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DOUGLAS KELLNER: Good afternoon everyone. My name is Douglas Kellner,

Co-Chair of the State Board of Elections. To my left -- signing the canvas sheets are Jim Walsh who is Co-Chair.

And we will be starting by calling to order the meeting of the state Board of Canvassers for the purpose of certifying the election of Frank Patavan from the eleventh senate district. Those in favor of approving the certification say "aye".

>> ALL: Aye.

>> DOUGLAS KELLNER: Opposed? So we just have to complete the formal paperwork and congratulate Senator Patavan on...

>> EVELYN AQUILA: Many years, many years...

>> DOUGLAS KELLNER: - on his close election. -- Oh, I'm sorry. Okay, go ahead. I'm sorry. My apologies.

>> JAMES WALSH: You're doing a fine job.

>> DOUGLAS KELLNER: I'm sorry, Jim.

>> JAMES WALSH: Commissioner Kellner did a wonderful job earlier today so he's just been continuing on being our spokesman.

I appreciate the continuation. I'm Jim Walsh. I'll be also chairing this afternoon's meeting.

That's why they call us co-chairs.

And we have - I think we have introduced all four of us commissioners? Aquila?

>> EVELYN AQUILA: Commissioner Aquila, Evelyn Aquila.

>> GREGORY PETERSON: Commissioner Gregory Peterson.

>> JAMES WALSH: And we'll go around the horn.

>> Todd Valentine.

>> Kimberly Galvin.

>> Paul Collins.

>> Anna Svizzero.

>> Patrick Campion.

>> Bob Brehm.

>> John Conklin.

>> George Stanton.

>> Bill McCann.

>> Liz Hogan.

>> Stan Zalen.

>> Tarry Breads.

>> Bob Warren.

>> Dennis Ward, Election Commissioner – Erie County.

>> Ralph Mohr, Election Commissioner - Erie County.

>> Susan Stewart, League of Women Voters.

>> Amy Allaud, League of Women Voters.

>> Kathleen O'Keefe

>> Bob Groncczniak, NYSTEC.

>> Nils Ekberg, NYSTEC.

>> Bob Zeglen, NYSTEC.

>> Rebecca Wood, Wilson Elser.

>> Judd Ryan, ES & S.

## Board of Canvassers of the NYS Board of Elections:

>> JAMES WALSH: Thank you, everyone. Our first order of business - it will be kind of an addition to our regular meeting - will be the convening of the Board of Canvassers to certify the amended results of the November 2008 election.

That is the sitting commissioners as it is right now. Anna, if you would please explain the amendments we'd appreciate it.

>> ANNA SVIZZERO: I can sir. County boards contacted us - Jefferson, Monroe, Nassau, the City of New York and Suffolk, Ulster and Westchester.

Everyone outside of the City of New York had discovered errors either in calculating their blank votes or write-ins, etc.

There were some minor changes. No changes in the outcomes of any of the elections.

And since we were waiting for the entire borough of Queens, we can bring these amendments to you.

In Queens, because of the senate - litigation in the eleventh state senate seat, they recorded only machine counts in the entire borough of Queens.

So that whole borough had to be amended to reflect all of the absentee and affidavit and other paper ballots.

So since we did that this is the first time that we've brought amendments to the Board and posted them to the web.

Usually they were of such a minor degree that no outcomes were changed. We've never really amended in that way.

So this is a first for us. But because we had so many we were holding out for Queens, we thought we'd bring them to the Board and ask to post new results to the website.

>> JAMES WALSH: Thank you.

>> DOUGLAS KELLNER: We met with the city commissioners at lunchtime today and they indicated to us that there will be one additional change

in New York County, with the addition of 300 or so votes.

I think we've already approved the certification for the eleventh senate district. I would suggest that we lay aside the amended certification

for the statewide results until we get those new figures from New York County.

But in the meantime I would also authorize you to post the corrected numbers to the web so our website shows the current information.

If that's okay with everybody else.

>> ANNA SVIZZERO: Do you want us to post the numbers from New York County when they come in

or do you want them to come back to the Board first?

>> DOUGLAS KELLNER: No, I think we can post them as soon as they come in. And then we'll do the vote at our next meeting.

>> ANNA SVIZZERO: Okay.

>> DOUGLAS KELLNER: And then we do need to notify the federal authorities who record the presidential statistics of the new numbers, even if it will be four or five months late.

>> JAMES WALSH: We have nothing to vote on?

>> DOUGLAS KELLNER: No. If my motion is accepted then we can just vote on that, so we authorize them to post the results as they come in and then we'll formally certify at the next meeting.

>> JAMES WALSH: Do we have a second?

>> EVELYN AQUILA: Agreed.

>> JAMES WALSH: All in favor?

>> ALL: Aye.

>> JAMES WALSH: Opposed? Carried. Do we have to vote to come out of this Board of Canvassers?

>> DOUGLAS KELLNER: Now just call the commissioners.

>> JAMES WALSH: Sorry?

>> DOUGLAS KELLNER: Now we just call the commissioners into order.

>> JAMES WALSH: Yeah, that's what I'm - we don't have to adjourn one and open another?

>> TODD VALENTINE: We don't typically.

## Regular Meeting:

>> JAMES WALSH: Okay. Then we will begin with item one on the normal agenda, the minutes of the previous meeting.

>> DOUGLAS KELLNER: I move the adoption of the minutes as prepared.

>> JAMES WALSH: Second?

>> GREGORY PETERSON: Second.

>> JAMES WALSH: All in favor?

>> ALL: Aye.

>> JAMES WALSH: Opposed? Carried. Unit updates - Stanley Zalen, Todd Valentine.

Co-Executive Update:

>> STANLEY ZALEN: I have no comments, thank you.

>> TODD VALENTINE: The only big thing that is on the horizon, and Anna may touch on this briefly in her report, or in more detail in her report, rather, is we do have the special election for the twentieth congressional district.

We did receive the nominating documents and we did receive an independent petition.

The only thing I caution at this point is a possible scheduling issue in the event that there's a challenge for that independent petition, which could force the Board to meet at some point if a challenge does come, to make a determination.

Since the election is on the 31st of March, given the timing, this would put us to possibly meet the beginning of the week before that.

