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>> DOUGLAS KELLNER: All right.

Good afternoon everyone.

My name is Douglas Kellner.

I'm co-chair of the State Board.

>> Jim Walsh.

>> Gregory Peterson.

>> Evelyn Aquila

>>DOUGLAS KELLNER: I'll ask the staff to identify themselves.

>> Todd Valentine Co-Executive Director

>> Stanley Zalen Co-Executive Director.

>> Kim Galvin.

>> Paul Collins.

>> Joe Burns

>> Anna Svizzero

>> Patrick Campion

>> Bob Brehm.

>> John Conklin.

>> George Stanton.

>> Bill McCann

>> Elizabeth Hogan.

>> Bob Warren, Election Operations.

>> Kathleen O'Keefe, New York State Assembly.

>> DOUGLAS KELLNER: Thank you all.

You're all welcome.

Board of Canvassers Meeting:

We start as the Board of Canvassers to certify the results of the special election in the 77th and 85th assembly districts.

Do all the commissioners approve the results as prepared by the staff?

>> Approved.

>> Yes.

>> DOUGLAS KELLNER: All right.

So that's unanimously adopted and we will find the paper work now.

>> We have two documents for each of you to sign, commissioners.

We are certifying Vanessa to the 77th district and Margaret Cresco for the 85th, please.

>> DOUGLAS KELLNER: So if there's nothing further, we will close as the Board of Canvassers and proceed to the commissioners meeting of the Board of Elections.

Regular Meeting:

The first item on our agenda is approval of the minutes of May 12 and June 15th, 2009.

>> JIM WALSH: So moved.

>> DOUGLAS KELLNER: So we're approving them as originally drafted.

Those in favor, say aye.

(Chorus of ayes.)

Opposed?

The minutes are approved.

We will then proceed with the unit updates.

Unit Updates:

Co-Executive Unit Update:

Stanley Zalen and Todd Valentine.

>> STANLEY ZALEN: Thank you, Doug.

One of the things that we have been involved in is a single pay or audit.

For the first time, we have spent enough federal monies on machines that that were subject to the federal audit.

And as a result of that, we were audited this past week, the week before last, by an auditor that was hired by the state in order to help us correct deficiencies so that we would be better prepared for the federal audit.

And we did pretty well.

Initially, they were intending to settle down here for about five days.

The audit company is located in Buffalo.

However, they left in two days because they didn't see very many major issues that we would have to deal with.

We will be getting their final audit report, but they gave us a draft and it looked pretty good.

Probably the biggest problem in the draft is -- Was our failure to ask each of the Counties in turn to provide their own single audit.

The federal auditors would need that single audit from each of the counties, because the counties are all ongoing with federal funds and they all get their own single audit done by various auditors throughout the state.

And we're in the process of rewriting our letter to the Counties to ask them for each of their single audit reports and that way we will have it available.

The other thing I wanted to mention for the public, I'm going public with this now, is I'm intending to retire on October 1st.

And it's been a good time that I've had here.

It's been over 35 years when I retire; most of my life.

And I wouldn't trade it for anything.

It's been a wonderful experience all those years.

I've gotten so much out of it, and I thank you all for your role in my life, working here.

Thank you.

>> EVELYN AQUILA: You're welcome.

>> DOUGLAS KELLNER: Well, thank you, Stanley, and to respond to that, you have achieved a great deal.

I think people forget that this agency itself is only 35 years old and that you came here just a couple of months after it started, and that not only are you the highest ranking member of the agency staff, but you're also the most senior member.

And you have certainly accomplished a great deal in that tenure, particularly as enforcement counsel and setting the high standard that we have for campaign finance enforcement.

And, particularly, the objective that you always have had, which is to encourage compliance, that I found when I was just a young election lawyer and calling up for advice and I found your assistance very valuable and frankly you taught me everything I learned about campaign finance.

>> STANLEY ZALEN: I appreciate that.

>> DOUGLAS KELLNER: We will miss you and we wish you well in your retirement. Of course that is three months away. There is a lot to accomplish and I am glad that you will be here through the implementation of the first phase of the pilot project so that you

can share in the credit of everyone in the agency for bringing aboard our new voting systems.

>> STANLEY ZALEN: Thank you, commissioner, I appreciate that.

>> EVELYN AQUILA: I came on this board a long time ago. I was the most senior here. I don't want to say how many years because I'll be giving away my age. When I came here, I knew very little about this board.

In fact, Albany was a place that I had visited only several times before and that was when I came up to lobby with groups, different groups in my neighborhood and things.

So this was a totally new experience to me.

And from the first day, you put yourself out to help me and to be at my side.

And I certainly appreciated it.

In fact, in the beginning when we went out on Election Day, you were always with me and we went to see all the different -- you certainly knew when you walked into a hall where there was an election what was going on, and you taught me.

And I'm so very thankful for the years that we worked together and for your presence here.

And I think that everybody's entitled to retire and to be with their family and we wish you only the greatest of happiness to you and Valerie and your family.

And good health.

And certainly we're going to still have -- we still have your phone number, Stanley.

[Laughter]

You still will get those calls, those desperate calls.

So I thank you so much and God bless you and may the rest of your life be wonderful.

>> STANLEY ZALEN: Thank you very much. I appreciate it.

>> JAMES WALSH: I put my two cents in, too. Stanley, I wish you the best.

We were together ten years ago and we are back together now. You've been a dedicated employee and I appreciate your honesty and your help that you have given to this board over the years.

You're very loyal to the board and the commissioners, loyal to the law and loyal to the counties we serve and the people that that are out there.

Very knowledgeable.

And when I came here as a young commissioner ten years ago --

[Laughter]

>> GREGORY PETERSON: Why are you laughing?

>> EVELYN AQUILA: You have one gray hair.

>> JIM WALSH: See what happens?

>> GREGORY PETERSON: I've only been here a year and see what happens.

>> STANLEY ZALEN: I retired from several jobs over the last 15 years.

This is never the end of one thing.

Maybe this is one of the cases where one door opens and another door closes.

Above all, I wish you health.

That's all we can wish to each other.

That is the greatest gift that we can wish for you now and before the greatest retirement and who knows you might come back here as a commissioner.

Best of luck.

>> GREGORY PETERSON: Stanley, as the youngest member of the group time wise, I've only been here a year.

And in that time, I'll make it short and sweet, I found you to be knowledgeable, dedicated and a real gentleman and I wish you well.

>> STANLEY ZALEN: Thank you very much, commissioner.

All of you.

I a appreciate that very much.

>> DOUGLAS KELLNER: Well, congratulations to you.

Todd, did you have anything to add to the Executive Director's report?

>> TODD VALENTINE: Nothing like that.

>> GREGORY PETERSON: You have anything nice to say?

>> DOUGLAS KELLNER: If you retire, we will say something nice about you.

>> KIM GALVIN: Maybe. Maybe!

[Laughter.]

>> TODD VALENTINE: No.

Our biggest focus as Stanley pointed out is the machines and part of the federal single audit, as they call it.

It was a -- it was -- well, we knew we weren't perfect; the shortcomings were exactly what we expected.

They gave us the roadmap we have to follow so when we get another audit from the Federal Government itself directly, we will be ready and we will have adopted that.

We are in the middle of a petition filing week, and Anna can update on that.

And we, you know, we -- not to bring everybody down, but we continue to have budget issues are still a problem for the state as well as for us.

You know, cash, while our budget on paper is fine, what happens from --

What happens in reality is you never get all the cash you're supposed to in the budget.

They always restrict you on cash expenditures because the state can only give you the cash that comes in as tax revenues.

That's the way it works for all agencies.

So that continues to be close. The budget isn't off, but it's something that we have to monitor as we move through this quarter or through this second half -- as we move through the second half of the fiscal year.

Because there is a rumor, although it depends on how the next quarter tax revenues do, whether there could be further state spending cuts.

So I don't mean to bring you down, but you should be aware that that is something that the Governor's office has telegraphed to us as the division of budget that you have to be aware of.

They haven't asked for cuts, but they are warning us that if we have positions that are vacant, you should try not to fill them.

They are not letting us fill them, so it makes it easy.

>> DOUGLAS KELLNER: Did they indicate what elections we shouldn't run?

>> TODD VALENTINE: It's very frustrating when we have those meetings, because they say, "We understand; you're important."

Don't tell us we're important and then not give us sufficient resources to let us do what we have to do.

I don't think they are going to go that route.

But again, what we have done in the past is we target tightening to what we call the non personal service resources.

We cut back on the fleet of cars that we have dramatically. That may go forward in the future.

That may be reduced. We restructured our intention to expand. We stayed in the space we have. We have renegotiating the lease so we will look at renegotiating the lease price with the vendor.

We instituted, you know, specific caps on spending to a much lower level than we used to.

We used to, you know, it used to be like a thousand dollar threshold and we lowered that to almost a zero threshold.

So if you need to buy a pile of pens, you need approval.

And everybody questions those: Do you really need that many pads?

You have to start looking at every penny because those things do add up.

We end up, you know, there is always a bit of cushion in a budget and there is a bit of cushion in the resources and supplies that you buy, so you have to start monitoring stuff like that.

Trying to be aware of spending on bottled water.

We cut that back before the Governor instituted his executive order.

We saw that as an expense that was not -- like a luxury.

Those are the things that we start to target, not the positions.

That's the last thing we will ever look at cutting, because we know we need the people. But we can borrow or work with the other paper work and stuff.

We do have one item to add to the agenda, which was a late addition, which is the ballot proposals that are scheduled to be on the -- we need to add that under new business.

We only found out about this last week, at the end of last week.

>> KIM GALVIN: You're not going to steal my report again, are you?

>> TODD VALENTINE: No.

But working with the AG's office. They put those together and then Kim can -- the legal unit can go through what that is about.

>> She really undercut you.

>> TODD VALENTINE: I know.

And of course we will update everybody.

It's on the agenda for updating on the machines, and George and the steering committee for updating on the database.

And we are filing petitions.

Did I mention that?

>> KIM GALVIN: Yes.

>> TODD VALENTINE: So far it's been quiet.

It's almost all judicial delegates for us this year up here?

As of yesterday we had like two petitions in.

Two.

We don't get that many.

And that --

>> DOUGLAS KELLNER: When we talk about our adjourn date we will go into --

>> TODD VALENTINE: Yes, that's what my note is, in the event that there is an improper petition that the board has to rule on, whether it's invalid on its face or an objections file, we need to consider having available a meeting within the next two or three weeks.

>> DOUGLAS KELLNER: Thank you very much.

Todd.

Legal Update:

>> DOUGLAS KELLNER: Kim Galvin, the legal report.

>> KIM GALVIN: As Todd mentioned and we will go over, it's a petition filing period.

So Paul and I answered --

There has been a flurry, I don't think I'm supposed to admit this in a board meeting, but it's been relatively quiet leading up into this particular board meeting.

There has been a flurry of calls from the candidates and the boards regarding, you know, their upcoming elections.

They seem to be never ending.

But the weekly DOJ calls and, you know, the meetings and conversations we have to have to keep the Department of Justice and the Attorney General's office apprised on the machine testing and development seems to be moving along.

The Department of Justice, O'Brien, seems to be following us along.

Things seem to be on track with them.

No real issues to speak of with regard, legally, to the pilot or the new timeline.

We have continued conversations with the Office of General Services regarding any contract problems we might have with primarily machines or the machine ads or any other legal issues that the vendors bring to the Office of General Services.

With the flurry of bills that have recently popped out of the Senate, there seems to be a variety -- we're trying to get a handle on those bills that need to be pre-cleared, receive pre-clearance.

So far I think we identified three, two of which have not been signed by the Governor's office yet as of this morning.

So I don't really --

I have to learn that process.

This is my first time through with that.

But I think Paul can walk me through it because he knows how to do it.

And the ballot proposals, once again as Todd said, they were kind of stalled.

They kind of sat in the Senate.

So we had to kind of jog the legislature to send them to the Secretary of State and do all the follow-up with the Attorney General's office and the Secretary of State's office, but they seem to be in order for your signature later.

