

Jim Walsh: Good afternoon everyone. Welcome to our meeting of the New York State Board of Elections. Sorry for the delay but business sometimes gets more complicated. I would like to start off the meeting, if you would please, by introductions. My name is Jim Walsh. I'll be acting as the Chairman of the Board today. To my left, my right, I'm sorry my Co-chairman Doug Kellner, Evelyn Aquila, Greg Peterson, Todd Valentine, Paul Collins, Phil Burns, Anna Svizzero, Tom Connolly, John Conklin, Dan Valvo, Bill McCann, Cheryl Couser, Bob Brehm, Terry Breads, Bob Warren Guest list attached.

Jim Walsh: Thank you all. The first item of business is the minutes of the January 12, 2012 meeting.

Doug Kellner: I move the adoption of the minutes as read.

Evelyn Aquila: Second.

Jim Walsh: Alright, all in favor.

All: Aye.

Jim Walsh: Opposed. Carried.

Jim Walsh: Unit updates: Executive Bob Brehm and Todd Valentine.

Todd Valentine: Well, we continue to plan with our restacking committee – restacking is shorthand for the moving of the agency. So, you know right now we have met with our Office of General Services design and construction section and they are working on some plans for a proposed move to, I don't know if that has been announced publicly or not so, yeah, well moving yes but the location, I don't know if they are releasing that yet or not. Yeah, it's not far away but we're working on the design plans because it could change but I assume that we are still going there. They expect to have revised plans to, our plan to us at the end of this week and then we'll review that and make and see. There should be ample space in the area we are looking at. It's just then at that point we'll drill down for each unit to locate their particular employees within each little subunit of our own board. There should be ample space there. There is obviously space for a Boardroom, meetings, for a regular conference, space

Evelyn Aquila: Any private offices?

Todd Valentine: There are. That is one of the plus factors to this location. It did have that. There is a bit more privacy as far as that is concerned and, of course, ample storage for the petitions, room for working on the voting machines and we are also consolidating our storage. We have another off site storage facility just north of Albany in another state facility. It is a rented facility and we'll be able to consolidate this and save additional money.

Evelyn Aquila: What will be there?

Todd Valentine: It's a back storage we have for voter registration forms that get mailed out. It's also back storage for campaign finance primarily, old petitions that we will store until our construction date comes us we would store there. So, those will all now be consolidated into the same building, a different location than where we are. They will be on a different floor but there is ample storage space so we will be able to not only save the rent from our current leased space but also we do lease space in that warehouse that we will be able to consolidate to one location. So, that would be, that could be unique with only in one building. We don't have any personnel permanently located at that warehouse but we do have to go down there on a regular basis to not only file things but also to retrieve documents out of our archival storage.

Evelyn Aquila: And to check on the mail.

Todd Valentine: Yeah. So, that

Evelyn Aquila: You can throw everything out and not know who they belong to.

Todd Valentine: Well, our space is secure. Nobody is throwing it out. I mean it is in a locked storage space so nobody accesses it and the same will be, there are provisions for a secure location within, segregated within this storage facility in this building and we continue to work with the Office for Technology to determine a location for the site for the service for the data bases that we run and then for connectivity to the county boards to keep that operating in a smooth, seamless manner. I mean, obviously, we'll have to go offline at a certain point, but we want to minimize that. And, so we have toured, not me personally but we have had several people tour a variety of locations that they have offered to house the servers. None of them are perfect yet, all of them need some type of work either for space wise or we'll need to put security for our servers, or connectivity out to the counties and the rest of the world. A connection between our downtown location which will be and where we are anticipating locating the database is another end of Albany. That connection already exists so a question of just making it work is all we have to do. But that is not settled yet either and, of course, we are still waiting for the budget to be approved, you know, our proposed budget which does have a lot of these savings already incorporated into it. So, the sooner that we can complete the restacking, the less of an issue that we'll have going into the new fiscal year, and, we have everything else going on.

Bob Brehm: One bit of good news that doesn't happen often in the world of budget is the Federal Election Assistance Commission notified the states that there was another round of requirement money very small amounts for whatever states failed to use their lever replacement money by the time that was extended under HAVA. If they didn't complete it by the date certain they forfeited the money and the Help America Vote Act had a

formula to reallocate it to the remaining states. Our share of that is \$79,173. We made application as we would want to get our much fair share, completed all the application and Tom Jarose just gave me notice within the last two days is that the money transferred and it has been received. So, that is money that is here. We have the spending authorization under the state account to use that for whatever other kind of purposes we have so that is the little bit of good news that we have. Other than that, we did have another follow up meeting with the State Department of Motor Vehicles. They are working on a program as part of their review of mission critical programs and the reduction and stats that they have through the attrition and funding. They have identified the electronic voter registration activity integrated during the DMV transaction as a priority that they think will improve services. So they met with us here on February 13th to review. They had a few questions and we reviewed the process and what they were proposing to work through it. It looks very interesting. It is a way to really streamline those pieces of paper from the various DMV intakes directly to the County Board of Elections. You know, when we look at the NVRA annual report and of the percentage of debt we had, but generally of the NVRA agencies, 75% of the paperwork comes from the DMV site on average. So that if we can facilitate that getting from a DMV site to the counties quicker and in a more efficient way, they can use it, I think that will help them. So, we still are working aggressively on that program and I thought it was a productive meeting. Other than that I think it would be easy to say we spent a great deal of time since our last meeting working on various political calendars and responses to federal court that I know is big on the council's agenda also.