We're hostage to the schedule of the objection process which - and I only warn you because of planning purposes, and that's the big issue on our horizon.

Just to be aware of that. Anna can go into the details on what's been filed if you're interested at this point.

And we've posted all that on the web.

>> DOUGLAS KELLNER: So, Todd, what is the last day for filing objections?

>> TODD VALENTINE: Well they file the objections on Monday, so Tuesday, Wednesday, Thursday generals would be due.

If they wait until the last day then -- objections the following.

If objections are filed. I don't know if they will be filed.

It was a fairly substantial petition so I don't know.

>> KIM GALVIN: -- Thursday, specific objection -

>> TODD VALENTINE: Right, the following Thursday for specific objections.

>> KIM GALVIN: Two days to do a hearing.

>> DOUGLAS KELLNER: So we're talking about Monday the 24th would be the day -

>> TODD VALENTINE: That's what we'd be targeting, yes.

>> KIM GALVIN: And that's assuming we could get a hearing done in a day as opposed to two days.

>> TODD VALENTINE: It's bad, but that's why I wanted to raise that as a key issue.

>> EVELYN AQUILA: Yes, it's good that you did.

>> TODD VALENTINE: Now that could be circumvented if there is a candidate challenge that goes directly to court, and just bypasses us altogether which is another possibility, but...

I have to throw that out there.

Yeah, and Tuesday might be better. Now obviously the absentee ballots will have to go out before then because normally we would certify this - probably tomorrow would be our normal certification for - we always wait at least a couple days after the last day to file the certificates.

In this case the independent petitions and the certificates of acceptance were due on the same day, which was Monday.

In case they mailed them we do allow at least a minimum of two days timing for mail.

>> EVELYN AQUILA: It's only one election in the state, right, there's only one?

>> TODD VALENTINE: For us. The city has been having it's own special elections.

>> EVELYN AQUILA: Oh I know but that's different.

>> TODD VALENTINE: This is the only one the concerns us.

At this time.

We don't need to decide now, I'm just...

>> EVELYN AQUILA: No, it's good to bring it up.

>> TODD VALENTINE: We just need to be aware of it.

>> KIM GALVIN: Because if we got to a hearing there are 7,000 signatures so it might take a while to do it.

>> DOUGLAS KELLNER: Well the 25th is better for me than the 24th.

>> TODD VALENTINE: Well the 25th would be fine...

>> DOUGLAS KELLNER: But we have to do what we have to do.

>> TODD VALENTINE: The 25th would work too because at that point you would not be addressing the absentee ballots because they will already be gone so you'll be making the necessary changes for the machine so since there's only one candidate - or one race on the ballot, making alterations to the machine, and this would be a candidate coming off, are easier than putting somebody on.

>> DOUGLAS KELLNER: And we can prepare both ballots setups when we-

>> TODD VALENTINE: We could advise the ten counties involved. They'll certainly know who's on there, and will be alerted if - we'll know if the general objections filed this week, so....

>> DOUGLAS KELLNER: We'll get more into it with Anna, but it's my understanding that we're programming the ballots for that elections.

>> TODD VALENTINE: That's true, as part of the BMD's we have offered that for our counties to assist them in this election. That's true. She has more details on the scheduling for that but we are involved in actually assisting them.

That's the big news from us.

>> EVELYN AQUILA: Is it assisting, just assisting?

Oh, well we'll wait until we get to Anna, I'm sorry.

Yes. Okay. Right.

Well Anna has so much time on her hands. (Laughter)

>> JAMES WALSH: We'll take that as an alert and we will hear from you at the proper time.

Alright. Unit update, legal, Kim Galvin, please.

## Legal Update:

>> KIM GALVIN: Thank you, commissioner. Many of the things that we did in the unit will be discussed in more detail as we move through the agenda, but we have answered a variety of questions continuing with the village elections and the twentieth congressional district.

It seems when there's only one big race everybody asks a lot of questions about it at a lot of different times.

Many of the staff have had several meetings discussing drafting, editing, putting together the legislative packet that you will have later in the agenda.

It was truly a group effort there. We've had several days of contract talks with the voting machine vendors, and then continuous follow up with them. It's still an ongoing process, the details of which we will be discussing later in the agenda.

We continue to update and communicate with the Department of Justice on a weekly, if not more regular basis.

Bob and I have had a few meetings with the Governor's Office of Regulatory Reform on just the process of moving - Bill was in that meeting as well - the process of moving the regulations through.

We had a very long, but I feel productive, meeting with Peter Quinn and Bill Frucci discussing, among other things, 6210-18.

The auditing regulations that very clearly need to be continued to work on in order to effectuate a smooth transition into the counting arena with these new machines.

And we had a lot of give and take there. We're going to put something together for our conference in April that may be will alleviate some of the confusion surrounding that.

Other than that, just generally that's all we have. Generally it was quite a lot. And then we'll specifically get into any questions you have on the legislation or in executive session, the contract talk.

>> JAMES WALSH: Thank you.

>> PAUL COLLINS: We have one finalized case. It's so rare that we finalize a case that we can bring it to your attention.

We have a case out of the southern district, Morowski that has been signed, sealed and delivered. The judge signed the stipulation of discontinuance and so ordered it so we closed one.

That's a 2006 case challenging this gentleman's right to be on the gubernatorial ballot.

But it's a pro se case and sometimes those cases just go on and on and on.

>> JAMES WALSH: Thank you, Paul.

Now with all the advertising, Anna Svizzero.

## Election Operations Update:

>> ANNA SVIZZERO: I hope it's not a let down.

We can report to you that this past Friday we did receive a letter from the EAC in which they had restored the accreditation to SysTest, which was probably a month sooner than we thought was going to happen.

So we're hoping that that time will benefit our timeline when we get around to drafting a new one.

We have asked SysTest for a plan on how they intend to wrap back up the testing, how they're going to bring back perhaps some of the persons who had been working on our project before so that we have some experience moving forward.

They have to bring in some new people to conduct peer reviews, et cetera, so we've asked for their staffing plan, resumes, we've asked for some information related to - that we'll use in relation to putting a new timeline together.

We did get that plan last night. It looked like a preliminary plan. So we haven't really had a chance to huddle up here in the office to discuss it.