Other than that, do you have anything to add, Paul?

>> PAUL COLLINS: Just very, very briefly, and the only reason I mention it is because the two of you were sitting there, last week there was an application made in the pro se case to join the two commissioners as defendants individually, and I'd like to speak to the two of you after the meeting.

That's all.

Just what you need.

Commissioners Kellner and Aquila are defendants as individuals.

>> DOUGLAS KELLNER: Now that you raised it, just summarize what the claim is in the case.

>> PAUL COLLINS: The claim is that there is a constitutional right to have every vote cast on paper and the paper never ever leaves the public eye until every piece of paper has been counted that night, and news media is not to be told until everything is counted.

It's what we might call in the trade an uphill climb, but be that as it may.

>> DOUGLAS KELLNER: Originally as I recall all 50 states were joined.

But because the plaintiff is a New Yorker, everyone got dismissed except the New York Board of Elections?

>> PAUL COLLINS: Yes.

The other 49 states were dismissed and the other 49 state plaintiffs were dismissed as well.

>> GREGORY PETERSON: That's perfectly fine with me if Evelyn and --

[Laughter]

>> JIM WALSH: I don't want to horn in on it.

>> DOUGLAS KELLNER: Well, I had the experience in the 1990s of being a defendant as a New York City commissioner in the Gelb case, which was brought by a pro se taxi driver running for Bronx borough President, and the case was decided by Judge Sotomayor.

She dismissed the original case but then he re-brought it following her advice and dismissal; and it caused tremendous havoc for the City of New York for the next 15 years.

He argued that there was a right to cast a write-in vote on the lever machines in primary elections, even though the New York City lever machine, the Shoups, don't really -- are not really amenable for write-ins.

>> Well, you could put a write-in up on top.

>> DOUGLAS KELLNER: It's very complicated.

>> I know, the City of St. Louis -- but you can technically do that.

>> DOUGLAS KELLNER: Long story.

So you have to pay attention to the Pro Se lawsuits, that's the bottom line.

All right.

I'm sorry for that diversion.

Is there anything else, any news, anything else we should say about the federal case?

I guess Kim reported we're on track with the Department of Justice.

>> KIM GALVIN: With regard to the testing and, not to speak for Anna's unit, but clearly there are instances where we will be set back a few days or -- but I don't believe in any of the meetings so far -- [knocking on wood] -- that they are unrecoverable setbacks.

Anna will speak to it.

But as far as the red flags being sent up, I don't think it's time for any red flags to be set up.

I'll be the first one to cry.

>> The legal phrase is show stoppers.

We haven't seen anything.

>> DOUGLAS KELLNER: Well, that's good news.

>> KIM GALVIN: Thank you.

>> DOUGLAS KELLNER: So on that note, we will turn to Anna Svizzero, election operations.

Election Operations Update:

>> ANNA SVIZZERO: Thank you commissioners. We obviously prepared the documents you signed.

When we get them downstairs we will give them to the appropriate authorities and candidates.

Our weekly and daily meetings with SysTest and NYSTEC and the vendors are ongoing.

The vendors made the deposits to the escrow accounts that we requested, begrudgingly I'm sure.

But we expect to do that monthly until testing is concluded and the vendors are cleared.

That if at any time we think this testing is at risk to the state because of an -- because an account is below an appropriate balance, that that testing will stop.

We conducted and concluded the functional testing on the voting systems.

We did have three members of the CEMAC committee come join us for that testing.

1 We utilized three Kelly staff people to help us out with that, and that report is available
2 for your consideration later in the agenda.
3
4 We continued to work with NYSTEC and on our staff on new procedures, revising forms,
5 everything from the canvass sheet on down has to be revised for this new process.
6
7 As we complete them, we launch them to the County boards.
8
9 When things are labeled "draft," County boards ignore them.
10
11 So we are considering them final.
12
13 But we know that all of these are living documents and we are clearly looking for
14 feedback in the pre-election tasks, the conduct of the pilot and then that analysis after the
15 pilot so we can revise them accordingly.
16
17 We, as Stanley and Todd both mentioned, met with the auditor, since our unit was a
18 prime contributor to the reaching a limit for having conducted the audit in the first place.
19
20 So we will take all of their advice and correct the error of our ways, if there was indeed
21 an error.
22
23 I think it was an oversight.
24
25 It was new money to us.
26
27 We never had that to distribute or monitor, so I think we will be a lot better off having
28 gone through that process.
29
30 Our acceptance testing site is up and running at the state office campus, if anybody would
31 like to see that process at work.
32
33 It's quite an event.
34
35 Joe was up there last week and saw firsthand how it goes.
36
37 And it really does hum along.
38
39 We have acceptance tested 604 scanners from ES&S.
40
41 We expect to test the balance of them over the next ten days or so.
42
43 There are 293 remaining to be tested.
44
45 Schenectady and Albany received all the units they need for the pilot project. Erie was
46 shipped over 300 of theirs to date.

1
2 The balance will be completed and shipped out accordingly.
3
4 The Dominion scanners we're expecting in about 2 to 3 weeks.
5
6 Thank you, Bob.
7
8 And then we will conduct acceptance testing on those as they come in.
9
10 So we're --
11
12 There is a schedule in place for that.
13
14 Hopefully our guys up at the dude ranch, as we fondly call it, will get time to catch their
15 breath between the two events.
16
17 We have not been given budget authorization to fill the three full-time staff positions that
18 you approved months ago.
19
20 Bob Warren and our election operations team have been stretched thin, as every project
21 in this unit has the same deadline, has a specific deadline and has its own degree of
22 criticality.
23
24 As is our custom in election operations, and we are very proud of the team we have there,
25 they will redouble all of their efforts to meet each of the tasks that we're assigned.
26
27 But I did want the board to be aware that the staff shortage is going to impact, and not in
28 a positive way, the support we're able to provide to the County boards.
29
30 Our ability to monitor the pilot project, our ability to assess the pilot project when it's
31 over with and revise again all of the procedures and forms based on the knowledge that
32 we gain in the pilot project.
33
34 I do not understand the delay, but as I said, our folks have all been putting in more hours
35 than we can account for, and we diverted three of the Kelly people here to the State
36 Board and they worked a significant amount of time on the functional testing.
37
38 There is a really good team down there that has enhanced our own staff for that purpose
39 so we're proud that they are all working together and have provided the documents that
40 you get to consider in all of your decisions.
41
42 As to the rest of the election operations work, that, too, is ongoing.
43
44 We're, as everyone pointed out, responding to boards with petition issues.
45

We have a lot of new commissioners out on the front lines, so the process itself is new to them, plus the regular petition questions that you do get from candidates and others.

Petitions are being filed with us.

There was a flurry of time clock noise when I came up, so it must mean the mail is in.

A lot of the petitions in this time of year come in by mail.

For the most part they are delegates to judicial conventions so those are being processed as we speak

Whether they get objected to and affect your next meeting schedule is something that we can discuss later.

Other than that, I think that's it for election operations.

Joe, do you have anything to add?

>> DOUGLAS KELLNER: Thank you.

And of course Anna will be getting back to you because of the issues relating to the voting systems that we will be discussing in new business.

But perhaps there is one thing; do you want to comment at all on the Sequoia Dominion announcement that is going to be made today?

>> ANNA SVIZZERO: I can do that. There will be a press release today. Dominion voting system, the owner and creator of the ImageCast system, is taking over the Sequoia footprint in New York.

They are assuming operations in Jamestown and will continue to use New York state subcontractors for the systems that they are building.

I think they will be migrating a number of staff as well over to the Dominion side of the operation.

It's a mutual agreement.

I think it is beneficial to Sequoia and Dominion. I think Dominion has demonstrated its commitment to succeeding in New York and making sure that the board certifies systems that they are comfortable deploying in the counties, and we're very comfortable with the decision that they have made.

As I said, there should be a press release out officially later today.

They have begun the paper work with the Office of General Services so that that assignment can happen.

Paul and Kim will probably be involved in that at some point when the documents get perfected.

>> DOUGLAS KELLNER: I saw commissioner --

>> EVELYN AQUILA: Is this a merger?

>> DOUGLAS KELLNER: No. It's a --

>> EVELYN AQUILA: Acquisition?

>> DOUGLAS KELLNER: It's a renegotiation between the arrangement of Dominion and Sequoia.

And I saw Commissioner Walsh favorably nodding when he saw the news.

I had the same reaction. That very much to Sequoia's credit, when they realized that New York was not going to be a DRE state, but that the political winds were blowing in favor of ballot scanning technology, Sequoia had its own in-house scanning system that it first showed and a lot of the public and the County commissioners and some of us who were at the State Board now said to Sequoia hey, that machine doesn't really cut the mustard.

And to Sequoia's credit, they went out and they found Dominion across the border, and said, you know, Dominion has this really good scanning system that's been working in Ontario and other Canadian provinces, and started showing it in New York.

And there was a favorable response.

And so they did this marketing partnership where Dominion manufactured and developed the system and Sequoia marketed it in New York.

I'll let them explain their reasons for doing this.

But Dominion has put together an excellent state of the art product, and that's not to disparage the ES&S DS 200, which is also state of the art.

And each of them has features that make them competitive with each other.

But I think this is a good development and it will make implementation easier in New York, and that we will find that I think Dominion will be a very reliable vendor.

>> EVELYN AQUILA: That's why I asked was it a merger.

>> DOUGLAS KELLNER: The County commissioners will hear this announcement today and I think it was worth at least mentioning it at our meetings --

>> EVELYN AQUILA: Yes. I agree with you.

>> DOUGLAS KELLNER: So that there is no need for anybody to be nervous over this.

It's probably a positive development.

Well, thanks, Anna.

So we will turn to John Conklin for public information?

PIO/NVRA Update:

>> JOHN CONKLIN: Thank you very much.

Good afternoon commissioners.

We completed the television and radio PSAs for the new machine, which we previewed at the ECA conference.

The TV ads are in English.

The radio ads are in Spanish and English.

We're planning on an August 31 launch date for the PSAs for the upstate market.

We received word that the grant application for the 2009 HHS poll side accessibility improvement funds has been approved in Washington.

We expect a formal letter notifying us of this within about three weeks.

We have worked diligently on the storyboards for the poll worker training and voter education for the two machines, so I'll let Bob talk about that.

>> BOB BREHM: We heard a lot of comments when we were with our colleagues at the ECA conference about the education and training.

When we returned from the conference, Sequoia Dominion provided the ImageCast manual.

We reviewed it, commented on it, and they made a number of revisions. Both with the work that we received with Anna's unit and the information in the manual, we prepared what we call our storyboard.

And it is the document that will be used by us, we, the voter education contractor, to make the video.

So it was a lot of work to put together.

There were a lot of changes that ImageCast has from last year to this year.

We circulated that draft to all the County commissioners, for two reasons.

They are in the middle of preparing their training.

It's helpful for them to see what we are preparing that can supplement with work that they're doing, and also any early training they can use that information in their training.

And also to get any feedback that they had on areas that we can improve.

Copies were also provided to advocate groups, including the disability advocate groups.

We appreciate the comments we received so far and working to include them in our final draft.

We have scheduled for the week of the 28th for SOE to come here and actually do the videos of everything that they need to have ready in July.

And then depending on the production schedule in mid August to have the videos ready for our edits and also to make them available to the County commissioners.

It's an aggressive schedule.

It includes the new DS 200.

That is the next phase. Later this week we should get that storyboard and follow the same path getting it out to the County commissioners and trying to get feedback so we can sign off on it in time for the video demonstration.

So we're making progress.

It's not as early as we had wanted, but we had to wait for the documents from the vendors and we had to wait for the changes the vendors to make updates to the systems in order to know how to communicate that to the poll workers and the public.

>> JOHN CONKLIN: Thanks Bob.

The proposal from the usability expert for the voter registration form was approved by DOB and we will have the first meeting with her tomorrow.

The July NVRA newsletter was sent out yesterday.

We have done some more updates to the Web site since the last board meeting.

