

**NYS Board of Elections  
Board of Commissioners Meeting  
02/06/2013**

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**Douglas Kellner:** Hello, good afternoon everyone. My name is Douglas Kellner Co-chair. I'll call the meeting to order. I've asked the other Commissioners to introduce themselves.

**Jim Walsh:** Jim Walsh.

**Gregory Peterson:** Gregory Peterson.

**Evelyn Aquila:** Evelyn Aquila.

**Douglas Kellner:** I'm going to ask the staff and guests to introduce themselves.

**Bob Brehm:** Bob Brehm.

**Liz Hogan:** Liz Hogan.

**Bill McCann:** Bill McCann.

**Anna Svizzero:** Anna Svizzero.

**Dave Loomis:** Dave Loomis.

**Tom Connolly:** Tom Connolly.

**John Conklin:** John Conklin.

**Paul Collins:** Paul Collins.

**Kimberly Galvin:** Kimberly Galvin.

**Todd Valentine:** Todd Valentine.

**Natasha Kerry:** Natasha Kerry from the New York City Council.

**Aimee Allaud:** Hi, I'm Aimee Allaud of the League of Women Voters of New York.

**Bob Warren:** Bob Warren Election Operations.

**Douglas Kellner:** And welcome to our guests. The first item on the agenda is for us to meet as the Board of Canvassers. And I guess there are actually two issues to be dealt with. As a result of the conclusion of the litigation in the 46<sup>th</sup> State Senate District the canvassers today can now certify Cecilia Tkaczyk as the winner of that contest. And we've also received several amendments from County Boards as the result of post election changes to their vote counts. Following your vote today, following

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our vote today, all the amended results will be posted to our website and also, for the Presidential Election is it Anna that you'd send them off to Washington?

**Anna Svizzero:** Yes.

**Douglas Kellner:** To make sure that the historical archives have the correct final numbers from New York.

**Evelyn Aquila:** Yes and our signature.

**Douglas Kellner:** That's right. So we did circulate just before the meeting started the paperwork that has to be signed. Do you have everything you need?

**Bob Brehm:** Yes.

**Douglas Kellner:** Okay. So, those in favor of adopting the canvas for the 46<sup>th</sup> Senate and the amended certification for the General Election.

**All:** Aye.

**Douglas Kellner:** So that's adopted and that concludes the business of the Board of Canvassers. So now we will proceed with the meeting of the Commissioners for our regular meeting.

The first item on the agenda is approval of the minutes of October 31<sup>st</sup>, December 10<sup>th</sup> and December 31<sup>st</sup>. Is there a motion to approve the minutes?

**Jim Walsh:** So moved.

**Gregory Peterson:** Second.

**Douglas Kellner:** Those in favor say aye.

**All:** Aye.

**Douglas Kellner:** Opposed? All right the minutes are adopted. We'll now turn to the unit updates and we'll start with our Co-Executive Directors Robert Brehm and Todd Valentine.

**Bob Brehm:** There were a number of items that took place during the December meeting other than the two supplemental meetings we had to have to certify what we could along the way. One of the most important items that stands out a little bit is the budget came out at the Executive Proposal. In it, it does a couple of things. It reduces our budget appropriation level by about a hundred and five thousand dollars (\$105,000) but it increases the cash availability to us to spend out of the appropriation by two hundred and forty-four thousand (\$244,000). So there's a little bit of good news and bad news in the

proposal. We certainly have to wait and see what the final budget gives us. But at least that's where we stand with regard to the proposal.

**Evelyn Aquila:** We should be getting that final soon.

**Bob Brehm:** Well, it's to be done by March 31<sup>st</sup>. But...

**Evelyn Aquila:** This is February.

**Bob Brehm:** We wait and see. You know a number of other items certainly bills that participated in the Election Commissioner Conference earlier in January, the 2<sup>nd</sup> week of January. It was right here at the Albany Hotel so that logistically worked out very well for us. We hosted an open house and it was well attended. And for those staff members that baked cookies, we appreciated it. And certainly, so did the people who came to our open house. But I thought the conference was very uh, a number of important items were discussed. We continue to hold the monthly telephone call with the County Commissioners to kind of, you know, hard to have a full when they are full in the Primary and the General Election and, you know, the December one was when they were, they finally after running an election every other month last year it was the two minutes that they had time off so we did have a full phone call at that point. But, I think they're very helpful for us. We host them and we work with the Officers of the Association. What are the topics of interest? But they're hearing from people that we should cover, they should cover with people and what we think are important to cover. So, those are very helpful. We do them on the, you know, each month, the fourth Thursday of the month. So, that is ongoing.

And Todd and I attended the NASED Conference in Washington and I went to the Overseas Vote Foundation Conference while I was down there.

**Evelyn Aquila:** Bob can you sit back. I'm looking at the back of your head.

**Bob Brehm:** Sorry. And it was well attended for the conference. It was one of the larger attended conferences both from OVF and NASED the Overseas Vote Foundation I thought was interesting from the point of view it was the first full year of implementing all of the provisions of the MOVE Act as opposed to in 2010, 2011 when there were certain items being, you know, that had a different implementation schedule. And I think it kind of showed that where we can get the ballots out earlier, it increases the ability to get them back from either Military or Overseas Voters.

**Evelyn Aquila:** Yes.

**Bob Brehm:** There still is work to be done on the registration end of things as the MOVE Act also required the Department of Defense to work with persons who were reporting for duty, when they deliver those duty orders to that advanced location to also use that as an opportunity almost like an NVRA Registration site to update the record. And that's where they were seeing there wasn't a lot of compliance with that component of the issue. And almost to a tee people talking about, you know, we're doing a good job now handling the responsibility for those applications we get early to track them and to

transmit and get back those ballots. And they're in a much higher capacity to count. But, it's that last minute rush after that forty-five day period where we're getting applications and we're trying our best to respond to them. But we still can only do the best we can. But that's where I think DOD needs to step up. It's their responsibility and that with an intricate public conversation.

And also Todd was elected the, an officer of the NASED group at the conference though. Unfortunately, I wasn't there for that part of the meeting because I was at OVF that part.

**Gregory Peterson:** That's the way we would have voted.

**Douglas Kellner:** Well, congratulations Todd. And what, what is your title there?

**Todd Valentine:** I was secretary for a day and I'll be treasurer for the next year and then move my way up through the officer ranks over the coming years though.

**All:** Congratulations.

**Todd Valentine:** Thank you.

**Evelyn Aquila:** We'll have to notice if you stop to wear some extra jewelry or something.

**Todd Valentine:** No, no, no it just means more meetings to attend.

**Evelyn Aquila:** I know, I know.

**Todd Valentine:** You know and it's uh...

**Kim Galvin:** I think we're good at it.

**Todd Valentine:** Yeah, we are good at meetings. I mean an NASED Meeting is there were over 35 states and territories in attendance and, you know, it's the good times. So now we talk with the people in our own region which was well attended. Pretty much everybody from the Northeast was there, Maine, New Hampshire, Vermont, Connecticut, us of course, Massachusetts so, you know, we have a lot of commonalities because a lot of our election systems developed at the same time. So, we're only in a slightly different position than the western states because they operate, they tend to do all mail elections. They're much larger jurisdictions. So, the way they run elections is a little bit different than the way we do it. But, so I think it's a good experience that this organization presents, you know, to discuss those things. And it's not dissimilar to the way we deal with our own counties where, you know, counties that are different sizes set the same duty but they will do it in slightly different ways but there are lessons they can learn from each other. So, that's why the conferences, the phone calls, you know, anything that we can do to foster that relationship, that's one of our mandates. So, that's how we do that. But it does take a lot of meetings and a lot, does take a lot of time, so.

**Evelyn Aquila:** Are we the third largest state? I know California and Texas...

**Todd Valentine:** Well, Florida I think is bigger than us now.

**Evelyn Aquila:** What?

**Todd Valentine:** It's either Florida or us. But, you know, we're a large jurisdiction, so, you know. But, you know, we don't run things the same way they do in Texas or California but...

