Table of Contents

State Board of Canvassers Meeting

DOUGLAS KELLNER: All right. So, good afternoon, everyone. We start by convening the meeting of the State Board of Canvassers in order to certify this fall's general election.

My name is Douglas Kellner, and I'm Co-Chair.

JIM WALSH: Jim Walsh.

GREGORY PETERSON: Gregory Peterson.

EVELYN AQUILA: Evelyn Aquila.

TODD VALENTINE: Todd Valentine.

KIM GALVIN: Kimberly Galvin.

PAUL COLLINS: Paul Collins.

JOE BURNS: Joe Burns.

ANNA SVIZERRO: Anna Svizerro.

PAT CAMPION: Pat Campion.

JOHN CONKLIN: John Conklin.

GEORGE STANTON: George Stanton.

ELIZABETH HOGAN: Liz Hogan.

BOB BREHM: Bob Brehm.

TARRY BREADS: Tarry Breads, Election Operations.

BOB WARREN: Bob Warren, Election Operations.

BOB GRONZIAK: Bob Gronczniak, NYSTEC.

AMY ALLAUD: Amy Allaud, League of Women Voters of New York State.

DOUGLAS KELLNER: Okay.   Well, thank you.   Well, before us we have the certification.
Are there any explanations that have to be given? I don't think you have everything, correct?

TODD VALENTINE: Yes. Do you want to do that, Anna?

ANNA SVIZZERO: The 100th Assembly District is not part of your certification. That is still being litigated, and the Boards did seem to have some issues calculating blanks and voids and miscellaneous votes, so there will be some amendments forthcoming.   We have – the 89th has been resolved, but that will be amended; but clearly, the winner is designated in the numbers that you have before you. Was there anything beyond the 100th? Was there a Senate seat?

BOB BREHM: Seventh. Seventh.

ANNE SVIZZERO: Seventh. Seventh.   So that is not part of your certification today.

GREGORY PETERSON: It's my understanding that, as far as the Seventh is concerned, we're under basically a court order to not certify it.

ANNE SVIZZERO: Right.

GREGORY PETERSON: Is that correct?

ANNE SVIZZERO: Right.

TODD VALENTINE: - - the 100th.

DOUG KELLNER: Yes.

ANNA SVIZZERO: Right.

DOUGLAS KELLNER: Okay, so we will approve the doc - I move that we approve the documents as given to us by the Operations staff.   And - -

BOB BREHM: First - - require - we do want their - -

DOUGLAS KELLNER: Well, let's start the signature -

[TIME: 00:2:19 into Video]

[PAPERS CONTINUE TO BE SIGNED; SOME BACKGROUND SPEAKING]

[TIME: 00:09:58 into Video]

DOUGLAS KELLNER: All right, so we have certified the election results for the state-wide offices, for three court justices, Congress, State Senate and Assembly, and Special Election in the 29th Congressional District, with the exceptions of the 100th Assembly District and the 7th Senate District.

DOUGLAS KELLNER: All right, so motion to adjourn the Board of Canvassers?

GREGORY PETERSON: So moved.

JAMES WALSH: Second.

DOUGLAS KELLNER: All right, we're adjourned and now we'll open the meeting for the Commissioners of the State Board of Elections.

State Board of Commissioners Regular Meeting

Approval of Minutes

The first item of business is approval of the minutes of October 21, 2010.

JAMES WALSH: So moved.

DOUGLAS KELLNER: Those in favor say Aye.

[Chorus of Ayes]

DOUGLAS KELLNER: Opposed?

The minutes are approved.

Then we'll go to the Unit Updates.

Unit Updates

Todd?

Executive Unit

TODD VALENTINE: Actually, I'm going to let Bob talk more because it's hard for me to talk.

BOB BREHM: Okay. It's a professional issue for an attorney, not to be able to talk.

[LAUGHTER}

JAMES WALSH: Our first blessing of the season.

[LAUGHTER}

TODD VALENTINE: Wow. Ouch.

EVELYN AQUILA: As Shakespeare said, "First we kill all the lawyers."

BOB BREHM: I think briefly since our last meeting, the majority of our time with the election certification, post-election legal issues and whatever it took to be able to certify the contests today. So anything – just about everybody in the Agency has participated in that in some way or another.

You know, now that stage has ended, we're focusing a little bit on, you know, end of year wrap-up and looking forward to next year.

The Election Commissioners Association has planned their conference for the end of January, the 25th to the 28th in Rockland County, and have asked the State Board to participate in three workshops, to talk about test deck procedures; there were some changes, which we worked with the City in the primary season to update and to get that information out to everyone.

The asset management system, which the contract is still pending with the Controller's Office with a number of questions that Election Operations are preparing responses to their questions, so it should not be too overly complicated to respond to, but that would move that long.

And they've asked us to talk about the 3% audit.

Also, they've requested that we get back into our schedule, which we've been doing, like a monthly phone call with them, but between the primary and the general we had found fewer and fewer participate in the calls because they were busy doing their other work.

But our next call with them is this Thursday, and we'll set up that conference call for the Executive and the Legislative Committee members and then the full membership can listen in.

We've also started to work on our touchup lists with the Agency for legislative items for bringing to your attention for next year, just from a, you know, what's on our lists that we noticed during the election that, you know, we'd jot it down, get them all together in perhaps one list, and then keep working from that as to what can we draw up and what can we bring to your attention so that we can consider putting them in our packet for next year, hopefully about something early into 2011 to move that along.

The MOVE Act - we had our session with the vendor this past week that provided the service to us, just so we can have a general conversation about, you know, it was an interim implementation to deal with the fact that the law was adopted and we had to do something by the deadline.

But we knew it was an interim and we wanted to, you know, put it in place but also learn from it and prepare for permanent implementation going forward.

So last week was a general conversation about the things that we felt worked well and those things that we thought could perhaps see improvement.

And towards that end, we have a technical workshop planned tomorrow with each of the County voter registration system vendors who have to make necessary long term improvements. And so if they rely on a vendor, that vendor will participate. And if it's a home grown system, as is the case of several of the counties, their IT people have been invited, as well as the Commissioners, so that we can, you know, get their perspective on what can we do to make it a permanent program, but it will also streamline some of the process that makes their job a little easier and we can get this done faster than we did in the past.

EVELYN AQUILA: Can I – oh, you still have things to report --.

BOB BREHM: Just a couple. We're still finalizing the survey that's required for the Federal Voting Assistance Program.

I think there are a couple of counties outstanding from – Operations is collecting those post-election MOVE Act compliance surveys; and we owe one report to the Department of Justice and one to the Federal Voting Assistance people – basically to see how well the program worked getting the ballots out and getting them back. So that should be done shortly.

Another item, just in general, that's taken a lot of time in the past, is the various litigations, and I know it'll be covered.

But again, in addition to the work that is on the Counsel's Office, I think just about everybody in the Agency's been involved in some form or another in one of the litigations, in order to deal with, you know, information, education, you know, what's possible with the use of the new voting machines, what do we need to do to respond to the various court cases that are out there.

And certainly from an ability to certify the election results, the number of impoundments or, you know, variations of that counting has really taken people quite a bit of time over the last month or so.

Those are the general items.

- - do you have others?

EVELYN AQUILA: Bob, may I – may I ask you something?

I noticed that Senator Addabbo is going to present some legislation concerning Election Day and the ballot and things. Do you think it would be worthwhile to have our office to talk to his staff to find out exactly, you know, what's going on there?

Is that a problem? Yes?

TODD VALENTINE: No, there's no problem – we're always interested in ideas.