All of the State Board regulations are now posted on the Web site under the election law section.

The final canvass results for the two special elections signed today for the 77th and 85th will be posted.

Petitions were posted in the summarized PDF form as we received them.

Lastly, we received a copy of the Department of Motor Vehicle's response to New York City BOE letter from April 7, which we included in our letter of response to the New York City Board which was mailed out last week.

Other than that, the routine operations of the unit.

Anything else you'd like to add, Bob?

>> DOUGLAS KELLNER: John, what is the status of the New York City participation -- participation in the voter registration database?

>> JOHN CONKLIN: I think George is going to talk about that.

It may need more than one unit to discuss that as the makeup of the steering committee brings that -- we will all participate in that, but I'll wait until George does his, if you don't mind.

Okay?

And I have nothing else.

Any questions?

>> DOUGLAS KELLNER: Thank you very much.

>> JOHN CONKLIN: You're welcome.

>> DOUGLAS KELLNER: Campaign finance?

Campaign Finance Update:

Elizabeth Hogan?

>> ELIZABETH HOGAN: Thank you, commissioner.

Initially I'd like to state that today is one of the highlighted dates on the calendar for campaign finance because it's a filing date.

So we have been extremely busy.

One of the things that -- regarding that that I would like to bring to your attention, just so you're aware of it, is the call volume.

And I think at the last meeting I mentioned to the commissioners that our volume was up significantly.

And you know we have had this telephone system in place for about two years now and it enables us to see the number of calls that we're getting and the number of calls that we're able to answer and the time of the calls.

And there are all kinds of bells and whistles on this thing that enable you to see all of this.

But there are a couple numbers on these reports that really command my attention.

And one is the total number of calls we get in one day, the total number that we're able to respond to.

And the number that are abandoned.

And I brought this to your attention previously because we have two call center analysts remaining of the six that we originally had.

And the four positions that we lost were unable to be filled we were told because of budget constraints.

The report that I was looking at for yesterday is a bit troubling to me and I just want you to be aware of it.

We received 298 calls yesterday.

There were two --

We have two telephone people who are answering the phones and yesterday additionally our two accountants were on the phones as well to try to assist in the volume call.

We answered 228 calls.

70 calls were abandoned, which is approximately 24 percent of the calls that we received yesterday.

That abandonment percentage makes me very unhappy but there is nothing that I can do about it.

The staff is working to their best ability to respond to these things and we just --

I just want you to be aware that there are probably people out there who are very unhappy because they could not get through.

We just can't accommodate them.

So that is the percentage on that.

>> JAMES WALSH: Let me ask you a question on that.

Does technology allow yet the ability for, let's say I called in at 10 o'clock and the technology -- technology can identify my phone number.

I abandon or I'm abandoned.

And then I call back two hours later and I have a hit.

So I have a conversation.

I get my answer.

Is there any way to put those two together and find out that while the 70 abandoned really were not all abandoned, 35 were, because that person did call back?

>> ELIZABETH HOGAN: That's an interesting question and Patty Lloyd and I talked briefly about that yesterday when we talked about the stats.

I don't think we can do that, but if you'd like we can do a bit of digging around and see if the potential is there.

Certainly, because when I look at these numbers, I said to Patty, this is just unacceptable.

Not from the work perspective, because they worked really like crazy yesterday, there is no question.

But the number itself.

And I think she alluded to the fact that we were unable to do that because one of her concerns was we have 70, but maybe 20 of those maybe actually ended up getting through, we don't know.

But I can look into that and get back to you on that.

>> DOUGLAS KELLNER: I appreciate that.

I see a caller ID.

If you get a call from the local County, the number that shows on the ID is not the phone number that is being used.

>> ELIZABETH HOGAN: Exactly.

>> DOUGLAS KELLNER: And that may get scrambled.

>> ELIZABETH HOGAN: A lot of people have their number blocked and you can't tell.

But I'll look at that and get back to you.

>> The volume of work that you're handling and that is astronomical, and I thank you very much for that.

But what I wanted to say is there any way that they can at least leave a message that maybe a day or two later could be returned?

>> ELIZABETH HOGAN: We do have a voice mailbox. And many times --

>> EVELYN AQUILA: They can get on the voice mail. All right. Thank you.

>> DOUGLAS KELLNER: The point you're making is that the staff cut backs, they are not able to answer the phone calls of people who want to file.

And if our policy is to give priority to voluntary compliance and helping people file, that this is being cut back --

>> EVELYN AQUILA: I understand completely. It's almost unacceptable; truthfully, it's not their fault unless we can give them a couple more people to answer the phones.

>> DOUGLAS KELLNER: So it's a real function that has been delegated to this agency that isn't getting done and that is getting impaired.

>> EVELYN AQUILA: And I'm sure we will be criticized for it at some point, too, even though working beyond and above, you know.

DOUGLAS KELLNER: Obviously the priority is to keep the computer running so that people can log onto the Internet and look at the information and George will talk about how well that is working.

But, again, you know, the thing doesn't work itself.

It really takes people and resources to make that campaign finance disclosure system work.

And it could creep to a halt if we don't have the resources.

>> EVELYN AQUILA: Say 500 people decided to call?

>> JIM WALSH: This is a telephone we're talking about here.

>> ELIZABETH HOGAN: This is a telephone system, yes.

>> JIM WALSH: So can people also make inquiries by e-mail?

>> ELIZABETH HOGAN: Yes.

>> JIM WALSH: E-mail can be responded to the next day or a day later.

So there isn't that slippage of e-mail. Do people know they have this back-up possibility?

>> DOUGLAS KELLNER: It's in the manual.

>> ELIZABETH HOGAN: It doesn't tell you that on the phone that you can resort to an e-mail question if you have one.

But we have the capability of e-mail, an e-mail message system.

One of the things that Bill and I talked about that we intend to do is one -- with one of the projects going forward is we intend to put a FAQs section on the campaign finance part of the Web site.

Because we feel that the very specific and constantly asked calls in someplace apart from the volume of the handbook may be helpful to people, where they can go on our Web site. Yes, frequently asked questions. And we hope that that would help people who have to talk to a representative.

EVELYN AQUILA: I'm sure there are some people who say I want to talk to a human being. You know, let's face it, my question is intricate. It's not the usual question and I need someone to talk to. Human beings still exist and they still have consent and we need the help.

1 >> DOUGLAS KELLNER: Most treasurers are volunteers who are trying to do a favor --
2
3 >> EVELYN AQUILA: For a friend.
4
5 >> DOUGLAS KELLNER: Well, to keep the political system running.
6
7 >> EVELYN AQUILA: Right.
8
9 >> DOUGLAS KELLNER: The majority of candidates lose. So, so, you know, the --
10 it's, you know, we want the campaign finance disclosure system to work, but it doesn't
11 work by itself. It will need help.
12
13 >> EVELYN AQUILA: It needs to have the money it needs to work.
14
15 >> DOUGLAS KELLNER: And of course Todd and Stanley grew up through that
16 system and know it well.
17
18 All right.
19
20 Go ahead, Liz.
21
22 >> ELIZABETH HOGAN: Okay.
23
24 Just a report on a very successful seminar season, which ended at the end of June.
25
26 We provided 27 seminars through the state and it's my understanding that approximately
27 twice the number of people attended the seminars this year as last.
28
29 I don't have the exact figures, but it was reported to me that twice as many people
30 attended.
31
32 So we consider that a success.
33
34 To bring to your attention the amendment to rule 6200.1, next Monday, the 20th is the
35 last day for public comment.
36
37 So that is in the system.
38
39 I'd like to talk to you about some of the projects that we're working on in the unit.
40
41 I'd like to, if I could, just reference to you what we had done to get to these projects.
42
43 We completed the corporate over contribution audit for 2006 giving and the 2007, and
44 brought those reports to the board.
45

1 We have completed the 2006 election cycle for the Senate and assembly and report to the
2 board is in the packet today.
3
4 We are now focusing; we have three audits ongoing at the same time.
5
6 We are looking at the 2008 corporate over contribution.
7
8 We are looking at the 2008 legislative audit and that is the election cycle for 2008 for
9 Senate and assembly.
10
11 We're looking at the 2006 election cycle for statewide offices.
12
13 Those three audits are ongoing.
14
15 Regarding the non-filers for 2008, that list was referred to the district attorney for review.
16
17 I'd like to bring to your attention, also, the -- even though it's not specifically campaign
18 finance, I'd like to just tell you that I had done a quick look at the list of complaints made
19 to the board that our unit is handling.
20
21 It was interesting that in excess of 275 complaints have been brought to the
22 commissioners by our unit this year.
23
24 So we're moving right along at a clip on that.
25
26 We're doing the best we can, considering it's the two of us, obviously.
27
28 We're also working on -- since the seminar season has ended, we're working now on a
29 couple of very, very we feel pressing issues.
30
31 One is updating the campaign finance Web Page.
32
33 We're trying to make that much more user friendly.
34
35 And we're getting a lot of good information from all the staff and trying to centralize that
36 information as to how we can change our Web Page to most effectively benefit the
37 people who need it.
38
39 And one of the things that I mentioned before was putting the frequently asked questions
40 perhaps section on there.
41
42 We're also working on procedures. We're working with George's unit on the operating
43 system neutral software.
44
45 I believe we're in the process now of writing business rules for Phil that he needs to
46 proceed to the next step.

But we have all the staff involved in that as well.

And I think that's it.

Bill, would you like to add anything?

>> WILLIAM McCANN: No.

>> DOUGLAS KELLNER: It's impressive what you're able to do with the limited resources, Bill and Liz. And please keep up the efforts.

>> ELIZABETH HOGAN: We will.

>> DOUGLAS KELLNER: Great. So we'll turn to the next report for information technology. George Stanton.

IT Update:

>> GEORGE STANTON: Thank you. Life is good. I'm not being named in any lawsuits.

[Laughter]

I only wish I could announce my retirement so people could say good things about me.

>> GREGORY PETERSON: Why didn't we ask Todd that?

[Laughter]

>> GEORGE STANTON: As Liz has already mentioned, you know, the July 15th filings are coming in.

And we're experiencing the same type of things on our help desk.

They have been busy for the last few days and yes we get the people who are dropped.

They get the option of going into a voice mailbox and people review the mailbox when they are off the phone and call them back.

But I think to answer the question that was asked, I don't think OFT has the capability in their telecommunication system to give you information on who might have been dropped and yet later got accepted as a call.

So I don't think we can track that.

We can ask that question, obviously.

As Liz also said the EFS software, I'm informed, we're getting near -- somewhere near the completion of the beta version of the system neutral software.

>> DOUGLAS KELLNER: What is EFS again George?

>> GEORGE STANTON: That's the electronic filing, the vendor neutral, the operating system neutral filing software.

Electronic filing software.

We have also been working with the scanning folks on the campaign finance scanning project to resolve some printing issues on the scanned forms.

>> DOUGLAS KELLNER: This is to archive the campaign finance records?

>> GEORGE STANTON: Apparently there is an issue with the imaging scanned in color which prints out gray.

And that -- unfortunately that is an inherent problem if you're trying to print something in color that is scanned in color, there is really no way to resolve it, other than scanning in black and white.

>> DOUGLAS KELLNER: Or printing it in color.

>> GEORGE STANTON: Or printing it in color, which is extremely expensive.

>> BILL MCCANN: The issue we have on a lot of responses for the district attorney's offices where they historically provide the certified documents or the original documents, the certified copies need to be legible in the form that they receive.

>> DOUGLAS KELLNER: Well, we can give them the PDF files and let them print it.

>> BILL MCCANN: I guess. I never thought of it that way but I guess we could do it that way. That's more than one way to skin the cat. I don't see why we couldn't certify an electronic file.

>> GEORGE STANTON: Moving on to the NYS voter.

I have three or four staff that works on NYS voter mostly exclusively doing the daily monitoring, software updates and patches.

We have had several counties last month decide without warning to switch Internet service providers, which gives them new addressing systems and they can no longer communicate to us so we have to help the counties with that.