**Evelyn Aquila:** No, of course not. Of course not, I know.

**Todd Valentine:** I mean its one thing the City Board has, you know, has been trying to learn lessons with regards to the application of language with the ballots that Los Angeles has done for a number of years with eight languages. And, you know, so, they met with them in that meeting prior, not the meeting we were at, but another meeting. So, that connection there is a good one. It's hard to find that central line. You have to work hard to find those things.

**Evelyn Aquila:** Uh, huh.

**Todd Valentine:** But these organizations provide a way to do that.

**Jim Walsh:** Great.

**Evelyn Aquila:** Congratulations again.

**Douglas Kellner:** Is that all for the Executive Directors? Then we'll ask Kim Galvin to give the legal report.

**Kim Galvin:** Thank you Commissioner. There's not much to add from our written report. We did go through some of our staff had a series of depositions in the double vote case that lasted quite a number of hours. We just recently received the transcript back a day or two ago. So, they're going to have to be sent to the people that were deposed, to review, make any corrections if necessary.

Paul and I have supported the other functions at this conference or whether it is developing the Legislative Proposals, dealing with the Department of Justice on our many issues. And, actually, I spent virtually a great deal of time discussing some issues with the New York City Board's Staff working with Anna's unit on Bengali and also monitoring some of the turn over and some of the runoff issues, but, generally just routine business and that's it, anything to add Paul?

**Paul Collins:** Not really. We're waiting a determination from the Court of Appeals on Nassau County's motion for leave to appeal. If my calendar is correct, that should come within the next ten days one way or the other. And we're waiting as we have waited for about six months for the Second Circuit to rule on Mr. Shultz's motion for an en banc reconsideration of the dismissal of his case.

**Douglas Kellner:** I have one comment. I think that uh, Judge Prudenti's letter to the judges concerning the need to consult with the County Boards of Elections and the State Board of Elections before entering Ex Parte orders-to-show-cause has been very productive and effective.

**Kimberly Galvin:** Yeah, it seemed to work well.

**Douglas Kellner:** I'm not aware of any Ex Parte order that was issued without consultation this year which was a big change from what happened before. So, I'm, I'd like to suggest that we write a short thank you letter to Judge Prudenti. If Paul and Kim could confer on just doing a draft and maybe circulate it for the Commissioner's to sign off on it so that we could just acknowledge that she did that and then let her know that it, we too have had a...

**Evelyn Aquila:** I think that's a great idea. She's a very smart woman.

**Douglas Kellner:** ...that it was productive.

**Evelyn Aquila:** Very impressive.

**Douglas Kellner:** Is that okay?

**Kimberly Galvin:** That's fine.

**Douglas Kellner:** It doesn't have to be long but I think just to let her know that uh...

**Kimberly Galvin:** Yeah, certainly an acknowledgement and let her know that it worked but at a much more tight process.

**Douglas Kellner:** Yeah, yeah.

**Evelyn Aquila:** She certainly did help.

**Douglas Kellner:** All right well, so, any other questions for legal? Then we'll ask Anna Svizzero to give the Report for Operations.

**Anna Svizzero:** Thank you Commissioner. I don't have much to add to our written report. I'll be happy to answer any questions that you have. By way of our future plans, we are moving forward with the Bengali upgrade for the ES&S Voting Systems and we're looking at about six weeks for that. We're hoping that, that will be a smooth process and we are efforting that as we speak with Source Code Review and also the functional testing done here by our staff.

We are looking at issues from last year's elections to make sure that we have those resolved. Making sure that none of the issues fell through the cracks. We'll be getting a letter together for New York City

to review issues from their election, phone calls that we received here because people couldn't get through to the City Board just so that Dawn Sandow and Pam Perkins have an idea of the areas of concern. One was absentee ballots didn't go out and certainly the lines at polling places and, you know, engage in some conversation so that we can either help them evaluate resolutions that they're proposing or at least contribute to some as they haven't had a chance yet to get to that issue.

We need to have new Commissioners coming here. We've initiated a one day, two days if you need it, a new Commissioner Workshop here at the State Board. We have one Board and possibly three are coming in on next Friday the 15<sup>th</sup>. And we have another Board, Oneida County, coming at the end of the month, the 25<sup>th</sup>. So those could be good. We're trying to keep the group to just four people at the most. If it's a Board that has particular issues, we're only going to do the one board because it will be so targeted to their problem/resolution that type of thing. But we have a lot of new Commissioner's that were appointed late last year into and beginning their terms January one of this year. So, we're hoping that more Commissioners will reach out first. They've indicated that they will. I think it's just a matter of who has to drive the farthest and who wants to do that in January and February. So, that will probably pick up after Easter.

**Evelyn Aquila:** Anna haven't you had several reviews now though?

**Anna Svizzero:** The new Commissioners we've done, we've worked it into the various conferences. But we really think if we offered it here, the new Commissioners would have a chance to meet with Enforcement, Executive Counsel at Special Counsel's Office whoever they might have issues with. Get to meet the people that they're going to be talking to and then we can focus on their issues rather than do the global, we have global advice but maybe your Board that's not really applicable.

**Evelyn Aquila:** What you need, right.

**Anna Svizzero:** So, you can tailor these to your issues, your problems or just in general do a, you know, an overall presentation depending upon the audience we're talking to. And that audience now will be much more specific. So, we're hoping that will work out better for us.

**Evelyn Aquila:** Well, thank you Anna. You're always thinking of ways to help the County Boards. Years I have listened to different ways you've tried to apply your group to helping them and I just want to say thank you. You work very hard and it's appreciated.

**Anna Svizzero:** My pleasure. We have a good team; we're always there for them, their voting equipment and the other staff. We're happy to help anybody who picks up the phone.

**Evelyn Aquila:** Okay.

**Douglas Kellner:** Anna, could you explain what the time line is now for the report on the Election Assistance Commission Audit Grant? Where do we actually stand? Are we going to get written reports of the 2012 Pilot Projects that we umh...

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**Anna Svizzero:** We completed the DVD the Logic and Accuracy testing. We hired a firm to prepare the DVD. Those copies were burned. They were distributed to our own Board at the conference in January. We'll be writing a report and sending that officially to the EAC.

**Bob Warren:** That will be sometime in May.

**Anna Svizzero:** May 1<sup>st</sup> is the due date for that report. And then the other component of our Grant was the automated alternative to doing a Post Election Audit. We did some pilot projects in this past Primary and General Election. The boards that were involved in those pilots are reviewing the various reports, which are extensive, that that system provides. And then we'll be writing those reports and submitting our findings to you first, obviously. And then sharing those with the EAC, and that due date is...

**Bob Warren:** They're both May, they're both in May.

**Anna Svizzero:** ...both May 1<sup>st</sup>.

**Bob Warren:** Well, I don't know if it's May 1<sup>st</sup> but in May.

**Anna Svizzero:** Right.

**Douglas Kellner:** Uh, my...

**Anna Svizzero:** We could have the Accuracy Testing Report to you before May 1<sup>st</sup> because that one is wrapped up.

**Douglas Kellner:** My reaction from the Commissioner's who were familiar with the Pilot Projects that there was a very favorable reaction to it. And, so it looks like that that's something that we'd want to be moving ahead on. And, one of the issues that I'm sure you'll be addressing in the report is that uh, there are some changes that would be required to 9-211 the Audit Statute to provide for that. And, I'm just wondering, if your unit has discussed the legal issue yet or have started the process of working out the relatively small language changes that would be needed in order to accommodate it?

**Anna Svizzero:** We are beginning to look at our regs too, because we have that entire regulation, so.

**Douglas Kellner:** That's right.

**Anna Svizzero:** So, we'll be doing that with the Counsels Office. We just briefly discussed it in house, you know, for the present. But that's on the list of items that would have to be addressed.

**Douglas Kellner:** All right. Second is that, I know at the very least you have in progress the certification of the, what everybody is calling the Bengali upgrade to the ES&S Machine but this actually involves other features besides just the additional language capability.

**Anna Svizzero:** It does.

**Douglas Kellner:** And what's the schedule for that?

**Anna Svizzero:** Well, I'll have Bob speak, Bob Warren speak to that.

**Bob Warren:** Currently the Source Code is a build for the DS200 and EMS were delivered to SLI last week. They began the Source Code Review on Monday. They submitted the builds for the two systems to us and they anticipate about three weeks of Source Code Review. They received the Auto Mark Source Code and build yesterday. They're going to get me an estimate today as to how long they believe that will take. I would assume that will take less time because it's less code changes. In the meantime, we're doing our functional testing. Currently we expect that to be about a three week period. Then we're going to work on getting the reports together, so it should be about a four to six week period to get that wrapped up, as long as there are no issues that come out of it.

**Douglas Kellner:** So, again, you're talking about having it ready for the Commissioners for the May Meeting?

**Bob Warren:** No, it would be sooner than that. The latest it would be is April.

**Evelyn Aquila:** Okay.

**Bob Warren:** Depending on when the March meeting is, potential for the March it was late in the month but it would be April at the latest.

**Douglas Kellner:** Great.

**Anna Svizzero:** New York City. John Naudus, some of his team are coming up at the end of the month. They're going to bring the interpreter's so that they can make sure that the language in the screen actually reflects, you know, sometimes when you buy those packages or however it happens. We just want to make sure that they're getting what they think they're getting. So, they're going to bring their team up here. The voting systems are here. The, you know, it's a lot easier than packaging everything up and taking it down to the City and hauling it all back. So, they'll be up here at the end of the month for probably a day and a half, two days.

**Douglas Kellner:** I think the important thing is that the vocabulary track what's actually used in the newspapers that are published locally in that language.

**Anna Svizzero:** That's why we thought we wanted that extra input from the City Board on that aspect of the upgrade.

**Kim Galvin:** And just relating to the timing of that, I know in the original schedule was that there would be a concerted effort to have the certification done so that the city could be ready for any movement in the Primary or potential runoffs. So, that's why it's ahead of schedule. So, we're trying to make it as easy as possible in the event that there are some changes to that.

**Douglas Kellner:** All right, we have two other operations issues that are separate agenda items and we'll talk about them later then. So, I think we're ready then for Public Information, John Conklin.

**John Conklin:** Thank you Commissioner. I just have a couple of highlights from our report. We quieted down quite a bit since the election and the aftermath. Most questions right now were about the 46<sup>th</sup> Senate District and the ongoing court battles. And then, in the middle of the month of January a periodic was filed so the press is always very interested in how people are using and receiving money. We're processing FOIL requests. We had 34 in December and 42 in January. The Unit is still working on MOVE Act updates with our vendor Scytl and the local VR Vendors. The Unit, as you are aware because you were there, participated in some of the presentations at the winter meeting for The Election Commission Association. Tom did a presentation on MOVE Act statistics and UOCAVA statistics. Greg and Patrick did some presentations from the Grants and our NYSVoter Procedures and Reviews. Greg and Patrick visited Oswego and Madison Counties in December for NYSVoter Reviews. We also sent out extension contracts to all the counties for their grants. Those are due March 10<sup>th</sup> for those who are listening. And lastly we posted the 2012 election results. So, do you have anything to add Tom?

**Tom Connolly:** No, I mean like John said, we're working with IT and with some of our vendors in regards to kind of doing a post mortem on how our system did with regard to UOCAVA Voters and we're also working with a lot of the counties as far as compliance with Chapter 505 of the Laws of 2010 with regard to poll site accessibility just so that we have everything here. And I've been working with Dave and his staff just to kind of make an easier organizational system internally for tracking all those Poll Site Surveys. But, other than that I think that's it.

**Douglas Kellner:** Okay. Then we'll ask Dave Loomis to give the report for Information Technology.

**Dave Loomis:** Thank you Commissioner. I do not have anything to add to the report I submitted. But if you have any questions on it, I'll try to answer them for you.

**Douglas Kellner:** Any questions?

**Anna Svizzero:** I have a comment. I would like to congratulate you Mr. Loomis. I am not the best IT advocate in the building probably but Dave started a program where he meets with units to talk about what he's doing, wants to know what he can do to help us do what we do and it's a very unique approach and I am grateful for the opportunity to participate in those, and get a better education, maybe improve my track record with IT, we've not always gotten along, before my life here at the State Board. It has nothing to do with people; it has a great deal to do with philosophy. But, Dave's got this new program and we spent about an hour and a half with him, Bob and I did looking at what we're looking at, what he's got in mind that intersects with our unit. And I thought that was very, very helpful. So thank you.

**Dave Loomis:** Well, thank you.

**Liz Hogan:** I'd like to second that because Dave met with Bill and myself regarding Campaign Financing Enforcement issues and it's totally refreshing and really very welcome to have him actually be the one that comes forward with the initiatives as to what we can do to, to make it better as opposed to trying to, you know, run after him. So, we have been very appreciative of, you know, his really out front approach on this stuff.

**Dave Loomis:** Well thank you.

**Kim Galvin:** That's an "At a boy" from everybody.

**Dave Loomis:** Can we end the meeting now?

**Tom Connolly:** Dave would like to make a motion.

**Douglas Kellner:** All right, so old business? We...

**Bill McCann:** Do you have anything on Finance?

**Douglas Kellner:** What?

**Liz Hogan:** Campaign Finance.

**Douglas Kellner:** Oh, Campaign Finance. Yes.

**Liz Hogan:** That's all right. I don't mind passing. I don't mind being passed over. Um, okay I, basically I just want to point out a couple of things regarding the written report which as I reiterated every meeting, it's a way that we keep you updated as to some things, you know the volume of things. And, in this report I gave you the statistical summaries for the year 2012 as to what the Campaign Finance Unit did in the way of the day-to-day business. And, here you can see that there was a lot of work done. For the size of the staff that we have to work with, it amazes me sometimes what we get accomplished over there. But, you can see that they registered almost 2000 new committees, 1600 were terminated. The small staff, we've lost half of our call people. And the four of them have handled over 13,000 calls to the HELP Desk, the four of them. And it's incredible. I much appreciate what they do. So, they, you know, if you just look over those numbers you'll see that we've had some significant activity over the year 2012. The other thing I point out is that the January, non-filing of the January Periodic lawsuit will be initiated on February 14<sup>th</sup>. That's traditionally our largest lawsuit of the year. And, in conjunction with that, the statute requires that we send out notifications of delinquency basically of the filing. And the staff processed over 5000 letters that were sent out last month in regards to the pending lawsuit to the January Periodic. And then in conjunction with that, I know we've told you a couple of times in the past that we've been working on getting a new automated machine which is assisting us. You know in the

past we've had to manually, we've had to take all our staff and manually stuff letters and fold letters and all this stuff. And, we finally got the new machine in place. It was the first use of it was for the 27-Day Post. And, Dave and Hope Hardwick were just terrific in pushing that to get that set up. And it made a huge difference time wise.

**Evelyn Aquila:** Oh, I can imagine, yeah.

**Liz Hogan:** And the appropriate use of resources that we have. So, we're very appreciative of that. In addition to those things that are in the report, I just want to bring up two matters to you. I know in the past there has been an interest which the Commissioners have expressed... an interest that we institute a process for the collection of judgments. I want to assure the Commissioners that we are in the process of instituting that. We will be collecting judgments and I want you to be aware of that. We're setting up a process right now for how we are going to do it. But we will be doing it. And the other thing that we will be doing...

**Evelyn Aquila:** Thank you very much.

**Liz Hogan.....**after the January lawsuit is we will be implementing the provisions of the Ethics Bill Chapter that required, I think it was 399, that required the, it provided for the suing of treasurers and candidates appropriately who missed three filings in their election cycle. And so, with the January Periodic, this is a first basically um, this is the third report that everyone, you know, would owe us. It's the trigger report and so, we're doing an assessment now. We're setting up a process for implementing after the lawsuit for the January Periodic, for bringing a lawsuit for that, you know; basically we repeated missing three filings. Now that has an increased significant penalty and we tried, if you recall, at the conference in January we raised it to the local Commissioners because it has this significant financial impact. I mean, just for not filing one the penalty has been raised to \$1000 ceiling. The three strikes, which is what we, you know, in house call this, is a \$10,000 financial hit, a lot of money. And, so, we've tried the best we can to let people know that this was coming and we will be instituting that in the spring.