Jim Walsh: That is a good lead into our next introduction. Thank you very much for that Bob and Todd. Legal Paul Collins, please.

Paul Collins: Well we found an actual written report that the board has already adopted this month. Subsequent to the filing of that report, we received notice from the Department of Justice and our application for pre-clearance of the over vote screens devised by ES&S on an interim basis on both the scanner and the ballot marking device has received pre-clearance of the Department of Justice. That means in the special elections in New York City on March 20th they will be able to use those screens, which is good news. Also, the actual over vote case itself has been resolved. We now have a court blessing of the resolution, those screens have gone to the Department of Justice for pre-clearance as well, that is pending. The big thing that we have pending with DOJ is the blessing of the Department of Justice's section 5 pre-clearance unit of Judge Sharp's order of the June non-presidential federal primary in New York but I fully anticipate that they will sign off on that in relatively short fashion. Finally, the Appellate Division has issued an order with regard to one of the three Nassau county election machine case appeals and Nassau finally has to file a brief I think by the March 5th, so that is heating up. The Schultz case which sought to ban any voting machine in New York whether the old lever machines or the new electronic machines, they have filed their brief and appendix in the second circuit and we'll file on or before March 20th our reply. Again, Commissioner Walsh, it is always nice to be on the respondent's side because we won in

the District Court. And finally, the Gramalic Case, which sought to challenge the ban of the use of non-resident petitioner petition gatherers in New York, has been marked submitted on the 25th of March to a second circuit panel. Again, the respondent there, having won in the district court, and, other than that, everything else is pretty much in our written report.

Jim Walsh: Thank you very much. Election Operations, Anna please.

Anna Svizzero: Thank you Commissioner. Good morning. Good afternoon. In addition to our written report, we do have a couple of items to add. We are preparing paperwork that will certify the presidential primary ballot based on the outcome of today's board meeting. We are working with OGS on our contract renewals. That is quite an extended process so we are trying to get involved in that as early as possible. We are looking at the contracts for the testing labs for NYSTEC and also the voting systems. The voting systems contracts have a one-year extension in them and that has been triggered. We are also discussing ways to consider the procurement of central count voting systems so these conversations are just beginning with OGS. We are reviewing the regulations that are in existence that covered central count systems up until now. Bob Warren and John Ferri have reviewed those and we are looking to make sure that every requirement in the old regs is covered by a requirement in the new part 6209 and 6210 to make sure that we don't have any omissions and that we have incorporated all of the best practices that we have learned over the years using the central count system we have right now. We obviously worked through all of the objection process and worked with the council's office to review those items and prepare those documents for today's meeting and I don't believe that I have anything else. Joe, do you have anything to add?
We can answer questions if you have any.

Doug Kellner: Anna, there are two machine failure issues that are outstanding that have come up recently. One is in the city of Tonawanda. The manual count, they discovered that there was a ballot in the ballot box that had not been recorded by the voting machine and later on in the meeting I am going to comment more on the court rulings in the Tonawanda case. But, it is my understanding that the Erie County Commissioners are doing an investigation and I would ask that the state board also get involved in that because I think that it is very important that we follow up on every single issue where there is a machine failure. And, obviously, a ballot getting into the ballot box without being counted by the machine is significant. I think the Erie County theory right now is that there may have been a paper jam and somehow or other in clearing the jam, the ballot went through without the vote being registered. But, I think we need to investigate that further. And, then the other is the issue of the large number of over votes that have been recorded on a machine in the Bronx and I understand that Bob Warren is going down to the Bronx and is finally getting access to the election materials on that. And, I would appreciate a report of what we know so far and exactly what we are planning to do at the state board level on that issue.

Anna Svizzero: I can have Bob speak to that rather than me interpret how Bob has briefed Joe and I so.....

Bob Warren: We are going to go down tomorrow and I have talked to the Bronx and asked them to make available the election, the ballot definition election, the images for that machine that were collected, the physical ballots that were marked. And, they are going to have some extra ballots that we can have for tests and they are going to have the machine in there that is in question. We are also going to look at their test deck, make sure that they created their test deck properly and the results of the test deck processing. And, what we can't get through, we are going to bring back with us, all the images that they have so that if we have to do further examination, we'll have them here and we'll try to determine whether it was a human error in designing the ballot, whether it was a printing error in printing the ballot or whether it was truly a machine error. It could end up being one of those or and the other possibility is they are all over voted ballots. And then it is a question of usability or the design of the ballot that caused the problem. Because this is from the 2010 Governor's election and I have been doing some analysis on some of the other counties that had some incidents of over votes and some you can make an argument that may have been caused because of the wrapping. These are on the landscape; theirs is the portrait, so that may come into play in theirs.