We had one County offline for a week because they contracted an internal virus in the County so they were shut off completely.

So after a week of trying to get them back online after they straightened out their virus situation, they told us they replaced a bunch of hardware so we had to go to square one and they had to bring in a vendor on their side to do the addressing and routing on their new hardware.

So right now everybody's working fine for today.

We also, between my staff and Saber staff, identified an issue with the duplicate purges.

It seems sometimes counties would purge someone on the Web site.

The message would get sent to the County that someone purged it, but the update never was sent back to NYS vote with the purge.

In some instances the update came back but the transaction that they were supposed to send to the other County transferring the voter ID never got sent.

So we --

Meaning Saber has written a utility to help us.

Every day we check that now and the messages get re-sent and that's working fine right now.

Shape from the Saber is going back through all of the transactions pre the utility and making sure that they all get re-sent, because they have to be done basically on an individual basis.

And it appears that when we do resend the transaction, things for the most part go well.

Sometimes it has to get sent more than once, but it's kind of an inherent thing with a bottom up system.

We have no control over what the other end is doing, we can only send messages and wait for the messages back.

The purpose for the utility is to identify when we are not getting the messages so we can re-send them.

So that seems to be resolving the problem.

We are just going back and cleaning up some of the old.

We also had requests from several counties to change the way we did duplicate matching to take the middle initial out of the equation, so that if -- and one example that a lot of them gave was that if a woman married and started using her maiden name as her middle name, the middle initial would change.

But if she registered in another County it wouldn't show up in the duplicate list.

So they requested that we still show the middle initials, of course, but this, for instance, say I registered in Schenectady County as George E. Stanton and then moved to Albany County and didn't use my middle name, it would still show up as a possible duplicate and the counties would be able to compare the information and decide whether it was the same person or not.

We polled the counties.

I sent out an e-mail last week and it's almost unanimously they think it's a good idea to do it that way.

But there were a couple counties that didn't quite understand what we were talking about, but most of them would prefer to have it done that way.

So the steering committee is going to talk about that when we meet next week and decide what we're going to do.

And as far as the steering committee goes, we already spoke to the DMV letter.

As far as the New York City situation with the use of NYS voter, nothing has changed since the last report.

We obviously talk about it every week.

We have -- as you know, made changes to the rules and regulations, and that -- we have gotten comment from New York City.

The regulation, I believe Monday is the cut-off date for that.

>> BILL MCCANN: July 25th.

>> GEORGE STANTON: 25th.

>> BILL MCCANN: It falls on a weekend.

So it ends on the 27th.

And we discussed in the steering committee that at an executive session we should discuss our possibility dates and strategy going forward with that on the board.

So we would like to do that.

>> GEORGE STANTON: And the only other thing that the steering committee, other than the, you know, the regular monitoring of the NYS voter system going on, we have been discussing what to do about next year's Saber support contract.

And we have got some ideas on that, which we will probably be presenting next month to the board.

>> DOUGLAS KELLNER: Well, thank you very much, George.

Any other questions?

All right.

Old Business:

Then the next item is the resolution authorizing the interim use of the Dominion ImageCast vote system and the ES&S DS 200, including the AutoMARK ballot marking device for the pilot project.

And this is essentially based on the report, Anna, which you distributed to the commissioners last week and the functional testing that was done --

>> ANNA SVIZZERO: Yes.

>> DOUGLAS KELLNER: on the June software update.

>> ANNA SVIZZERO: Yes.

We did test both versions, April 30th version that the board previously approved at the May and June board meetings, and also the June 8th version.

There were a number of advantages to the June version, so we were hoping that things would indeed have been successful so we could move forward with that.

There are changes that the County boards asked for, advocacy groups had asked for, and some issues that have been resolved in the result of the work done at SYSTEST so far.

So the functional test was difficult to do.

1
2 We had obviously staffing issues.
3
4 Greg Jones is here.
5
6 Greg is on our CEMAC committee and he can attest to the daunting task of marking a
7 test deck.
8
9 There were a number of lessons that certainly the election Ops people have been familiar
10 with.
11
12 But Greg got to see firsthand what's involved in that process.
13
14 It's something that we need to focus the County board's attention on.
15
16 And to the extent that we do get word that the acceptance testing site is done so that we
17 have some pockets of space availability there. We're going to be bringing the County
18 boards in and inviting them to come in and do hands-on training on marking and testing.
19
20 That worked out well with the EMS.
21
22 It worked out well with the receipt process.
23
24 So we have the ability to use that space and use the time and do some hands-on training
25 with the County boards.
26
27 Counties that use the FCT system are already familiar with the process.
28
29 It's just going to be a lot bigger deal for them.
30
31 Counties that have no experience with test decks at all are really in for a learning curve.
32
33 So we did point out the concern that we have for care to be taken in the area of test decks.
34
35 We also made mention of the throughput findings that we had.
36
37 I know we will talk later on the agenda about some changes that are likely to come from
38 this entire process, but throughput is clearly one of them.
39
40 4,000 voters is a threshold for units to be assigned.
41
42 I don't think serves --
43
44 I don't think we think it serves the County board needs, but it will make County boards
45 have to reconsider the number of units they're purchasing.
46

So for those who think that they're done buying scanners, they may not be done buying scanners.

So they shouldn't worry about the shoe box money too much just yet until we figure out based on where the real world experience falls what the throughput experience means to them.

The findings are in this report.

Bob Warren is here on this his day off I might add

I apologize to his wife for bringing him in on his wedding anniversary.

For any questions that you have, Greg, as I said Greg Jones is here if you have any questions of him.

>> DOUGLAS KELLNER: Well, Bob, thank you for coming.

I just want to put you on the record though that as the director of certification, you are supporting this resolution that your office drafted.

So, Bob you're comfortable that we should move ahead and use these machines in the pilot program?

>> BOB WARREN: Yes.

All accounts on the testing all came out accurately.

The hardest part is getting your ballots reconciled.

You think what they are marking and they should be marked and you run them through.

But once we ran them through, all accounts came out accurately.

>> DOUGLAS KELLNER: I read the reports.

>> BOB WARREN: There were a few paper jams that we experienced.

But nothing that would stop us from doing this. The enhancement on the June bill that would help the counties a lot

>> DOUGLAS KELLNER: I read the report Bob, and I was impressed with the way the counts were done and you didn't just do a simple easy count.

You mixed things up and you showed us how difficult it was and they came out correctly.

>> BOB WARREN: Well, the times they had to rerun the test deck, we probably ran 6 or 7,000 ballots through each -- two builds for each vendor.

>> Well, both to you and Anna, Bob, I tip my hat.

Both of you worked tremendously on this project --

>> ANNA SVIZZERO: And Joe. We made Joe work.

>> DOUGLAS KELLNER: And Joe, Joe Burns, too.

He is new to the process. But since he came in we haven't let him breathe.

>> ANNA SVIZZERO: We have worked hard over the last couple weeks of doing this.

>> DOUGLAS KELLNER: Are we ready to vote?

Those in favor say aye?

[Chorus of ayes.]

Opposed?

All right.

So the resolution is adopted.

New Business:

The next item of new business is marked on the agenda, discussion of need for pilot program analysis, including but not limited to a structure to review any statutory, regulatory or procedural changes that may be needed for the full implementation of the new voting systems.

And I wanted to add three subtopics to that.

One is to discuss the commissioner -- the question raised by Commissioner Dewitt on the oval square debate.

And the second is my own little pet peeve, which is the over vote notification regulation and how we're going to implement that.

And then I thought it would also be worth a couple of minutes just to discuss where we stand on possibly revisions of the audit regulations 6210.18.

1 But, Todd, I think you drafted the original item agenda item on the pilot program.
2
3 Do you want to talk about that part of it? Then we can move to the oval square or the
4 overlook--
5
6 >> TODD VALENTINE: This was raised by one of the members of CEMAC and we
7 concurred on this that this is a pilot program and there are things undergoing the testing.
8
9 We recognized that there could be changes, either as I said in the addenda items,
10 statutory, regulatory or procedural that we need to address.
11
12 And what we need to come up with, and I know that Anna -- we have had some
13 discussion on a staff level anyway, is to come up with a process for, as we cross those
14 items or identify those items, that we are able to develop a log of those.
15
16 So we don't forget them.
17
18 And then figure out all right, what do we need to change once we have kind of gathered
19 all of those?
20
21 Because if we start going after one item at a time, unless it's the so-called show stopper,
22 you know, it might be easier if it's a statutory change, it's more efficient to put that in a
23 package.
24
25 If it's a regulatory change, it's more efficient to put that in a package.
26
27 If you're making changes, Bob Brehm went to the governor's office and clearly to make
28 changes in the regulations at this late date, the state procedure act really wouldn't permit
29 it.
30
31 So recognizing that, we will have to deal, you know, we don't -- really don't think we
32 have any problems with that now, but we know that we have to identify those.
33
34 On top of that, the County boards have been really interested in trying to give us,
35 partnering with us, because they are the ones operating the devices in the field.
36
37 They will have that information of what happened firsthand, you know, as far as hey, let's
38 change this procedure, because we found out that that's --
39
40 >> EVELYN AQUILA: It doesn't work -- It encompasses --
41
42 >> TODD VALENTINE: It did work as we intended it to work.
43
44 A lot of what we build as procedure, we didn't make up, they came from best practices
45 from the Federal Government or we adopted them from other states but we have to see
46 our own experiences how that works here.

1
2 >> DOUGLAS KELLNER: The over vote notification we made up.
3
4 >> TODD VALENTINE: Well, that's --
5
6 >> Over or under?
7
8 >> Under.
9
10 >> DOUGLAS KELLNER: Under --
11
12 >> I'm sorry.
13
14 Under vote notification.
15
16 Right.
17
18 Thank you.
19
20 Everybody does --
21
22 >> KIM GALVIN: Well, there is an over, too.
23
24 >> That's out of our control.
25
26 >> KELLNER: Over vote is required by the statute.
27
28 Under vote we did in our regulation. As far as I know, Illinois is the only other state that
29 thought about doing it.
30
31 And one County in Pennsylvania tried it and turned it off as soon as they found out.
32
33 >> VALENTINE: Well, that's one example.
34
35 >> KELLNER: But we will get back to that.
36
37 >> VALENTINE: That's what I'm saying.
38
39 That's one item.
40
41 >> KELLNER: I didn't mean to interrupt but that's one where we made up and we didn't
42 do it, we tried to invent our own best practices.
43
44 >> TODD VALENTINE: And we also identified a couple other items that we started to
45 see.
46

1 So what we need to do is now that we're in July and I know that the -- the new election
2 commissioner's president is interested in having some type of a clear County focus group
3 to assist us in this from a field perspective.
4
5 We need to have a mechanism, we had some discussions with Anna of some type of a
6 survey mechanism that we can send to all of the counties to provide us feedback.
7
8 And the problem with doing that, and this is where we need to have a discussion on this,
9 and that's why I want to raise it now, is we don't want to bog ourselves down, over
10 analyze a lot of feedback, but we have to get it back in an efficient manner.
11
12 You can develop the perfect system to develop the feedback, but it will bog the counties
13 and bog us down and we need to move fast in December and into January if we need
14 statutory changes and certainly if we need regulatory changes done in time for the 2010
15 election.
16
17 So this is the time that we need to start.
18
19 And to be honest, and we have got some --
20
21 >> KELLNER: And the governor's office has refused to provide some of the staff for
22 this?
23
24 >> TODD VALENTINE. That is a problem.
25
26 That means a longer lead time for us to develop a process -- and I think the key is
27 partnering with the counties to have them.
28
29 Because they will be out in the field, saying helping them provide that back to us.
30
31 And to utilize as many automated tools to gather those.
32
33 For example, we get surveys from other states that we pass along on automated survey
34 instruments where they fill it out and it's collected and the survey instrument tabulates it
35 for you.
36
37 So you don't have to have someone do all the data entry.
38
39 Well, that takes a step right there.
40
41 If it doesn't cost you money, that's what you do, or a little bit of money, because you
42 would have spent that anyway.
43
44 But what I think we need to have, the under vote is one issue
45

Probably some of it is a brainstorming session, but it's informing the board that we're taking this step and certainly to inform the public.