**Douglas Kellner:** Do you have a rough idea how many people are going to fall into that category?

**Liz Hogan:** No, honestly I don't have it. I don't have that information but we can try to...

**Douglas Kellner:** Dozens or hundreds?

**Bill McCann:** Well, it depends on the parameters because you have the "A" filers and the "C" filers and depending on the scope of implementation...

**Douglas Kellner:** You're using that jargon...

**Bill McCann:** Well, Commissioner the original system of filers we call the "A" filers that file their ID, that's for all the offices that were originally required to file here. In 2006, with the advent of local filers

having to come here, we gave them a “C” indication for County Filers. And, so, there are separate groups with separate filing obligations. So, depending on the implementation and scope, it will determine that. So, it, it could be rather large.

**Evelyn Aquila:** Now, is there a grace period, even if, you know, they did all this and haven't filed. When they finally decide to file, do they not get the fine, say it's after the time, do they get...

**Liz Hogan:** You mean for the three strikes or do you mean toward the original...

**Evelyn Aquila:** Right after three strikes.

**Liz Hogan:** Well, the three strikes applies to people who have not, as of the time we bring the lawsuit, given up the filing. If they were delinquent in making the filing but have actually made it, that's not what this law provides for.

**Evelyn Aquila:** I wasn't sure of that.

**Bill McCann:** Well we do, you can imagine, when the process servers and I'll get to the point on that in a second, you know, with the process servers and the mailings and all the interaction we have with the filers, it does bring people after they got sued, then they come and file. So, if we do get responses, that's our ultimate goal then yes then they would be in compliance. But this would be for the people that...

**Evelyn Aquila:** That's why when red lights, you know when you see a process server you should get your filings in.

**Bill McCann:** I mean the statute does allow for the people when we bring this lawsuit to bring mitigating factors to the court's attention. That's on their, they have an ability to do that in their reply to say whatever their issues are and I anticipate that that will be rather detailed because, you know, we'll be able to...

**Evelyn Aquila:** The treasurer does.

**Bill McCann:** Or they say well I, you know, a lot of people even now when we sue people, they'll often say, oh, I had technical problems. Well what does that mean? Then we go look in the system to see what interaction we had with them. They're either just saying that or if they really did. But, by and large, the, you know, this will be the first time we're doing it so it will be interesting to see how the implementation will work. But towards the issue of process servers, our five year contract expires with our current process server. We've submitted to OGS our draft scope. They want it out by the 25<sup>th</sup> of January. We provided it at the beginning of the month of January. And so, we're waiting to hear back from OGS but we anticipate releasing that and the contract reporter and the state register and all those profit fees and then we fully anticipate having a new vendor online. The difficulty that we have with the process servers is that because of the scope of our process serving, and it's geographic scope around the whole state, it's very difficult to find process servers on a centralized contract basis that can fulfill all of those things and

so, actually the impact was significant in the last contracts because our vendor, because of Hurricane Sandy, they're offices were literally under water. And so we had to delay the bringing of the thirty two day pre-general until after they were able to get their offices back up and running so that we could sue for both that and the eleven day. So, there was that because they happened to be located in lower Manhattan. But, we don't know, obviously, how many vendors will submit, but this wasn't the first time, we've done this several times now. Not an inconsequential expense to the Board.

**Evelyn Aquila:** No.

**Bill McCann:** But, but we're in the process and by all accounts, you know, that's proceeding smoothly.

**Douglas Kellner:** Good. Now in terms of the Enforcement Report, I see that we have got more than a dozen from 2011. Have we now closed out all of the, all of the complaints from 2011?

**Liz Hogan:** Yes.

**Bill McCann:** Correct. We have a, currently there are ten remaining from 2012, the bulk of which are from the election cycle. And, as you know, complaints received during that cycle are pending. So, we anticipate...

**Douglas Kellner:** So, we are now closer to getting current?

**Bill McCann:** Oh, I would say we're current.

**Douglas Kellner:** Okay, good. All right well thank you for getting them out. Anything else on Campaign Finance? So, let's start our discussion on the Central County Absentee Systems. Anna, you want to just give some background on this issue?

**Anna Svizzero:** I can. Both of the optical scan system vendors that we have now developed central count systems that use for canvassing absentee ballots, affidavit ballots. Those systems were certified. They're now available for purchase with by the County Boards of Elections. Some counties have arrangements with the vendors for replacement of the existing Sequoia Teamwork Systems to be replaced by the Dominion Central Count System, so there's that conversation that is ongoing at present. Other counties that never had a central count system but that have a significant number of absentee and affidavit ballots for process are looking at acquiring these systems. So, that conversation is also happening. The question, the overarching question I think that we have is whether or not the existing Sequoia Teamwork System needs to be certified to the standards that we've set out in the VVSG that we've adopted under 7-200 of the Election Law and also the regulations in Part 6209. I guess our position was that we had to recertify that system because the standards had changed significantly and we thought that's how we were reading the statute but we've just begun those conversations here at the Board to find out if that's indeed the case. I don't know how that's going to progress moving forward. But we also have not heard from the vendor, from Dominion which acquired Sequoia as to whether or not they're going to, if necessary, if the Board determines that certification is necessary, if they intended

to pursue the certification of that system. Certification is costly. They just spent a lot of money on certifying their new system that they're prepared to move forward with and are moving forward with. The question remains, what to do with the Teamwork System. So, we have the two overarching issues, one, does it need to be certified and two, does the vendor intend to pursue certification?

**Jim Walsh:** Is there a price on this?

**Anna Svizzero:** On the cost of the systems?

**Jim Walsh:** Yeah.

**Anna Svizzero:** I don't recall what the two prices were; they're significant, somewhere above \$30-40,000.

**Bob Warren:** One was over \$100,000.

**Anna Svizzero:** Right.

**Anna Svizzero:** One was over a hundred thousand. One was about forty thousand if I remember correctly.

**Douglas Kellner:** So, let me put the issues to the Commissioners and I'll share my thoughts on this. The Sequoia Teamwork System was certified in 1999 or maybe it was 2000.

**Anna Svizzero:** 1999 and then small upgrades to it for New York City.

**Douglas Kellner:** And prior to the adoption of the Accuracy Standards in the Help America Vote Act, the in 2003 there was an extensive technical investigation that the New York City Board did with a vendor over problems because the machines never came up with the same numbers. You'd run the ballots through three times and you'd get three different results. I don't know whether or maybe I should just ask the question to Bob and Anna, is whether since 2003 there's been any subsequent testing to determine whether the issues that were raised in that 2003 report have been definitively resolved?

**Anna Svizzero:** None. Not that I'm aware of, no.

**Douglas Kellner:** So, it strikes me that continued use of that equipment which is already more than a decade old should be evaluated. And Anna raises the question of whether the vendor is going to pay to have it recertified. Well, it's certainly not in the vendor's interest to do that because if the equipment were decertified then the vendor would be able to bid on selling new equipment.

**Kimberly Galvin:** But that's not, excuse me, but that, that wasn't the position they gave me at the conference. They said if we required recertification, they would seriously consider it.

**Douglas Kellner:** Well, that's good. Then I would add that the additional option...

**Anna Svizzero:** I just want to say that that's different from what they told me two months ago. So, obviously there's more conversation happening.

**Douglas Kellner:** Which is good, that's positive. I would add the additional option which is that New York City could seek to recertify it right? The statute doesn't require that the vendor make the application?

**Anna Svizzero:** No, the city could but they have to have...

**Kimberly Galvin:** I don't know that they own it though. Do they?

**Anna Svizzero:** They'd have to have source code access and they'd have to have staff on board to make any changes to the source code.

**Douglas Kellner:** Well, don't we already have the source code for the old Teamwork system?

**Anna Svizzero:** It's in escrow but it's not here like our new escrow system is, it's in escrow at Iron Mountain. So the vendor would have to surrender it and the City Board would have to have the staff on board with the skill sets to modify source code or anything that came out of it from the Source Code Review.

**Douglas Kellner:** All right. Well...

**Evelyn Aquila:** Do you think they're talking about what they want to do with this or how they want to reach a solution?

**Anna Svizzero:** Not to me.

**Kimberly Galvin:** Well they have, I have had conversations, well just, just in the context of other things. I mean, as they're considering the runoff possibilities and all the things, I think the Teamwork System is an integral part of some of those options. And as their machine person told me to switch vendors and switch systems now with everything else going on and have to train the entire staff and use a system that's never been used statewide would be problematic for them under these circumstances.

**Anna Svizzero:** It's a transition period we talked about at the last Board Meeting was up to two years.

**Douglas Kellner:** Yeah, I would suggest...

**Kimberly Galvin:** Right.

**Anna Svizzero:** Have to make that transition now.

**Kimberly Galvin:** Right.

**Douglas Kellner:** I would suggest that we draft a formal resolution for the next meeting that would set a deadline of December 31<sup>st</sup>, 2014 for recertification of the existing system. Well, that we would decertify the system, unless it were recertified by December 31, 2014. I'm just throwing this out for discussion now. I think there should be a formal resolution drafted on this that would explain...

**Evelyn Aquila:** We'll talk about it at our next meeting though, you know, this is a big thing.

**Douglas Kellner:** I mean this is old business, right? We, we're trying to...

**Evelyn Aquila:** Right. I'm sorry, I'm sorry.

**Kimberly Galvin:** This is old business but the discussions haven't started and hardly as to whether or not...

**Douglas Kellner:** Right. So, I'm trying to get those discussions started. I, I tried to do it a month ago and yet you tell me the discussions haven't started internally. So, I'm trying, I'm trying to move the process along without foreclosing any options yet. But my suggestion, at this point, is just a suggestion. Otherwise, I'd draft a resolution myself, is that we set a deadline that the resolution indicate that the reason for de-certification or because of the modification of the state law and federal law, in particular, because of the accuracy standards required by the Help America Vote Act. And that, that either the vendor or the counties that use the system, submit it for testing to show that it complies with current standards. Now, the date, the December 31, 2014 date is significant because it would mean that if they were going to go to a new system, they would do it in the off year, the 2015 off year elections.

**Kimberly Galvin:** Commissioner, respectfully, wouldn't it make more sense if we reviewed the system to see if it was compliant before we made a motion to decertify it?

**Douglas Kellner:** Well, if you're going to do that, that's fine but that's a big project. And...

**Anna Svizzero:** Who is going to pay all that source code review?

**Kimberly Galvin:** Yeah. Well, I think the conversations would have to uh, I just started to, yeah, we would have to, because I think the statute says we have to review the technology to see if it is compliant.

**Douglas Kellner:** Right. But, but...

**Kimberly Galvin:** Initially before we would...

**Douglas Kellner:** But I've been asking this for a while and you're telling me that this process hasn't started yet. So, what do the Commissioners have to do to get the staff to actually do it?

**Anna Svizzero:** I am the staff. That's the first thing.

**Evelyn Aquila:** Bob did you have something to say, I thought you wanted to be heard.

**Bob Brehm:** When I think there was a money issue but I don't think that's the issue here.

**Evelyn Aquila:** Okay. I thought you had put your hand up.

**Bob Brehm:** You know, when you were talking about the cost of the system back then but you've moved on a little bit, but it's my understanding that in the purchase arrangements, those counties that had the Legacy System is a certain amount of what the vendors said they would replace with the new system. And I'm not sure it's dollar for dollar, because they bought additional, they might have bought a second system like in Monroe County to deal with the overflow. They might get one replacement, but they're not getting a one for one replacement. In those counties that it's not a replacement, it, it would be the cost if they wanted to buy this system. But to those counties that have a Legacy System, it is my understanding the vendor had a certain proposal to replace part of that equipment.

**Jim Walsh:** So, fall under the title of mandated increase to a county.

**Bob Brehm:** Well that's part of the whole Help America Vote Act. There are a lot of Legacy Systems out throughout the country whether they are electronic or mechanical and we all have to move on because some component that was evaluated. Whether it's the accuracy testing component or the source code review, whatever those VVSG's that, you know, components that deal with central counting. And there are a certain number of them that we used to set up the testing regimentally true systems to certify them. You know the evaluation of what was in the VVSG that required our testing. And, you know, what component of the Legacy System, Central Count System already complies with that or what needs to be evaluated in some manner to know whether it does or doesn't. You know, some of the evaluation is more technical and it will require -- it may require -- a review of our testing lab. Who pays for that? You know, the city certainly could or the vendor certainly could. Theoretically we could if we had an overarching issue to do it.

**Douglas Kellner:** And we still have some HAVA money left, right?

**Bob Brehm:** There is some, yes.

**Evelyn Aquila:** Enough to do this?

**Bob Brehm:** We don't know.

**Evelyn Aquila:** It's hard to say.

**Gregory Peterson:** I, I have no problem with a resolution of that sort. However, I'm very conservative in nature and, you know, I always say give me the facts and then what's your conclusion based on these facts and then I have a second to ask him an intelligent questions. Very frankly, right now, I couldn't ask an intelligent question. So, what I'd like to see, look, we've been complimenting our staff up and down all this all morning because I think they deserve it. Um, I think that the staff should be given our direction to get this thing moving, you know, without necessarily putting it in writing and have a resolution where we may paint ourselves into a corner later on and go "Whoa, what did we do?" And I would like to at least make an intelligent vote taking a look at this and saying well you know what, yeah, that's appropriate or no this is going to cost X amount of dollars or yes, it's going to affect three quarters of the state one way and New York City another way or, you know, the other twenty-five percent another way, I don't know. And at this juncture, I frankly I'd be operating in the dark and that makes me very uncomfortable.

**Jim Walsh:** I think it's a little early. I think we have more questions that have to be answered.

**Douglas Kellner:** Well, that's the point.

**Gregory Peterson:** But I think...

**Douglas Kellner:** I agree with everything you said and what I'm trying to do is make it happen.

**Gregory Peterson:** I agree. I have no problem with that at all.

**Douglas Kellner:** All right.

**Evelyn Aquila:** We need more info, I just wanted to say, delay this until next month's meeting and put it on because in the meantime, give us more information that we can understand. Not everybody is brilliant.

**Douglas Kellner:** I don't have the answer either. I'm not saying I have the answer.

**Gregory Peterson:** I think what Commissioner Kellner was saying frankly was, you know, let me make this the impetus to get this thing done, which is fine and I understand that. However, I don't think necessarily that we need that drastic an action to get the ball rolling. I think, given our position as a Board and 4 commissioners and say look, we want, we want answers to this. I want to be able, we all want to be able to make an intelligent decision or conclusion but that has to be based upon what we know. Right now we don't know. And as I said, you know, it's a whole different ballgame I think wrapped in the City of New York as opposed to Buffalo or you know...

**Evelyn Aquila:** But at the same time, like what Doug gave us though was a deadline to know which is also good. He said, you know...

**Douglas Kellner:** Well, if you tell the city now, you know, 2014 may be the last time that you're going to be able to use these machines unless you do something, but that's...

**Gregory Peterson:** See the consequences because I'm going to understand it.

**Douglas Kellner:** Look, and I think that's, I agree with everything that you said. So, I think, is it clear Todd and Bob and Anna, I don't see is, Joe isn't here right?

**Bob Brehm:** Right.

**Douglas Kellner:** Okay.

**Anna Svizzero:** Bob Warren's here and he's going to be here tomorrow.

**Douglas Kellner:** So, I mean do you have any questions about what we're asking you to do? I mean I think what Commissioner Peterson said summarizes it,

**Anna Svizzero:** I'm fine good, uh huh.

**Doug Kellner:** Good.

**Douglas Kellner:** Okay great. Thank you.

**Evelyn Aquila:** Thank you both.

**Douglas Kellner:** All right next is the 2013 Legislative Package. Bob or Todd you want to explain what's happening.

**Bob Brehm:** We have everything carried forward on a proposed list that we're still working on that we had on last year's list, the Article 9 piece of legislation and an additional discussion that you asked at the last meeting to bring to summarize to at least have a draft and talk about which was the Electronic Poll Book. So, there's a list of nine items that are similar to what we had last year. And then there are two additional items that we are working on.

**Douglas Kellner:** All right.

**Kim Galvin:** The actual Bill Drafts will stay the same because we just altered the numbers on the blurbs. We're just going to have to update the draft numbers but they're already done.

**Todd Valentine:** No language.

**Kim Galvin:** There are no language changes.

**Douglas Kellner:** All right so I move the adoption of the Election Law Proposal for 2013 that has been distributed.

**Jim Walsh:** Second it.

**Douglas Kellner:** Those in favor say aye.

**All:** Aye.

**Douglas Kellner:** Opposed? No? So that carries. Now the two items that we're working on I would like to discuss again the timeline for trying to get this resolved. I'm especially frustrated about the Article 9 Draft because we've been circulating it and recirculating it and I think it's very important because the current, the bill that passed the Assembly last year basically set out separate standards for New York City which I think is not a good idea. That we should be striving for uniform standards statewide or, if we're going to have optional procedures, then to provide those options on a uniform basis so that everybody has the same option. And I know that a revised draft went out, well, the latest revision listed Friday.

**Bob Brehm:** Right.

**Douglas Kellner:** All right, so, can we get comments and try to come to consensus on this before our next meeting?

**Todd Valentine:** Well we have a draft and, you know, and again, we only got it on Friday. But we can, I mean the Assembly Bill was reintroduced this year. It was a subject of negotiation in the Legislature very late into the session last year. But the Bill that was introduced does not reflect any of the changes or agreements that both sides had come to last year. So it just carried forward where they left off. It just carried forward what they had; they hadn't done an amendment to it.

**Douglas Kellner:** Are you aware of portions of it that the Senate has gotten and plan on changing that we haven't seen or?

**Todd Valentine:** No, no but them...

**Douglas Kellner:** But you think that there were?

**Todd Valentine:** They thought they had something of agreements at this time when the clock ran out, as they say.

**Douglas Kellner:** Well, see...

**Todd Valentine:** So, I don't know.

**Douglas Kellner:** My goal Todd is not necessarily a partisan one and not necessarily to be carrying water for either the Assembly Democrats or the Senate Republicans but to give our professional opinion as to, as to how this should work. And I realize that, I'm not sure I understand why it's all that political for us to come to agreements on what we need to do. And then the Senate and the Assembly are going to do what they want with it anyway.

**Evelyn Aquila:** They don't need us.

**Douglas Kellner:** But at least we would go on record from a, you know, as election professionals as to what needs to be done.

**Gregory Peterson:** Doesn't that put us in the position though of telling the Legislative and duly elected officials what to do?

**Douglas Kellner:** Well...

**Gregory Peterson:** We're going to paint them in a box and, you know, when it comes to something like that, my attitude frankly is to back off a little bit and let the people in the political arena deal with it and then come up with something. If they ask for our opinion at that juncture or input at that juncture, we'll be happy to give it. But I don't, I don't want to put the cart before the horse.

**Douglas Kellner:** Well, Commissioner, my problem is, is that the Bill that passed the Assembly which I support, is better than the current law, has a lot of technical issues in it that we need to be addressing and to go on record with. And, I think it's a big mistake to just take a backseat and say they'll do it because they aren't the people who are administering elections. To the extent that there are political decisions in them, I, you know, I respect that they can make the political decisions. But if we're not saying, if we're not pointing out the technical issues, I think that it is a problem.

**Evelyn Aquila:** No, he knows for himself. I think the members of the Legislature don't always have the close look that we have and for that reason I support Doug. I think he's right, you know. They've always gotten our opinions in the past. They've, I don't know how many times they haven't paid attention or didn't pay attention, you know. I know they have more on their roster than just elections. But, I think if we...

**Douglas Kellner:** Well, it would be...

**Evelyn Aquila:** ...help them like making some things clear, we should do it. That's all.

**Kim Galvin:** We'll try.

**Douglas Kellner:** It would really be helpful because I would like to try to develop at least some consensus within our agency because obviously I can take off, you know, what is now my draft and say here's the Kellner draft. And...

**Evelyn Aquila:** Well, you could put my name to it. I support you.

**Douglas Kellner:** ...and circulate it around. But, you know, I'm not really interested in doing that.

**Kimberly Galvin:** Well, only because of political issue necessarily wouldn't, you know, both sides of this building were intrinsically involved in the negotiation of that bill. I mean both sides were working with their counter parts in the Senate and Assembly and they got to a point and the negotiations stopped. But for a bipartisan introduction of one side or the others, it becomes a political issue.

**Douglas Kellner:** But I'm not aware that that happened in this.

**Kimberly Galvin:** It did happen.

**Douglas Kellner:** That there were...

**Kimberly Galvin:** It did happen.

**Douglas Kellner:** All right, well, we'll talk about it again next month and see if we make any progress on it. And um, you know, to a lesser degree the Electronic Poll Book is again just a technical statute. But, you know, it would be nice to get everybody's input here.

**Evelyn Aquila:** I don't want to; I don't want to waste any energy.

**Douglas Kellner:** Okay. I think that I'll agree to move on. All right so the next item I understand is a discussion about the New York City Runoff Election which I think is very important for the State Board to increase its profile on the issues that are coming up on this. The City Board recently did an Internal Report I guess to the City Council and the Mayor's Office talking about the extraordinary difficulties that they would have in running the Runoff Election. They said that the budget, in order to comply with all the existing statutes and regulations, would be half a billion dollars, five hundred million (\$500,000,000).

**Evelyn Aquila:** Say that again. How much?

**Douglas Kellner:** Five hundred million dollars (\$500,000,000) is what the New York City Board of Elections says is necessary to comply with all the existing statutes and regulations.

**Evelyn Aquila:** Well, let the two candidates go down and run it themselves.

**Douglas Kellner:** All right. I am, I am...

**Evelyn Aquila:** I'm being just facetious. I'm sorry. Forgive me.

**Douglas Kellner:** I am extraordinarily skeptical of the City's Report and personally I have been advocating several issues, but I think that it's very important that the State Board be involved. If I could just outline for a minute, I think many of us have been publicly saying that the best solution is to change the primary date, to move it up from September 10<sup>th</sup> to an earlier date. But the feedback we're getting from the Legislative leaders is that's not going to be seriously considered this year. And we're already getting pretty close to the deadline when it's too late to do that anyway, even if everyone agreed that it was a good idea.

The second solution that I have been proposing along with several others is to abolish the Runoff Election either entirely abolish it or provide for instant Runoff Voting. I do believe that it is technically feasible for the City Board to use the current scanners for most of the count of a, of an instant runoff voting election. But it would not be elegant because the, if it were necessary to go to second or third choices or whatever format is ultimately decided to do that.

**Evelyn Aquila:** They'd be in court before they do anything.

**Douglas Kellner:** Well, they would have to, the scanners can count the first place votes under the technology that's about to be certified as part of the Bengali upgrade. But to count the second or third place votes, they would have to go to a system that's used in North Carolina or Minneapolis where the second round would either be hand counted based on the score from the first count or could be scanned at the, by central scanners. It's a little bit complicated but all I'm saying is that it's technically feasible. By having an instant Runoff Voting they would preserve the concept of the runoff to make sure that there were significant support within the party for the parties nominee for the Citywide Offices and it would save the City between fifteen and twenty million dollars which is the cost of running the Runoff Election. So, in order to do that, that would require either State Legislation or an Amendment to the City Charter which the City Council could adopt.

Given the real possibility or perhaps even likelihood that there's not going to be any legislation to change the current system. Oh, and another alternative that I understand is being considered, is to change the Runoff from September 24<sup>th</sup> to October 1<sup>st</sup>. In other words, push the Runoff back a week... Pushing the Runoff back a week gives a little more time to process the Primary results. But, it then shortens the time between the Runoff and the General Election and the problem can spill over into the General Election then because of the delay from the Runoff. So, that's also on the table. If there's no legislation to change this, the City's Report of a half a billion dollars in order to comply with existing regulations is basically their interpretation of our regulations governing the Logic and Accuracy Testing. Where they are saying that they would have to print in advance of the Primary Election, before they know who the Runoff Winners are, all of the theoretical combinations for the runoff and test those ballots which I think is extremely unrealistic and unproductive for them to even lay that out as a suggestion.