But we do have it in hand and I'm sure we're going to have some questions. So once we can speak to NYSTEC and talk internally we'll be reaching out to SysTest to try and add some meat to that skeleton so that we can have a proposal for you on moving forward.

We continued our vendor calls so that those lines of communication could stay open.

NYSTEC has been working on making sure that happens with our own team, Bob Warren and our folks in election operations.

We are anticipating that the security test plan will be to the vendors by the end of next week.

And we have some questions that have been asked of us and we've worked through some answers on the accuracy testing and the stress testing, et cetera, that has to be conducted at SysTest.

So we're hoping that those test cases can be finalized in about a week's time, and those be delivered to the vendors as well.

That would complete all the test cases to the vendors. They can make their final changes to software, firmware, whatever might be involved.

And then we'll have a hard date for delivering their final product to SysTest.

We, again, Kim pointed out that we had contract discussions with the vendors which I think we all thought were productive.

And we'll talk about those details in executive session.

We did issue the proclamation from the Governor's Office.

The congressional district in the twentieth, involves ten counties. We have provided them with calendars. We have two candidates who filed nominating certificates last week. We had one candidate who filed and independent petition yesterday.

We did work out some final details. We'll be working with Dominion to do ballot programming for those ten counties and their ballot marking devices.

So we're sending a team to Toronto, probably Monday or Tuesday of next week, so that we can get that done.

We would, from an operations perspective, would like to certify this ballot this week - tomorrow if possible, because it's a federal elections.

We have a lot of federal voters living out of the country. We need to get ballots to them as quickly as possible. There's not a lot of turn around time.

And we have military voters as well.

We are collecting our annual report data from the county boards. Right now we're missing New York City and Nassau.

Nonetheless, we'll be working on our report to the EAC which they then forward to congress relating to activity in the last presidential election.

So we'll be working on that. We reached out to Chitaqua and Erie county boards of elections in response to requests they made to conduct pilot projects.

We shared with Erie - they had three dates for pilot elections. We selected the last of those dates for a town election in April.

And hopefully we'll be working together on that. Chitaqua however withdrew their request.

They had hoped for a village election in March and their just wasn't enough time to do that with the kind of effort and oversight that's necessary.

So we - I expect we'll be discussing that further in the latter part of today's agenda as well.

We received the election results which you have just certified on the eleventh, so we're glad to have that wrapped up.

We continued to discuss software and intellectual property issues with vendors so that we could have a better idea of whether or not we or in fact any other county can host ballot configuration tasks with surrounding counties, or we do it perhaps on behalf of some of the harder pressed counties. Those conversations are still ongoing so until we get that issue resolved we really don't have a definitive answer.

But Joe has been working on a plan with Bob Warren on how we might do that.

We're hoping that our foray into doing the work in this twentieth district will help us flesh out a few of those ideas because we can talk face to face with the folks at Dominion.

We had a conference call with the county boards throughout the state on Friday.

And one of the issues they asked us to consider, among many, were that we arrange to have software loaded on some of the scanners they already own so that their training could be more effective for their inspectors. For those boards that have the wherewithal to do multiple training sessions it's important to not pretend the machine would do this or imagine the machine doing this.

It would be much easier to have it turned on and actually have the device function the way it's supposed to.

So we told them we would bring that issue to the Board and look for some direction from you in that regard.

And that may stem from some of the other conversation we're going to have regarding the contract.

So we could do that at your pleasure at executive session or later in the agenda.

And other than that, I think that's it for my overview.

>> JAMES WALSH: Commissioner Kellner.

>> DOUGLAS KELLNER: Anna could you explain to the extent that we can without violating the confidentiality rules of the state contracting regulations, the vendors request for price increases and what's happening with that, and what the - just to explain what the state Board's role is in that.

>> ANNA SVIZZER: We... (Laughter)

>> DOUGLAS KELLNER: I should have asked you, Kim.

>> KIM GALVIN: I think it would probably be ...

>> ANNA SVIZZERO: I think there - maybe globally we can look at because there was a letter delivered to the county board.

We are looking at the ability to have devices built and delivered to the counties in anticipation of being able to react to a certification and put devices out in polling places this fall. It is possible. It may not be probable, but without taking that step we would be poorly positioned to react at all if we had good news and if we had fairly clean systems moving forward in the certification process.

So that is something that we need to discuss more fully with you in executive session.

But I think that was key to doing that. And perhaps there would be an incentive for counties to be able to make that decision.

Some counties have to -

>> DOUGLAS KELLNER: - is really for the public record because I think most of us in the room have talked about it privately already.

The vendors have proposed price increases, which they are allowed to do under the state contracting process.

And that that's not an issue that the State Board has control over.

If a vendor has an open-ended contract the way these contracts were bid out, they can change their bid by establishing new prices.

>> ANNA SVIZZER: They can. They nearly have - "nearly" is a relative term - but they have to file a justification with OGS.

The existing contract permits price changes, higher or lower. Adds products perhaps that are missing.

For example, one vendor is adding various parts that perhaps you wouldn't have to replace an entire unit, they've determined that they can sell components separately which is advantageous to boards who want to buy supplies and be able to become a little more self sufficient in repairs and that kind of thing.

So those adds are an automatic process stemming from the existing contract, and there is no board approval for those.

It's an OGS process with a justification from the vendors.

>> DOUGLAS KELLNER: And the Board - this agency doesn't get to review that justification, right?

>> ANNA SVIZZERO: No.

>> DOUGLAS KELLNER: That's an OGS determination. And am I right that OGS has never rejected a vendor's justification, historically, as far as we know?

>> ANNA SVIZZERO: As far as we can tell, Paul has done some research there, but it's a - justifications are what's termed "reasonable".

I think, and Paul can speak to that better than I can.

>> PAUL COLLINS: There's a two sided process. In addition to the justification you have- having been made to OGS, there is a pre-audit by the state comptroller. So the state comptroller also must sign off on any price increases.

And the term of art in the OGS world is "regular add".

I did some looking through the New York Central Railroad and cannot find any rules and regulations as to how they determine this process.

I also did some research looking for an article 78 where someone was denied a regular add, and couldn't find one.