Because this was raised by members of the CEMAC committee.

Hey, yeah, we're doing this, and to the county boards.

>> AQUILA: Well, I just want to say that I don't think the Governor's office has not allowed us to have the new -- the people that we need.

I think that we're just falling under the axe that is across the whole state of the financial problems that are out there. Because I spoke to him and I think we all spoke about them and tried to see if we can get it.

And I don't think it's anything that they want to hold us up from doing what we have to do.

It's just saying no to everybody.

Unfortunately, without the money, we fall under that.

I'm sorry for that.

I do think that this is a time that we will really learn.

And here we go again like a teacher.

The whole reason for a pilot program is what it educates you to. And I hope -- there's going to be many surprises and maybe many of those surprises will be good ones and some of them will be ones that will give us deep concerns.

So we have done so well so far.

I expect nothing but good results one way or another.

>> KELLNER: Do you mind if we get into some of the specific issues?

>> TODD VALENTINE: I don't know how much you want to do this at this meeting.

But issue identification is a key thing here.

>> KELLNER: I really do have an issue on the under vote notification.

But even before that, I just wanted to dispose, because Commissioner Dewitt asked us to explain the oval square issue.

So Anna or Bob or Joe...

>> ANNA SVIZZERO: Do you want to give it a shot?

>> BOB WARREN: The oval square issue?

>> ANNA SVIZZERO: We are currently certifying -- not certifying -- moving forward with the products as they were submitted to us. We could not resolve all of the outstanding issues concerns why one of the systems counts ovals and one has squares.

What everyone needs to know is that the scanning system looks for squares.

The ballot is a grid pattern.

The shape of a mark that a voter provides is something that can be determined.

But the scanner is always going to look within a predetermined area and we defined some of the areas in our definitions in 6209.

We're looking for consistency in how votes are counted across the state.

If districts are crossing County lines and the voting systems are also crossing County lines, we want to be sure that a vote is a vote, no matter what sort of system the vote is cast on.

So we are proceeding with the systems as they were provided.

But we are cognizant that there are issues ergonomically speaking.

It's easier to fill in an oval. People when they doodle, tend to fill in circles not squares.

It's clearly, as I understand, I was not at the conference, but I do understand that the speaker from Minnesota pointed out that providing instructions to the voters on how to fill in a mark, whatever that mark is, properly, is key to the success of any Op scan system.

So there is an education process that would be involved, whether it's direct mail as the County boards provide information to voters on what they will experience at their polling place in the fall, ads in newspaper, the training required, the poster or demonstration that is required in a poll site using new equipment.

All of that, the key component of that clearly has to be how to mark a ballot.

We learned a very important lesson in the absentee world when we told voters, showed voters that they had to color in an oval and said this is a good mark and then said these are bad marks.

Voters only saw all of the marks and continued to make Xs and checkmarks.

So when we printed the ballots the next election, we only showed good marks and our problems went away, so, we have personal experience in that area.

But that really is the difference between the oval and the square as they appear on the ballot right now.

>> AQUILA: Well, the tendency -- X and square --

>> KELLNER: To answer Commissioner Dewitt's question directly is that there is no basis for changing policy now?

I mean, what he -- I believe what he is asking is that the counties have the options to do that.

And I think we all agree that at this point, no, that this isn't an area that we're going to provide room for experimentation of the counties.

The counties all have to do it the same way.

>> ANNA SVIZZERO: Yes. And there needs to be that consistency.

I think out of HAVA that is probably one of the few original goals at heart, that there is consistency across the board.

And we need to be clear on that what direction we choose should be based on the experiences the County boards encounter in addition to what we picked up from other states and from our own experiences.

>> KELLNER: And the way we're addressing the oval square issue now is on the basis of a consensus of all of the experts doing the testing?

>> SVIZZERO: Yes, we worked with NYSTEC.

We prepared papers on the topic.

Bob and our team tested a number of ballots in a number of different ways with a variety of marks.

We spoke with the vendors about what was involved in changing a square to an oval or an oval to a square.

In some cases it's software and firmware, which would derail our whole certification project.

1
2 So it's something that we are living with, proceeding with, as the systems were submitted
3 by the vendors, and we will make changes based on hard facts later in the process.
4
5 >> DOUGLAS KELLNER: Anybody else on the oval square issue?
6
7 Let's turn to the under vote notification. You know, I guess we should recap by saying
8 that the statute requires that the scanning machine notifies the voter of over votes.
9
10 The statute is silent on the issue of under votes.
11
12 Our regulations that were adopted in 2006 provided that the voting machines must
13 provide notification of under votes as well as over votes.
14
15 And those regulations remain in effect.
16
17 There --
18
19 >> GREGORY PETERSON: Subject to change, right?
20
21 >> DOUGLAS KELLNER: Well, the regulation is in effect today.
22
23 And that's -- well, that's the purpose, Commissioner Peterson, of my discussion on this is
24 that, is that --
25
26 All right.
27
28 Well, let me move on with the background.
29
30 I apologize, because I think the four commissioners know this.
31
32 But the -- the options were to turn off the under vote -- all right.
33
34 When we did the function -- when we did the usability testing, starting in Rochester and
35 then in Syracuse and I think there was a third one in Albany, we observed that the under
36 vote notification becomes a delay factor and it also impairs the voter's privacy of the
37 ballot.
38
39 Because the fact that the voter has not voted a complete ballot becomes public, because
40 the machine notifies that.
41
42 One option was to put a box on the ballot where the voter could turn off the under vote
43 notification, and that is still what I think is the best way to do it.
44
45 But the commissioners as a group had indicated that they did not believe we could do that
46 without a -- without legislation authorizing it.

1
2 And we proposed legislation, but neither the Senate nor the assembly adopted that
3 legislation this year and indeed the feedback that I've gotten and I think Kathleen O'Keefe
4 reported to us at a prior meeting is that the legislature did not include under vote
5 notification in the statute, and that there is a presumption that we should just turn off the
6 under vote notification.
7
8 Another option was to put a place on each rate, each contest that the voter wasn't making
9 the whole thing -- wasn't making -- was choosing not to vote in that particular contest.
10
11 In any event, the legislature has not changed the law.
12
13 The current regulation, in my view, is unworkable both because it discloses the fact that
14 the voter has chosen not to vote a complete ballot in a public way and it will cause the
15 rejection of the majority of the ballots.
16
17 At the election commissioners conference in Lake Geneva, we discussed this and
18 somebody asked for a show of hands by the County commissioners, and virtually
19 unanimous County commissioners were recommending that we turn off the under vote
20 notification.
21
22 Now, I understand that since that conference in Lake Geneva that the staff has been
23 working so that the under vote notification is going to be turned off in the pilot project,
24 without changing the regulation.
25
26 And that concerns me to great end.
27
28 My view is that if we have a regulation --
29
30 >> KIM GALVIN: Commissioner, I think that --
31
32 >> KELLNER: Go ahead.
33
34 >> GALVIN: I think we took steps to figure out what it would take to do that. We did
35 not tell them to turn it off, as far as I know.
36
37 >> BOB WARREN: It would be over vote, under vote, blank ballot.
38
39 >> KELLNER: Well, is it going to be on or off?
40
41 The commissioners are asking us to turn it off.
42
43 I think that's the right decision.
44
45 And if they are going to turn it off, we have to adopt an emergency regulation in
46 accordance --

>> GALVIN: We would turn it off so they wouldn't have the ability to do it.

>> KELLNER: Right now, they don't have the option to turn it off. Our regulation requires that it be on.

>> GALVIN: Right. I understand that.

>> KELLNER: That the voter -- Under vote notification be turned on.

>> GALVIN: They can't do it themselves.

>> AQUILA: It has to be done by the vendor or us.

>> KELLNER: We are headed for -- the primary is only two months away.

>> GALVIN: I understand.

>> KELLNER: We need to make a determination whether it's on or off. And that is a regulatory determination. Right now, the rule says that there must be under vote notification. Everybody seems to agree that we should turn off the under vote notification. If we're going to turn it off, we have to adopt an emergency rule.

>> GALVIN: But the Governor's Office of Regulatory Reform doesn't think this would qualify as an emergency rule making procedure.

>> DOUGLAS KELLNER: First of all, offices don't give opinions, unless you're saying it's the director of GORE who is giving that or it's the counsel to the Governor giving that.

I happen to don't agree.

The statute --

>> PETERSON: The bottom line, Doug -- I can see where this is leading. I'll follow your lead. What should we do?

>> DOUGLAS KELLNER: I think we should adopt an emergency regulation to turn it off. Everybody agrees that this should be turned off.

>> AQUILA: I think so.

>> DOUGLAS KELLNER: If everybody agrees that it should be turned off, because it will create a problem at the election for reasons that we did not foresee at the time we adopted the regulation, including the fact that it may be unconstitutional --

>> AQUILA: It was a reg that I did not like at the time; I did voice that opinion at the time.

>> DOUGLAS KELLNER: I feel strongly that we have to adopt an emergency regulation.

>> PETERSON: We meaning this board?

>> KELLNER: Yes.

>> AQUILA: Yeah.

>> KELLNER: And frankly I'm not impressed with GORR at least in the way that they have dealt with us in dealing with regulations.

>> PETERSON: But this was a regulation promulgated by the state Board of Elections.

>> KELLNER: Yes.

>> PETERSON: So if we can un-promulgate it in the State of an emergency --

>> AQUILA: Bur I think Bob Warren wanted to say something about this. Bob, stand up so we can hear you.

>> BOB WARREN: Just a technicality, in the Dominion system you can technically shut it off in the configuration file.

In the ES&S system, it's an election by election basis that the County would have to not set the configuration, but our test-deck process would prove it out whether it was on or off and they would have to make that correction.

>> AQUILA: We can say where possible?

>> PETERSON: They can respond to do that.

>> KELLNER: It can be done and it's already approved by our certification. So the certification has the option built into what we have already certified. But, but right now we have a regulation saying that --

>> AQUILA: I understand --

>> KELLNER: Saying that the counties have to use it. And I am --

I am adamant that we either change the regulation lawfully or we comply with the regulation as inappropriate as it is.

And I don't think there is anybody who thinks that we should comply with the regulation.

>> AQUILA: That's --

>> KELLNER: So that means we need to immediately change the regulation.

Now I believe there is text already out there that we should do it today.

But if we're not going to do it today we should do it at the next meeting.

>> AQUILA: I'm willing to do it today.

>> BOB BREHM: Back to the emergency issue.

But if you do consider passing the emergency amendment, it's only good for 90 days.

You may also want to considerate the same moment --

>> PAUL COLLINS: You've got to do that.

>> BREHM: You may also want to considerate that moment to also ask us to -- an emergency only buys you the 90 days.

We also have to tell us to do the steps to make any permanent amendment also, and that will allow us to -- we still have to follow the process we normally would follow.

However, during that 90 days it would be in effect and that would give us the time to take the normal process to follow it.

>> COLLINS: We have to do it today then.

>> BREHM: Otherwise at the end of 90 days we wouldn't be able to extend it if we didn't do the steps.

>> KELLNER: Do you have the text of the proposed amendment?

>> BREHM: It was in your packet.

>> Bob, go ahead.

>> VALENTINE: But, Bob, if I'm not correct, you spoke with GORR and GORR told you you wouldn't be able to do this under emergency regulations. That's what you told me.

>> BREHM: That is correct.

>> VALENTINE: So the Governor's office advised you that we don't have the ability to do this as an emergency regulation.

>> BREHM: The counsel at the GORR office suggested that this can be fed into the emergency category --

>> COLLINS: Commissioners, sometimes we have these discussions that may lead to litigation. It might be a good idea to have some of this discussion in executive session.

>> Okay.

>> COLLINS: If you wish to waive that concept, fine. Because I have some thoughts that I'm reticent to share -- You know...

>> AQUILA: Let's come back and go for it at the executive session.

