 22nd would be fine.

The 22nd.

Any day we're up there is fine.

>> HELENA MOSES DONOHUE: What is the date of

>> EVELYN AQUILA: Unless Neil wants

>>: I don't want to meet as an executive and

>> EVELYN AQUILA: She laughed at you?

You got it?

(Laughter.)

>> EVELYN AQUILA: You got it!

(Overlapping speakers).

>> : You're going to be on on 24th.

>>: I think it's the same day.

>>: But we can certify.

We don't have to wait for the numbers.

>> PETER KOSINSKI: Yeah.

>> DOUGLAS KELLNER: All right.

>>: What did you find out?

>>: It will have to be

>> TODD VALENTINE: The Commissioners, to finish that thought, we spoke with counsel for the one Commissioner that was waiting.

He informed us that two Commissioners at the Board of Elections were certifying the results that we need and they would be here momentarily via fax machine.

We are waiting for those.

At this point what the board can do is certify with those results, add those to the results as they come in.

So you should have those unless you want to wait around for the fax machine.

>> EVELYN AQUILA: We want to go down and look at the machines.

>> DOUGLAS KELLNER: We'll recess, look at the machines and come back for the numbers.

>> TODD VALENTINE: He said they were faxing.

>> : Are we good with the 23rd?

>>: The 22nd is a good day.

>> EVELYN AQUILA: The evening of the 23rd and the 24th.

>> : The 23rd is the date, the 24th we're busy with presentations.

>> DOUGLAS KELLNER: The 23rd in Saratoga.

>>: Pretty much any time, I suppose.

>> DOUGLAS KELLNER: Okay.

>> EVELYN AQUILA: Are we going down to the second floor?

>> DOUGLAS KELLNER: We are recessing.

>> NEIL KELLEHER: Going to leave our stuff here?

>> DOUGLAS KELLNER: Is everyone here going to be in Saratoga by 10:00 a.m.?

(A recess was taken.)

(Meeting in Recess - Please stand by for the continuation of the New York State Board of Elections meeting.)

>> DOUGLAS KELLNER: Are we ready to reconvene?

Ready to reconvene and sign the

>> HELENA MOSES DONOHUE: Yes, please.

>> STANLEY ZALEN: Sign the canvass

(Overlapping speakers).

>>: Do you need anything to turn

It's on?

>> EVELYN AQUILA: It's on.

>>: How many pages?

>> DOUGLAS KELLNER: All right.

I call the meeting back to order.

I understand that we do now have the certified numbers from Suffolk County.

Is that correct, Todd?

>> TODD VALENTINE: That's correct.

>> DOUGLAS KELLNER: Based on that, the motion is that we certify the state results and the tenth judicial district incorporating the Suffolk counsel think numbers.

All those in favor say aye

(All members responded "aye.")

>> DOUGLAS KELLNER: Opposed?

>> DOUGLAS KELLNER: It is adopted.

Hearing nothing else, we are adjourned until January 23rd.

>> EVELYN AQUILA: In Saratoga springs.

>> DOUGLAS KELLNER: Yes. Thank you all.