Evelyn Aquila: Bob, what I wanted to ask is that the, are either of these cases the over vote in the Bronx, or maybe Paul would have to answer this in the Tonawanda case, are they part of any of these lawsuits that you just mentioned? Isn't there a lawsuit to say you just go to the paper ballot?

Paul Collins: Certainly Evelyn, Commissioner Aquila, the over vote case which was brought by the NAACP within the context of discovering in that case New York City was obliged to reply to discovery request from the NAACP and that is when this anomaly in the two scanners at one poll site in the Bronx came into play. The case has been resolved as against the State Board of Elections. It has not been resolved as against the New York City Board of Elections and is ongoing in the event that there is some unwillingness on the part of the New York City Board to implement the new warning screens that we have agreed on with the plaintiff. In the Tonawanda Case is not on our radar screen and it involved a local election out in Erie County.

Doug Kellner: Bob, I have two additional items that maybe you have already considered on this. One is will you have access to the original canvas reports, the original canvas tapes to confirm that the canvas tapes actually showed the numbers that...

Bob Brehm: They didn't mention that but I can call when I get downstairs.

Doug Kellner: Okay and then second is to review New York City's procedures, their post election procedures. Not just following the letter of our post election testing rules but also whether they have anything in place so that when there are anomalous results that

that would trigger a special review. And it seems to me that when you have an anomaly of that size that it should be handled something differently than just ignoring it and using the same machine a second time without following up.

Bob Warren: Okay.

Evelyn Aquila: Do you think Bob that this could have just been a faulty machine?

Bob Warren: It could be. It could be people actually over voted that much. You know like I said, I did notice that the wrapping does seem to appear that it caused people to over vote that may not have over voted. You don't know for sure.

Doug Kellner: Maybe we need to explain that a little bit because when you have a horizontal ballot which is used everywhere except in New York City where the candidates are listed by political party across a row so that right now all the Democratic candidates would be on row A, all of the Republican candidates would be on row B and so on.

Bob Warren: So when there aren't enough rows for all the parties that are available, then you have to begin to get a second column like in this case for the Governor's race, then you start from the bottom wrapping the candidates coming up the ballot. So, for somebody that may not have been paying attention, they could easily think that it is just another column and they are just marking as they go along and they mark in every column that they see and go on their way.

Doug Kellner: Now that doesn't happen to that extent in New York City because New York City uses a ballot on the opposite access so that the political parties are listed in columns and the ballot only has eight columns. And in New York City for many years we have had the procedure that the first two columns are reserved for the Democrats and the Republicans whichever gets column A and the wrapping only goes in the six columns to the right of those so that if they need two or three rows, there will not be a minor party candidate listed in column, in what would appear to be column A or in column B. And, so you don't have that so if somebody is voting a straight ticket, it is obvious

Evelyn Aquila: To go down

Doug Kellner: And I think that is another issue of ballot design. I don't know whether you can incorporate that same procedure in the landscape ballot that everybody else uses but it certainly would avoid the problem because leaving the first two columns blank, highlights the fact that it is a single office and that there are multiple rows.

Bob Warren: That is what we do because we begin from the bottom up so you never get up to the top where the two major parties are there.

Doug Kellner: So you are saying that all the over votes occur in the other parties.

Bob Warren: They occurred, you know, it would either be Democrat, Republican or Conservative and then somebody would have a mark down in the Taxpayer's Party or something because it was in that other column so they were just going, you know, here, here, here. Some people voted straight across on the row, they did straight party vote across at the bottom. There were just various things that would have, that you can look at the ballot and you are only assuming that the person didn't do it intentionally.

Doug Kellner: Okay, well I look forward to getting a detailed report on the New York City Bronx over vote situation because I think it is significant.

Bob Warren: Okay.

Jim Walsh: All set? Our NVRA/PIO John Conklin.

John Conklin: Thank you Commissioner. I really don't have much to add to the written report. I just wanted to highlight that Tom and I have been working on the restacking stuff as well with Bob and Todd. In George's absence, Tom and I have kind of been working on some decisions with IT and we have been involved in visiting the sites for where the servers may be so we have been doing a lot of that kind of stuff. I just wanted to highlight that. Do you have anything to add Tom?

Tom: No, we're good.

Jim Walsh: Thank you gentlemen, Campaign Finance, Bill McCann.

Bill McCann: Thank you Commissioner. Just a couple of highlights from our report, we did file for the January periodic order to show cause on the 23rd and that is returnable in March on the 22nd naming the 511 filers that they file, processing of that. We did complete our initial data testing for our Operations System Neutral Software and they are doing a post use analysis and that is going well. We are waiting on the response for our continuing legal education application which takes several months in the normal process so we are hoping to get that approval in line with our seminars which we are scheduling now for the spring which will take place in May and June. Also, working on our filer update which we send out each spring in anticipation of the seminars for all of our filers as well as making any modifications to our handbook and been working on the seminar schedule so that is all going according to plan. Then last but certainly not least our independent expenditure regulations mandated by Chapter 399 of 2011 were published in the State Register on February 22nd and that public comment period runs through April the 9th and so we will wait and see what comments we get and then provide that to the Board for approval. That is our report. Questions? Thank you.