EVELYN AQUILA: Yeah. I think we should find out, you know, it's been in the papers downstate that he is going to announce some new legislation, about election day, and I think we should talk to them about that and see if we can be of help.

I mean, he's going to go forward with this legislation, and we just want to make sure that the legislation – I think we should make sure that it's really going to help, you know.

And - - I'm sure that he has looked into it every way, but sometimes I think people forget to talk to us, and I think they should because, you know, we have some experience at what's going on.

And I think some of - - with the City Board, but it wouldn't hurt for us to at least have a telephone conversation with him, whoever his staff person is in charge of this, so we have a better grasp, not just reading a – I don't want to read out of the newspapers - - supposedly -- this legislation.

I would rather know for sure.

Paul has been raising his hand.

PAUL COLLINS: Well, Commissioner, during the last legislative session, Bob and I had any number of discussions with Senator Addabbo's counsel, and we will just continue to do that, that's all.

EVELYN AQUILA: Oh, I think he's already, he's evidently formulated some legislation, and I think we should just have a look at it or know what's in it, you know, because I – people are, you know, sometimes you feel like you're overcome with all the legislation they put out there.

And only half of it sometimes is a help, in some matters.

I don't, you know –

GREGORY PETERSON: That was generous.

[LAUGHTER}

EVELYN AQUILA: Well, thank you, Greg, thank you.

And I think that if this is to deal with Election Day, with the new machines, what's going on, I think we should have a knowledge of what's happening and maybe we can be of help. I think Senator Addabbo has really tried to be very helpful, and I'm happy for that. I mean, we've had some Chairmen in the past that didn't even say hello. So this man has really reached out, and I think we should reach back, that's all I'm saying.

TODD VALENTINE: Sure.

EVELYN AQUILA: That's it.

BOB BREHM: Well, I think from our – you know, not to get into where we - we've just tried to identify where people have called us, whether it be a County Commissioner asking a question, or whether it was an observation ourselves, just put them down on a list for now. And then when we sit in the room to try and – you know, do we have the whole list – certainly we'll hear from others, and more importantly, the County Commissioners, on the - well, this week, I mean, they were under the gun to get their, you know, roll out their new equipment, do all the tasks related with certification.

Now that everybody's finished that, I'm sure we'll also hear, you know, their input and the input of others, as to whether or not, you know, what was the actual experience with the machines and where we could we make them better.

And I think from all of us, certainly our job is to enfranchise as many people as possible and make it as simple a process as we can, so the more good ideas.

EVELYN AQUILA: Well, I think if we have any legislators who are going to put out legislation, it's imperative, then, for us to talk to them so we don't get laws passed that really don't encompass all of the concerns that we might have, or let some things in, in laws that are unnecessary.

GREGORY PATERSON: Um-hmm, sure.

EVELYN AQUILA: I think we have to, well, you know, take a role in that.

GREGORY PETERSON: Good idea.

EVELYN AQUILA: All right.

GREGORY PETERSON: That's never happened.

EVELYN AQUILA: No, I know, I'm trying to start something new.

JAMES WALSH: Yeah.

DOUGLAS KELLNER: All right, anything else?

TODD VALENTINE: No, I don't have anything to add.

EVELYN AQUILA: But you will do that, though --

BOB BREHM: Um-hmm

Legal Unit

DOUGLAS KELLNER: All right, then we'll go to the Legal Report, Kim Galvin.

KIM GALVIN: Thank you, Commissioner.

We continue to do our weekly calls with the Department of Justice, bi-weekly calls with the Department of Justice, the AG's Office, although you know, those reports, the weekly status reports haven't changed much, obviously, because we haven't had much to change with them, if Brian Heffernan is watching.

TODD VALENTINE: Yes.

KIM GALVIN: We've worked with the Town Counsel, primarily Paul has, that are representing us on the outstanding litigation, particularly the over-vote, or the double vote, and the non-issues.

We've represented the Board in any impounds that we are a party to, or we've monitored the activity in the various impound orders across the state, trying to notify the counties as quickly as possible, with the Operations Unit, as to any changes on the coverage of the impounds.

There was quite a few of them and it got to be confusing, because they would come in and some parts would be lifted and some parts would be in place; and then there would be competing local impound orders.

So we did our best to work with the County Commissioners to keep those straight for them.

We did work – wherever Bob just went – we worked with – initially to start the legislative package, keeping in mind all the things that Bob put forth.

And also if you recall, the latest Consent Decree that we entered in with the Department of Justice, one of the provisions there said that we would pursue or explore any avenues that would help to keep New York State in compliance moving further, so that we don't repeatedly need waivers.

So part of that package is putting forth some of those ideas that may seem a little bit out of the ordinary to some people.

That's the basic Unit, other than the obvious calls and working with the other units on their routine business.

And then Paul has some things to add, regarding the specific activities in some of the cases that he's been handling, so.

PAUL COLLINS: The Nassau County challenge to ERMA [Election Reform & Modernization Act] has been transferred to Albany County, and that's the status of it.

There has been no activity in it.

I went down to New York and participated in a discovery conference over the Brennan Center's litigation on the over-vote warning message.

As you know, the Attorney General is actually representing the Agency in that proceeding because it's down in the City.

With respect to a couple of the cases in the Northern District, there was a case brought by a voter in 2007, who takes the view that the use of any voting machine, lever machine or electronic voting, violates his Constitutional right to have a process that's completely transparent.

We moved to dismiss that case, based on standing issues, because there's some good law out of the Third Circuit in that regard.

We also had a case brought by someone who ran for United States Senate here in New York, and we've moved to dismiss that on standing, as well.

He seeks to challenge the New York State ban on out of state petition gatherers, and also the closed primary system.

So we've moved in the Northern District to dismiss that.

And I attended, last week, a status conference on the DOJ's NVRA case against the community colleges in SUNY/CUNY.   And there's a real effort on the part of all of those folks involved in that case, to move the thing along and to comply.   And it was a very good conference and it's moving.

The Department of Justice was granted some re-judgment, and now you're into the enforcement aspect of it, but the people from SUNY are really trying to comply. So that's good news, because we're looking to register people.

And that's about it, other than the normal calls we get from the County Commissioners with their questions, which are a pleasure to answer. That's what we get paid for.

DOUGLAS KELLNER: All right, thank you, Kim and Paul.

Election Operations Unit

If there are no questions, we'll move to Election Operations, Anna Svizzero.

ANNA SVIZZERO: Well, we've been a little busy with County Board support, ballot issues, voter issues, etc. I think for the most part, we're very pleased that the way that things went with the voting systems. They are working as they should. Our issues are, for the most part, people oriented.

We have overly helpful election inspectors; we have poll sites that perhaps are not conducive to the new array of equipment that needs to be positioned in those poll sites, that don't afford as much privacy as voters might want, by way of path-of-travel around privacy booths, and access to the scanner, etc. So we'll be listening to the County Boards with their feedback on those issues, but also reinforcing our

training components with them and asking them to reinforce those issues with their teams of inspectors so that we can move a little bit more in the direction that some voters would like to see.

But clearly there is a learning curve on the voters' part, too. There is no longer that monster voting curtain around them when they vote. We need to afford them every other variety of privacy and confidentiality that we can, given the poll sites that the Counties made available to them.

Apart from that, we are collecting information on the audits from the County Boards. When we have had a couple of reports indicating that their audit needed to be escalated, our research into those particular issues indicated that it's a hand counting issue. Peoples' eyes don't pick up what a voting machine picks up. So those, again, were people issues, but the audit teams and the County Boards did follow the procedures that we had laid out for them. We're expecting a lot of feedback on this issue at the January conference, and we'll be reviewing the forms that we invented for this process, to make sure that they are as friendly as we thought they were when we invented them, and make sure that they serve the purpose for which they're intended.