**Kim Galvin:** And buy a whole new fleet of machines essentially.

**Douglas Kellner:** Well, they're saying that but we don't think that's, well, we meaning Anna and I don't think that's true either, that they have enough machines. So, my suggestion is that the Commissioners go on record saying first that we would ask the staff in the Operations Unit to take an active role in consulting with the City Board of Elections on methods for preparing the Runoff Election under the existing Statutes. And, as part of their mandate, to look at our own testing regulations to work with the City to put together a viable testing plan. Now the City is saying given the unrealistic cost of complying with the existing State Regulations, that they're, that they would have only two alternatives for holding the Runoff under the existing Statutory Scheme and that is to either use the lever voting machines, setting them up the way they were before. But, of course, that would require a statutory change; that would require an act of the Legislature. Or to do an all hand count Primary and to not use the scanners for the Primary Election, I mean for the Runoff Election.

**Gregory Peterson:** Aren't the, excuse me, aren't the lever machines already certified technically?

**Douglas Kellner:** No, and they're illegal. In other words, the Legislature said that the machines cannot be used but they did, they did pass an exception allowing them to be used for Villages and School Boards.

**Bob Brehm:** Run by Village Clerks and School Districts, not Village Elections run by Boards of Elections.

**Douglas Kellner:** So, those are what's on the table and I'm suggesting that, as I say, given the recent history of the City Board sort of going out of their way to create Rube Goldberg interpretations of our regulations, that it's incumbent on us to work on a proactive basis consulting with them now, both evaluating their internal reports and making active suggestions on how to do this in realistic ways. And I would add that if it's a choice between relaxing the Logic and Accuracy Testing Requirement that we have which are pretty strict and running an election all paper, that we're better off relaxing the regulations with this particular case then we are on insisting on such technical compliance that they become unworkable and require a hand count which would be even less secure and more problematic than a relaxed Logic and Accuracy Testing Regime.

So, I give that outline. I noticed today that we're joined by Natasha Kerry from the City Council and Natasha is there anything that you can report to us that might be helpful to guide the State Commissioners.

**Natasha Kerry:** You know what, I actually was just told so I really can't help the meeting so I honestly can't give you any suggestions right now but certainly I could do it after with you when you have time. I apologize for that.

**Kimberly Galvin:** Commissioner, I think there's one overreaching also issue that we need to consider as we evaluate these options and that's if the two week window between the Primary and the Runoff does not change regardless of what you're Runoff looks like, you may not know the candidates in that time period.

**Douglas Kellner:** That's always been the case.

**Kimberly Galvin:** Right.

**Douglas Kellner:** And we have dodged that bullet in New York City twice where, where we came really close to having that problem.

**Kimberly Galvin:** So now, I mean, we could set up whatever, we could agree, we could find cause, we could do whatever, but there's a very good possibility in the, if there is a Runoff, that second and third is going to require and you go to the paper that comes in and you're not going to make the deadline.

**Bob Brehm:** To know if you have a Runoff?

**Kimberly Galvin:** To know who the candidates are?

**Todd Valentine:** Oh, really seven days after the Election for the receipt of the absentees if you have to go to that.

**Kimberly Galvin:** So, if it gets that close on either side...

**Douglas Kellner:** But that's already the case even with the lever machines. That's not something that, that's generated by the switch to the ballot scanners.

**Bob Brehm:** And even if, I know, I mean, when this was raised Todd and I and Kim met with the City Staff and people from the City Board at, during the Conference at the, at the Albany Hotel, I keep calling it the Crown Plaza, they change the name every three weeks. And we looked at their proposal and we had a general discussion. You know, part of, I'm not sure you, you use the Rube Goldberg approach, but, you know when, you know they're looking at every option and in the past when they had mechanical machines, every option. They still would winnow down the options as it got closer to, they didn't print every mechanical face of the ballot but they printed the ones they thought were likely. So they, you know, had to invest to have all of the supplies in house not knowing who might win but knowing, you know, instead of the two hundred and eighty (280) combinations, those that were most likely. So, at least it shrunk that number down to some extent.

**Kimberly Galvin:** But that was with the levers. If you...

**Bob Brehm:** But it's the same electro analysis, you know, there could have been two hundred and eighty (280), you know, in the past options also. But they didn't print all of them because they, you know, you talk to the City. They ordered all of the papers to be on the loading dock...

**Kimberly Galvin:** But I think their point is...

**Bob Brehm:** ...then they rolled with it. And...

**Kimberly Galvin:** But I think their point is they have to do the testing protocols. That's why they would have to print them all in advance.

**Bob Brehm:** Well, part of it is I think we have to evaluate the Rube Goldberg approach is part of it is you really don't have to test two hundred and eighty (280) combinations. It's probably a lower number.

**Kimberly Galvin:** Just hope the other one doesn't come out.

**Bob Brehm:** Well, they've done that in the past. So, I'm, yes that's part of the analysis that they've always done on mechanical machines.

**Todd Valentine:** Yeah, but that was just printing. You really didn't need to test the lever machine because it had already been tested before, you know, it's a choice of two. All you were doing was swapping out...

**Bob Brehm:** Well there has to be a testing protocol that's reasonable.

**Todd Valentine:** ...the strips, whoever, whoever won and you were printing a lot less because again, you're just printing the strips to the levers as opposed to all of the ballots.

**Anna Svizzero:** You're not going to put the paper on the front of it. You still have to configure it and you do still have to cast some votes on it to make sure that it works.

**Evelyn Aquila:** Right.

**Anna Svizzero:** And if there's more than one Runoff, you have to have the cross, the lockouts for the difference between the two parties, several parties that...

**Kimberly Galvin:** It just isn't as time consuming or as costly.

**Evelyn Aquila:** What I'm concerned about is the turnout. Turnouts for Runoff Elections are very low and you can understand that. And, so, therefore maybe it could be an easier way. I don't know. I'm not really an enemy of the paper ballot in a Runoff Election.

**Bob Brehm:** But during that brief time...

**Evelyn Aquila:** I know nobody agrees with me but I'll tell you, I was an Inspector for years. We would have Runoff Elections where we sat there all day to get three voters. I'm telling you.

**Anna Svizzero:** Before we let lever machines back in by the thousands...

**Evelyn Aquila:** And back in Brooklyn not having districts where...

**Douglas Kellner:** Well, I...

**Anna Svizzero:** If you let levers back in the mix and add like further identified in Amy's report.

**Douglas Kellner:** My intention today was not to go into substantive issues but to ask my fellow Commissioners for a mandate to the staff that they, you know, make this a priority to look at the City's Report, to consult with the City's Report and to prepare...

**Bob Brehm:** They gave it to us at the, when we meant with them.

**Kimberly Galvin:** No, those were their options. All our commissioners have changed since then maybe they have to revisit that.

**Bob Brehm:** But that's what they gave us. We asked them to give it to us, they gave it.

**Douglas Kellner:** Kim, I'm asking that we, let's just get down to what it is that I'm asking because this is work for the staff...

**Kimberly Galvin:** Right, I...

**Douglas Kellner:** But it's something that in my view really needs to get done on a priority basis because we have a role as the State Board in making sure that the election system works.

**Kimberly Galvin:** I agree.

**Douglas Kellner:** And to the extent that the elected officials say these are the rules, even if they're not listening to our advice on how difficult it is to comply with those...

**Kimberly Galvin:** I just didn't realize that the options they provided to us were the City's Report. I thought there was an additional thing that they gave.

**Bob Brehm:** No.

**Douglas Kellner:** No, I'm not aware of anything else.

**Kimberly Galvin:** That's what I was, that's the only thing.

**Douglas Kellner:** But to me that draft contained a couple of appalling analyses that along the lines of crying wolf, which are a shame because there is a serious problem here in dealing with the logistics. But when they exaggerate it with lots of unrealistic side issues and, for example, saying it's going to cost half a billion dollars (\$500,000,000) to comply, then that starts to undermine their credibility. And, we need

to come in working with them to evaluate what their suggestions are but also to the extent that they're not looking at, at what we think are the best ways to do it. We should be making suggestions as well. And to the extent that our regulations are a problem, that we at least evaluate the cost benefit of aspects of our regulations with at least the possibility that the Commissioners would revise the regulations for the particular situation of a Runoff Election that has to be held just two weeks after a Primary Election, so that there is a realistic way to conduct the election.

And as I say, to me the cost benefit analysis, is it more secure to hold the Runoff Election using relaxed standards for Logic and Accuracy Testing than it is to just do it as a hand count primary and that you just weigh the two of them?

To say, I'm not making any substantive recommendations, but I'm asking that the staff spend some time on this and work with New York City so that we have input on this and that they don't do what they did with their canvas procedures where they invented unnecessarily complicated system that's much more costly and less efficient than what everybody else in the state is using.

**Evelyn Aquila:** I apologize, I misunderstood you at first. You know...

**Gregory Peterson:** I agree that sounds reasonable.

**Douglas Kellner:** All right so the four of us are in agreement on that, Anna, Bob, Todd do you have any questions about the scope of this and what we've asked you to do?

**Anna Svizzero:** No.

**Douglas Kellner:** All right thank you. Now, in our packets were two reports evaluating the elections, one from the New York League of Women Voters and another from the Independence Living Council. I wanted to acknowledge both of them and thank them for sharing their reports with us and for their excellent work and Aimee Allaud is here today and perhaps she could just spend a minute or two summarizing what's in the Leagues' Report.

**Aimee Allaud:** Thank you Commissioners. I'm glad to be here today to share with you the results of our Election Survey of November 2012. This is actually the third time we have done it, 2009 when we had the partial implementation of the new voting machines and then 2010 also. So, I actually don't want to go into the results today. I think they will speak for themselves. I do have hard copy reports for all of you. It also will be posted to our State League Website and we will be sending copies to the local Boards of Elections, hard copies also. The survey, just briefly tells you we had participation rate of over a thousand statewide voters, not limited just to league members. Actually we had three hundred and forty (340) respondents of over the thousand whom self identified as non-league members too. And, the participation rate was very much higher in some of the more populous counties, Downstate, Westchester, Albany and the urban areas. But it actually does include reports from forty six (46) counties in the state.

So, I think it was interesting. We saw an appreciable improvement. I wouldn't say appreciable, it was really in discreet areas. As people have come to be more familiar with the voting machine and the process, I think that's reflected in the survey results on specific questions compared to 2010. However, there are areas that still show a big need for improvement and that primarily seems to deal with the privacy issue. In general, the privacy issues, privacy in the polling booth and in the polling place, and also on a need for improved instructions on the voting machine, interestingly enough. That was the only negative result we saw. People actually felt, at least the people who responded to the survey, indicated they felt there was a greater need for instructions there.

So, I hope you'll have an opportunity to read it. It certainly, we want to commend the Boards of Elections and yourselves for an incredible experience that you all had to deal with dealing with the Hurricane Sandy results. And, I think you're all to be credited for the work that you did enabling voters to have the opportunity to exercise the franchise too. So, I'll leave these with you and if you have any questions, feel free to contact me or the League or our counter parts in the Leagues across the state too because I think we're all interested in the same thing which is to make voting an opportunity for voters to express their choice in the voting booth. Thank you.

**Evelyn Aquila:** You're welcome. I'd like to say thank you also. It was incredible when you went to places like Coney Island and the Rockaways and Staten Island when you see the way those people really did an excellent job and I think if we said at every one of our meetings thank you, it wouldn't be enough because it was, I couldn't believe Coney Island what they did there, I really couldn't. And the Rockaways, they had such good humor with everybody even though they were moved out of their schools and where they usually voted and were running around and getting people out. And letting people know and Staten Island, what happened to Staten Island was one of the worst things I've ever seen in my life and I didn't think I had a, the only reason I went out there is my girlfriend works out there for the Board of Elections and we always would meet and have a dinner late. And we didn't have dinner, I'll tell you but she handles a section and what those people were doing to get people to vote. Just so much was destroyed in their lives. I just have to say again is incredible. And I have to give some of that, a lot of that credit to the New York City Board for the help that they gave. You know, and were out there leading and helping those people. So, I think I said it at the last meeting. I just wanted to; I hope I never see anything like that having to be done like that again. But it was remarkable.

**Douglas Kellner:** I think we all share those sentiments.

**Gregory Peterson:** Absolutely.

**Douglas Kellner:** So, Amy, we do thank the League for their report and you should be aware that the League's Report as well as the report from the New York State Independent Living Council were included in the Commissioner's Packets that were distributed to the Commissioners and the staff.

**Evelyn Aquila:** And we thank you and the League of Women Voters has always been on the top of my list for helping women advance and thank you for all that work.

**Douglas Kellner:** With the uh, so we have the preliminary determinations on the Campaign Finance Enforcement Cases, does anybody want to go into Executive Session on that? All right, so a motion to adopt the reports as proposed by staff.

**Jim Walsh:** So moved.

**Gregory Peterson:** Second.

**Evelyn Aquila:** Yes.

**Douglas Kellner:** All in favor say aye.

**All:** Aye.

**Douglas Kellner:** And opposed? All right so those are, preliminary determinations are all adopted. Do we have a date for our next meeting?

**Bob Brehm:** Um, Passover and...

**Evelyn Aquila:** I had to leave my class, no Wednesdays. Any day but Wednesday, my poor little kids have had to...

**Bob Brehm:** The last week of March is bad if you look at the Holidays for Passover and Easter Weeks. So, either, if we try to, I mean if you can fit in, I mean it's hard to say, we'll try and fit in the certifications. Whenever we go down that path, people assume we're really going, we can, it's a crystal ball... that all the testing will be done right. But theoretically, you have up till the third week of March or roll it into April.

**Todd Valentine:** And given the time frame, just saying it would be more likely to have the report right at the beginning of April until sometime in...

**Evelyn Aquila:** What day is Easter? Tomorrow is...

**Bob Brehm:** I thought early March theoretically, sometime in March.

**Todd Valentine:** 31<sup>st</sup> of March.

**Douglas Kellner:** Well can we circulate dates then. It's far enough out that we could propose dates, circulate them by email to the four Commissioners and...

**Bob Brehm:** But you don't do the, Thursday, April 4<sup>th</sup>, you know, depends, would perhaps be the earliest after Easter that's not a Wednesday.

**Evelyn Aquila:** After Easter, thank you, thank you. It's just that...

**Douglas Kellner:** What about the third week in March? That's six weeks from now.

**Robert Brehm:** That would be the 21<sup>st</sup> is a Thursday of March.

**Evelyn Aquila:** Well, Tuesday, Monday/Tuesday.

**Bob Brehm:** Well, I'm trying to push it as close to the deadline to get maximum...

**Evelyn Aquila:** Oh, oh, oh.

**Bob Brehm:** if you wanted to try and get maximum time, either the 21<sup>st</sup> or the 22<sup>nd</sup> if you want to do it on a Friday, Thursday/Friday.

**Douglas Kellner:** Just thinking that I have a commitment in Atlanta that, on the 21<sup>st</sup>/ Then I would suggest we try not to go too long out because we have some of these other issues, that but, I mean, if the meeting is the only way to actually get the work done, we need to set...

**Evelyn Aquila:** These people work really hard when we're not here.

**Bob Brehm:** We'll try it. I mean if we know we're pushing up against the 21<sup>st</sup>, it would have to be early in April. You know.

**Evelyn Aquila:** The first week in April is Easter, right?

**Todd Valentine:** Yeah.

**Bob Brehm:** No, no, Easter is the 31<sup>st</sup>, March 31<sup>st</sup>. Palm Sunday is the 24<sup>th</sup>.

**Evelyn Aquila:** Oh, I didn't realize that.

**Bob Brehm:** So, Easter is the 31<sup>st</sup>.

**Evelyn Aquila:** Oh, okay.

**Douglas Kellner:** Wait, why not the week before, why not the Tuesday before Easter? Yes, we're adjourned.