Jim Walsh: IT Dan Valvo.

Dan Valvo: I have nothing to add to the already submitted report. What I was going to add was pre-empted by both Todd and John, so.....

Jim Walsh: So, I'll give you a third of the credit for that. For old business, discuss the 2012 proposed legislation is Paul Collins.

Paul Collins: Kim is not here and she is sort of shepherding that drive, so I am going to defer. Okay.

Jim Walsh: That's fine.

Doug Kellner: Alright, well I have two things that I want to say.

Bob Brehm: I think for one at our meeting that we discussed this last, which is two meetings ago I believe, you requested that we send it out to the Elections Commissioners Association. So we had sent that out to the officers and the legislative committee because they were having a meeting, they were going to discuss it and share the views. We did receive a couple of comments back that I know Anna and Kim when she's here have to review. They weren't very substitute and there were some issues that they recommended but it wasn't extensive substances in order to incorporate their views but other than that I think we still have some work to do internally on a bill that looks like, I mean that one is pretty close, the Article 9 bill, it is just a matter of a couple of days. There are a couple of issues with the usability that we need a little bit of time just to sit down. This shouldn't be overly complicated to try and deal with some of the recommendations that are out there to what better can we do to make the ballot a little bit easier especially from the instruction point of view. I think that is where we have seen a lot of information from some of the groups. You know when you read those instructions they are quite laborious and we recommend that some ideas there other than that. I know that is what we have been working on since our last discussion on it.

Doug Kellner: I hope that we can get the staff to make this a priority now, to get this done by the next meeting. Basically, the outlines of this were submitted in November and you are raising it each month and we keep putting it over and before we know it the legislative session is going to be over and it's going to be too late. And I think it is important to address this. The other thing that I would like to do if you would bear with me is to just review for a minute my reaction on the recent City Council Race in the third ward in Tonawanda which resulted in litigation that was eventually resolved but I think there were significant issues that came up that are worth reviewing. In that race, the initial canvas of all ballots including those scanned at the pole sites, the optical scan was the ES&S DS 200 and the absentee military and provisional ballots which are scanned on separate scanners at the Erie County Board of Elections had a race that recorded 435 votes for Candidate Byer and 434 votes for Candidate Sliz, with 31 ballots that were deemed blank or void. So the losing candidate Sliz commenced a proceeding in Erie

County Supreme Court pursuant to Election Law 16113 to obtain a manual audit of the voter verifiable audit records of all the ballots cast in the election. And the trial judge initially dismissed the proceeding essentially for failure to state a cause of action relying on the Court of Appeals decision in Johnson vs. Martins that was the 2010 decision over the Senate Race. Where the Court of Appeals had ruled that the discrepancy rate that where there is no manual count when the discrepancy rate is significantly below the margin of victory such as there is no substantial likelihood that the result of the election would be altered by the conduct of a full manual audit. This year the Appellate Division in the 4th department reversed the ruling of the Erie County Court and remanded the case for trial and although the Appellate Division did not address Johnson vs. Martins, the court did note that it was undisputed, that there were no unresolved discrepancies during the mandatory audit and thus no basis for further verifiable audit record under election law 9211 where regulation 96210.18. And then the court went on to note that the petitioner had not alleged any of the discrepancies defined under election law 92083 and so the only basis for a manual audit is that there is “a likelihood of a material discrepancy between the manual audit tally and the voting machines system tally which is language of election law 16-113 subdivision 2. And then the Appellate Division added that because only one vote separated the two candidates, the petitioner is contending that there is a substantial possibility that the winner of the election is reflected in the voting machines system tally could change. And the Appellate Division ruled that the losing candidate should be given an opportunity to prove the case even though it didn’t actually order a manual count. So, on remand, obviously there was considerable interest among election officials throughout the state because New York doesn’t have any black and white guidelines on when a manual canvas is appropriate. And right now there is no statewide standard and most counties have no standard at all with two exceptions that I know about. Columbia County does a manual canvas in every contest and New York City has a written procedure that requires a manual canvas where the margin is less than ½ a percent or ten votes.

Evelyn Aquila: I stopped there and did many myself.