>> KELLNER: It's not a lit --

>> COLLINS: I'm guessing, commissioner, that it might be. Because if you adopt the regulation on an emergency basis, and someone challenges it or --

>> KELLNER: If someone challenges it, it's because they're asking us to turn the under vote notification back on.

All right?

Now, that same person would challenge the action of the Counties in turning it off without a regulation and it would be a slam dunk, correct?

>> COLLINS: Maybe.

>> KELLNER: Am I correct?

If --

>> COLLINS: Well --

>> KIM GALVIN: I think there must have been a miscommunication about the position of the staff and the board.

Because clearly the conversations that were had at our level are -- there's going to be a thousand discrepancies against our rules and regulations that we're going to have to deal with at the ultimate certification report.

And if these things come up, we can deal with them as we do the thousand other things that people can sue us on at the end of the day.

1
2 But nowhere --
3
4 >> KELLNER: What were the discrepancies, Kim?
5
6 I'm not aware of any intentional noncompliance with our regulations.
7
8 >> KIM GALVIN: I have said that all along that intentional noncompliance with our
9 regulation would be a problem.
10
11 >> KELLNER: Well, so -- the answer to that is for us, do we believe that the general
12 welfare requires that we do this on an emergency basis?
13
14 I personally can say in good conscience that yes, that -- and the factors behind that are
15 our understanding from the usability tests that this will significantly delay and cause
16 confusion among both voters and poll workers.
17
18 Two is, also from observing the usability tests, that there is a significant constitutional
19 issue raised, because the state constitution requires the secret ballot, and that the current
20 regulation that requires the under vote notification impairs that right to a secret ballot
21 because it publicly notifies the voter that they haven't voted in every contest.
22
23 Those two issues to me are compelling reasons why we need to do this and why we can't
24 wait the 90 days for public comment on this and need to adopt this as an emergency
25 regulation.
26
27 I'm saying this now for public record now to build that record.
28
29 We have an obligation to adopt this -- and there is a complete consensus.
30
31 It's not like the issue hasn't been -- we say public comment -- there has been no formal
32 public comment on this but this is an issue that we have been discussing for many months
33 and soliciting comments.
34
35 We proposed legislation to the legislature that would have addressed the issue in a
36 different way, and the legislature consciously and appropriately decided that they were
37 throwing in with the turn the under vote notification off, that we didn't want you to turn it
38 on in the first place and we're not going to pass legislation that cleans up your problem.
39
40 So the legislature in my view has spoken indirectly to us.
41
42 We heard back from the County commissioners, who almost unanimously have told us,
43 turn it off.
44
45 And we know that --
46

1 >> GALVIN: I agree completely with you.
2
3 >> KELLNER: Sorry for the long speech.
4
5 So we should just do it.
6
7 >> GALVIN: I just thought for purposes of the pilot, since it's not certified software, but
8 interim authorized software, that we could legally --
9
10 >> KELLNER: I don't think we can legally.
11
12 We can't authorize software that doesn't comply with our regulations.
13
14 >> GALVIN: Well, we are sure this isn't going to at the end of the day --
15
16 >> KELLNER: The only time we did it was with the ballot marking device to comply
17 with the federal court order.
18
19 >> AQUILA: We will be educated by some things --
20
21 >> KELLNER: We are not intentionally disregarding our regulations.
22
23 >> KIM GALVIN: I agree. I think there was a miscommunication of positions.
24
25 >> KELLNER: I'm sorry.
26
27 I'm not trying to make this a hostile thing.
28
29 But I just feel very strongly that we are in a better position by adopting an emergency
30 regulation, instructing counsel to file the paper work with GORR both to make the
31 permanent and to -- and my understanding is that actually on the emergency regulation,
32 we give it directly to the Secretary of State and that GORR does not have discretion to
33 reject our emergency regulations.
34
35 The Secretary of State is required to publish it.
36
37 >> AQUILA: May I say, I agree that we should do this and take it out.
38
39 But may I just ask this one question.
40
41 Is there a way that we can word this that say by our testing program we have seen that it
42 deprives the voter of the privacy that he needs to cast his vote.
43
44 Therefore, we are taking it out.
45
46 And how can anyone challenge if we think it's standing on constitutional position.

>> KIM GALVIN: We can make the wording as appropriate as need be.

I don't want the commissioners to feel that these conversations were had at our level about filling out the paper work, because they had not.

The last we heard is that staff reached out to GORR and they said we couldn't do it as an emergency rule making and we thought that the issue was resolved other than the purpose of this discussion, not that we--

>> VALENTINE: So that was never raised as an agenda item to adopt a regulation for this meeting.

>> KELLNER: A miscommunication under --

>> PETERSON: Well, bottom line is --

>> KELLNER: I was one of the --

>> VALENTINE: They didn't tell us at all --

>> PETERSON: Wait a minute. I'm talking, Todd.

>> TODD VALENTINE: I'm sorry. I apologize.

>> PETERSON: This is more than a miscommunication. It's a lack of communication. So I don't know who or what is playing games here. The bottom line is staff on both sides of the aisle seems to agree, the commissioners agree, you know, so let's not have this happen again.

This should be -- frankly, this is -- this was not in the packet, I didn't have it; neither did Commissioner Walsh, that ticks me off.

The bottom line is -- look, there has to be communication. There has to be communication at the staff level.

And so that the commissioners sit up here, we have to make a reasonable decision based on some of the advice you give us. But everybody has to be informed. It's a rather simple way to do it.

Take a couple words out of what had been and let's pass this thing on an emergency basis and let's get going.

>> AQUILA: We didn't have copies, either.

>> DOUGLAS KELLNER: Greg and then Paul.

>> GREG JONES: Would I be correct to understand that whatever you do wouldn't affect the on the BMD?

>> COLLINS: I don't know.

>> GALVIN: Yes, I believe that the BMD would continue to tell people when they had -- all of that.

>> JONES: Well, that's my point.

>> COLLINS: I'm not sure.

>> GALVIN: Well, we can --

>> KELLNER: The way it's worded, we have to look at the wording on that.

Greg is correct that --

>> SVIZZERO: We can change it to scanner instead of system.

>> GALVIN: Well, we can work out the language.

>> KELLNER: Well, we need to work it out now if we are to adopt it today.

>> GALVIN: We will have language that you can adopt.

>> COLLINS: But if you're going to adopt it on an emergency basis, you've got to have the language today.

>>KELLNER: Does somebody have another copy of it?

>> PETERSON: It says DRE or paper based voting system --

>> VALENTINE: So that would be on the BMD as well so the voter

>> GALVIN: No, we don't want --

>>KELLNER: Now wait a minute. Why would we be changing the first sentence?

The first sentence, in a DRE voting system, the under vote notification is not an issue.

Right?

>> SVIZZERO: Yes.

1 >> DOUGLAS KELLNER: Anna? Bob?
2
3 Bob Warren, can you come up here?
4
5 Sit up here so we can ask you questions.
6
7 In a DRE system, not that we have any, but in a DRE system, under vote notification is
8 not a problem because it -- it's just -- it just shows up at the summary at the end and it
9 says you haven't voted in these races.
10
11 And that's all private and it doesn't create a problem.
12
13 So we don't need to strike that language.
14
15 >> KIM GALVIN: But are we certain that a system that might be submitted would
16 operate that way?
17
18 >> KELLNER: Well, that's how they did.
19
20 The ones that we did look at, the liberty system and the -- so I would take out --
21
22 >> KIM GALVIN: I think that was for the purposes of --
23
24 >> KELLNER: So I would take out the first bracket and leave that language in.
25
26 It's sort of irrelevant anyway, because we don't have any DREs. Now, who -- who
27 proposed to add the words DRE?
28
29 >> SVIZZERO: We were just bringing it down from the previous sentence.
30
31 >> DOUGLAS KELLNER: Well, that comes out, too.
32
33 It should say in a paper based voting system, the system must indicate to the voter
34 specific contest or ballot issues for which an over vote is detected.
35
36 And then if you want to address Greg's issue, we could write -- all right.
37
38 So that's -- so I don't think we need to say anything about the ballot marking devices.
39
40 >> COLLINS: Commissioner Kellner, if you change the word "system" to "scanner,"
41 doesn't that address Greg's issue?
42
43 >>SVIZZERO: It needs to say ballot counting scanner.
44
45 >> KELLNER: A ballot counting scanner must indicate...
46

>> SVIZZERO: Because the AutoMARK is a scanner but it just doesn't have

>> KELLNER: We need to get --

Do we have any other copies --?

>> BREHM: Do you want a new blank one?

>> DOUGLAS KELLNER: Yes. Just so we have one definitive text.

>> CONKLIN: We can get another one.

>> We have been sending e-mails on this all week.

>> VALENTINE: I would recommend that we take a recess to do that. And the legal office can come up with the language. Because that's normally who would draft regulations; put a package together, which has not been done. I don't know if Paul has been involved in drafting this. But he is coming up with some valid -- he says he hasn't.

Certainly there has been a discussion of the generic idea. But the legal office, who prepares regulations, has not prepared this. So we are just drafting things on the fly.

>> GALVIN: Well, I think this is what Anna and I did when we were at the conference. We have had no follow-up from this language --

>> VALENTINE: Paul hasn't had any input on it. We were not prepared to draft regulations today.

>> KELLNER: All right. Well, that is the text I propose. And if you want to take time to do that, or Paul and -- where they can go out while we do the campaign finance stuff.

>> JIM WALSH: We can come back to this.

>> KELLNER: All right. So we have the two ballot proposals. There was one other issue --

>> PETERSON: Just before we get to that, since I have to step out of the room, I want to make sure that my vote is counted as voting in favor of item 3.

>> KELLNER: Very good. Right. Well, I just gave them text.

So Paul and Kim should step out and take --

>> I think your text is fine.

>> KELLNER: Unless you want to stay here while we discuss the audit regulations.

>> This is 6210.18?

>> KELLNER: 6210.18 is the next issue and part of the implementation of the ballot plan.

>> GALVIN: Why is it --?

>> KELLNER: What, Kim?

>> KIM GALVIN: Nothing. I was talking to him.

>> DOUGLAS KELLNER: Now, Bob, you're the lead on the audit regulations.

My understanding is that there are two or three issues that have come up in the comments that we have received on the regulations.

And I thought that it would be worth a minute just to hear everybody's reaction on this together, so that --

>> AQUILA: Could I just say something? I don't know if it's valid but I want to say it. Paul said to me we should not comment on these issues until after the comment period. That he said it's not proper that we have to wait --

>> BREHM: I think that was the NYS voter issue.

>> AQUILA: No, that was on the audit 6210.18. You told me I should not make any comments on it until after the comment period. That's a legal question.

>> KELLNER: Where does that come from?

>> AQUILA: Paul told me that.

>> KELLNER: My question is -- See, people -- There is a lot of misinformation, I think, floating around.

>> AQUILA: I agree. Well, someone called me and wanted an opinion

>> DOUGLAS KELLNER: So somebody says no, we can't do an emergency regulation. The law doesn't say that.

I mean, they make this stuff up.

They don't want to do an emergency regulation.

Maybe that is what the story is.

Now, is it true that we are prohibited from discussing proposed regulations before the comment period is over?

Or is this another one of these things that somebody's just made up out of thin air?

>> GALVIN: We have been discussing the comments for months.

>> DOUGLAS KELLNER: Okay. So I want us to continue the discussion.

>> GALVIN: I just didn't want us to do what we're not supposed to do.

>> DOUGLAS KELLNER: I'm aware of three issues that have come up in this so far.

One is a very straightforward one.

Is that in our -- in our statement to the counties, that we -- or the implementation guide that we gave the counties, we talked about nine-sided dice when there is no such thing.

>> ALL: Yes, there is.

>> KELLNER: Nine sided as opposed to ten sided?

You sure they are not ten sided?

>> BREHM: Well, we will go check.

>> DOUGLAS KELLNER: They are ten sided.

>> GALVIN: They are more than four.

>> DOUGLAS KELLNER: I think you will find that they are ten-sided Dice.