We did visit some Boards while they were conducting their audits, so we have our own firsthand information. We'll be incorporating those into a report that we'll provide to the Board.

We did monitor whole sites and County Boards of Elections on Election Day.   That report is being aggregated right now, and we'll have that for you – before the next Board meeting, we'll make it available to you and then present it formally at the Board meeting so that we can post it to our website.

We will be reviewing all of our procedures as they relate to election operations. In particular, it's the close of polls that perhaps isn't working the way the inspectors might best see it work.

And election night returns are an issue, as well, with Boards getting those numbers later than the general public would like to see them; and whether or not Boards are still using phone calls for getting those numbers, which means there will be errors, they're human errors. Or they're working out better ways to get the memory devices back from those scanners and read them, so that we at least eliminate the human error from that particular aspect of election reporting.

We will also be able to, as was alluded to by the Co-Directors, get into the ballot usability, the legislation that might need to be modified to better accommodate these voting systems, and a number of other associated issues. But hopefully we'll have this part of the process behind us and it'll be reporting and give us a chance to get to some of those other topics that eluded us as we worked through this election.

Joe, do you have anything?

JOE BURNS: [Shaking head.]

EVELYN AQUILA: May I say something? Bob and I and a gentleman from the Governor's Office, Jeff Pearlman, were going around and we saw some things, you know; mostly that we saw human error, you know. But there are some things that are a little bit of a concern. And one of them was the layout of the actual Boards that we went to; the school that we went to or wherever, you know, in that neighborhood.

And there were places where things were not placed in the best position. You could walk by maybe and read somebody's ballot when they were voting. And that disturbed us. That was a concern. In one case, I think, in Queens [Brooklyn] where, I think Senator Schumer had just been there and had concerns. And some of the watchers were brazen enough to pick spots to stand so they could watch somebody, how they voted. And I don't know what we do about that, as there's someone who helps them - how do you set up your polling place, you know; how do you do this so everything is private.

Ninety-nine percent of them were good, as always. But you know, there's always that one that isn't, and that's the one that concerns you. I would say most places, there were lines, which is a concern; it gets long lines and the people working very, very hard to, you know, facilitate everything.

They still weren't 100% sure of themselves, and of course that concern that we all have about the printing of the ballot, being on the small side. But it was the privacy booth, or when they went to put their ballot in to be counted that somebody - there were two gentlemen in this Queens place that stood against the wall, just so they could look at how people were voting, you know.

I think they were watchers. I would have thrown them out. But we did ask them. I think Bob went over - did you go over to them Bob, and ask them to move?

Somebody did.

GREGORY PETERSON: As big as he was?

EVELYN AQUILA: Maybe it was Pearlman, asked them to move; you don't -

BOB BREHM: We spoke nicely to the police officers.

EVELYN AQUILA: Yes.

BOB BREHM: And the Chairwoman was trying to maintain order. That was a site that had three machines, and two, the technician was there to clear them, so that she was trying to maintain order, to keep people flowing to the one machine and the technicians to repair the two machines.

EVELYN AQUILA: Right.

BOB BREHM: And I think the watchers -

EVELYN AQUILA: Two machines in trouble.

BOB BREHM: I give him the benefit of the doubt, were more concerned with what was causing the two machines not to work, as opposed to the one that was working. But we did suggest that they come up with a better way, that everybody can view what's happening and give the voters enough privacy. And they did move those people along, and -

EVELYN AQUILA: They did; they did.

BOB BREHM: Gave them a better place to stand.

EVELYN AQUILA: But they - with two machines down for whatever reason. And I must say, I have to say, New York City was on the job, because they had two people, two of them, they were taking care of them right away. And most of them - but I think what bothered me the most in all the schools we went to, not every school, but there were some that were situated perfectly, everything was in the right spot, in the auditorium or wherever it was, the gym.

But some weren't.

And I don't know what we do about that, because you want things - suddenly one long line connects with another long line and nobody knows who they're, which line they're on. And I think we have to look into some of these things.

I don't know how; I don't know if we have the right to stick ourselves in that business. But at least maybe it's something at our conference we can address, the make-up; and they don't do it. The Boards don't do it. It's basically; it goes out to the local community, the make-up of the polling place. But maybe we could, between the local Boards and us, we could give them a design, somehow a design how the ideal polling place should be laid out.

And I know every room is different, I mean, I'm not - you know, I understand that.

But get it as close as you can to this design or something, or a couple of designs. I don't know; it's easy for me to say, to give other people work. But I would like to see a more smoothly operating polling place, and I think, and some were; some were ideal. And I think somehow we have to look into that, because when you walk into one and you see its mish-mosh, it doesn't give you a great desire to want to vote.

And it doesn't look good. And most of the people there, as I say, they're doing their best. They're absolutely doing their best. But you could walk behind where they put in their ballot and see, in some places, and we don't want that to happen.

Thank you.

DOUGLAS KELLNER: Anna, could you explain the issue that arose in Erie County concerning the inability of the EMS [Election Management System] to read the memory cards.

ANNA SVIZZERO: I would ask Bob Warren to do that, if you don't mind.

BOB WARREN: Yeah, in Erie County they had a problem where they had to do an update in the EMS system to recognize the memory stick. So they had to contact the vendor and send the vendor information on it. The vendor sent them back the code that they would have to enter into the EMS system so that it would recognize those memory sticks, because they had found an error that was within the EMS system.

DOUGLAS KELLNER: Well, let's go back. The genesis of the error was that there was a last minute ballot programming change?

BOB WARREN: Well, it was - I think it was more than one last minute change.

I think they had made different changes over time and they were merging; they were merging the information over and over from one module to another. And the vendor found that there was an error when you did that over time, with the amount of information that they had. So it wasn't updating the code for the memory stick to be read back in.

So the vendor looked into it, told them what the code was on the stick that had to be entered into the EMS system, they entered into the EMS system, and then it recognized the sticks to be read back in.

DOUGLAS KELLNER: All right, yeah.

ANN SVIZZERO: Election Day software was not affected at all.

BOB WARREN: No.

ANN SVIZZERO: When these changes are made, those changes travel on two paths, one to the Election Day memory device is one, and two, the election reporting system. The election reporting system is where that path broke down. So the change that they had to make did not affect any ballots, readability of ballots, or the memory sticks themselves. Only when those election results were imported, they would be read incorrectly. So the change was made in the election reporting module, which is a product that they can or can't use; it's not required, but clearly in a county that size, it would be helpful to have that corrected. So the vendor has made that software change. It is part of the remaining findings that we'll be testing again after the first of the year.

EVELYN AQUILA: Well, that was - - huge problem, then.

ANNE SVIZZERO: Pardon me?

EVELYN AQUILA: That wasn't an insig-- am I right to think that was not an insignificant problem.

ANNE SVIZZERO: No, but it was not an Election Day problem; it did not affect voting; it did not affect anybody's ability to mark a ballot and have it read correctly.
It only affected the Board's ability to aggregate those results at the end of the day.

EVELYN AQUILA: - - a big thing.

ANNE SVIZZERO: Huge nonetheless, but Election Day would have been worse.

EVELYN AQUILA: Oh, yes.

BOB WARREN: Because there's three memory sticks created at the start of burning in the media. One is to put a scanner to recognize the poll stick that goes in. The other is the poll stick. And the third one is for the reporting module. So it knows to get all the information back in. And the code that was on the reporting module was no longer recognized by the ERM system that reads into the memory stick. So they had to update that so that it would recognize its ERM stick, then it could read in the poll sticks.