Now, it's hard to believe.

>> DOUGLAS KELLNER: So the bottom line is that the State Board or the county boards don't really have any role to play in this.

>> PAUL COLLINS: It's difficult to answer that question, Commissioner, in a public session and not jeopardize our position in contract negotiations.

One of the things I don't like to do is disagree with your analysis of the law. How's that?

>> DOUGLAS KELLNER: I don't think we're looking for...

>> EVELYN AQUILA: A diplomat.

>> DOUGLAS KELLNER: Yeah, I appreciate your diplomacy but you're entitled to disagree, especially if I'm wrong.

We all need to know it, including me.

A lot of county commissioners and other interested people in the state have said to the State Board "why aren't you fighting these prices?"

>> PAUL COLLINS: And the contract is with OGS and the vendors.

>> KIM GALVIN: Clearly these discussions were a result of the contract increase by the vendors of which we were assured they would probably go through without much discussion.

So the discussions are to try to exact something as a result of that.

>> DOUGLAS KELLNER: Right.

>> EVELYN AQUILA: We understand.

>> DOUGLAS KELLNER: Or to ... right. Okay. I guess I shouldn't go into details.

>> ANNA SVIZZERO: The prices are over a year old. In the current market money costs more, parts cost more.

There's an awful lot at play here so it wouldn't - it did not surprise us that there was a price increase that was requested.

There's certainly enough justification just in that area to understand why they're doing what they're doing.

But it wasn't part of a negotiation. It wasn't part of anything we solicited. It wasn't anything we even can chime in on.

It's a process of the contract itself.

>> EVELYN AQUILA: Anna, I have a brief question.

At the end of our meeting with the senators, just before it ended, they said that they were very concerned about the certification agencies that we use. You know, that they heard that they were not that good. I just wanted to say since we got the letter from EAC, number one I'd like to see a copy of it. And I don't know if it's something worthwhile sending over to the senator for him to share.

Since that question was brought up. It might be something we want to share with the senate committee.

And that's really all, Anna, thank you.

>> ANNA SVIZZERO: I think we, and maybe the Board wants to affirm what we've been doing.

We've talked about it before. We have so dramatically impacted what's going on in voting equipment certification.

>> EVELYN AQUILA: Oh we let them know, Anna.

>> ANNA SVIZZERO: With the EAC process itself and with everything.

>> EVELYN AQUILA: You can go into all of that. I don't think they're really interested in all of the machinations that we have gone through.

I think they're just interested in the fact that they hear the companies are in trouble, they lost their certification and we're using them. I think they just need the basics, not the whole nine yards.

>> ANNA SVIZZERO: I was just hoping that the Board would affirm the way that NYSTEC and we hold them to the fire.

And that we're not having a change of thought here, that's all.

>> EVELYN AQUILA: We were very time limited in what we could respond to.

>> GREGORY PETERSON: Bottom line, it was asked by a senator that just took office. Not to denigrate him or anything like that, but he was not really familiar with the whole thing, so he asked a question out there. When the question got thrown out I don't think he had a full understanding of what the process was so from that point he needs a little bit of education.

>> EVELYN AQUILA: I just thought, send him a letter at least. I don't know.

>> ANNA SVIZZERO: We can do that and put a little paragraph explaining what we've done, and send that over to them.

>> EVELYN AQUILA: Okay, very good.

>> JAMES WALSH: Good suggestion. Okay, thank you, Anna.

## Public Information/NVRA:

NVRA, Public Information officer John Conklin, please.

>> JOHN CONKLIN: As has been mentioned multiple places here already the Governor announced the congressional election - special election. Our units fielded a bunch of calls on that from reporters about the various deadlines.

The voter registration deadlines, the absentee ballots deadlines. We've put most of that up on the website.

There's a detailed political calendar on the website that lists the candidates which there are three of as of right now.

So we're trying to have as much information out there as possible.

In addition the letter from EAC about SysTest, that's also on the website, so anybody can see that there as well.

It's right on the front page, there's a link to it.

In a late development on Friday the state comptroller released an audit conducted in relation to the processing of absentee ballots by selected counties around the state from 2007.

The State Board had been given a draft of the audit beforehand and we responded in writing with a letter from the co-executive directors.

That was incorporated into the final release of the audit.

The letter acknowledged that some of the criticisms in the audit were valid and that the Board has acted in concert with the counties involved to address the changes in their processing of absentee ballots.

It should be noted for the record that some of the county commissioners felt the audit was overly critical.

I believe they used the word "nitpicking" in their response.

And they wanted to remind the comptroller if there were errors in processing applications they erred on the side of in-franchising voters, not disenfranchising voters.

We've also since the last meeting had additional follow up meetings with the New York State Broadcasters Association and New York Network to obtain a quote for PSA's for radio and television for the voter education and outreach program for the fall elections.

That's, of course, contingent on the implementation of new voting systems.

The TV ads will be in English and the radio ads will be in English and Spanish.

Use of New York Network gives us a tremendous value for our dollar, and enables us to preserve the bulk of our voter education funds for airtime. As a corollary to this we've included a resolution to transfer sufficient funds to the State Board's state operation account which will be in the new business part. This is a necessary interim step to ensure monies are in place to expend them if and when the time comes.

Lastly, preparations for next month's annual conference for the Board are moving along.

Since the Board's last meeting we have sent out letters to the county administrators informing them of the importance of the conference and the need for their county commissioners to attend. We've sent out all invitations to the county commissioners, including a draft agenda.

We've sent out the invitations for vendors who wish to attend. Invitations to public officials will be going out shortly and then we'll be moving into our final preparations phase.

Bob and I are expecting presentations from the New York State Broadcasters on the advertising portion of the voter outreach program.

And a presentation by SOE Software on the website portion of the voter outreach at the annual conference.

Other than that I think that's a good recap for the unit. Do you have anything to add, Bob?

>> BOB BREHM: No.

>> JOHN CONKLIN: Okay. Any questions?

>> JAMES WALSH: Thank you.

George Stanton.

>> DOUGLAS KELLNER: Liz?

>> LIZ HOGAN: That's okay.

>> JAMES WALSH: Oh, excuse me. Campaign finance, Liz Hogan.