Doug Kellner: So, my own personal view was that there should be no dispute that where there is a one vote margin in any contest, that that is close enough to trigger a manual canvas. The Erie County Commissioners who I think acted very responsibly and thoroughly in this process, Dennis Ward and Ralph Moore were aware that anything that, any decision that they made should be part of the formula that would have a binding precedential affect. And I think they are also concerned about equal protection issues of having a county set their own standard without any statewide standard because then you get into issues of is everybody being treated the same across the state. Eventually the candidates who felt that they were spending undue resources for a relatively inconsequential local office decided that it wasn’t worth further litigation and conducted a manual canvas and because it was conducted on consent, it doesn’t have any real precedential effects but the actual results of that manual canvas still forced us to take notice of significant issues, because in the manual canvas two votes changed. We already

discussed one of them where the Erie County Board had previously noted that there was a missing ballot and it turned out that there was one more ballot in the ballot box than the machine had recorded and it turned out that that ballot was for candidate Sliz so that brought the race up to a tie and then there was a second ballot that the scanner had counted as a blank vote but on looking at the ballot manually the voter had circled the candidate box without putting any mark inside the voting bubble. So, the machine correctly didn't count it but under our rules because the voter's intent was clear, that counted as another vote for the candidate whose name had been circled and that gave him the one vote margin that actually flipped the results. So, what this illustrates is while our machines have an excellent record out of the audits that we have done so far, there has only been one ballot out of the millions that have been audited where the machine miscounted the ballot and that was because the ballot was wet when it went through the machine and it came out as a blurry image in the images. But we see this issue of where there are paper jams or perhaps some other explanation where ballots can get into the ballot box without being recorded so that is one example here of the problem. And because this is a real issue, I think it highlights for us the need to develop a statewide standard on when a race is so close that there should be a manual canvas. And I think it is a subject that we should be talking about. That we should get the political parties and the election lawyers to talk about and try to come to some agreement on a standard so that there is a single statewide standard and not something that is as obscure now as just saying the possibility of, that it would change the outcome.

Evelyn Aquila: I think we should. I think that is a very good idea.

Doug Kellner: And then the second thing is simply the comment that I have for election practitioners is that the ballot images are recorded. It is relatively easy to gain access to the ballot images for the image scan machines. It is more difficult to gain access to the images for the DS 200 although I understand that one of the projects that we have in the works is to make it easier to get the ballot images for the DS200. But that one way of addressing this issue is that if election lawyers get discovery of the ballot images then the burden on finding the miscounted ballots could be on the lawyers and that they should have to go through the ballot images and say, "Hey, I've found X number of ballot images of ballots that applying our rule 621015 should be counted differently than the machine counted and that would spare the Board of Elections the obligation of doing a manual count and place the obligation at least in the initial level on the candidate who is challenging the results of the canvas to show that the ballot images would reveal a change in the result before it goes to court. I am just throwing these out as ideas that we should explore. I appreciate your patience in bearing with me on that long presentation but I did want to make it for the record so that we could get this discussion started.

Evelyn Aquila: Could I make just one very quick comment? I agree with both of your suggestions. I just wonder is there anything at all in the state law that restricts us from doing that that the counties have the right?

Bob Brehm: It is clearly the uniform standard would be what we are looking for. There is a question and I even went and talked to Commissioner Ward yesterday and what he gets into is it clear that is it a county by county authority or is it a state authority? If it is county by county you are going to have a contest that goes beyond a county border that are going to be counted differently from county to county. So, whatever the standard is makes sense to do it statewide. I mean clearly since we have absolutely no recount provision in the statute whatsoever, everybody is mining the field of the audit trying to find a way to use the audit to get a recount as opposed to an expanded audit. So, you know, a lot of the issues and the wording of the statute looks to, you have to detect, you have to prove that you have detected an error and the error is projected to cause the change. Well, if you have done a small audit and there is no detected error then it is not easily, it hasn't been successful in getting what they want which is a recount. When everybody is all done recounting and then they mind the only section that lets them, which is the audit. So a clear standard, you know, even from talking to Commissioner Ward, I didn't have a chance to talk to Ralph, it is clearly what they are looking for so that they don't get into a problem where, you know, we just want to do what we are suppose to do and we want to do it right.

Evelyn Aquila: Bob, I remember many years ago we discussed this having statewide requirements for when there would be a recount and at that time we abandoned it because it seemed to be the right, along with the counties whether they had a right for it at that time or not but it seemed to belong there.

Bob Brehm: It's kind of a two-part problem because we have no spot at the state level for having accurate or reliable interim results you know for those counties who use the portable memory device. You know, you have to be able to get the numbers, if it is totally within the county. I remember when we had the audit provisions that Howard Stanislevic and others were calling for, we had a great discussion at that time, because what they were looking for us to put in place wanted to be triggered based on how close an election was and we have no way right of reasonably, we have enough trouble of getting the 25 day deadline for you to certify much less an accurate preliminary number that goes beyond the county that you could then say is the automatic trigger. So, you know, the hard part is, I guess for New York, where our audit is upfront and some of the other states that have that provision you certify the results, then you do the audit and then you use the results perhaps to change the certification. Ours has to be completed before we can complete the certification so it is kind of, we would need some way when the contest goes beyond the border, to reasonably know a number so that is why the number is important and the process is important. And, it literally is, after every election we get these calls and it is something that hasn't been addressed yet and either we come up with a formula or process that we can work with or perhaps the court will have a hodgepodge across the state.