DOUGLAS KELLNER: Good.

EVELYN AQUILA: Let's hope that doesn't happen again.

DOUGLAS KELLNER: And how do know that the vote counts that were reported from the memory stick are an accurate reflection of the votes that were actually cast on that machine?

BOB WARREN: Well, what they did was after they read in the memory sticks into the ERM system -

DOUGLAS KELLNER: And is the 'they' the voter or the --

BOB WARREN: The Erie County Board. When the Erie County Board read those memory sticks into their EMS system, they then took the same stick and they put it into another machine and printed another tape from that machine, so that a comparison could be made between the Election Day tape and the tape that was printed on that day, along with the report from the EMS system. So they had three sources to verify to ensure that the totals were all the same.

ANNE SVIZZERO: And they did that with candidates present, with all of the attorneys present, because there were some close contests in that area, particularly in the Senate, so we made sure that - they made - the County Board made sure that they didn't do any work that was, you know, closeted in any way, if you'll excuse the term.

DOUGLAS KELLNER: Yeah. Were there any other programming issues that came up anywhere in the state, for the general election?

BOB WARREN: Not that I'm aware of. There were a few issues initially, where they didn't handle their cross endorsements correctly, but they were picked up during the test deck testing, so they were all adjusted prior to burning the media for the election.

DOUGLAS KELLNER: Okay, good. So we're getting there, we're making progress.

ANNE SVIZZERO: Yeah.

EVELYN AQUILA: Thank you, Bob.

ANNE SVIZZERO: The test decking is - the more we address the issues of test decking and reinforce how critical it is that it be thorough and robust, that how these errors, the errors can be found in the ballot configuration that the County Boards are doing. And we made our staff available. We did on site visits if they needed that assistance. We felt very confident that the Boards understood that we were a tool here to help them, and that they used us in that regard; we're happy to be used in that regard.

DOUGLAS KELLNER: Did we learn anything from the Erie County incident that would be useful for other counties or other states that use that system?

BOB WARREN: Not really for that one particular issue, because it was a software problem, which we're going to see that it's fixed and we'll be testing it.

DOUGLAS KELLNER: Well, what do you mean when you say it's a software problem? It's not just a formatting or a ballot programming issue?

BOB WARREN: No, no, this was an actual issue within the software, within the code of the software, that it wasn't updating that code on that reporting stick when it should have.

BOB BREHM: So it's more of an index, a -

BOB WARREN: Yeah.

BOB BREHM: An index code, so that the stick knows that the information, that the receiving Election Management System knows that, you know, the candidate in that position is the same from stick to stick. So it indexes the candidates from the stick that collects the election results to make sure it's the same index for the stick for reporting at the end of the night, and it's, you know, just as one of those Excel files, if you change the order of the candidates, you're going to get, you know, you'll have the numbers but they're going into the wrong slot.

So they put a code in to make sure that they both - you know, here's the order that the candidates are coming in, and they kept the index to make sure that it's doing oranges to oranges or apples to apples, and not mixing them up. And when it created the file, it correctly created the file for the index, as proven by the testing. But it didn't automatically update the reporting module stick, because as we've heard, so many last minute changes.

It wasn't one last minute change in Erie County; between the number of changes in the Governor's contest and in the state-wide contest because of somebody declining and somebody substituting; but also local issues with regard to propositions that were late changes.

And they made so many late changes that, whatever the issue was, did not properly update that stick.

So one, the vendors claimed they had a fix, and as part of our follow-up submission that they're making, that we have to test. But it's not a closed issue because we don't want it to repeat itself. We want to make sure that it's fixed. We think it's in the fix. We think it'll work, but we won't know until they submit it and we finish testing it. But it certainly is something that, you know, affected the ability to get the results, between the tape -

DOUGLAS KELLNER: To aggregate the results.

BOB BREHM: To aggregate the results. But anybody can look at the tape, and the tape was clearly available to all of the attorneys, because we all read about it in the paper - every night. And so everybody had the raw data. And so whether or not they used this system to aggregate the results or added them on their own piece of paper, or made their own Excel spreadsheet, they all could have aggregated the results and came to the same conclusion as to what the numbers were.

It's just when the system works, it happens faster, and people have more reliable numbers, kind of, you know, as fast as they can. So fixing it is on their list.

DOUGLAS KELLNER: I have two more questions on this subject.

Is anybody looking at the ballot images that are recorded, that you know of?

BOB WARREN: At the County level?

DOUGLAS KELLNER: Or anyone, at all.

BOB WARREN: I don't know at the County level if they are or not.

DOUGLAS KELLNER: All right, and does anybody look at the ballot images when there are audit issues? Or, have there been so few audit issues that that just hasn't come up?

BOB WARREN: I think they've all been able to account for their issues after they go through the ballots a number of times, so they can get the count. They recognize their problems over time; that it makes the audit come out correctly, where they have their hand counts in correctly.

And I don't think anyone has gone back to the ballots to look for that.

DOUGLAS KELLNER: All right.

BOB WARREN: Because it would be difficult because, you know, they're not tied to anything so you'd have to look at all these images and try to figure out which one is which.

DOUGLAS KELLNER: Well, except if they're trying to reconcile the audit by looking for ambiguous marks, the watermarks on the ballot images would definitely resolve that, right, because -

BOB WARREN: Yes, they would.

DOUGLAS KELLNER: The watermarks would tell you how the machine actually counted any given ballot.

BOB WARREN: Um-hmm.

DOUGLAS KELLNER: All right, well --

BOB WARREN: I don't think any one went to that step.

DOUGLAS KELLNER: You know, I just repeat my view that we should make the ballot, we should be encouraging people to make the ballot images, open, available, for those who do want to look at it, so that they can see how the machines are functioning, and that there should be - in my view, there should be more use of the ballot images, because that is one of the major features that distinguishes this system as the next generation of scanners from those scanners that don't record ballot images.

BOB WARREN: And they're all there and available, so they can --

DOUGLAS KELLNER: Okay. And then my last question or comment is on Justice Warshawsky's decision in the Seventh Senate District suggested that there were issues concerning how Nassau County was actually conducting the canvass and re-canvass. And I guess in my asking around, I have that the State Board hasn't been involved in that contest, and at this point we don't really know the answers to those issues.

Is that the consensus here?

BOB BREHM: Well, I think the transcript version that we saw first wasn't as clear as perhaps the written decision that came second, which gave a little bit more information that some of the ballot accountability steps took place.

But there's still a difference of opinion between the two Commissioners, I believe, not to mention the candidates, as to the audit issues, and they're still appealing them.

So you know, certainly we want to make sure that the audit was accurate and that they had taken the steps, that they counted, and if they identified issues that we need to look at, they and other counties during the audit, that we make sure that we, you know, if our regulations are unclear, that we make them clearer; if we've missed something, we make something clearer.

If people head down a different path because they don't understand our regulations, you know, we want to make sure that it's clear to everyone, you know, what is required under the statute and that we review any of the findings.

You know, one of the items that I myself scratched my head when I read the regs is, we never really put a provision in there, when the two Commissioners don't agree, as to what you do next, which is a valid issue that we have to at least consider.

But right now it's in court, so we at least have to wait until Thursday of this week and figure out if there's any more.

You know, if it's unclear to the court, we'll know that in their decision.

But you know, I think we wait for the appeals to happen and follow up with them afterwards.

DOUGLAS KELLNER: All right, good. Anna?

ANNA SVIZZERO: I was just going to say, it's very hard to use a hundreds-year-old footprint and then put this kind of voting system into it. The election districts, multiple EDs served by less than that number of scanners, and try to do ballot reconciliation in ten EDs, aggregate that so that three scanner teams would know what happened and then somehow get a polling place figured out of that site.

So I think some of the issues that we've talked about in how our poll sites are structured, how election districts are built, etc., might warrant some conversation - certainly not a change without having a lot of conversation on the topic.

But that process is daunting.

It's not easy for those separate election districts to reconcile those ballots. There's a lot of math; it's been a long day. And then you have to aggregate those numbers somehow so that they make sense for the several scanners that serve those multiple election districts.

There's a lot of new ground here that we have not had a chance to get into, but we've been kind of chomping at the bit. And here, I think is perhaps the entree for that, so -

DOUGLAS KELLNER: Right.

ANNE SVEZZERO: I'm looking forward to that.

DOUGLAS KELLNER: Certainly, we have talking about abolishing the use of election districts and just going to poll sites, at least for the purpose of canvassing votes.

BOB BREHM: But I think from our procedure, and we talked briefly, it probably wouldn't hurt us to do a workshop in time for our conference, on clearly, you know, what the requirements are for the close the polls, different under the paper based system.

You know, some of these concepts aren't different from when you had a lever machine, to account for the number of voters, and if there were any affidavits or emergency ballots.
The concepts are the same, but the steps are different.

And I think we've seen from some of the counties, you know, "What do I do now. They changed the system."

Or even on the re-canvass, "What is the re-canvass?" you know, we got a lot of, in all of these litigations, when they get the judge to order, what day we could re--- you know, now we can agree to do the re-canvass.
The question was, "Okay, now what is the re-canvass anymore?"

So probably, it's not, you know, from a higher level because every county does their steps a little bit differently. But what do you have to accomplish during the election night close, from a ballot accountability, and during the re-canvass, to just prove it. You know, if they had the list of items that they have to prove, each county's going to kind of go through some of those steps a little differently. But I think they're confused about what they had to prove in each step.

DOUGLAS KELLNER: And in my view, in reading Justice Warshawsky's decision, it left open the questions of whether the re-canvass had been done in accordance with the regulations. But after the litigation is

done, I think we do need to investigate the facts there and follow up, not just with Nassau, but with everyone to make sure that the Boards are doing a proper re-canvass, the way the statute contemplates.

EVELYN AQUILA: And if they want us to explain, you know, if they want more information or they feel we're not clearly presenting the information to them, because that happens sometimes.   People will say, "Well, you give us the information but, I really don't know what you mean."

I think we have to look at that, too.

This has been a first for all of us, and Nassau generally knows what they're doing, you know.   And I know that there were tensions there and everything, but still I think we have to see what can we do that will make this easier, is there something.   And Anna, you have done superwoman's job, you know, nobody could have done what you did.

I congratulate you.

But it was a brand new system for a lot of people, and I think there's bound to be questions of how can we do it better and more accurately.   And I think at our conference, we can begin, and it's not going to end at the conference.   We can begin to ask those questions, or have those questions asked of us.

ANNE SVIZZERO: And Election 101 issues aren't the same anymore, so --

EVELYN AQUILA: No, they're not.

ANNE SVIZZERO: So clearly, the closing polls, re-canvass, the audit and the ballot reconciliation were the ones where our Boards had the most questions, and the trip-ups might have manifested themselves. So those are the four that we need to focus on, I think, moving forward.

EVELYN AQUILA: Yeah, I agree with you.

ANNE SVIZZERO: In addition to whatever else the County Boards choose to raise when we're together in January.   I'm sure they're all going to have comments for us.

EVELYN AQUILA: Well, I think Commissioner Kellner is saying we could take the EDs away.

I would be very careful about doing that.

I would go kind of slowly, because enough change - you know, change can't come all in one day.

No, I can agree that they're not needed that much any more, but we are seeing it only from one side.

Maybe other people feel more comfortable, you vote with your community.

Your community might be your election district, and you might be comfortable.

"Oh, there's," you know, "people from across the street," or, "down the next block, and I feel comfortable seeing them."

And so I would go a little slow with taking EDs away, but I do see the benefit of it.

But not too much change all at once.

DOUGLAS KELLNER: Well, the other issue -

EVELYN AQUILA: Us old folk can't take it, Doug.

DOUGLAS KELLNER: The other issue that it's not too early for the counties to be paying attention to is the State regulation on waiting time. And as they prepare for the presidential election that's two years from now, that certainly --

EVELYN AQUILA: Oh, we have plenty of time -- go ahead.

DOUGLAS KELLNER: - that the counties in urban areas need to pay attention to how they're going to staff their polls to meet the Board regulations so that lines aren't longer than half an hour.

EVELYN AQUILA: I agree with that.

ANNA SVIZZERO: We have a primary in less than a year and a few months, so - the presidential primary.

BOB BREHM: Right.

ANNA SVIZZERO: Petitions come out in the fall of 2011, so -

DOUGLAS KELLNER: But it's specifically the presidential general election -

EVELYN AQUILA: Right.

DOUGLAS KELLNER: - that the counties have to pay attention to now, that just staffing them the way they've done historically is going to create long lines and it would put them in violation of the regulations.

ANNA SVIZZERO: Anything that we think of would be, it's good to be thought of now because at least we could try it in the 2011 elections and in the primary, and not have that again full blown implementation in a monster election like the presidential --.

EVELYN AQUILA: Unfortunately, it's hard to see, does the line move that fast, unless you have a long, long line and you see it move faster.

DOUGLAS KELLNER: All right, well, thank you.

Public Information / NVRA Unit

So we'll turn to Public Information, John Conklin.

JOHN CONKLIN: Thank you, Commissioner.

Well, as all the things that have been talked about at this table is all the kind of questions and answers that the PIO had to give out in the wake of the election - lots of media inquiries; email questions.

You know, when you come away from election night and you still have six Assembly seats, three Senate seats, two Congressional districts that are still too close to call, there's a lot of questions that get answered. So we've certainly had to deal with a lot of that.

And every part of the Agency has helped us answer all those questions.
So thank you, we appreciate that very much.

We posted the transcript for the October Board meeting.

We're starting our preparations for the Annual Conference for the State Board in April.

We posted Anna's Primary Report from the Election Operations Unit.

For NVRA, we're working on the draft changes to the voter registration form.

We have to add one additional party to the voter form.

The Green Party is now an official party, and we have to change the order of the parties on the form because they've been adjusted as a result of the election.

As Paul mentioned, the meeting with the State University, DOJ and the AG, the NVRA Unit attended that as well.

A couple of questions were directed at us, but overwhelmingly, I think it was issues of compliance with SUNY and DOJ.

And the PIO generally has attended and participated on all the MOVE Act discussions, as well.

So that's all I have.

DOUGLAS KELLNER: Okay, any questions?

Thank you, John.

JOHN CONKLIN: You're welcome.

Campaign Finance Unit

DOUGLAS KELLNER: Campaign Finance, Elizabeth Hogan.

ELIZABETH HOGAN: Thank you, Commissioner. In keeping with the format that I've tried to use in the written report for the past number of months, I tried to give you the statistics for the month of November and the cumulative statistics for the year. And as you can see from the review, the statistics are quite high.

We have 11,600 registered committees and candidates.

We have responded with, you know, the staff that we have to over 14,000 inquiries by telephone.

So I tried to give you a general idea by putting that information in the written report.

As well, we've been very busy this year especially, because the primaries and the general election have added six filings to the year, and with the six filings, it has certainly, you know, increased the staff workload and the number of lawsuits that we bring, and all the steps that are part of that.

I tried to give you some idea as to the status of what is happening with the different reports, and the lawsuits.