## Campaign Finance:

>> LIZ HOGAN: I'd like to just provide you commissioners with some highlights of the things that are happening in campaign finance since the last meeting.

First thing I'd like to tell you is the scanning project is underway. We're very, very happy about it. It's been a long process.

But the contract was approved. We've had our kickoff meeting and we expect our contractor to pick up the first 25 or 30 boxes of paper on Friday. So we're very much looking forward to that.

We appreciate your support in moving that forward.

We've worked for the past several months on updating our filer handbook, which we do every year at this time, and also the forms that treasurers and candidates use for registering and filing here.

We expect the handbook and the forms to go to the printer on Friday of this week.

We will have those available at our conference in April and also for our seminars, which I'll lead right into that saying we have twenty-six of them scheduled to begin in the middle of May. We've tried to set up a representative placement throughout the state.

We've worked with the counties and they've expressed a desire to have us come, that they need us to be there this year for a particular reason and we've scheduled, as I said, twenty-six of them.

The January periodic filing - we have initiated the lawsuit for non-filing of that periodic.

There were 456 named on the order to show cause.

We're in the process now of taking that to judgment.

We're working on the annual report for 2008. We're preparing to make presentations at our conference in April.

And we, for the most part that's the highlights of what we have been doing since the last meeting.

>> JAMES WALSH: Commissioner Kellner.

>> DOUGLAS KELLNER: Liz, one of the things mention was pursuing the judgment collections and I know your office has spent considerable time doing that in the last month and I wanted to just single out the efforts of Sheryl Crowser who I've gotten a number of positive comments back in terms of her assistance both in collecting the judgments and in assisting candidates who have been in default to clean up their filings, some of them going back quite a bit. I know she put in a lot of extra time in that and I wanted to acknowledge that.

>> LIZ HOGAN: Thank you, Commissioner. I'll definitely make sure she is aware of that.

With the additional staff that we were able to take on in the past year we've been able to extend our reach into things that we'd hoped to do.

Our staff works very hard and I very much appreciate, and I'm sure they will also, your support. Thanks.

>> EVELYN AQUILA: May I say also that Liz and Bill have worked very, very hard. They've been here some nights until eleven o'clock at night, working.

Like many of our people in the last month or so they have been breaking their back.

And I think they didn't get all the personnel they needed and they're filling in and they're doing a great job.

>> JAMES WALSH: Yes I have noticed I'm receiving emails dated Saturday and Sunday. Your work is appreciated.

>> LIZ HOGAN: Thank you very much.

>> JAMES WALSH: George we're going to give you a second chance now. You're going to get 15 seconds. George Stanton, ITU.

## Information Technology Unit Update:

>> GEORGE STANTON: I actually don't have a whole lot to report that's substantial. We did finish up - remember I reported last month we were doing all of the necessary updates for security and updates to software on the NYSVoter system.

Those were completed now so that we can get that on a schedule where we get them applied as they come out, rather than letting them back up and --

That went very well. We've also upgraded our Oracle database which is the database that houses all the campaign finance and all of the other applications within the agency that aren't related to NYSVoter to the latest and greatest version of 11G. We just did that last week.

And that had a couple little hitches but it's worked fine.

We're going to do one more cleanup tomorrow night on that and that should be very stable at that point.

Other than that it's just been doing mainly the routine stuff of getting all of these things on the website that everybody else has been talking about.

Working on --. We still have Phil working on the new ESF software and we're looking at the whole campaign finance system still.

And we're going to be meeting sometime before now and the end of the week with Liz and Bill to talk about those kinds of things.

Unless you've got any questions for me that's about it in IT.

>> JAMES WALSH: Commissioner Kellner.

>> DOUGLAS KELLNER: George, where do we stand now with New York City's use of NYSVoter?

>> GEORGE STANTON: I sent a letter to Steve Ferguson after he had responded to me about getting the files sent to them on a regular basis.

We sat down with the - the steering committee sat down and discussed it and came up with some four or five things that they needed answers to before we go ahead and do the work to see how they're going to process these files, if they get them.

And I sent that off to Steve Ferguson. Steve responded that he would try to get those answered. That was probably about a week ago.

We haven't a response yet.

>> DOUGLAS KELLNER: So where do we actually stand now with respect to New York City's implementation of the statewide voter database rules?

>> GEORGE STANTON: Well they're doing everything with regards to the NYSVoter database with the exception of logging into the web application to do the online voter maintenance. That's what this letter - Steve's request was to do it in a different way on an interim basis.

We wanted to know basically how they're going to process these files, how long they're looking to process them on an interim way before moving on to doing it the way everybody else is. So we're waiting to hear.

>> DOUGLAS KELLNER: Is there still an impact on the suburban counties because of New York City's status or has that been resolved?

>> GEORGE STANTON: I'm sure there is. I haven't been hearing from other counties on as regular a basis as I was back closer to the elections and so forth.

I'm sure there's an effect, yeah.

>> EVELYN AQUILA: Do you think it's getting solved now? That we're slowly going to reach an agreement with New York City to work this problem out?

>> GEORGE STANTON: I can't predict that If I could I could probably predict what the numbers are going to be on Friday night.

I think they request to get these files. From what Steve told me they are making a plan for how they're going to process them.

So I take that as a step at least. The next step will be just to hear back. If they answer the steering committee's questions in a way that is going to work for everybody I think we can take another step forward.

>> EVELYN AQUILA: Better than a step backwards.

>> JAMES WALSH: Okay, old business.

## Old Business:

State Legislative Packet, Kim Galvin and Paul Collins.

>> KIM GALVIN: I think the commissioners have in their packets a legislative packet based upon our discussion at the last board meeting.

Like I said, it was a totality of staff effort to develop them and while they're in no particular order or priority coming out of the commissioners, we'd be happy to reorganize them any way you'd like or make any changes or adjustments.

>> EVELYN AQUILA: These are all the things we really wanted.

>> DOUGLAS KELLNER: This shows a tremendous amount of work on the part of the staff.

>> EVELYN AQUILA: Absolutely.

>> DOUGLAS KELLNER: Again, thank you for getting this done because this is the best legislative packet I think the State Board's put together in a number of years.

Why are you laughing, Todd?

I know you did a lot of work on it.

>> STANLEY ZALEN: But the previous legislative packets that we submitted were handled by Todd, so...

(Laughter)

>> KIM GALVIN: Thank you, Commissioner. Thank you.

>> PAUL COLLINS: Commissioner Kellner, if I may, some of these items are not new. And there was a great deal of cut and past from what Todd had previously done. Much of it verbatim.

>> DOUGLAS KELLNER: So I move adoption of the -

>> EVELYN AQUILA: I do too. It's excellent.

>> JAMES WALSH: All in favor?

>> ALL: Aye.

>> JAMES WALSH: Opposed? Carried.

New business.

>> EVELYN AQUILA: Let's hope something gets passed.

>> JAMES WALSH: New business. We have a resolution for transfer of funds for the voter education outreach program, John Conklin and Bob Brehm.

## New Business:

>> BOB BREHM: This resolution allows the transfer of funds that were authorized in the budget for consideration of a vote of our commissioners.

Part was a grant through the Health and Human Service agency of the federal government for a sum not to exceed $120,000.

And the remainder is an appropriation that was in last year's budget that was interest money from HAVA that would allow us to use a sum not to exceed $585,000 for education and outreach efforts.

So that's the first part of the resolution. The second part is to allow us to move forward with the use of New York Network to produce the radio and television advertising and to use the New York State Broadcasters Association for our distribution of the public service announcements, with the caveat that we will use this - put this in place to use it when we have new machines to educate the public on.

So we ask you to consider moving the resolution.

>> GREGORY PETERSON: So moved.

>> JAMES WALSH: Second?

>> EVELYN AQUILA: Aye:

>> JAMES WALSH: All in favor?

>> ALL: Aye.

>> JAMES WALSH: Opposed? Carried.

Item B, vote on Erie County request to pilot program for opscan voting systems, Anna and Joe Burns.

>> ANNA SVIZZERO: Well we contacted Erie County and they are here today. They can speak to you if you like, if you have questions of them.

We did contact Erie regarding an election in April. They had wanted to do a pilot in the upcoming village elections.

And for my part, and I would offer that, we just didn't have the time to get issues resolved with the vendor and get the kind of program in place that would benefit everybody. The whole purpose of a pilot is to explore how some of the procedures we've written will work in the real world. How the equipment will work in parallel with the certification process that is ongoing.

So we had that conversation with Erie. We also spoke to the vendor. Particularly since the Board meeting was on the tenth we didn't know how the Board could authorize a pilot program for an election that was less than ten days away.

Joe you're certainly welcome to speak on this issue if you like, but that was my position on this.

And as I said, Chitaqua did withdraw from the pilot consideration for this springs election.

>> EVELYN AQUILA: Anna, this is all they're going to use, just the ballot marking devices?

Not their regular machines too?

>> ANNA SVIZZERO: -- not use lever machines.

Right, they're going to do a pilot project for the entire program in several villages.

>> EVELYN AQUILA: I meant are they still going to have any lever machines there?

>> ANNA SVIZZERO: Not in these villages, no.

>> EVELYN AQUILA: Not in any of these villages.

I didn't see that in here. Maybe I missed it.

>> ANNA SVIZZERO: But they're here. They could certainly talk to you about what their failsafe process would be.

>> DOUGLAS KELLNER: What's the date of the election, Anna?

>> ANNA SVIZZERO: The 18th is the village election. The April election - March 18th.

>> --

>> ANNA SVIZZERO: April 7th, sorry.

>> DOUGLAS KELLNER: What I don't see here is an actual formal resolution.

>> --

>> Ralph Mohr, one of the commissioners is here from the Erie is here for the Erie Board of Elections.

In February I was asked to speak to the Village Clerks Association and I talked to the Village Clerks and explained to them -

>> STANLEY ZALEN: Ralph, could you speak a little louder please?

>> BOB BREHM: If you could take that chair it would be easier because that's where the microphone is.

>> RALPH Mohr: Again I'm Ralph Mohr with the commissioners of Erie County Board of Election and Dennis Ward, the other commissioner is here. We've been in agreement with respect to this pilot project.

Second week in January I was requested to talk to the Village Clerks Association and we explained to them the requirements of using the ballot marking device plan b machine. During the course of that discussion we came around to the future of the plan a optical scan devices.

And there was a general consensus of ten village elections that were up.

Eight of the villages had expressed an interest in using the optical scan plan a device.

As far as Erie County elections go the village elections, with the number of candidate positions which were up, with maximum being three.

And the number of four out of the eight villages which wanted to participate and be uncontested races, we felt that this was a very simple election to conduct and we offer the best opportunity to try to work out a lot of the mechanics of using the plan A device, such as putting up the voting booths.

How to train inspectors and so forth.

I had over-nighted a letter to the State Board of Elections explaining - well first of all after the villages expressed an interest each of the villages went back to their village boards, talked to their respective village boards to see if they were willing and the eight that expressed an interest came back and expressed that they still were.

I contacted the vendor at that point and the vendor ES & S said that they would be willing to participate in the program.

I then over-nighted a letter to the State Board of Elections outlining the request. Getting no response to that correspondence I then stopped by in the beginning of president's week and talked to Stanley in Stanley's office while I was talking to him he had emailed each of the commissioners expressing the interest and also telling them about the March elections.

The fact that we were focusing on the March election was very clear from the very first conversation we ever had, right through.

That fact that they there's an April election, that April election is not one that's conducted under the election law.

It's an expansion of a sewer district project. The Board of Elections doesn't run that. The village or the sewer district clerk manages it and the sewer district clerk is also the same individual who wanted to participate in one of the village elections in the village of Alden, who is running that election as well.

That brings us to last Thursday when I was informed by ES & S that they were no longer willing to participate in the pilot project.

Up until that point recognizing that the State Board didn't meet until March 10th the Erie County Board of Elections had altered its website to put on public information. Information regarding the plan A device. We had set up special training programs for each of the inspectors.

And it was mandatory attendance, which was going to be conducted tomorrow and the following day on both the auto mark and the scanner device that we do have in the office as a demonstration model.

And in addition to that I hired retired IT personnel to come in and assist in making sure that we would be able to meet the deadlines there.