Evelyn Aquila: I feel we tried to address it several years back but it got nowhere because of some of the problems that were just stated. I would think that it is something

that we should absolutely do and I believe that at that time it was that I think that considering having three or four primaries and an internal election maybe we need to do it starting December for the next year and then we can look, I don't know if there is enough staff here to, reaching out to the counties at this time, to work with us on this. It may be a hard time, it might be a difficult time but it absolutely has to be addressed. But we had to take it off the table several years back. You might have been on the Board at that time.

Jim Walsh: Thank you.

Evelyn Aquila: It is a great idea and very important.

Jim Walsh: Under new business vote on petition rulings we have two votes to conduct here. One is on the large sheets of paper you have. We will accept a motion of accept the staff report. Regarding objections have been filed with respect to the presidential primary.

Doug Kellner: So moved and it's not just the staff report but there are the draft determinations that were also circulated.

Jim Walsh: Alright, second.

Gregory Peterson: Second.

Jim Walsh: No opposed?

Jim Walsh: Second item we have a motion to invalidate the request to appear on the Republican Presidential Primary Ballot by Rick Santorum for failure to complete set of delegates and alternates as required by statute subject to hearing by filing a complete slate. Can I have a motion?

Gregory Peterson: I'll make that motion.

Gregory Peterson: Just by way of explanation, we got a letter today from Meilin Tan of Flushing. I'll just read it so that we have clear understanding as to why his slate was not complete. She says that, "It has come to my attention that my name has been submitted by Rick Santorum as a proposed alternate delegate for the 5th congressional district supporting his candidacy in the New York Republican Presidential Primary. Please be advised that I never consented to this submission and that, in fact, I do not support and am not committed to Rick Santorum's Presidential Candidacy. Please remove my name as a proposed Santorum alternate delegate to the 5th Congressional District. Thank you for your cooperation" and, it is signed by her or him. So, that being the case, that leaves the slate invalid. We have no choice but to pass a motion like this subject to them curing it.

Doug Kellner: Commissioner just so we run through the legal issues here, it is my understanding that while the statute that applies here is election law 2-122b which is the method for Presidential Primary Nominations that are used by the Republican Party, right? And, under subdivision 3b that the two Republican Commissioners have certified the candidacy of Rick Santorum as a person who is nationally known and recognized, so then, we go down then to subdivision 3d which says that that the candidate who has met that requirement has to file a certificate with the State Board of Elections providing a complete election prioritized list of proposed congressional district delegates and congressional district alternate delegates supporting and committed to their presidential candidacy for each such position from the congressional districts to be elected at the primary election. So, again it is my understanding that Rick Santorum initially filed that list and there were many defects on the list, right?

Gregory Peterson: Right.

Evelyn Aquila: Oh, a bunch.

Doug Kellner: And, that he received a notice to cure on February 22nd with a list of the, well what is it, it is almost two dozen delegates that were invalid, and that after receiving that notice to cure on February 22nd the Santorum campaign then filed a new list that attempted to cure but the new list, but then just this morning, the State Board received this letter from the candidate,

Gregory Peterson: One of the delegates, Meilin Tan.

Doug Kellner: So the commissioner read and so, therefore, it would appear that in fact the Santorum campaign has not filed a complete list of delegates and alternate delegates supporting and committed to the Presidential Candidacy and, therefore, we go down again to the statute in that same subdivision it says that the state board shall review each slate and if it determines that the slate is not complete or is not otherwise in compliance with the provisions of the paragraph, it shall notify the Presidential Candidate of any defects forthwith and provide such Presidential Candidate with five business days to cure any defects. And, since we only got the notice from this delegate this morning that was not on the original list of cure, so by this resolution, we are giving the Santorum a second attempt to cure which we ordinarily wouldn't do. If it were on the first list and he hadn't cured it would be too late. But since it wasn't on the first list we are giving it this cure opportunity. But then, also, we have discussed among ourselves the fact that March 1st which is this Thursday is the deadline for the State Board to certify the ballots to the county boards so that the ballots can be printed in time to be mailed to military and overseas voters and so, even though the statute gives the candidate five days, the candidate is off the ballot until he cures and if we don't get the cure before the March 1st cure date, then the board will certify the ballot as it is. If we do get the cure before March 1st then that will be on the certification that goes out.

Evelyn Aquila: March 1st is too late. I thought that they had March 1st.

Bob Brehm: By March 1st.

Doug Kellner: Well, have I overlooked something in this?

Paul Collins: Respectfully Commissioner, and I don't want to go down the roads we shouldn't go but an obvious question presents itself, if prior to March 1st we received a piece of paper purported to cure this defect that is terrific. Who is going to make the determination as to whether it does cure the defect?

Todd Valentine: Well, it would be the initial determination like we do when it is filed, okay?

Paul Collins: I think the resolution ought to cover that issue because that is an obvious question.

Todd Valentine: Since this wasn't an initial file, the board doesn't rule on the initial file and they only rule on the projection with regards to ballot determinations.

Doug Kellner: And we have had cures in the past, right?

Todd Valentine: Yeah.

Doug Kellner: Cover sheet?

Todd Valentine: We have had cover sheets in the past.

Doug Kellner: And in the past, who rules on whether or not they are cured?

Bob Brehm: The staff does.

Evelyn Aquila: Always the staff.

Todd Valentine: So it would be the same process.

Todd Valentine: I think a determination has been made and it's only if something is wrong with the cure or I suppose you wouldn't have to bring, we wouldn't have to come back, it just didn't make it.

Bob Brehm: Right.

Gregory Peterson: It is my understanding that there is a representative of the Santorum Camp driving up a substitute today who has been promised by 5 o'clock this afternoon.

Now, obviously, they didn't do their homework, which is why this thing came to our doorstep today. And, there certainly needs to be a better delineation of what is required of candidates in order to put their name on a ballot. Certainly not willy-nilly just grabbing somebody and throwing their name on a ballot and keep your fingers crossed that they are going to accept. There should be some sort of certification by those who are named and that they have indeed accepted that, which would make our job a lot easier and certainly this kind of situation would not present itself. It is always difficult to turn around and say to someone that sorry you don't qualify and, often I know in New York we have been criticized for picky, what has allegedly has been picayune, detailing of a process. However, in a situation like this where there is obviously somebody who has said, "Hey, you didn't ask me, I don't support, get my name off" that lays it in our lap to do the right thing and frankly at that point your delegate list is not complete and you are off the ballot. So, as we vote today and at this hour assuming that that is what happens, bottom line is he is off until that is cured and I assume, hopefully, by this afternoon that we will have found a cure for that. But, obviously, there is a defect in the process that we have to address within the next four years.

Doug Kellner: We could tease you and say that the democratic rules require written

All: (Lots of laughter and talking)

Gregory Peterson: You know what and I agree with you

Doug Kellner: But the key words here are that the statute requires that the delegates be supporting and committed to the Presidential Candidacy and in view of the written statement of the delegate that she is not supporting Santorum I don't think we have any choice but to send him the cure notice.

Jim Walsh: Thank you. Thank you all. We have a motion made and seconded on the motion. All in favor please say aye.

All: Aye.

Jim Walsh: Opposed? Carried.

Jim Walsh: Item B meeting with chief administrative judge regarding the 2012 Calendar issues, Bob Brehm and Todd Valentine.

Bob Brehm: I know this is on the agenda and we talked about it briefly and before I think it's one of those items in the past the board has attempted to reach out to the court and go through the calendar issues. I think it is helpful to redo that assuming we have a stable political calendar as it speaks. Just because there is so much change it would really behoove us with a compressed calendar to meet with the court, explain to the court the calendar and the pressure that, you know, to meet those deadlines and any processing

order that the court could consider. It may help us tremendously. I know it was something we discussed when we put together the waiver application while it was, the application was not accepted and I think, you know, it would be helpful to do that. And I am going to guess it will take more than once this year because I am not 100 percent sure that the calendar is all set.

Todd Valentine: We need to open a dialogue, this year specifically because there are so many elections that are occurring according that the recording convention may occur and the court needs to be appraised of the timetables that are involved, that it is different than previous years. I mean I'm sure they read press reports but we need to get them to focus on that and just get that dialogue opening. We may start with the letter, obviously, introducing the subject and then go from there and see what they are going to do. But, you know, we have done this in the past to meet with the court system. Not so much, not to remind them of their obligations but to explain the situation so that they understand the need for finality and so that we can get ballots out and get voted on so.

Doug Kellner: There are three things that I would like to emphasize in approaching this and I think that Judge Prudenti will be very responsive that she has a fair amount of election laws experience and will understand these issues. The first is the calendar issues that you have discussed and obviously we don't really know what is going to happen because the primaries could really happen any date between June 26th and August 18th. It is really up to the legislature if they are going to get around to combining them and so it may be premature yet to talk about the calendar issues. The second thing is something we have discussed is to emphasize to the courts that there needs to be a real date that is the last day that the court can order a change in the ballot because of the nature of the scanning machines. It's not like the lever voting machines where you can do an order the day before the election and get compliance and I'm of the view that we would be well served by getting a bipartisan agreement in advance on what that cut off date really is so that there is no argument later on by one side or the other as to whether it is feasible to reprint ballots and do the necessary testing in order to change the machines. But the one thing that to me is absolutely critical is that no voting machine should be used without having gone through the logic and accuracy testing that is required by the statute in our rules. Not withstanding a court order changing the ballot. And then the third issue is to ask if Judge Prudenti would be willing to send a reminder to the judges that election day orders, such as the impoundment orders that are typically sought ex parte under the courts own rules are required to be on notice to the board of elections and particularly where these orders suspend the operation of the statutory scheme that the judges should not do that as lightly as they do it now. Just because a lawyer submits an order that alters the statutory scheme on how the ballots should be canvassed should not be taken without notice to the Boards of Elections. So, I would hope that we could include that in our dialogue with the Administrative Judge.

Doug Kellner: They put the rule in that says, I mean there is a court rule that says you are not suppose to do it ex parte and its just the need to

Evelyn Aquila I know. When people rush into the court that night and they fail

Bob Brehm: We did get one last year that was a surprise to us, that, a surprise out of all of them that we get, one actually followed the rules so it was different.

Paul Collins: That would be Judge Lynch from Albany County.

Evelyn Aquila: You're a good friend.

All: (Laughter and lots of comments together)

Bob Brehm: It made for an interesting hearing, they got through the process, everything worked following rules also.

Doug Kellner: Now, in the last two years we have gotten ex parte orders that were contrary to the statutory scheme and at least we were successful in talking to the attorneys who submitted the orders to get them to reinterpret their orders to comply with the statute but I think that is less desirable than at least alerting the judges in the first instant that they shouldn't be signing those orders without checking.

Evelyn Aquila: I don't see much hope in getting it.

Jim Walsh: Okay, thank you very much. Item number C vote on resolutions authorized additional expenditures of having funds for court ordered voting machine modifications and testing. Anna and Joe Burns any comment?

Doug Kellner: I move the resolution speaks for itself.

Evelyn Aquila: I second.

Jim Walsh: All in favor say aye.

All: Aye.

Jim Walsh: Opposed? Carried. There is no need for executive session I believe is there?

Doug Kellner: No.

Evelyn Aquila: There is one case.

Doug Kellner: There was one case and it was asked to be held over to another session.

Evelyn Aquila: Oh, it was?

Jim Walsh: Okay. I will set the date for our next meeting.

Todd Valentine: For Thursday, May 3rd is what we are looking at for the next meeting and there would be, you know other business.

Evelyn Aquila: No March or April?

Todd Valentine: Well, the beginning of April you have Easter, so Easter and Passover you have to deal with and then we have the filing period of the 10th and the 16th is currently scheduled and allowing two weeks for objections and specifications so, assuming this is all still going on that calendar, that is how we calculated, that is how we came up with that week.

Evelyn Aquila: No, I understand.

Doug Kellner: Yeah, May 3rd is fine. My problem is not getting the legislative package done.

Todd Valentine: Well, we have that issue too.

Doug Kellner: I think we should meet monthly.

Evelyn Aquila: Will we be ready by May 3rd?

Doug Kellner: No, we should do it in April. We should meet the first week of April.

Evelyn Aquila: That's Easter isn't it?

Bob Brehm: That's the second week?

Doug Kellner: We can meet on that Monday just so that we don't interfere with the Passover.

Evelyn Aquila: I would prefer to stick with Thursday, Tuesday or Thursday.

Bob Brehm: April 3rd or 5th.

Doug Kellner: Well, if I thought we would have the legislative package done without setting a deadline for the meeting.

Jim Walsh: Is there some way that we can accomplish that?

Doug Kellner: Why don't we cancel the meeting then if we get it done?

Todd Valentine: We could schedule it for the 5th of April.

Paul Collins: Commissioner the 5th of April is Holy Thursday. No.

Evelyn Aquila: No, we are not going to have it on Holy Thursday.

Paul Collins: I thought that might be a concern.

Doug Kellner: Let's do it the 2nd or the 3rd.

Evelyn Aquila: The 3rd, how about the 3rd.

Todd Valentine: I would prefer Tuesdays to Mondays.

Evelyn Aquila: You prefer Tuesdays, I do to. You can't be there on Tuesday?

Jim Walsh: I can't be here.

Evelyn Aquila: You can't be there on Tuesday?

Jim Walsh: The 3rd of April?

Doug Kellner: The 2nd?

Evelyn Aquila: The 2nd is very bad for me.

Gregory Peterson: The 2nd I have.

Evelyn Aquila: The 2nd is very bad but if I have to, I have to. I'll have to cancel something.

Bob Brehm: It looks like the 4th so far I didn't know that it was already bad.

Gregory Peterson: Wednesday?

Doug Kellner: So why don't we have it on the 4th?

Bob Brehm: Okay.

Jim Walsh: This is still pending that if

Doug Kellner: That if we can get this legislative package agreed to before then maybe we can cancel the meeting.

Evelyn Aquila: That we can go back to the 3rd.

Doug Kellner: Then we don't need to all come to Albany because we don't need to formally vote.

Todd Valentine: So why don't we schedule a meeting for May 3rd.

Evelyn Aquila: That's a definite. And the 4th is if needed.

Todd Valentine: And about the schedule for the primary changes,

Doug Kellner: Possible.

Evelyn Aquila: Yeah, I know.

Todd Valentine: Then we'll adjust the main meeting.

Jim Walsh: Okay.

Todd Valentine: That's to allow time to process.

Bob Brehm: That's the last day that we have to certify.

Doug Kellner: Let's see if we can get agreement on the legislative package so that we don't need to come in April. Otherwise, I think we need to come because if we don't set a deadline, it's just not going to happen, its six months now.

Evelyn Aquila: Is May 3rd alright for you?

Gregory Peterson: Yes.

Jim Walsh: A motion to adjourn please.

Doug Kellner: So moved.

Jim Walsh: Second.

Jim Walsh: Alright, both carried. We are adjourned.