From the perspective of the audit staff, this being the very end of the year, they've spent the year looking at audits relative to the year 2009. And for the most part those audits are complete, and the audit staff is at this point, wrapping up issues because they're not going to be able to start the next audits for the year 2010 until subsequent to the filing of the January periodic, and perhaps even the Order-to-Show-Cause for failure to file that report.

So we're trying to work on small things in the Audit Unit to clean up some matters.

As well, that staff is working with the training staff and with George's folks to try to talk and develop the software, the new software. And that's a long term project. It isn't, you know, it's not something that gets, from month to month of meeting here that I can tell you we've made X amount of progress on, because it's a very large project and there are a lot of parts that integrate with each other. But there's an active and continuing work on the part of George's people and our own, on that issue.

As well, the other large issue that we're looking at is the reworking of the campaign finance section of the website, to make it more usable for people and, you know, we've had a lot of input from staff as to what kind of telephone calls they get and you know, what might be the most appropriate way to present the campaign finance website to catch the attention of the people who are looking for those answers.

So, Bill, do you have anything you want to add to that?

BILL: No, that's fine.

ELIZABETH HOGAN: Okay.

BILL: That's fine.

ELIZABETH HOGAN: I mean, that's pretty much what we're doing in campaign finance.

DOUGLAS KELLNER: Thank you.

Information Technology Unit

George Stanton, Information Technology.

GEORGE STANTON: All of the above. [CHUCKLING]

We're sort of, you know, like I've told you lots of times, I view IT as a service organization for the rest of the Agency, so we basically, you know, take care of everything on a monthly basis that everybody needs from us, you know, as far as the website.

And we've obviously finished processing all of the campaign financial reports for the year, of which there were a lot.

Moving into a slower time period now, we're getting ready to do some major maintenance on the NYS Voter System in the week between Christmas and New Years, because it will be very slow and very lightly used at that time, so we're going to shut it down for a few days and do some heavy duty maintenance on the hardware and software, to get that tuned up for the next year.

Other than that, you know, you've got my extensive report, which is a lot of jargon. But if you have any questions, be glad to answer.

EVELYN AQUILA: Well, I'm going to ask again, is New York City still refusing to cooperate?

GEORGE STANTON: I don't know as I'd say they're refusing to cooperate, because I don't know if anybody's been asking them on a daily basis [CHUCKLING] to cooperate.

I think -

EVELYN AQUILA: Well, let me - -

GEORGE STANTON: I think we're -

EVELYN AQUILA: At least by the television, you know, somebody voted in Suffolk County who also voted in New York City.   And the television announcer said, "We're just like Chicago - get up and vote early and often."
And it was one person they were talking about and think that's a little - but -

GEORGE STANTON: Well, I think there are conversations beginning with New York City again about being more compliant, but Bob and Todd are better able to talk to that than I am right now, so -

EVELYN AQUILA: I mean, we have to - I just wish there was a way we could solve that, and we could have our statewide, you know, be able to do this statewide so these things wouldn't happen.

GEORGE STANTON: Well, there's a lot of counties - -

EVELYN AQUILA: And we have to sort them out and sort them out and -

GEORGE STANTON: There're a lot of counties out there surrounding New York City that would share that thought.

EVELYN AQUILA: Yeah. But I think we shouldn't just say, well, it's a done deal, there's nothing we can do about it.   I think we have an obligation to try to find a solution to that, and get that done, George.   I don't know if - -

DOUGLAS KELLNER: Todd or Bob, is there something in the works to get the next round of correspondence moving with New York City?

EVELYN AQUILA: Or meetings, whatever.

BOB BREHM: Well, I think we both have heard from people at the City Board again about a willingness to have a conversation.

TODD VALENTINE: They came to us.

BOB BREHM: And you know, I think we reminded them, the last face to face meeting we had on the subject was quite some time ago, and there were some issues at the City level because the staff that attended the meeting on behalf of the City were not authorized to have as full a conversation as we were

willing to have, and they needed to go back and get permission to actually talk to us about what needed to be done.

But I think at that meeting, you know, it was in Brooklyn, and I know George and Bob Smith had some - - little ideas of ways; and Bill was there.

You know, I thought that was a very productive meeting and they had several ideas on the table that would really allow us to get beyond some of the issues.

We're waiting for the City to respond to us in a way that one; their staff could have a meaningful conversation, and two, to do follow up.

EVELYN AQUILA: Bob, we can't wait.   We can't wait, you know.

BOB BREHM: No - we've followed up with them on a number of times, but they were not willing to respond to us.   But now they've contacted us, so we thought that that was very positive.   We brought them up to date on where we thought we left off, because there have been staff changes there at the senior management.

EVELYN AQUILA: Yes, I know.

BOB BREHM: And we, both Todd and I, relayed the information to them and offered our, you know, as soon as they want to, to re-- you know - pick up where we left off, with the hope that we can solve the issue.

EVELYN AQUILA: Well, I would get their top people.   Either we go down there or they come up here. And I mean, with some pressures that are on them, and I don't know if all those pressures are fair, maybe we can finally, you know, take this step and get this done.

I just think we shouldn't just let it, "Well, we'll see them in a couple of months, and we'll tell them what to do if they…" you know.

They've called us; it looks like they want to work it out, and I would reach out and set up the meeting, either - and you and Todd go down or they come up or whatever.

We'll give them coffee and buns, you know [CHUCKLING] - whatever it takes.

BOB BREHM: I know we both offered to --

EVELYN AQUILA: But it is the federal law.

BOB BREHM: A meeting here or a meeting there.

EVELYN AQUILA: Yeah. Um-hmm, all right.

BOB BREHM: Well, you know, - I know some of them are away a little bit now after the election.

EVELYN AQUILA: Well, I'm not saying before Christmas, but it's the federal law, and I think we should do everything in our power, and I think the other Commissioners agree, and get this done. Especially when a lot of other big counties have cooperated. And I know they're tough, they've got five counties within one city and it's not easy, and they don't have a lot of staff or a lot of money. But I think we can begin to have some progress with that.

DOUGLAS KELLNER: I agree.

EVELYN AQUILA: Thank you.

DOUGLAS KELLNER: All right, anything else?
Well, then we -

EVELYN AQUILA: I shouldn't have two coffees --

[LAUGHTER]

EVELYN AQUILA: two coffees coming up.

[LAUGHTER]

Old Business

Discussion of two Resolutions on Trade Secrets and Confidentiality

DOUGLAS KELLNER: All right. So we take up the first item of old business, which is the resolutions to determine Dominion and ES & S claims that certain records are trade secrets pursuant to Public Officers Law, Section 89, Subdivision 5b.

Paul?

PAUL COLLINS: There are two resolutions, one for each vendor. However, in looking at the one that's in my packet, for reasons that I don't quite comprehend, on the -

BOB BREHM: Theirs is correct.

PAUL COLLINS: Theirs is correct?

Okay, they've got –

PAUL COLLINS: What has happened is we have asked NYSTEC, our consultant, to review their claims of confidentiality.   NYSTEC has provided an item by item report, and it's the recommendation of staff that we accept that recommendation and determine that those items which the vendors have sought protection for, which NYSTEC does not feel to be either a trade secret or would put the vendors in a commercially disadvantaged position, that we ought not to give them that protection.

Now, that doesn't mean that it's over, because the vendors have the right, under the statute, to bring an Article 78 against the Agency to contest our decision that they're not entitled to trade secret or commercial sensitivity protection for all of the information that they've filed.

DOUGLAS KELLNER: All right, well, thank you for getting this done, Paul. I know this has been in the works now for almost two years. And just to clarify it's - the third column, wherever NYSTEC says 'yes', we are ruling that the document will be publicly available.