I'm informed that ES & S's position hasn't changed. They're still not willing to participate and despite the efforts that we have done and the efforts that the village clerks have done to make public outreach and inform the boards that we are going to be testing out this pilot project, we're not going to be able to do so, so that request is gone.

As I said, the April elections are ones that the Board of Elections does not conduct.

Yesterday I received a letter from the attorney from the sewer district saying that the April election they want to conduct on the voting machine.

So that one's off the table as well. It was very important for the Board of Elections in Erie County to go and conduct this pilot project.

One because, as you know, Erie county historically has a large number of primary elections, particularly in local election years, and is second only to New York City. ES & S has Erie County and New York City and we were very much concerned given the history of what occurred last year that ES & S would be able to provide adequate support to both Erie County and New York City prior to the primary election, that being the very first election going on. This year we have time to be able to do so.

We've been informed that there's going to be revisions to our firmware program for the plan B device.

Which concerns us because we still don't have the new software. We have people that would be able to go and utilize that.

And I'm just afraid that as it comes down we're going to be stuck in the same situation that we were last year with the software.

We produce all our ballots in house. We distribute everything in house, utilizing our own personnel.

And they're going to have to conduct a simultaneous election both in Erie County and New York City which I think is a very large chore.

And I quite frankly have lost a lot of confidence in their ability to do so. Particularly given the fact that even with the two weeks, and now one week which remains, four uncontested races and four contested races which are the simplest in Erie County, that we've seen in a very long time.

If they're not able to do that I don't know how we're going to be able to react to court cases that change candidates a week before, a few days before.

And this would have been a good test. It would have been a good opportunity to do it.

We certainly detailed in our plan all our backup contingencies. The one village has 647 registered voters. They usually have a turnout of less than 100. That can be easily hand counted.

Each of these are soul single election districts, except for the village of Depew which is broken up into four.

And actually the Village of Depew has been the most cooperative with us in working with us to make sure that their inspectors are fully trained and looked on the website and have received all our information.

And each of the villages has pledged total support so I think that we had a good back up plan in the event that there was any failure.

I really didn't see how any failure can occur.

So that's where we're at.

>> DOUGLAS KELLNER: Do I understand then that right now there's nothing on the table?

>> RALPH Mohr: There's nothing on the table because the vendors pulled out it's offer.

>> DOUGLAS KELLNER: I guess that makes it easy for the four of us. I want to thank you and Commissioner Ward for your efforts in doing this. As you may know I have supported the idea of having pilot projects. I hope that there will still be some other opportunities for pilot projects before September if we have special elections.

And it's very clear that the Erie County commissioners and your staff and the clerks put a lot of time and effort into putting together a very thoughtful plan and I believe that we do need the experience. It's not just an issue of having certified machines.

Certified machines are very important and certainly I stand steadfast that New York should continue its certification program, should not relax the standards just because vendors are having trouble meeting those standards.

But on the other hand we need to learn how to run elections using paper ballot scanning and that there are always unanticipated problems when you switch to a new system that we didn't think about.

One of the things that comes to mind right now is the special election that was conducted in Staten Island by the New York City Board two weeks ago.

New York City worked under very difficult conditions because they got a court order adding a candidate to the ballot at 2:30 the Monday afternoon before the election that started on 6 A.M. on Tuesday. And they properly determined that it was infeasible to redo the voting machines in that time, and that it would be better to conduct the election on paper. And they did conduct the election on paper with less than 24 hours notice there was relatively little training for the inspectors and a lot of issues have come up that hopefully will not effect the outcome.

Even though that was a close race it doesn't look like any one of these issues will effect the outcome but we've learned that there are issues that come up with paper ballots that are not the same as using lever voting machines or using direct recording electronic devices.

And that we need to learn from this.

Maybe it's better if I do it as a new item on the agenda but I would ask that we formally request that Anna's unit work with the New York City Board of Elections to review the conduct of that election to learn as much as we can to share with the county commissioners and perhaps either do a short report at the conference or some other report, but that the election operations do formally review the Staten Island election. And I would hope that we could still encourage some other counties to propose pilot projects before we go live with everybody all at once.

>> EVELYN AQUILA: We thank Erie County very much.

>> RALPH MOHR: Thank you, and I just want to say that, at least for my part, Commissioner Ward and I have been in agreement on this thing throughout. I couldn't have done it without his support. I don't know if he wants to add anything or not.

There may have been a perception because we had a disagreement as to the unit we wanted to use last year.

But once we've gotten the unit we both have full heartedly gone into making sure this works.

We've devoted a great deal of staff time to make this work.

>> EVELYN AQUILA: Thank you very much.

>> JAMES WALSH: Thank you. I'd like to add my two cents too and thank you for all the work that you and both commissioners have done in Erie County, not only that would have benefited your county, but the entire state of New York.

Your work will hopefully show some fruit in the future when we have the opportunity to test as you've been trying to do.

And thank you again for an excellent presentation.

Before we close out the new business section, Commissioner Kellner has two items he'd like to bring to our attention.

>> DOUGLAS KELLNER: So the first item is what I just mentioned about the Staten Island election. So I'd like to make a motion that we ask the election operations department to review the recent special election in Richmond County and to provide a report for us and for county commissioners in the state on some of the issues that arose there as a result of the using paper ballots for the conduct of the election.

>> EVELYN AQUILA: Doug can I make a brief suggestion? I don't know if it's any good.

Can we just ask the New York City Board to report on that at our conference rather than putting more work on the shoulders of Anna's unit?

Because we heard a lot today when we were over there having the -- about -- . Maybe that would be as good?

>> DOUGLAS KELLNER: Well maybe they could do it jointly but think it is an elections operations responsibility and -- certainly are welcome any help that we can get from the city board on this.

>> EVELYN AQUILA: I just thought it might be easier that way, but both ways may be alright.

>> JAMES WALSH: I have a second on the motion. Second. All in favor?

>> ALL: Aye.

>> JAMES WALSH: Opposed? Carried.

>> DOUGLAS KELLNER: And then the other is just a report that I just wanted to take public note of that may have happened 3,000 miles away but a very interesting report has come out of Humbolt County, California where a group of citizen observers who call themselves the Humbolt County Transparency Project, working with the county registrar who conducts the elections in that county.

Performed the post-election audit required by California law, just as our law in New York requires that we do post-election audits.

They did a very thorough process in reconciling the votes and found that they were unable to account for roughly 200 votes.

And decided that they were not just going to write off those 200 votes, even though it didn't effect the outcome of the election.

But were determined to find out what happened to those 200 votes that seemed to be missing from the official canvas report, but showed up when they did their audit. And what they had found, and these are basically citizen volunteers working with the county registrar, was that the premiere election management system that had been used by the county and is used by dozens, if not hundreds of counties throughout the country, had a glitch in it where the first batch of ballots that was run through that system was deleted.

And it was deleted not only from the final accounting, but actually deleted from any record as if it had never existed.

Certainly that violates all of the key standards for election management equipment and that error and glitch was only discovered because of the persistence of this group of volunteers in following up to investigate the source.

I think first of all it's a warning again to everyone that here is again equipment that had been certified by the National Association of State Election Directors without ever properly testing and finding that glitch.

There were testing authorities that had signed off on this who need to be held accountable because they signed off on something that did not meet the standards and was not working properly.

And through the efforts of these citizen volunteers and a cooperative election administration, that they were able to discover the error, and notify the rest of us throughout the country that this glitch existed. I think it's a further reason that we should feel support for our own position that certification and testing is important and that we should not compromise the standards. And also I want to acknowledge these volunteers who were able through their own volunteer efforts to help identify that problem and correct an error which really effects everybody.

So thank you...

>> JAMES WALSH: Another reminder to be alert as to where we're going here.

It is normally at this time we set our next commission date. Do you want to hold on that pending your information coming back?

Or do you want to set it and make both happen?

>> DOUGLAS KELLNER: I think we're better off if we at least set a tentative date.

>> TODD VALENTINE: Yeah, we've been going with the first week of the month as our normal -

>> DOUGLAS KELLNER: So I would suggest the 7th, 8th or 9th of April.

At least we could try to start blocking out those days.

>> EVELYN AQUILA: Is that holy week?

Tuesday would be better.

>> DOUGLAS KELLNER: Well is that alright or is that too early for --

>> EVELYN AQUILA: Holy week's okay as long as it's not the end of the week like holy Thursday or good Friday.

Oh yeah, when is Passover?

>> STANLEY ZALEN: April 8th and 9th.

>> JAMES WALSH: Sundown, April 8th.

>> EVELYN AQUILA: So if we do it Monday or Tuesday, which is better?

>> GREGORY PETERSON: Tuesday's alright, right?

>> EVELYN AQUILA: Tuesday's alright for you?

>> DOUGLAS KELLNER: Alright so let's say Tuesday the 7th.

>> JAMES WALSH: If there is no other new business we'll accept a motion to-

>> EVELYN AQUILA: What about the March date? Is that definite?

>> JAMES WALSH: I think we have to wait.

>> DOUGLAS KELLNER: Just mark it. It could happen.

>> EVELYN AQUILA: And that's March 25th?

>> DOUGLAS KELLNER: 24th

>> EVELYN AQUILA: Monday March 24th.

>> TODD VALENTINE: I think it's Tuesday the 24th or Wednesday the 25th would be better for -- as well.

>> DOUGLAS KELLNER: Well if it works, as I say, I don't -

The 25th is better for me but only if it has a choice and only if doesn't prejudice --

>> JAMES WALSH: I'd rather 25 also. I've got something there that's easy to knock out.

>> TODD VALENTINE: Well let's pencil in the 25th then.

(Overlapping speakers)

>> DOUGLAS KELLNER: So I move that we go into executive session to consider the campaign finance investigation reports and determinations and to discuss the voting system contracts and then the third issue would be a meeting with the Erie County commissioners concerning a campaign finance investigation issue.

>> JAMES WALSH: Can I have a second?

>> EVELYN AQUILA: Aye.

>> JAMES WALSH: All those in favor?

>> ALL: Aye.

>> JAMES WALSH: We will go into executive session.

(Executive session)

>> JAMES WALSH: Alright. We are out of executive session. First vote on enforcement cases. Is that where we -

>> DOUGLAS KELLNER: I move the adoption of the calendar in its entirety as recommended by staff.

>> JAMES WALSH: Second?

>> EVELYN AQUILA: Aye.

>> JAMES WALSH: All in favor?

>> ALL: Aye.

>> JAMES WALSH: Opposed? Carried.

Voting machine contract issue?

>> GREGORY PETERSON: In executive session the staff reached -- on the continuing contract amendment discussions that have been had by the State Board of Elections staff.

OGS staff and both ES & S and Sequoia, the two voting system vendors.

After taking in all the circumstances surrounding the certification effort, and what still needs to be done to make the use of these systems viable in 2009, we are authorizing the staff to continue with the negotiations in the terms that have been outlined to us in executive session.

We are confident that it is no longer a question of "if" these systems will be certified in New York State, but "when" they will be certified as such.

As we understand it most of the changes that come in the certification process will be in the form of software changes and modification and not hardware changes.

These contract amendments will put the state in the best position to be fully ready for deployment and use when certification is granted -- to allow the staff to continue to negotiate the terms and conditions outlined in executive session.

>> JAMES WALSH: We have a motion. Do we have a second?

>> EVELYN AQUILA: I second.

>> JAMES WALSH: On the question, all in favor?

>> ALL: Aye.

>> JAMES WALSH: Opposed? Carried.

Any other business to come before us?

>> PAUL COLLINS: Yes. On the SysTest. Commissioner. I would like the commissioner to consider the following resolution.

Whereas upon the suspension of SysTest's accreditation by the EAC a stop work order was issued by this Board and Whereas SysTest's accreditation has been restored, be it resolved that the previously issued stop work order to SysTest be in same hereby is rescinded and SysTest is directed to proceed with it's contract.

>> DOUGLAS KELLNER: So moved.

>> JAMES WALSH: Second?

On the question, all in favor?

>> ALL: Aye.

>> JAMES WALSH: Opposed? Carried. Any other business to come before the Board? If not let's get the motion to adjourn.

>> Motion to adjourn.

>> JAMES WALSH: Second? We are adjourned.