>> BREHM: We will try to count them.

>> GALVIN: They are zero through nine.

>> CONKLIN: He is playing a different version of Dungeons & Dragons than you.

[Laughter.]

>> DOUGLAS KELLNER: And that has been a subject of ridicule on the national voter blogs that we don't know the difference between nine and ten.

All right.

1 So, that is a minor thing that we do need to correct.
2
3 The next issue that they are raising is this issue of escalation of the audits and races
4 across County lines.
5
6 Now, has there been any internal discussion of the pros and cons of this?
7
8 The audit community is saying that our current regulation is flawed because the basis for
9 the audit is done within each County, even though the races cross County lines.
10
11 And that the suggestion here is that if there is a basis for escalation because there is an
12 audit in one county, which that should automatically escalate the audit in the other
13 counties in which that contest is involved.
14
15 >> KIM GALVIN: Well, there has been a very brief period. We did discuss this, at least
16 this very brief period of --
17
18 >> BREHM: Well, we had a phone conversation on Tuesday with one of the advocates.
19
20 I know Anna, Joe and I spoke with him on the phone.
21
22 He has had several e-mails and telephone calls.
23
24 We have asked if, you know, when we put the regs out for comment, what words don't
25 you like, what words do you think are wrong that need to be changed or what words are
26 missing that need to be added?
27
28 I did send around early this morning, because we received somewhere last night written
29 comments.
30
31 I have not had an opportunity, and I'm not sure everybody else has, to go through each
32 specific one, other than our general conversation on Tuesday.
33
34 The escalation issue is one that was raised Tuesday in our phone call.
35
36 It was also raised in the comments that we received.
37
38 I'm still, myself, not sure of many of the advocates are looking at the audit to be a recount
39 as opposed to an audit to see if the machine is functioning properly.
40
41 There are general disagreements.
42
43 >> KELLNER: We know we're not -- Sorry if I'm interrupting.
44
45 But, I mean, I have always been very clear that the audit does not substitute for the re-
46 canvass and was not designed to be a re-canvass.

>> BREHM: The other issue is they really feel that this statutorily required 3 percent will not allow us to look at enough systems in close elections to have a high level of confidence.

So they have long advocated that we -- and they have also recommended to the legislature that the legislature amend and remove the fixed percentage base and put a statistical variation process, which is what the advocates are recommending in many other states.

The statute speaks to how we do the audit and then it tells us to adopt regulations as opposed to uniform standard as to when we have to escalate because we have a discrepancy was found in the initial audit.

That's why we didn't think we had the ability to draft the regulation to ignore the statute and just go with a statistical variation.

So we don't know if there is an issue in a County and there is not an issue in the next County, at what point -- how would you do it?

Can you do it?

>> KIM GALVIN: Realistically, and my position in the conversation that I was having, the audit is to assure that the machines in your County have worked properly and are accurately counting the votes that were cast thereon.

There is a lot more to it than that.

But let's say Hamilton County has some problem for Governor, it falls within 1 percent in that particular County, we would then be saying if it falls within 1 percent in Hamilton County, the whole rest of the state has to count the entire Governor's race --

>> DOUGLAS KELLNER: No. We're talking about the regs now. We're not talking about the special resolution for the pilot program.

>> KIM GALVIN: But isn't --

>> DOUGLAS KELLNER: The regs provide for escalations. Is it three stage escalation?

>> KIM GALVIN: I thought the 1 percent is only in our pilot, not in the regular, right?

>> DOUGLAS KELLNER: Correct.

>> KIM GALVIN: Sorry. I misspoke. The normal escalation.

>> BREHM: The 9 to 11 describes what the audit has to start it.

Of the 3 percent of the voting districts they recommend -- the advocates recommend election districts, the status systems.

We would have concern about how to audit election districts in the concept of vote centers, where you have maybe three scanners servicing five or six election districts, it would be very complicated to audit by ED under this concept that we're moving forward on.

So we have a concern about that concept that was also raised in the phone call.

But primarily, the issue in the statute is you shall conduct an audit of 3 percent of the voting systems.

It says if a discrepancy is detected, we have to set forth a uniform standard as to how and when we will escalate to a further audit that could lead to a complete audit of all records.

So we're --

so the more recent comments we have received is do 3 percent and then come up with an also look at more based on a statistical process that if you follow their mathematical equation will give you a high level of confidence that you've looked at enough things that the right person won the election.

>> GALVIN: But it's 3 percent plus any other race that isn't included in the initial 3 percent draw, so it makes sure that every race is audited at least once.

>> BREHM: Well, it would count for a lot of things in the statistical variation.

>> GALVIN: Fiscal variation.

>> AQUILA: Is the hope Bill passed yet?

>> KELLNER: No.

>> AQUILA: That's 3 percent and then 5 percent. 10 percent. Based on how close --

>> BREHM: Well, 3, 5, 12 and then everything.

>> KELLNER: And it's based on the closeness of the race.

>> AQUILA: I said that, on the closeness.

>> DOUGLAS KELLNER: But that incorporates this concept of using the audit as a substitute for recount, which --

1 >> AQUILA: Well, no. That really shouldn't be.
2
3 >> DOUGLAS KELLNER: -- which we have rejected.
4
5 I'm interested in two of these issues.
6
7 You've discussed a number of them, Bob, and that as far as the statistical formula for
8 escalations; my own view now after reading the comments on this, is that it's too
9 complicated to apply for the County boards.
10
11 On the other hand, there are two aspects of this that I think are still worth focusing in on.
12
13 One is whether --
14
15 And --
16
17 Whether there should be something written into the regulations on a procedure for
18 escalation outside of the County in a multi-County contest.
19
20 So that if you've discovered an irregularity in one county that requires escalation in that
21 County, should we have a formula on when the other counties within that particular
22 district are required to escalate?
23
24 And it does make sense from a conceptual point of view.
25
26 If you're thinking about either a potential attack or an error in the programming of the
27 system that the statistical odds of that error coming -- becoming aware of that as a result
28 of the audit increase when you have these multi-districts --
29
30 Actually, I'm sorry. It's backwards.
31
32 That if you're discovered a discrepancy in just one district, in just one County of a multi-
33 County district, that the possibility that that error affects the other counties but was
34 undiscovered increases.
35
36 And therefore --
37
38 >> GALVIN: When you say discrepancy, do you mean an irreconcilable discrepancy?
39
40 >> DOUGLAS KELLNER: I'm only talking about irreconcilable discrepancies.
41
42 >> GALVIN: So if Hamilton County realizes why their machine is not counting right -
43 that falls within the parameters -would that be expanded over to--.
44

>> DOUGLAS KELLNER: I'm only talking about irreconcilable discrepancies. Not discrepancies that can be identified to human error or to the machine. To a specific anomaly.

>> AQUILA: That's very intricate decision.

>> DOUGLAS KELLNER: Now, I think there is some proposed language on how to do this, but it's not very well done.

So I think this is something to look at between now and when we actually adopt the regulation.

The other one is that in our guidelines, I'm not sure it's in the regulations, in the guidelines we gave the counties we said that when they have central scanners that they can audit by election district.

>> BREHM: Central Count absentee scanners?

>> DOUGLAS KELLNER: Right.

That's what's in our guidelines.

You know, some people say well, you're fudging the statute by doing it that way, because theoretically if it's a single scanner scanning all 1200 election districts in a County, that 1 percent of the system or 3 percent of the system is that one machine and therefore we have to do the whole machine and all 1200 EDs.

I think it's a practical interpretation that makes sense.

But that same practical interpretation could be applied to these - what you describe, Bob, as vote center districts that if you have --

You don't do the whole ED, you only do the ED on the machine, particularly if you are using it because it's an added contest.

It's a contest that wasn't covered in the initial 3 percent draw, and so you have to -- you have to choose additional machines in order to add the contest.

Well, you could do that by ED, it would reduce the number of ballots that have to be auditing while increasing the statistical integrity of the audit.

>> BREHM: If it were ED per machine selected, yes-

>> Yes, that's what I'm suggesting.

>> BREHM: That's not what they had advised us so that is why this is just a conversation on Tuesday and we looked at it from a vote center, it makes it extremely complicated and what we're very nervous about is a voting system with -- how many pieces of paper did you start the day when you opened the polls that are all blank and how many did you end the day and which ones are tallied for candidates and which ones are still blank?

And when you start taking some of these pieces of paper out of this system and adding them to some taken out of another system in order to come up with an audit that does something, in this new world that we will have lose our breath sometimes when we think of new things that we haven't thought of before, this one really stops our heart.

So we tried very hard to make sure that all of the ballot accountability is very important in article 9 of the statute in paper based system. We think it's the cardinal rule of how we go forward.

And if we look at EDs on a machine, we can get there.

>> GALVIN: EDs would be fine.

>> BREHM: One other thing that I think is important to mention that the advocates that are both nationally and statewide that are recommending these changes, I don't think give New York credit for enough, is that the fact that we are the only state that has set such high standards for cryptography, we have set such high standards for meeting the 2005 VVSG

We don't allow the vendors, once we are into a certified system to program the ballots.

So you won't have that process where a single vendor has programmed the whole state so therefore a problem found in Hamilton County is unlikely to be repeated everywhere else.

It's more a human error that you'll probably find and that human error in New York state should be found because we both statutorily and regulatory require an extensive pre-election qualification testing.

So to the extent that we require all of those other things, I think we can look at ways to improve the regulation.

We always are open-minded about that.

But I think the kinds of issues that we're seeing in other states, California is a good example, if they had used our re-canvass procedures they would have found the 200 missing votes in Humboldt County probably within 24 hours of the polls closing.

But it took them 6 months later and 100,000 dollars to accomplish that.

>> KELLNER: And I also want to add that we found that same error in our own certification process when we were certifying.

>> BREHM: It's new to us. We talk about it. We will continue to talk about it.

We will look at these issues as we go forward.

>> AQUILA: I think we will allow candidates, they have many --

Many things that they can do for a recount if they are unhappy with it.

If they think there is something wrong or the machines --

Our candidates in New York state, you know that you can get as many recounts as --

You can do the recount in the Board of Elections; the recount goes to the court.

They order it back again.

So the candidate does have greater recourse than in most cases than in most places.

>> KELLNER: But the two points I'm raising I think are highly technical and I'm just putting it out on the table.

Those are the only two that I'm personally interested in out of the dozen or so issues that some people have raised.

>> BREHM: Well, just to wrap up, we are up to two public comments now, the one we received last night and the one we have today.

>> KELLNER: The formal public comments. But we have lots of other comments on there --

>> BREHM: We have a lot of comments on the whole development of the testing.

This has been part of the system for a year.

>> DOUGLAS KELLNER: We have a couple hundred comments on the drafting of the regs, right?

>> BREHM: The drafting. But when you adopted the regs as put out to the Secretary of State under this round of public comment, we received one last night, just so you -- the universe of comments that we have had so far.

>> DOUGLAS KELLNER: All right.

Well, I again thank my colleagues for listening to all of this. But I wanted to do it openly so that we are communicating and that the day we adopt the regulations this isn't going to come up for the first time.

So the next item --

>> BREHM: Sorry.

>> DOUGLAS KELLNER: The next item on the agenda is the certification of the ballot questions for the -- sorry, the ballot proposals for constitutional amendments that will appear on the general election ballot this year.

We have received the text from the -- I guess it's the Attorney General that drafted the text.

>> GALVIN: We received the certified copies of the language from the Secretary of State and the Attorney General drafted the language in the abstract.

>> DOUGLAS KELLNER: And I guess I can't help resisting noting that the question for the amendment to section 24 of article III is -- has the split infinitive in it. But it's in the title of the Bill.

So ... if I had drafted it in a Bill drafting, I wouldn't look at that.

But I don't think we as commissioners can change the grammar or should change the grammar that is in the Bill title.

>> AQUILA: No.

>> DOUGLAS KELLNER: We're on certification of ballot proposals.

So is there -- or are we ready to vote on the certifications?

>> PETERSON: Yes.