PAUL COLLINS: That's my understanding.

DOUGLAS KELLNER: And that where NYSTEC says 'security related' or 'source code related', that we are going to sustain the vendors' claim of confidentiality.

EVELYN AQUILA: Confidentiality.

PAUL COLLINS: That is correct.

DOUGLAS KELLNER: And that immediately after we adopt this resolution, you and Kim will take steps to formally notify the vendors that we made this determination, so that the provisions of the Freedom of Information Law, Section 89, are triggered.

PAUL COLLINS: That is correct, and their time to challenge it would commence to run.

DOUGLAS KELLNER: All right, great.   Well, thank you, I'm very pleased that --

EVELYN AQUILA: It was a lot of work, yeah.

DOUGLAS KELLNER: We got this -

EVELYN AQUILA: [SOUNDS LIKE] Homage to Kim and Paul.

DOUGLAS KELLNER: Is there a second to the resolution?

JAMES WALSH: So moved.

DOUGLAS KELLNER: Those in favor, say Aye.

[Chorus of Ayes]

DOUGLAS KELLNER: Opposed?

All right, so both resolutions are adopted.

Discussion on Ballot Usability

Next item on old business is discussion of ballot usability, which I've been continuing because I just think this is important that we should be talking about it every month. And there are two issues on this. One, we spoke briefly during the Legal Report about revising the screens, notifying voters of over-votes. And could we have an update on what's happening in terms of doing those revisions that we said in February we were going to start to do?

BOB BREHM: Yes, we talked in February, we were hoping to get some input from also the experience of this election, if there are other notices that the counties have identified to us.

You know, we've talked, we've had a preliminary meeting just to kind of discuss what an improved, if there was an edit to the page, what would it, what could it look like that would be clearer to voters, as we discussed in February last year.

One, I think we haven't quite heard from all the counties yet as to, you know, any notice issues that they may have thought that - was it understandable, was it not.

Certainly any improvement, we would want it to improve something and not cause more confusion.

But those are still at a preliminary stage.

I think we hopefully can complete those, both for the Dominion System and for the ES & S system, that would - I mean, I think [SOUNDS LIKE] many of our terminology, we use over-vote; maybe a voter, on Election Day, doesn't know what the word means.

So is there a way of changing the wording in a way that would be clearer to people.

I think we've talked about them.

I don't know that we have a specific plan yet, but I think that we're getting closer and we hopefully could have one, depending on what the January meeting looks like and you know, what, between now and then, you know, we should be pretty close to having one for you at the January meeting. If not that meeting --

DOUGLAS KELLNER: When you say plan, you mean an actual proposal for the --

BOB BREHM: A proposal for what the words would look like.   From our talking, we would like, you know, what do we think would be helpful, a little bit of input from the counties to make sure that they don't have other notice issues that we haven't even considered yet, because they haven't brought them to their attention.

If we're going to do it, let's make sure we accomplish - people who have experience with the Dominion and the ES & S System, if any other notice is unclear. And also sit down with the two vendors to make sure that if we think this is a good idea, that it isn't, you know, something - that there won't be some other trigger affect that we haven't thought about. That at least we should get their input before we give you the plan.   And I think relatively, we should be able to have that for you in January.

DOUGLAS KELLNER: And I understand that the staff is working on finding out exactly what notices are being used in the other jurisdictions that use the DS-200?

BOB BREHM: Um-hmm, we've looked at some and I know some have some wording that, you know, some people like a little bit, the concepts. But you know, the functionality that a voter independently learns on our DS-200 system requirements, where the system independently will identify for that voter which contest, and if it's more than one, all of the contests, that the voter has over-voted.

You know, some of the other notices aren't clear, you know, people have shared with us, how that communication takes place.   So we want to reach out to those states. Maybe they just gave us a bad example, and it didn't make sense. But certainly you wouldn't want it to tell you you've over-voted in this contest; you go back and fix it, and come back and find that you made the same mistake in another contest.

DOUGLAS KELLNER: Right.

BOB BREHM: You know, that would be very frustrating to a voter. And some of the, you know, screens that people have shared over the last couple of months aren't really clear, but it gives you all the information that our screen gives you.   Maybe the top wording needs to be better; maybe the ending wording, but that functionality, I think is very important to communicate independently to the voter, because once they leave that voting machine, if they have to ask an inspector, that's a verbal conversation with a ballot out, in the middle of a polling site, and it's not a confidential, private situation.

So I think we can -

DOUGLAS KELLNER: Right.

BOB BREHM: You know, take some of the - take the best of both worlds. Ours is not fully broken and theirs is not as good as some of the functionality of ours.

DOUGLAS KELLNER: And the other issue we need to look at is whether or not to just reject a ballot when it's - to reject the ballot automatically when it's over-voted. At least, in the litigation, the plaintiffs there are asking if that be the relief. And it would be helpful to find out what other states are actually doing that, and to weigh the pros and cons.

All right, so that's one issue.

The other one is this issue on how we lay out the ballots - the typeface sizes, the formatting of the ballot, and whether we continue having this difference where New York City is using the horizontal ballot and everybody else is using - well, New York City is using a horizontal for the parties, and everybody else puts the parties on the vertical axis.

ANNA SVIZZERO: There is a better way to make more use of the limited space on that ballot, and the format is not in an [PH] AVM style; the format is in that vertical kind of layout - not quite a New York City layout, but something along those lines is what we have seen with some of the samples that have been shared with us. Even the vendors have contributed to some of that conversation. But it is something that we need to get into.

DOUGLAS KELLNER: I mean, you have been gathering -

ANNA SVIZZERO: Yes.

DOUGLAS KELLNER: Examples of what other states are doing.

ANNA SVIZZERO: Yes.

DOUGLAS KELLNER: And have you assigned anybody on your staff to become a usability expert, to get usability training?

ANNA SVIZZERO: No, we have not done that.

DOUGLAS KELLNER: Well, you know, I don't know how the other Commissioners feel, but this is something where I think strongly that Anna should now, now that certification is winding down, that Anna should take one person on her staff and that that person should be told, "You are going to be the usability person," even if means formally changing the job description, and providing training for that person, so that we have somebody on staff who can begin to acquire expertise on this.

It strikes me that at least somebody in the state should be trained in how to put together a ballot in the most usable format.

EVELYN AQUILA: I just want to ask two questions about that, because I agree with you.

DOUGLAS KELLNER: All right. And I guess, Anna, I would ask that this be something you'd address specifically at the next meeting. I don't want to just ram it down you, although we've asked about this before.

EVELYN AQUILA: Well, I want to ask her something. Let me ask a question first. Anna -

ANNA SVIZZERO: Yes.

EVELYN AQUILA: Do you have a person that you can spare at this moment, to pull out of what they're doing and give them this new job. I mean, we've got to be practical here.

DOUGLAS KELLNER: Well, as I - of course, we don't. But - and I'm just saying that we have to start to prioritize and that -

EVELYN AQUILA: I think we should -

DOUGLAS KELLNER: A certification - I remember two or three years ago, I insisted that Anna assign her staff people to learn how the machines worked, and that they - and there was a lot of resistance. As I recall, it took months for them to go through the manuals and actually learn the machines. But then when we came to the certification votes in January of 2008 - or was it 2000 - well, whenever - whenever we went through that first round of certification voting, it was critical that we had people on our staff who actually knew all the nuts and bolts.

And I think that, as the State agency responsible for the ballots and for giving assistance to the counties on this subject, that we need to have at least one person who's gone to the professional training programs that are available to understand the issues that need to be addressed in properly formatting a ballot.

EVELYN AQUILA: Now, I agree with you, but I'm concerned about her staff. Can it do another job? Does it have the ability to take on - this is a big thing. And certainly our budget is [CHUCKLING] - is already in trouble.

ANNA SVIZZERO: We are up for it.

EVELYN AQUILA: Anna, speak the truth - if you can do it easily, fine.

KIM GALVIN: I mean, it's certainly not my unit, but we do understand, all of us, that it's a huge undertaking and that whoever is assigned as the point person, will need complete and total participation by every level.

And input and you know, clearly one person might not have the County Board experience or the expertise that will be required or come to bear, and there have been a lot of discussions about you know, assigning a person in the Agency, certainly not to take away Anna's authority to do so, but I know that that person will need buy-in from both sides, all levels. So it is a huge undertaking.

EVELYN AQUILA: A big, big job, you know. I know it's not a little thing, and --

KIM GALVIN: We all have recognized that.

EVELYN AQUILA: If someone is assigned to it, I want them to be able to do it correctly.

DOUGLAS KELLNER: I agree.

EVELYN AQUILA: And that's my concern.

DOUGLAS KELLNER: But I think at this point, we need to take people who had been assigned to certification, at least one person -

KIM GALVIN: No, I totally - I totally agree.

DOUGLAS KELLNER: And say -

EVELYN AQUILA: But we need the person.

KIM GALVIN: And we know how it gets when too many people are assigned. I think it needs to be a very tight focus group.

DOUGLAS KELLNER: But there needs to be a usability expert.

KIM GALVIN: I agree.

DOUGLAS KELLNER: And I don't think it's realistic that we can go to – and ask for an additional position. I mean, ideally, the way government used to work is we'd say, "All right, we need a usability expert, give us another budget line for it." That's not going to happen, so -

BOB BREHM: I think we've learned it's helpful to have two because for whatever crisis we have, it isn't a single crisis.

There's usually some overlapping other item that we also have to manage at the same time, so if we had two -

KIM GALVIN: Or someone gets sick or -

EVELYN AQUILA: Yeah.

BOB BREHM: If we had two, but you know, and we're going to - you know, I think we identify them and we'll work with those existing organizations that do this kind of work and - It might not be as expert as others in the outside world, but once they develop a working understanding as the source, you know, as I think we've worked over the years with the poll site accessibility.

We've become more expert; certainly we are not experts but we have learned that we have a reliable organization on the Commission on Quality of Care.

So we know where to go to get the answers.

So I think as an agency, once we learn enough to become more proficient at it, we'll also learn who are the people that we can have as a sounding board that we might able to ask the tough questions.

DOUGLAS KELLNER: Right. Right, well -

EVELYN AQUILA: I support it.

DOUGLAS KELLNER: We'll continue this so that it appears on the agenda again next meeting.

ANNA SVIZZERO: We'll have a plan of some sort to present to you at the next meeting.

EVELYN AQUILA: Okay. Thanks, Anna.

DOUGLAS KELLNER: And you know, I would urge you to continue gathering as many sample ballots as you can from all around the world. And then to look at the staffing so that we actually have somebody who's doing this on a professional basis and not just the way we've been doing it in the past.

All right, so we have two items of new business.

New Business

Resolution on Alternative Dispute Resolution Services

First is the resolution authorizing funding for the Alternative Dispute Resolution Services.

That's been passed out in our packets.

Is there any discussion on that?

JAMES WALSH: No.

DOUGLAS KELLNER: Those in favor say Aye.

[Chorus of Ayes]

DOUGLAS KELLNER: Opposed?

All right.

Resolution to Continue NYSVoter Storage Area Network Service Contract

Next is to continue the NYSVoter Storage Area Network Service Contract.

Again, I think we've had that in advance and if there's no discussion, we'll take a vote.

All right, those in favor of the resolution to continue the NYSVoter Storage Area Network Service, say Aye.

[Chorus of Ayes]

DOUGLAS KELLNER: Opposed?

All right.

Enforcement Cases

Enforcement Cases - does anybody want to have a discussion on them in the Executive Session?

ELIZABETH HOGAN: Bill had a discussion with me subsequent to our reading, and there was one complaint that, I think there was an issue with some wording changes.

We could either table it -

DOUGLAS KELLNER: Which number is it?   Which number is it?

WILLIAM MCCANN: It's 09141.

ELIZABETH HOGAN: We could table it to the next meeting if - 09141.

BOB BREHM: As long as we don't talk about the --, yeah, just what do you want to do with it?

DOUGLAS KELLNER: All right, so we can lay that one over.

EVELYN AQUILA: All right.

DOUGLAS KELLNER: And then - you both agree that we want to lay it over?

ELIZABETH HOGAN: Yeah, that's fine.

DOUGLAS KELLNER: All right, so -

EVELYN AQUILA: It's on the bottom.

BOB BREHM: It's always the last one I look at.

DOUGLAS KELLNER: All right, so other than that one - so that's 09141 that's being taken out of the list. All the others, we're moving the adoption of the preliminary determinations and those not requiring preliminary determinations as reported by the Campaign Finance Enforcement Unit, right?

So, all those in favor of adopting the Campaign Finance Unit's proposal, say Aye.

[Chorus of Ayes]

DOUGLAS KELLNER: Opposed?

All right, so that's done.

Have you discussed when you want to meet next?   ...Second week of January?

KIM GALVIN: March.

[LAUGHTER]

EVELYN AQUILA: A lot of people are going away - no, not me. I could have gone too -- but I said no.

GEORGE STANTON: Nice try, nice try.

DOUGLAS KELLNER: So?

EVELYN AQUILA: Well, it's the second week --

DOUGLAS KELLNER: Actually, the third week is better for me, but --

[SEVERAL SPEAKING AT ONCE]

TODD VALENTINE: When's the holiday?

DOUGLAS KELLNER: Martin Luther King Day is the 17th.

CHORUS: The 17th, yeah.

BOB BREHM: 17th.

EVELYN AQUILA: Every day but the 19th for me, - - I'll make myself accessible on that day.

I have an assistant.

BOB BREHM: So do you want to do it before the holiday?

EVELYN AQUILA: Whatever you want.

BOB BREHM: Or is that week bad?

EVELYN AQUILA: Martin Luther King Day is the Monday.

KIM GALVIN: Looks like the third's better, the third week's better.

TODD VALENTINE: So it's Tuesday, Wednesday or Thursday - 18th, 19th or 20th.

EVELYN AQUILA: Um-hmm, all right. Whatever the gentlemen would like - -

DOUGLAS KELLNER: So the 18th, Tuesday the 18th?

EVELYN AQUILA: Tuesday the 18th all right?

TODD VALENTINE: Okay.

EVELYN AQUILA: Greg?

GREGORY PETERSON: Yep.

EVELYN AQUILA: Okey-doke.

TODD VALENTINE: That's - Wednesday would actually be better.

[SEVERAL TALKING AT ONCE]

TODD VALENTINE: Because that's the day after the holiday. We're not going to be here on Monday.

EVELYN AQUILA: Okay, you want to change it to Wednesday?

TODD VALENTINE: Yeah, Wednesday, the 19th.

DOUGLAS KELLNER: Okay, that's fine with me.

EVELYN AQUILA: Is that okay?

TODD VALENTINE: Yeah, we'll need a - -

[SEVERAL TALKING AT ONCE]

DOUGLAS KELLNER: All right, so is there a motion to adjourn? **JAMES**

WALSH: So moved.

DOUGLAS KELLNER: Those in favor say Aye.

[Chorus of Ayes]

DOUGLAS KELLNER: All right, we stand adjourned to January 19th.

[END AUDIO]