>> DOUGLAS KELLNER: Those in favor say aye?

[Chorus of ayes.]

Opposed?

Now, the next item on the agenda are the --

>> GALVIN: They have to be signed, though, too.

>> DOUGLAS KELLNER: Where is the original?

>> They are all originals.

>> DOUGLAS KELLNER: So Jim and I should sign these?

>> VALENTINE: Yes.

>> BREHM: Just so you can record it correctly. You did both.

>> KELLNER: Yes.

>> WALSH: Yes.

>> CONKLIN: Proposal number one and proposal number two?

>> VALENTINE: Yes.

>> GALVIN: I'll scan the copies. I'll forward them. I'll give you the originals. I'll do whatever you want.

>> CONKLIN: That's fine.

>> DOUGLAS KELLNER: Do you want to wait to do this --

>> PETERSON: Do it right now.

>> DOUGLAS KELLNER: I don't care. I read this. But if you want more time --

>> PETERSON: No. Just -- Just to read it out loud so we know exactly what it is.

>> DOUGLAS KELLNER: All right.

So the proposal is to adopt an emergency regulation to amend part 6209.2A8 of the subtitle 5 of title IX of the official compilation of the codes, rules and regulations of the State of New York regarding polling place voting system requirements.

And it would amend subparagraph 8 to read: "In a DRE voting system, the system must prevent voters from over voting and indicate to the voter specific contest or ballot issues for which no selection or an insufficient number of selections has been made."

New language is added "A ballot marking device must prevent voters from over voting and indicate to the voter specific contests or ballot issues for which no selection or an insufficient number of selections has been made.

A ballot counting scanner must indicate to the voter specific contests or ballot issues for which an over vote is detected." And the words "Or under vote" are deleted from that sentence in regards to the requirement for a valid counting scan.

So I will move the adoption of the emergency regulation.

I think the reasons for the adoption of the regulation on an emergency basis have already been stated on the record.

Just to summarize them are that we have discovered in the testing process that the regulation with respect to the ballot counting scanners would create serious problems at the polling places.

We have discussed the issue with a number of people, including the County commissioners who unanimously recommended to us that it be adopted prior to the September primary election, where they are and we are concerned -- that major problems could occur if this regulation were left in place for the primary election.

And also the concern that enforcing the regulation as written could very well be unconstitutional because it deprives voters of their right to a secret ballot.

>> GALVIN: We're the only state -- And we since learned that we're the only state in the nation that would require that.

>> DOUGLAS KELLNER: That is correct.

All right.

So ...

>> PETERSON: I'll second that.

>> DOUGLAS KELLNER: Those in favor say aye?

[Chorus of ayes.]

Opposed?

Thank you, commissioners.

>> COLLINS: Commissioner Kellner?

Are the commissioners now directing that we also move through the regular course to amend this?

>> DOUGLAS KELLNER: Yes.

>> COLLINS: With the same language?

>> DOUGLAS KELLNER: Yes.

>> COLLINS: Okay.

>> VALENTINE: And what I would recommend now is that the board would concur is that they would direct Paul and Kim to -- the Governor's office with speed to seek the publication of the amendment.

>> DOUGLAS KELLNER: But my reading of the state administrative procedures act is that we file --

The regular regulation with GORR and the paper work required by the State Administrative Procedure Act, like the regulatory impact statement and all these things, that gets filed with GORR.

But at the same time, the official text is immediately sent to the Secretary of State and it's the Secretary of State who has to publish it and if there's some problem with the Secretary of State publishing it, then we will have to decide whether to bring it --

>> BREHM: There is a certificate of emergency that we file with your statement and the Reg.

>> DOUGLAS KELLNER: Yes.

>> VALENTINE: Just so --

>> KIM GALVIN: Well, why don't the same people who have been doing it do it?

>> BREHM: It's either the Co-Executive Director or the counsel.

>> DOUGLAS KELLNER: All right.

I move that we direct the staff to take all steps necessary to implement the emergency regulation and the proposed amendment, permanent amendment.

Those in favor say aye?

[Chorus of ayes.]

Opposed?

All right.

1 Now, we're on the campaign finance reports.
2
3 I have no problem adopting the recommendations in public session.
4
5 There is one that I'd like to comment on, without naming names.
6
7 It's the over contribution report.
8
9 Which is what number, Liz?
10
11 >> ELIZABETH HOGAN: I believe it's 09-35.
12
13 >> DOUGLAS KELLNER: 09-35 isn't on the list. Okay, in the preliminary. Okay.
14 Thank you. All right.
15
16 Now, your recommendation was to send the list of over contributions to the Albany
17 County District Attorney?
18
19 >> HOGAN: It was.
20
21 >> DOUGLAS KELLNER: All right. And my suggestion or at least something that we
22 should talk about is that the there are some people on that list who -- that other counties
23 have districts where county prosecutors have been historically interested in campaign
24 finance enforcement.
25
26 So I'm raising the question.
27
28 I don't have a strong view on it, but I'm raising the question of whether we should send
29 the list to the Albany County district attorney and for those who are in districts that are
30 within a single County, to the district attorney of that County.
31
32 >> HOGAN: My initial, just thought about it, would be that it would put the --
33
34 It would put the Albany County Attorney in the position of always having to coordinate
35 with a number of other district attorney offices as to who might do what.
36
37 >> KELLNER: Who is actually going to do it.
38
39 >> HOGAN: Exactly. There is no lead prosecutorial agency. So I would have a concern
40 about that?
41
42 >> BILL MCCANN: Well, we have in the past referred some cases, we had an illegal
43 voting cases that was in the Bronx and the Rockland County and we referred it to both
44 counties and it was the Bronx district attorney that prosecuted the matter.
45
46 If you send it to both, they will say that the other one would do it.

1
2 >> DOUGLAS KELLNER: Well, that was my thought, is that Charlie Heinz in King's
3 County and Queens and the Bronx have also been fairly good about picking up our
4 referrals and taking action.
5
6 And --
7
8 >> HOGAN: I suppose we could --
9
10 >> DOUGLAS KELLNER: Now, we could wait and see what the Albany County district
11 attorney wants to do.
12
13 Or leave it to him to refer it if he wants to.
14
15 >> HOGAN: There is that.
16
17 And the other thing we might do, if the board felt strongly about referring it in a dual
18 manner is to draft a letter very specifically as to what we are doing to put them on notice,
19 but it creates an additional step for them to consider in their --
20
21 >> PETERSON: You might want to do it -- if it's something that is particularly
22 egregious, you know, and you do feel that way and the board feels that way, that we refer
23 it to a district attorney outside of the area.
24
25 >> KELLNER: None of these are --
26
27 >> VALENTINE: Well, this is also from 2006.
28
29 >> HOGAN: These are not individual complaints that you have voted an investigation
30 on.
31
32 >> DOUGLAS KELLNER: Well, so my suggestion is that we send it to the Albany
33 County district attorney and then if he is -- we can either suggest to him either formally
34 or informally that he could coordinate with the other counties if he wants.
35
36 Leave it to him.
37
38 >> VALENTINE: I don't know if it's -- It creates a --
39
40 >> DOUGLAS KELLNER: All right.
41
42 It doesn't affect the vote on the matter.
43
44 The other --
45
46 All right.

1
2 Have we actually voted?
3
4 I forgot.
5
6 >> HOGAN: But before you do vote may I just ask that in reference to one of the
7 determination, which is 09-13, there was a miscommunication and a misstatement on my
8 part when I did the memo.
9
10 It isn't that -- it had to do with the corporate over-contribution complaint brought by a
11 private person against a corporation.
12
13 And the corporation named -- the entity named subsequently became a corporation.
14
15 But at the time of the 07 conduct complained of they were not. All of the contributions
16 were given by the LLC. And I think I miss worded that in my memo.
17
18 >> DOUGLAS KELLNER: Do you want to withdraw that one and put it in a memo?
19
20 >> HOGAN: No. It's only a matter of changing that -- that it was not a corporation in
21 2007, whereas I thought it was.
22
23 >> DOUGLAS KELLNER: So you have an amendment to the memo that you want us to
24 adopt?
25
26 >> HOGAN: Yes. Right. And it's that all of the entity giving in 2007 was not by the
27 corporation, it was by the LLC. That's all.
28
29 >> KELLNER: And Bill you've seen that?
30
31 >> MCCANN: No. I -- I'll take it on its face. It doesn't change the outcome.
32
33 >> VALENTINE: Right.
34
35 >> HOGAN: The recommendation is still --
36
37 >> MCCANN: It's the same.
38
39 >> DOUGLAS KELLNER: All right.
40
41 So I'm moving that we adopt all of the recommendations that appear on the agenda for
42 preliminary determinations.
43
44 We're closing complaints not requiring preliminary determinations.
45
46 Those are referrals to direction operations.

And the update doesn't require action, right?

>> HOGAN: No. It could.

>> DOUGLAS KELLNER: Well, it requires the formal vote --

>> MCCANN: Well, the update is the memo that I anticipated we would discuss in executive session.

>> DOUGLAS KELLNER: Well, if you want to have that discussion we can still have that discussion.

>> MCCANN: I'd like to have that discussion.

>> DOUGLAS KELLNER: So we are only voting on the complaints not requiring preliminary determinations and the preliminary determinations.

All right?

>> WALSH: Second the motion.

>> DOUGLAS KELLNER: Those in favor say aye?

[Chorus of ayes.]

All right.

So now I think we're ready then to go into executive session to discuss the update and we're also going to discuss the litigation recommendations from the steering committee on the database and other DOJ compliance issues.

All right.

Those in favor --

>> PETERSON: Are we coming back? So the public understands, we will not be coming back to vote on anything after executive session?

>> AQUILA: Well maybe.

>> DOUGLAS KELLNER: Do you want to do dates --

>> AQUILA: We might have to come back in case there is something – no?

>> KELLNER: I don't think so.

>> VALENTINE: We can vote at the next meeting.

>> DOUGLAS KELLNER: Stanley, can I just look at the book with the calendar?

All right. If we have objections and we have to do hearings, what are the tentative dates that you have in mind?

>> VALENTINE: Well, normally we get objections early next week. So to be honest I would target the first week in August.

>> DOUGLAS KELLNER: 4th, 5th, 6th? Evelyn, how are you on August 6, Thursday August 6?

>> EVELYN AQUILA: Could I just take a look at that? I'm sorry.

>> VALENTINE: Maybe we can schedule it as a tentative meeting, because if we don't have any problems --

>> DOUGLAS KELLNER: Well, I think we should schedule a tentative meeting a week or two later, depending on people's vacation schedules, and we will skip the 6th. If we do meet the 6th, then we would meet in September.

>> EVELYN AQUILA: I would prefer Monday, Tuesday, or Wednesday to a Thursday. Thursdays and Fridays are bad for me in August. We can meet Monday, Tuesday or Wednesday?

>> DOUGLAS KELLNER: So you want to do Tuesday the 4th as our tentative date?

>> EVELYN AQUILA: Okay. That would be fine.

>> DOUGLAS KELLNER: How is the 18th if we don't have to do that?

>> PETERSON: Tuesday the 4th is tentative?

>> DOUGLAS KELLNER: Right. Suppose we say the 18th if we don't have to meet the 4th?

>> AQUILA: Is that July 18th or August 18th? Sorry. You're talking in that direction.

>> DOUGLAS KELLNER: August 18th.

>> PETERSON: August 18th?

>> DOUGLAS KELLNER: August 18th is a Tuesday.

>> AQUILA: And when is the comeback date in days you need us in July?

>> VALENTINE: August 4th.

>> EVELYN AQUILA: That's the tentative one. Sorry because when the heads are turned this way, I don't always pick up what is going on.

>> KELLNER: Sorry Evelyn.

>> AQUILA: Maybe the 4th and definitely the 18th.

>> Are we come can back after executive session?

>> No.

>> Okay.

>> DOUGLAS KELLNER: So those in favor of going into executive session aye?

[Chorus of ayes.]

Opposed?

All right.

We're in executive session.

Executive Session: