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DOUGLAS KELLNER: Good afternoon, everyone.

My name is Douglas Kellner.

Co-chair, I'll call the meeting to order and ask the other commissioners to introduce themselves.

I'm Commissioner Aquila.

Jim Walsh

Gregory Peterson.

DOUGLAS KELLNER: And our Board of Election staff, please.

Stanley Zalen.

Bill McCann.

George Stanton.

John Conklin.

Bob Brehm.

Patrick Champion.

Joe Burns.

Anna Svizzero.

Paul Collins.

Kim Galvin.

Todd Valentine.

Tarry Breads.

Bob Warren.

Amy Allaud.

Kathleen O'Keefe.

Cheryl Couser.

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Bob Gronczniak.

Rob Zeglen.

DOUGLAS KELLNER: All right.

I notice that yesterday the New Yorkers for verified voters announced that Bo is moving on on the national front.

And that they will be -- and that they -- the new Executive Director is Professor Wanda Warren Barry from Colgate University.

And we congratulate her on her selection.

And Bo, I'm sure you will be missed.

But going onto bigger and better things.

The first item on our agenda is the approval of the minutes of January 6th.

Are there any modifications?

JAMES WALSH: Move for approval.

DOUGLAS KELLNER: Those in favor say aye.

(Chorus of ayes.)

DOUGLAS KELLNER: Opposed?

Minutes are approved.

Next the **unit updates.**

Start with the co-executive directors.

STANLEY ZALEN: Thank you, Doug. A

couple of things, commissioners.

We have to amend our statewide HAVA plan in order to receive the 7 odd million dollars which is our sharing of HAVA funds from the Federal government.

Our draft to present to our newly reconstituted Task Force is pretty much the 99% done.

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One more turn around to the staff to look at and we're ready to send it onto the Task Force members and to make a meeting.

Our first meeting.

We hope to have the whole thing wrapped up in two or three months.

As for the Task Force, we've constituted it.

The members of it have agreed with a single exception of those members to be nominated by the legislative leaders.

I haven't got a response from the legislative leaders as to who they would like me to select for the Task Force.

I'm sure they will have people in place by the time of our first meeting.

And again, I hope to wrap up the whole thing within the next two to three months.

EVELYN AQUILLA: Who has been nominated by the Board, Stanley? I

don't know.

STANLEY ZALEN: I don't have a list in front of me.

EVELYN AQUILLA: By you I think, right.

STANLEY ZALEN: Right, it's by me as the chief election official for Federal purposes.

And I've tried to appoint a wide range of diverse members.

Including the handicap community.

And various ethnic groups.

And I think it's pretty good.

And I'm just waiting for -- well I'm not waiting at all.

I'll set a meeting and presumably the legislative leaders will nominate those persons.

Those legislators, who they would like to see on the committee.

EVELYN AQUILLA: You don't have their names yet, though.

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STANLEY ZALEN: Yeah, I'm still waiting for their names. But I'll set a meeting --

EVELYN AQUILLA: I mean your names.

I mean the names of the people that were nominated by you.

STANLEY ZALEN: I could give you a list after the meeting. I have it back in my office.

EVELYN AQUILLA: I'm just curious that's all.

Any of the people stay?

STANLEY ZALEN: Any of the people who were on the last task force?

EVELYN AQUILLA: Yes.

STANLEY ZALEN: At least one who is present here now.

Amy Alan.

EVELYN AQUILLA: Okay.

Thank you.

STANLEY ZALEN: The other thing I was going to -- I would like to give a brief update on are positions for enforcement.

At the end of the 30-day amendment period the executive chambers do not add any members -- any positions for us to be able to hire.

And it's now with the legislative process with the State Senate and State assembly.

And we'll see.

TODD VALENTINE: Just a couple of other things we did have a large number of staff and commissioners did attend the County Board's election commissioners association winter meeting in Cooperstown, so that was --

EVELYN AQUILLA: It was the winter.

TODD VALENTINE: It was the winter.

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Related to that, we're now at the process where we start to put our agenda for our own annual conference which we talked about it's the last week in April so if there's any particular ideas, now is the time to start feeding those up.

The staff will generally this time of year is when we start.

EVELYN AQUILLA: Are we going to have a main speaker?

TODD VALENTINE: That's part of what we figure out with the agenda so if you have any ideas on that.

EVELYN AQUILLA: Some years we have and some years we haven't. I didn't know.

TODD VALENTINE: It depends on the issue.

You know that's -- it starts on a Monday and goes through a Tuesday and then a Wednesday morning session so it's here in Albany, by the way, at a hotel.

And then last item just to update you on, more conferencing, Stanley and I will be going to Washington at the end of this week for the national election directors winter meeting.

And we've contacted, reached out to Tom Wilkey for EAC to make certain he sets time for us so we can raise with him issues obviously that we have to deal with on the SysTest and lever machine replacement.

And what their schedule is for further attention, or perhaps not to call it back although I think they are kind of bound by that.

So that's -- that's what we have.

EVELYN AQUILLA: How long will the meeting be with the national election directors?

TODD VALENTINE: It's Thursday and it actually starts Wednesday evening but both of us we are flying down Thursday morning early.

Like a 6 a.m. flight.

And then it's all day Thursday, Friday and then they reserve a time for Saturday morning for sessions.

That's gone back and forth over the years.

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So Stanley has to come back so I've planned to make sure that I stay Saturday night so at least one of us is there to take notes or do whatever we need to just in case we have to preserve -- you know plan for that.

DOUGLAS KELLNER: Good.

Okay.

Anything else?

All right.

Then we'll move onto

legal. Kim Galvin?

KIM GALVIN: Paul and I have answered almost -- well a lot of questions almost everywhere you can imagine about the upcoming Village's elections and the machines.

And what they have to use.

And everything from candidates to you know just about everything.

Regarding the village elections.

We've also been asked a lot of questions about the upcoming Congressional special and subsequent special elections in the assembly should it go one way or the other regarding motor enrollments and things of that sort.

As you know there hasn't been a proclamation issued for that special as of yet.

There's been little to no activity that I know of with regard to our static -- our bundle of cases.

That we have communicated regularly with the AG's office as representing us on the Cyber case and Joe Brehmer has some of the ones in New York City.

We work clearly hand in hand with election operations on a variety of issues.

They have been keeping us busy with the re-vote issues around modification surrounding everything from the escrow payments to opening negotiations on the machines with OGS.

We continue to of course talk with the Department of Justice on a regular basis to keep them updated.

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And on the progress or lack thereof that we continue to have.

I know there's been a lot of discussion on the legislative package that the Board is putting forward or attempting to get together.

But I think that's --

EVELYN AQUILLA: That's one of the issues.

KIM GALVIN: We can speak more about that when we get to the section and quickly the lawyers at the Board are participants in the CLE panel on February 19th which should be interesting.

So we have had a few meetings in getting stuff together with that.

It's been busy.

Not too busy but busy enough to keep us going.

Paul is there anything to add.

PAUL COLLINS: Yeah, we have an apropos of various cases in the office.

We have a 2006 pro se case which is now headed up somehow some way in the southern District.

It sort of fell off the calendar.

And now it's been resurrected.

We are completing disclosure in that.

And we anticipate making a motion to dismiss saying it sought originally to adjoin the 2006 gubernatorial election on the grounds

that our requirement that there be a signature minimum for candidates to get on the ballot was unconstitutional.

So that's heating up.

DOUGLAS KELLNER: All right.

Thank you, Paul.

Election Operations, Anna Svizzero:

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ANNA SVIZZERO: Thank you, commissioners, we have been processing surveys that the County Boards have done.

We have about 20 counties that have responded to date.

So we're anxious to collect that data.

It becomes the foundation for our own report to the EAC who then reports to Congress.

So collecting that information is key.

We'll be sending reminders to the counties and massaging that information.

Moving forward.

We -- to reiterate what counsel's office has told you our fielding questions about just the operations from the ten counties that are involved in the 20th Congressional District.

Once that proclamation is issued, there will be a calendar that's distributed posted to our web site.

There is a period for independent petitions within that calendar.

It's a very tight timeframe.

But it is provided for.

So that's been one of the most popular questions.

Our status meetings with regard to certification we continue those with NYSTEC.

We continue to have an open communication with SysTest although the work that they are performing and discussing happens most often at the NYSTEC level but they are continuing to work on previous test cases and test plan preparedness.

And not doing actual testing.

SysTest does have a confirmed appointment.

We have confirmed it from several different points including the DOJ.

That visit is going to happen on February 18th.

And we're hoping that the EAC's report comes out promptly thereafter.

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We have reiterated to the EAC on a number of occasions the importance of the turnaround here as this is really impacted our timeline, which was already impacted in the first place.

But it's not helping.

We've had some conversation with OGS which we're happy to discuss with you in executive session concerning the opening negotiation talks with the voting system vendors.

There are some issues of mutual concern and interest.

And we are hoping to schedule these for later this month.

And we can elaborate on those later if you're interested.

We are working with OGS and NYSTEC on an invitation to bid for privacy booths and voting systems seals so the counties can purchase with the HAVA dollars directly from the state contract rather than having to use scarce County funds and hang onto receipts and hopefully submit at the end of the process using any of their leftover HAVA dollars for that reimbursement.

The team at NYSTEC continues to work on test cases.

We've provided six test cases.

The latest as recently as this morning to the vendors so they can use those to help them get their products in a better position to move quickly once certification resumes.

The work has been problematic in that regard because since there isn't a funding stream coming into SysTest they have let go staff.

In some cases key staff.

Some other staff have been either reassigned or dismissed or sent on forced vacation so everyone involved in the project is hoping that once the accreditation is restored the staff can be restored and we can continue to make progress in that regard.

As this work that we're anticipating is billable work, we need to have the vendors replenish the escrow accounts.

Counsel's office is going to work with us on our memo to the vendors.

We will reach out to them by phone first and let them know what's coming and then we'll have a letter together that counsel's office prepares and we'll send it off to the vendors.

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We need to hold ourselves equally as accountable so we have a resolution for you at today's meeting.

We are looking for the Board's authorization of another \$150,000 which will be used to pay the generic test costs which the Board had already agreed to.

We will -- we were reluctant to add significant dollars to that account we would rather come back to you if we need to depending upon how the costs to the state shake out as this does move forward.

We are continuing to collect asset management documents from County boards and our team and election ops is working with the boards that are still struggling with the concepts and the types of data that we're trying to collect to make that a more useful tool.

Several of us attended the commissioners conference as Todd Valentine pointed out.

We participated in several of the user groups with both vendors and also with NTS who was a significant voting registration system provider to the counties.

Those sessions are always helpful I think for us as well as for the County boards and it's nice to be included in them.

Bob Warren and John Ferri from our staff presented a high level workshop on the basics of ballot programming, which is very frightening to boards that have staffing issues and perhaps skill level issues.

We got excellent feedback.

We thought we presented a concept that they've been struggling with in a way that used New York terms and plain English terms so we're hoping we've allayed some of their fears.

And in concert with that effort, we are going to -- as soon as our staff schedules get squared away, offer the orientation program that we explained at the conference.

We would invite counties here on a county by county basis so that they could sit at a computer, program a ballot, watch us program a ballot and get a little more understanding on exactly what's involved.

And we're hoping that that will allay some of their concerns, as well.

And that would be followed by their purchase of the EMS and the vendor training that's required.

So we're -- we can do that in our voting equipment lab downstairs.

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It would be a county by county basis so it's a very small group and a very hands on opportunity which we're hoping they will take advantage of.

We are working on a -- the concept of this state being an interim kind of resource or a support resource or a safety net for counties regarding the ballot programming.

A number of legal issues have been raised.

So we are going to continue to explore that.

And put a plan together in writing for the Board which hopefully we can get to you if not before the next meeting at the next meeting.

And I think that's it for operations.

EVELYN AQUILLA: I wanted to say one thing and it's not speaking to all of the technical things you spoke of.

But I think that you particularly, all our people are excellent in -- at the meeting but you in particular gave a tremendous report to the County commissioners and later they were saying you know how valuable your information was to them.

And I just want to say congratulations.

All our people were great.

But you in particular was very meaningful to them when you spoke to them about the machines and what was happening.

I just wanted to say that publicly.

ANNA SVIZZERO: Thank you very much.

DOUGLAS KELLNER: Anything else on election operations?

And I guess we'll take up in executive session the contract issues that Anna wants to discuss with us.

All right.

Then John Conklin, your first report from **Public Information**.

JOHN CONKLIN: Thank you, commissioner.

Since the last meeting Pat Tracy was notified by the comptroller's office that the Federal government has increased the 2003 grant to meet the funds that the state comptroller had

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disbursed from that grant it doesn't pay any additional vouchers but it eliminates a deficit that existed between the state comptroller between what the state comptroller had disbursed after the grant expired on October 1st.

This was for work that was timely done and timely vouched but processed after the grant was recalled by the feds.

This amount was about \$339,000.

It's important because while it doesn't necessarily give us new money, it -- we don't have to move any money from existing grant years to cover the deficit that was at the comptroller's office.

Barbara reminded the -- Bob reminded the commissioners at the last meeting that the deadline for poll site access for improvements is March 31st, 2009.

Two counties continue to have outstanding materials for us.

Bob was able to meet with them at the conference.

It was Erie and New York City.

Erie asked for some additional copies of things to complete their application which has been sent to them.

The unit has worked with OGS and the state comptroller to simplify the contract process.

And we've agreed to extend the March 31st deadline that's coming up.

It's important for the counties to have a way to draw down this money for poll worker training, voter education, poll site access.

We continue to remind them to use this money because if they don't, the state Legislature or the Governor can come back and take it away.

The best example of this was last year when the Governor asked them to cut three counties that already used their money so they weren't incorporated into that cut.

So they escaped that.

The unit staff has met with the New York State broadcasters association to discuss our voter outreach program as we mentioned at the January Board meeting.

We discussed what our budget is likely to be and what the parameters should be for our purposes.

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We should have a proposal for you as soon as the next Board meeting.

An update on the voter registration form that was discussed at the last meeting and the incorporation of the organ donor language that's been sent to the Department of Health.

We had some miscommunication about the meetings so we don't have any feedback from them yet so we'll just continue to monitor that.

At the ECA conference Bob and I met with representatives from SOE to discuss a proposal to update and expand the poll worker training curriculum and the voter education materials we have on the web.

We followed up with two conference calls since that meeting to clarify SOE's proposal and to discuss a presentation by SOE at the Board of Elections conference in April.

SOE's proposal was in your packet, which we can address during the new business part of the meeting.

Greg sent out the NVRA newsletter for January.

Todd brought up the issue of the agenda for the April meeting already.

We would also like to remind the unit heads to think about what they want to talk about in the agenda during their parts of the conference.

The last thing is in addition to elections operations and legal we fielded a lot of the calls on the 20th Congressional District when

Congresswoman Gillibrand became the Senator other than that it's just routine operations of the unit.

Thank you.

DOUGLAS KELLNER: Thank you.

Any questions?

Then we'll go onto **Campaign**

Finance. Bill McCann?

BILL McCANN: Thank you, commissioner.

Liz is away on a much deserved and I'm sure happy vacation so I'll give an abbreviated report.

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On the good news front we were just notified this week that our scanning project was finally approved.

So we will be now moving forward to set up and finalize our internal processes to get that underway and fully implemented.

So that's very, very good news and we're glad to see that and we appreciate all of the help of our admin office and also OGS for getting that pushed through.

That's a positive thing.

We just came out of the January periodic filing. At the conference we had a longstanding relationship with the counties where we essentially give them a list of people from their county who may be a little late in making their filings so we've had good results with that.

The order to show cause for the January periodic will be on February 19th so we're trying to get done with the list to support the counties to get that list smaller and smaller.

It works out better in the long run.

We have a couple of upcoming meetings - one with GORE on Thursday to address any outstanding issues that they have.

And they will tell us we submitted a draft of all of our papers and they have some feedback they want to provide and we're anticipating as a result of that meeting on Thursday that we'll be able to just make the final finishing touches and be able to move forward.

And again we're still on track to have that regulation in effect beginning in July for the July periodic.

So that's for the duplicate filing issue.

We also have a meeting with OGS printing on Thursday afternoon.

We enlist their assistance to do our major printing projects including the handbook and the forms and also because of the institutional needs the January periodic order to show cause and judgment it's a huge printing project.

And so it really eats into our resources.

And it's more cost efficient to use OGS to do this printing.

So we've done this with them from the last four years or so.

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And we've found it to be very useful so we'll continue with that.

We also have in your agenda we have submitted to the Board a few weeks ago the proposed panelists for our HAVA alternative dispute resolution process which is mandated by statute and we'll take that under the new business. In line with that we will be doing training with the panelists in April, working with NYS DRA, which is the New York State Dispute Resolution Association who is our contracted vendor for that.

We also implemented at the conference a project for local candidate identification, working with our resources.

And we've started to bear some good results from that where counties are providing us with the information.

So we'll continue that triage as we move forward. But all in all things are proceeding under the normal course of business, and that's my report.

DOUGLAS KELLNER: Okay. I have questions about the numbers of pending investigations and how the budget cuts are effecting us. And I think it's great that you guys are trying to do more with less.

But -

I think it's probably better to do it in executive session.

ITU, George Stanton:

GEORGE STANTON: Yeah.

In ITU as far as NYSVoter goes we've been continuing to meet, pretty much on a daily basis with

Saber to continue the transfer knowledge- or knowledge transfer of the system.

My folks have been learning a lot about the system.

We've have pretty much taken over.

But I believe now we have fully taken over in what used to be the weekly reboots of the system.

Saber was rebooting all of the system weekly to clean them out.

We have actually changed that so we are not doing that quite as often now we found out we can go a little longer than weekly.

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We are going to try to do it monthly in the future.

A lot of that has been automated.

But we can't -- we found out it can't be completely automated.

Somebody has to be involved in the process to make sure that all of the services come back online and everything is working as it's supposed to be.

Occasionally you have to, you know, you have to give the engine a kick to get something going.

But a lot of moving parts there.

We did have to replace one of our F 5 site minders these are basically a hardware device a load balancing device that directs traffic where it needs to go when the county has accessed the system but that was under warranty and that was -- I can't remember exactly what happened to it.

It seemed like it was a small problem.

But the company decided -- or they opted to just send us a new device and we replaced the whole device, which was good.

We've also over the past month or so been working with Microsoft to install their SUS we --

WSUS we rougher to it as wuss it's the member update services and what it does is makes it easier for us to manage security updates and performance updates because anybody that's ever used Windows knows they come out like every other day and we've got about 50 servers that were maintained so it's a full-time job for someone to do that pretty much.

And in -- and this actually helps.

We can push out all of these -- we download these to one server and we can push them out to all 50 servers.

And that was tested in our testing environment.

Last week we shut down NYSVoter on a Saturday and staff came in and worked Saturday on the first round of applying -- using this to apply patches and security updates.

And everything went very well.

They have opted to do it in steps rather than -- because we had let it go during the election season.

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We didn't want to be messing with anything.

So they had opted to redo them in steps.

And last week was the first step.

They will be doing it again this week.

And possibly the following week.

But we don't know for sure on that yet.

But it will definitely be going on this week.

We had to help a couple of counties reconfigure their end of their VPN.

A few counties have changed their Internet service provider which changes IP addresses and we have to help them reconfigure.

Those have all gone pretty smoothly from what I understand.

I spent quite a bit of time working on ITU's portion of the internal controls review which I completed last week.

Also Patrick and I have been spending a lot of time together going over reports and trying to put the pieces of the puzzle together to see what does this report mean compared to this report and stuff.

And Pat has got everything well under control here I think.

He's been learning a lot from the counties on how they are handling verification situations.

I did take a call yesterday from New York City from Steve Ferguson in New York City asking about the interim steps that we had talked about sending files to New York City so they could do their duplicate felon and deceased processing.

He said he was instructed to contact me to see I guess where we go from here.

So I think we are -- the Steering Committee hasn't met since I talked to him.

So we haven't talked about that yet.

We may have to set up a follow-up meeting with the New York City IT guys to see where we are going to go with that.

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We also -- the Steering Committee actually took -- sat in on a call from the Governor's office.

They were asking about our reluctance to convert our NYSVoter VPN system over to OFT's one net system so we had a discussion on that raised our concerns.

I don't think anybody has heard back on that.

And of course RND continues on the campaign finance and the electronic filing software that we have been working on.

And that pretty much sums up the highlights for the last month in ITU.

DOUGLAS KELLNER: Thanks, George.

And I wonder if you could explain a little bit more about where we stand with New York City in terms of the database and I'm not sure I understood why we would need a Steering Committee meeting on our end to respond to your conversations with Mr. Ferguson.

GEORGE STANTON: Yeah, well we had originally talked when the Steering Committee went to New York it must have been November I guess --

October 1st.

GEORGE STANTON: October 1st.

We talked about possible interim solutions to them because they didn't want to log onto our system as you know and use our system.

We talked about ways that they could interimly do their database maintenance.

And one idea that was you know agreeable to everybody was to send them you know a monthly file of the deaths and felons and they could import them into their system on the back end, do their letters in whatever process.

And then feed the data -- the updates back up to us.

We never proceeded with that, which is -- talks kind of fell off at that point.

We never really had --

DOUGLAS KELLNER: When you say we never proceeded, I mean, I thought that the state Board was sending them those lists.

GEORGE STANTON: No.

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DOUGLAS KELLNER: You just post those lists on the state database.

GEORGE STANTON: Right.

DOUGLAS KELLNER: And they are supposed to get it from the database.

GEORGE STANTON: Exactly.

We offer --

DOUGLAS KELLNER: What's the resistance at this point for them not to take it off the database?

GEORGE STANTON: I think it has to do with the bipartisan processing and how they interpret that.

DOUGLAS KELLNER: For the felony list.

GEORGE STANTON: For all of the lists.

Anything that's done on the site.

DOUGLAS KELLNER: So where do we stand now? The city is not using the system?

GEORGE STANTON: They are using the system as far as sending us their voters, sending us -- they are doing everything from their end.

And sending us anything that happens to get done on their end.

In other words, if they mark somebody deceased in their system because they read an obituary I don't think they probably do that in New York City.

But for any reason that somebody gets marked as a purge or if there's any change that gets fed up to us but as far as going on and looking at the web site and comparing it to other counties and doing the process that way, they are not doing it.

DOUGLAS KELLNER: Well, how is the felony list for example communicated to New York City.

Are they processing felony cancellations?

GEORGE STANTON: Not to my knowledge.

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Not from our listing.

DOUGLAS KELLNER: That's because OCA notifies us?

GEORGE STANTON: Yes.

DOUGLAS KELLNER: So it's put onto our database.

GEORGE STANTON: Correct.

DOUGLAS KELLNER: All right.

And is it that we receive the death list from the Department of Health?

GEORGE STANTON: Yes, we receive the death list from the Department of Health which also ever since the beginning of the HAVA implementation has also included the list from the New York City Department of Health.

They send it to the State Department of Health and they in turn send it to us.

We hammered out that agreement two years ago.

DOUGLAS KELLNER: And is there any reason why the bipartisan issue would affect processing the death list or the felony list?

GEORGE STANTON: That's for loftier minds than mine to determine I guess.

DOUGLAS KELLNER: So what is it that New York City is waiting for from us that you think needs a Steering Committee decision?

GEORGE STANTON: Well, the thing that I was referring to was you know the Steering Committee deciding how we're going to proceed with this -- sending them these lists because we don't have any commitment.

And I asked.

We really don't have any commitment that they are going to -- what process they are going to use to do anything with those lists if we send them to them.

And it's a matter of we have to develop the process for sending out the lists.

So we just haven't developed it yet because we don't have any commitment that anybody is going to do anything with it other than --

EVELYN AQUILLA: May I ask a question?

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If they receive a copy of say right from the Department of Health right from the system would they use it then, the criminal justice -- you know if it didn't -- if they received their own copies rather than have to take them real far, would that please -- would they be able to do that then?

I mean, why are they refusing --

GEORGE STANTON: I don't know if that would please them or not but I believe that HAVA requires that we do it centrally.

EVELYN AQUILLA: I'm just trying to think how we get these -- it absolutely does.

GEORGE STANTON: I don't know if it would make them happy or not.

DOUGLAS KELLNER: Bob, do you want to speak on this?

BOB BREHM: When we had our last meeting in October in Brooklyn was where we held it, you know, the City Board commissioners had some pretty strong parameters to what their staff was allowed to talk to us about.

We were not constrained the same way.

And we made a list of items as George described that we thought might be some interim ways of getting some list maintenance services completed while we work towards a long-term solution.

And we identified those in a memo.

We sent it back to the city as summarizing what we discussed at the meeting.

The people at the table needed permission from their principals to even take it the next step.

We followed up I think twice through Todd and Stanley to say: We're prepared.

We offered some suggested dates to take it to the next step.

You know, where are you at discussing this subject at the next level.

So one I think it's encouraging if the city has given Steve Ferguson to give permission now talk to about this again.

We thought providing information to them on a monthly basis as an interim solution helped to deal with list maintenance while we continued to work towards, you know getting them to do a more automated solution where we didn't have to download it for them.

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But certainly -- and in October we looked at what we do to foster list maintenance now and work towards bridging the gap towards a more long term solution.

But you know we haven't had an invitation to sit down and talk about it until yesterday's phone call which from my perspective not knowing the parameters of how much they are willing to talk to us about is encouraging at least.

GEORGE STANTON: And I sent Steve -- I sense Steve Ferguson's frustration because he like me is just a systems guy and neither one of us see any real issues with being able to do these kinds of things.

But he's told to talk to me.

But he doesn't have the authority to make things happen, either.

So it's kind of like you've got the two guys that can't really do anything talking to each other.

EVELYN AQUILLA: That happens a lot.

DOUGLAS KELLNER: And George, that is the purpose of my question is to make sure that there's nothing that you feel inhibited about your ability to follow through.

GEORGE STANTON: I don't think there's any technical issue either way. I

don't think there's any technical issue in us sending files to them.

I don't think Steve thinks there's any technical issue to using the web site.

Although I apologize to Steve if I'm speaking out of line.

Like I said it's just --

EVELYN AQUILLA: I just thought if we sent them the copies of the list when we got it that's the same as taking it off our web site in a way because they are getting the same list we are and if that would move it along to some degree of us working together, you know, maybe that would be a possible small solution.

GEORGE STANTON: It's a possible interim to get some maintenance done.

It doesn't solve the problems that some of the things that are required by HAVA such as the voters ID following them from County to County.

EVELYN AQUILLA: You're right.

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DOUGLAS KELLNER: Well, we'll talk about the -- you know following up on the mandate for New York City in executive session.

I just wanted to make sure at this point that we understood what the parameters are.

And that we're not holding you back from getting any information.

GEORGE STANTON: No I'm not being held back at all.

We could probably if we, you know, go ahead and get the parameter -- I mean it's probably going to require at the least another meeting between the technical people to see exactly you know the file layouts and that kind of thing but we could probably do it within a couple of weeks.

EVELYN AQUILLA: I hope it's a good sign. I

hope.

DOUGLAS KELLNER: Good.

All right.

Any other questions for George?

All right.

I don't think we have any Old Business.

So we'll proceed to **New Business**.

First is the resolution to increase State Board voting machine examination account.

Anna and Kim?

KIM GALVIN: Unless you have questions I think it's pretty straightforward.

DOUGLAS KELLNER: I agree.

There's a motion to adopt the resolution.

Those in favor say aye.

(Chorus of ayes.)

DOUGLAS KELLNER: Opposed?

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The resolution is unanimously adopted.

Next is the resolution regarding poll site disability grant program.

John Conklin?

JOHN CONKLIN: I would say the same thing, if the Board has any questions.

DOUGLAS KELLNER: All right.

There's a motion to adopt the resolution regarding poll site disability grant program.

Those in favor say aye.

(Chorus of ayes.)

DOUGLAS KELLNER: Opposed?

The resolution is unanimously adopted.

Next is the vote on the NYSDRA ADR panel approval.

Bill McCann.

EVELYN AQUILLA: Can I ask for the public -- the public hears all these initials it would be nice if we explained to them what they were.

That's all I'm saying, Mr. Chair.

BILL McCANN: The procedure was mandated by HAVA and we have a parallel state statute which calls for when there's a complete concerning title 3 of the Help America Vote Act that would be handled a certain way administratively.

As part of that HAVA administrative complaint procedure was statutorily required to have alternative dispute resolutions available if it gets to that point under the statute.

We have a vendor which is NYSDRA the New York State Dispute Resolution Association who is our vendor to provide those services they did an RFP where they solicited under certain criteria an invitation to submit for people to be a potential panelist.

They had about 80 submissions they whittled it down to 50 and from that 50. From that 50 they now have 17 that they've submitted to the Board and ask that the Board approve them to be potential panelists.

If a case does go to ADR or alternative dispute resolution, then through the process of regulations they would select the panelists, one panelist, to hear that.

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So this is just a grouping of panelists who would be available as the case might be to serve in that capacity.

EVELYN AQUILLA: Excellent nominations. I

read every one of them.

And I must say I was -- I thought they were excellent.

DOUGLAS KELLNER: Those in favor say aye.

(Chorus of ayes.)

DOUGLAS KELLNER: Opposed?

The resolution is adopted.

The next item is discussion of the US Election Assistance Commission unified testing initiative.

EVELYN AQUILLA: That's you.

DOUGLAS KELLNER: I attended a conference at the request of the Election Assistance Commission last week on voting machine certification issues.

And the conference had about 75 participants.

And representatives from state election agencies, from the vendors, from public interest groups and then the EAC certification testing experts themselves. And part of this was to see if there were ways of reducing the costs of certification testing.

And the EAC has come up with a proposal that indeed it would be less costly if the EAC could coordinate testing with the states so that the states were not forced to incur duplicate testing expenses.

I think that that didn't strike me as a great surprise.

That -- on that policy.

The reason I put this on the agenda is because the EAC is -- has drafted a formal initiative where they would try to work with a group of states to implement such a project.

And I did ask the director of certification for the EAC whether in fact hasn't this been the case with New York and the EAC because we have been closely coordinating the testing efforts at least in the last year.

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And he agreed that that was the case.

So I don't think I was going out of place of volunteering New York as an initial participant on this.

But I did want to bring it to the other commissioners.

And at this stage there are no real formal commitments on anything.

It's just that we are listed now among a group of six or seven states that will be participating in this initiative with the EAC to try to coordinate testing so that there won't be duplicative testing and to reduce the cost of certification testing for both.

And I hope that's acceptable to the rest of the other commissioners.

It would really be up to Anna and our executive directors that are going to the NYSED conference this week so it will also come up at that conference.

EVELYN AQUILLA: I have only one question we had tested far ahead of many states.

We have far ahead and down the track on that.

We have been way ahead of that.

Is the EAC going to use this both ways?

If a state they trusted to do certain tests, well then that will be considered to -- another state wouldn't have to go through that test because we did?

DOUGLAS KELLNER: Well, that's -- that is hopefully the direction that this is going in.

And that is one of the reasons there has been this coordination with SysTest of the tests for the two vendors who are in certification in New York.

Now, one of the issues that we will be discussing in executive session, though, you know in terms of how do we proceed with testing now that while SysTest is not accredited.

And so legally the US election assistance commission has this problem.

Because we -- if we go ahead and use SysTest prior to a -- gaining reaccreditation then the question would be whether the EAC can retroactively approve the use of those tests from it SysTest.

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So that's an interesting issue.

EVELYN AQUILLA: Yeah.

DOUGLAS KELLNER: But the goal is for the EAC to be using the same tests that we're using.

All right.

GREGORY PETERSON: It sounds like a good idea.

DOUGLAS KELLNER: So I'm glad there's consensus that we can proceed with that initiative.

All right.

And then the last item on the agenda is the discussion of the Board legislative packet -- package.

Kim and Paul?

KIM GALVIN: Commissioners, I guess I would like a little direction on exactly -- I can give you just generally what's occurred at the Board to the point that we are now or would you like some other type of more targeted discussion or --

DOUGLAS KELLNER: Well, I guess my goal is to get a package of bills over to the Legislature in the form that agencies generally refer bills.

You know, with actual text of bills and the short memos in support of the bills with the budget implications.

In a format so that we could get those moving.

Are you and Paul familiar with that format?

And Todd --

KIM GALVIN: I worked with the Legislature for ten years.

And I understand the format that's required.

I was in fairness -- well, everyone in the room knows it probably except the commissioners, I had no -- I didn't know that this agency -- it's my own fault being new here -- operated differently than a lot of the other agencies where they have direct liaisons where the Governor's office and the development and formation of the ideas because we are -- and I should have known it -- independent.

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I didn't realize that we do it all independently and then shift it over.

So that being said, I know that a lot of the staff here developed 34, 35 proposals.

Then we met -- when we learned it was becoming a pressing issue for this meeting which I didn't understand to be the case, we had a meeting in which we I think agreed conceptually on 22 or 23 -- that's the list that you have.

And again, I wasn't until very recently understanding that for you to approve it, you needed the actual bill draft language in the memos.

I had thought conceptually we would agree and it would be delegated to us to do the actual drafting.

But understanding now the totality of the circumstances, I think it's fair to say that there were several items that we held that one side or the other or both one staff member or the other decided to hold for further discussion whether it be a timing issue or whether or not high school seniors can work as inspectors due to labor law concerns things like that that we fully anticipate having the additional meetings and I would suspect that we'll have a packet to the Board now that I understand that we need drafts and memos of probably 40 or so pieces of legislation by the next meeting.

DOUGLAS KELLNER: All right.

Well that's progress.

EVELYN AQUILLA: Absolutely.

>>DOUGLAS KELLNER: I tried -- and this is before you, Kim, tried to raise this in the fall of '07.

And we couldn't get anything together in time for the 2008 legislative session.

And so then in October, November, December I kept raising this again.

KIM GALVIN: In fairness, we did -- I was forwarded a package of information on December 5th.

And then you know for a variety of reasons I was out.

But I really wasn't understanding -- I guess through not asking enough questions -- of exactly what you needed to vote on so I can say now with a great deal of certainty that by the next meeting you'll have your legislative package and we'll continue discussions.

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DOUGLAS KELLNER: This is the time we should be sending it to the Legislature and if we're only going to send it to them in March, then we're bordering on the deadline for introduction of bills which I think --

Right now you have the Senate bill the whole month has gone by and they haven't billed out one bill I don't think we're going to be behind at all.

And the other part of it is shouldn't this be prioritized.

You send the - knowledge of what the Legislature is all about.

I mean you're lucky if they look at two let alone 40.

KIM GALVIN: Well clearly I think that as we develop the package and the entire senior staff develops the package we should endeavor to create maybe 1 through 5 of prioritized issues that mean the most collectively that have the most feasibility being passed.

And then certainly include the cleanup measures and the other things perhaps.

In the list, as well.

But clearly I think that more attention will be paid if it's targeted and it's specific.

And I don't think we have any problem with the people sitting around this table to do that.

I mean certainly we're going to have issues where we're going to disagree on whether or not something substantively should be changed and that that we will clearly bring to the Board.

But I think for a vast portion of the ideas set forth conceptually we can have agreement and find agreeable, build draft language and memos.

DOUGLAS KELLNER: And you know if its cleanup language, we can -- I think you can probably put multiple items in a single bill.

KIM GALVIN: Right.

TODD VALENTINE: Yeah, you could.

Because a lot of these are -- it's in the past so certainly drafting the language it's already done really it's just a question of updating it for this year.

EVELYN AQUILLA: This strikes me as being mostly changes in language and bills that are out there.

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You know.

Am I right or wrong?

KIM GALVIN: yeah they are definitely amending sections of the election law that are currently constituted.

EVELYN AQUILLA: There's nothing I saw that really stands alone.

KIM GALVIN: There's not really many new ideas.

EVELYN AQUILLA: No, I didn't see any.

PAUL COLLINS: There are a few.

The confidential registration for domestic violence.

EVELYN AQUILLA: I saw that.

I think we've said that in the past, though.

Yes, that's gone before.

KIM GALVIN: But the campaign finance ones I think are new.

But as with anything clearly conceptually we can agree on yes we agree the detail is in the devil and everything is in the details.

DOUGLAS KELLNER: Maybe we should quickly go through the list for people who are watching the tape just to see where we are on these things.

The first one you have is an election law 30105 that's just correcting the heading which is almost a typo in the statute.

KIM GALVIN: Yes.

DOUGLAS KELLNER: All right.

The second 4-122 drop candidates from the addresses from legal notices, is that the same as the election commissioners association proposal?

KIM GALVIN: Yeah.

EVELYN AQUILLA: Yeah, it is.

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That's what they asked.

DOUGLAS KELLNER: All right.

3 is a little more complicated but substantively important which is the polling place provisions of 4-104.

And now that we are switching over to ballot scanning, a more thorough analysis of how those polling place requirements should be set up.

And when you can reduce the number of inspectors and do consolidations makes a lot of sense.

But I realize it's got a lot of complicated implications.

It also removes the waiver conditions.

DOUGLAS KELLNER: All right.

Then Item 4 was 5-210 subdivision 3 on timely receipt of the registration forms.

So that's just language that if you receive the forms in the state that it's good.

All right.

And 8-310 language stub ballots.

And Anna, exactly what is the issue there.

ANNA SVIZZERO: We need to make the provisions of 6210 regulations consistent with the regulations that are on the record.

So that there's one single process for doing that.

And there are a few places where those don't mesh very well.

DOUGLAS KELLNER: And where the statute is -- needs to be updated.

ANNA SVIZZERO: Yes, definitely to reflect this op scan.

DOUGLAS KELLNER: So that's pretty important to get that done this session, right?

ANNA SVIZZERO: Yes, I would say so.

DOUGLAS KELLNER: If we're going to implement the ballot scanning in September.

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ANNA SVIZZERO: I would say yes.

DOUGLAS KELLNER: So that strikes me that that -- it's a small bill but it needs priority if we're going to avoid a potential litigation issue after the election if there's a close election.

All right.

6-132 and 6-140 on the petition witness --

PAUL COLLINS: Commissioner, I think you skipped one I think.

DOUGLAS KELLNER: Oh the lockbox.

No.

Yes.

We have some interest in that.

DOUGLAS KELLNER: Yes.

Now, I guess to my surprise that there are still half a dozen counties that actually still use the lockbox and all the rest of the counties just post the information and indicate the effective date is after the next general election.

Now, I heard discussions that there was some concern that we should continue the lockbox.

Yeah.

BOB BREHM: I think the issue was the privacy.

Many of the counties use an electronic lockbox as opposed to a physical lockbox.

DOUGLAS KELLNER: When you say many how many a handful.

BOB BREHM: The majority of the counties use electronic lockbox they put it into an electronic tickler file and on the magic date they hit the button and it makes the change but they don't disclose -- they still maintain the privacy that the particular party -- a new party has been selected.

So they have these -- as this section of the statute provides which is the privacy of disclosing the change of enrollment, they continue to use.

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They just use an electronic tickler file instead of the physical put the piece of paper in the lockbox.

DOUGLAS KELLNER: So only the people at the Board of Elections know what the file contains.

BOB BREHM: Yes those that have access to the original document.

DOUGLAS KELLNER: I guess from my own part I'm very concerned that there's not a uniform standard statewide in other words there is a single statute.

And if the statute is requiring confidentiality, then we should insist that all of the Boards statewide comply with the statute.

My own view is that that statutory provision of confidentiality until after the general election is anachronistic.

And that especially with it's been processed by the Board so party officials have access to it through the people at the Boards of elections.

And see any functions served by continuing to keep it confidential.

But it strikes me that if there are people here who think that that's an important function, then we need to talk about that.

Because there's a substantial lack of uniformity throughout the State on this.

Because New York City and a number of the large counties that I'm familiar with do not provide any confidentiality with respect to a change of enrollment.

All right.

So that's on the agenda of the let's see if we can talk about this and try to hash this out before the next meeting.

All right.

The next was the -- 6132 and 6140 on the petition --

PAUL COLLINS: I just want to make sure of the cleanup. Our statute is not constitutional.

DOUGLAS KELLNER: And the Legislature has known that for a decade.

And I don't know that any bill redraft is going to affect the Legislature on that.

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Because I know that they are well aware of the issue.

TODD VALENTINE: It hasn't in the past.

DOUGLAS KELLNER: So I guess I would say you may already have the text of the bill and if you've already got it then okay we can put it in.

But I would give that low priority because I don't think -- it's not new.

And I don't think there's interest on the legislative side.

But maybe if we send it over they will be interested.

It's a good bill.

DOUGLAS KELLNER: If it's ready -- next was confidential registration for domestic violence victims.

EVELYN AQUILLA: Excellent.

DOUGLAS KELLNER: If there's text then that's fine you can present it to us.

Again I think that's been on the legislative agenda for a while.

So I think they have legislation that's floating around out there.

EVELYN AQUILLA: It's not new.

At least six seven years old.

DOUGLAS KELLNER: Confidential registration for law enforcement officials same types of issues.

EVELYN AQUILLA: Helena strongly supported that because her son was a policeman.

DOUGLAS KELLNER: He felt threatened?

EVELYN AQUILLA: No but she knew what it meant.

KIM GALVIN: A lot of times they have corrections officers when people get out of jail they find out where they live so that's sometimes a very serious issue.

EVELYN AQUILLA: Somebody just got shot not too long ago somebody was prison and they got out and went to his house and shot him.

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PAUL COLLINS: That brings up an interesting point.

Some of the legislation on this simply references a definition of law enforcement officers that -- correction officers on both the state and county level who would not fall within the umbrella and I think she raises a good point that perhaps when we do ours, we ought to include them.

DOUGLAS KELLNER: All right.

Then Item 10 was 5-604 subdivision 1 on the publication dates for enrollment lists.

11 was 9-212 subdivision 2 publication of official results.

Next was 1-104.

To allow common carriers in addition to the post office.

And I'll just chime in on that.

That I've long advocated that -- I've alone advocated that if we're going to allow filing by mail that we require overnight mail.

It's my own little thing that we should not allow the process to be unduly dragged out by people sending filing or other documents by regular mail.

But I just would throw that out.

We've talked about that before.

And the problem is the year that you do it, somebody will get snagged because they haven't heard that the law changed.

What I'm thinking on this language is to simply steal the definition of common carrier from the tax department for some uniformity.

KIM GALVIN: To address your point certainly somebody would get snagged in the first year however you could probably make it up until a certain day and then require it by overnight mail so if they file by the first day it would make it more complicated but those are all things we can discuss as we move forward.

DOUGLAS KELLNER: As I say the idea is to get some package out and we'll make priorities on what's doable And not doable.

Then next was 6-158.

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Create a date certain for filing a certificate of nomination executed by a party committee when breaking a tie vote at a primary.

Well that makes sense.

All right.

Then 14, 11-106 and 11-204, remove the -- 11-204.

What is that?

That's overseas --

KIM GALVIN: Yes, Federal voters.

DOUGLAS KELLNER: Okay so the proposal is to remove the requirements from detachable signatures.

So that's to -- that's a cleanup.

KIM GALVIN: Right.

DOUGLAS KELLNER: Yeah.

All right.

Then we've got a whole list of things with absentees.

And I agree that well you know for a number of years we've been saying that the absentee statute has issues in it.

And you know Kathleen may want to comment on this.

But I get the feedback that this is a priority issue in the Legislature now that there's a lot of discussion on early voting, no fault absentee voting which no fault absentee requires a constitutional amendment and then whether our statute is overly -- whether our forms and our statute are overly restrictive even if you're not going to eliminate -- even if you're not going to go with no fault absentee voting do we need to have so much detail on the statute.

Commissioner, if I could interject, there are six items on this list that the assembly has bills on.

And that's one of them.

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The only thing that's not in the bill that we have is the date of birth which came up recently in a discussion I had with Bob.

And I think for purposes of adding that, that's not a big deal but we do have six items here that we already have bills on.

I'll send the Board bill numbers.

DOUGLAS KELLNER: Do you want to tell us offhand which topics.

No. 2, taking of the addresses in the legal notices.

That was a request from the election commissioners association.

No. 3, I've actually been working with our sponsors and had this issue for a long time going back to what we negotiated at HAVA and have recently talked to Bob about the existing procedure that the Board is already using and we didn't want to have the sponsors bill conflict with the Board's current practice so we're trying to amend the bill slightly to make sure we're not undermining the current program.

No. 8, confidential registration for domestic violence with the victims we have a bill on that.

No. 10 the publication on info first you and I discussed this in the past to make it uniform every year.

Let's see.

No. 15 absentee ballot cleanup.

We still have a little bit of a limitation there because of the Constitution.

But the bill I believe goes as far as it can without changing the Constitution.

And we have a separate bill.

The sponsor wanted to keep this bill.

And it has to do with caregivers being able to get an absentee ballot.

We incorporated that at last session into the bigger bill but he would like to keep it separate so I think we're going to do that.

DOUGLAS KELLNER: I appreciate that report.

Thank you.

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DOUGLAS KELLNER: And so Kim and Paul, no need to reinvent the wheel if it's already out there.

PAUL COLLINS: We have it all done.

You know what we can discuss it, it's fine.

Not all have been introduced this year.

Most of them were past at the meeting last year.

DOUGLAS KELLNER: All right.

And then 16 we've got election law.

7-121 cleanup language to allow for off scan ballot layouts and ballot marking needs and that's the kind of technical thing that again you may want to stick that with the -- you know with the other -- with the stub ballots.

The kinds of ops scan cleanup stuff that we really need to address so that the courts can actually follow the statute.

If there's a close election we're not going to get into ambiguity because we're not following the statute.

All right.

8-500 prohibit candidates from being poll watchers.

EVELYN AQUILLA: I don't think they are actually poll watchers. I

think they use the poll watchers --

DOUGLAS KELLNER: It should say that a candidate can't be a poll watcher if he's on a ballot.

We proposed it for quite a number of years.

EVELYN AQUILLA: I know we have I'm just saying that what the candidate does it take that poll watching certificate and visits all of the polls in this District if anybody says he doesn't belong here he says I'm a poll watcher there should be like a kind of certificate for those people.

A candidate may visit you know -- because they want to go into the polls on the day that they are running for office.

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They are all in there.

So you have to have a way so they can't get thrown out because if I see someone running against -- if I was someone running against my candidate I would say please get that man out of here.

TODD VALENTINE: That's why the bill doesn't pass.

EVELYN AQUILLA: Right I'm saying if we can clean up that language in some way it would.

It would.

DOUGLAS KELLNER: Let's get some text in front of us and then we can actually vote on it at the next meeting.

EVELYN AQUILLA: Yes.

DOUGLAS KELLNER: The next one is 9-108.

How to handle the undervote on ops scan ballot.

Oh, actually it's a separate -- let me throw out the 9-108 issue and then we'll talk about undervote.

I realize now these are two separate issues.

You skipped one.

18.

DOUGLAS KELLNER: The sun set for return of military ballots.

That's why the Legislature knows full well.

I mean they have to deal with it every year.

So they don't need us to tell us about that.

They pointed it out.

KIM GALVIN: I'm not sure the Legislature knows how much this costs this means reprinting envelopes every year so the counties don't get the benefit of any economy of scale by buying the envelopes in quantity because they can only use certain envelopes with a certain language in certain years and it makes things very confusing and costly.

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And it makes the publications --

DOUGLAS KELLNER: Kathleen do you know why they have not made it permanent?

I don't know of any resistance of making it permanent but the pew center did a recent study on military voting and New York was in the negative category where really there's not enough time period to be able to have those votes count so this is one part of a much bigger issue.

This just came out this past month.

So I'm planning on looking at this issue and in a more global way to try to see if we can provide -- a bigger timeframe to allow these to be counted.

So this may be -- the elimination of the sun set its successor will be part of that big event.

Thank you.

DOUGLAS KELLNER: All right.

And I know -- No. 19 was the undervote issue.

And Kathleen, this is one of the time bombs I think that people haven't really thought through yet that right now our regs require notification of undervotes.

When the voter feeds the ballot into the scanner.

Since the majority of voters intentionally undervote that means the majority of voters will have their ballots when fed into the scanner rejected by the scanner.

And there are four options that I've put on the table with this.

One is to repeal the undervote notification.

Two is to have a place on the ballot where the voter indicates that they have intentionally undervoted.

That turns off the undervote notification in effect.

Another is to put with each race something that says no choice or I'm not voting for all of the candidates in this race.

Which some people colloquially have called the none of the above option.

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EVELYN AQUILLA: It's a very important issue I agree. I

think a lot of people undervote.

You know my mother used to say well I'm not voting for any of those bums, excuse my language and she would just leave some space empty and I think a lot of people are like that well I'm just going down to vote for the President.

DOUGLAS KELLNER: Well frankly if the voter is not familiar with the candidates.

EVELYN AQUILLA: It's a privilege.

DOUGLAS KELLNER: If they aren't familiar with the candidates perhaps the intelligent and proper civic thing is not to vote in a race in which the voter doesn't know.

EVELYN AQUILLA: But they keep their registration up so they go down.

DOUGLAS KELLNER: The problem here is this is something that's been -- we're alerting people on this.

And that either we have to make a decision or the Legislature needs to make a decision on how to do this.

EVELYN AQUILLA: I like it says this says it needs more review and discussion after it.

DOUGLAS KELLNER: Also in this subject 9-108 has a provision that I think most people find counter intuitive.

9-108 says that for paper ballots the first thing inspectors are to do when they canvas the paper ballots is count the number of ballots and reconcile the number of ballots that were in the ballot box with the number of voters who cast votes.

And if it's determined -- if the inspectors determine that there are more ballots in the ballot box than voters, they are to randomly remove the ballots from the ballot box and mark them as removed pursuant to that provision and set them aside so that they are not counted.

New York is just about the only state in the -- it's the only state that I know of in the country that has such a provision.

Most states have other provisions that -- so since we're going back to an all paper ballot system now -- oh, and also, with our voting machines frequently the voting machines have more votes on them than the number of votes showing in the poll books.

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That's not -- well when I say -- certainly if you go and you try to reconcile it in close ways this comes out because the New York law on voting machines is you count the number that's on the voting machine and it becomes an irregularity.

So you don't just randomly pick and say we are not going to count these two votes on the voting machine.

Instead you now have irregularities because of the number.

And at least in primaries where we have -- where the irregularities become so great that you can't tell who actually won the election our statute provides that the courts have power to order a new primary election which happens from time to time.

So -- and that is, by the way, what my experience is that most other states do with paper ballots.

Now my investigation into this that the reason for the New York provision is to stop the old ballot box stuffing that happened in the old days when there were paper ballots so you had 100 people vote and there would be 175 ballots in the ballot box.

The theory being that the incentive to add ballots to the ballot box would be substantially decreased if you weren't going to count them.

And just randomly remove 75 of the ballots.

Then you don't gain anything by stuffing the ballot box.

And of course there are the examples of the famous precinct 13 in 1948 in Texas where LBJ won the Senate.

EVELYN AQUILLA: By one vote.

DOUGLAS KELLNER: Won by about 50 votes.

But they claim that the last 250 voters in this particular precinct voted in alphabet order and those ballots didn't count.

EVELYN AQUILLA: They say what do you want?

DOUGLAS KELLNER: So I'm not suggesting it's not an issue.

But that that's one that I think that we should -- most people find that counter intuitive.

That we would just randomly pull out two ballots and not count them as opposed to what we do with irregularities on the voting machine.

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So I suggest that that might be in the cleanup, also, with these paper ballots.

Can I ask you go back to the number vote issue you said you have four ways to resolve it.

DOUGLAS KELLNER: The last one is to do just what we've got now which is nothing in which case we will have a majority of the voters who are casting ballots being notified in a sense publicly that their ballot has been rejected because of an undervote.

And I suggest that that particular provision is unconstitutional because IT denies the voter of a right to a secret ballot.

And therefore the only constitutional way to do it is to put some box on the ballot that the voter can

check off to say: Don't notify me or to repeat that provision of the regulation although it's a little late to repeal it now for this year.

EVELYN AQUILLA: An undervote is an actual thing.

DOUGLAS KELLNER: The undervote isn't required --

BOB BREHM: I think when we read that we have a hard time understanding why the rest of the states don't read it the same way.

But we can certainly look at it one more time.

DOUGLAS KELLNER: Maybe we should revisit that.

Because certainly -- I'm sure it's --

BOB BREHM: We've read it several times and we keep saying.

DOUGLAS KELLNER: The machine is capable of notifying.

BOB BREHM: And we understand why there aren't as many people --

DOUGLAS KELLNER: I personally prefer not to repeal the regulation and have -- I think it's better for the voter to say don't notify me if I'm not -- in other words, for the voter to consciously say I'm not voting a complete ballot.

That way the voter who is inadvertently undervoting would be alerted to that.

BOB BREHM: It doesn't technically reject it just provides that summary notice to the voter.

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And then they could decide to reject it or override it or do something.

EVELYN AQUILLA: That's true.

BOB BREHM: It certainly slows down the process when the voter undervotes.

Excuse me.

Maybe John Conklin could confirm this.

When we were doing the statutes we had to do a list of what the machines would or wouldn't do and one of the things on the list is not allowing overvote and we had a long set of negotiations around whether or not it should say not allow an undervote.

And we came to a conclusion just like you're saying that people purposely undervote.

And so it was an affirmative decision to leave that off the list to allow people to do that.

Now I recognize that the notice issue is a different thing but I mean we were really trying to make it clear in the statute that voters can legitimately undervote and there shouldn't be anything wrong with that if they choose to do that.

EVELYN AQUILLA: I agree.

DOUGLAS KELLNER: Well as I said my own proposal is that there would be a box on the ballot that would educate voters that if they are not voting a complete ballot they simply check that box and that turns off the undervote notification.

EVELYN AQUILLA: They have to be educated to that because they will undervote that, too.

DOUGLAS KELLNER: Yes.

Let's move on.

DOUGLAS KELLNER: All right.

Let's see.

We were up to 20.

14-118 to -- that's a technical amendment on the campaign finance filings.

And the same with 21.

And 22 increase maximum fines for violation of the fair campaign code currently \$1,000.

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And non-filing currently 500.

Have we ever fined anybody for violation of the fair campaign code.

STANLEY ZALEN: Yes.

But only about \$250.

DOUGLAS KELLNER: When was the last time that happened?

BILL McCANN: A couple years we did it.

DOUGLAS KELLNER: So it is still alive. It's

not that the whole thing is unconstitutional.

STANLEY ZALEN: No.

The only portion of the fair campaign code that's unconstitutional --

DOUGLAS KELLNER: We should put in our numbers for that and I think the Governor has also asked for that, right?

I don't think they have.

TODD VALENTINE: They didn't put in the 30 day budget amendments. But -

-

DOUGLAS KELLNER: So we should put that in.

EVELYN AQUILLA: Not that there are many that we had to handle.

DOUGLAS KELLNER: So that's our list.

Anybody else want to say anything on the list?

All right.

So the next step is let's just talk about our next meeting before we go into executive session.

I would suggest four weeks from today, which is March 3rd.

EVELYN AQUILLA: Is that a Tuesday again?

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That's a Tuesday, yeah.

EVELYN AQUILLA: Tuesday, March 3rd. I

believe it's okay.

DOUGLAS KELLNER: Yeah.

And it's just possible that I may end up having a conflict.

EVELYN AQUILLA: If we have to change it, we can change it.

That's good for this moment.

DOUGLAS KELLNER: Okay.

So I'm proposing that we go into executive session to discuss three items, one our voting system contract issues.

The second is the campaign finance enforcement determinations.

And the third is the New York City enforcement issues.

EVELYN AQUILLA: We probably could do the cases -- you have some questions?

Okay.

DOUGLAS KELLNER: So those in favor of executive session on those items say aye.

(Chorus of ayes.)

DOUGLAS KELLNER: Opposed?

All right.

So we're going into executive session.

(Executive session)

DOUGLAS KELLNER: Alright, open the door, please. We're calling the meeting back to order. Is there anybody out there, Paul.

PAUL COLLINS: No, there's no one there.

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DOUGLAS KELLNER: We are adopting the proposed report from enforcement council on all but seven items.

The items that are being pulled out are 6-81, 6-84, 7-18, 7-36 and 7-44, 7-60 and 7-44.

So let's vote on all the rest of them and then we'll come back and do the other items.

BILL McCANN: I just had one question for clarification. It was my understanding on 36-44 since it had to deal with that Delaware County case that we were just going to close those.

DOUGLAS KELLNER: Alright, that was going to be my next motion, to close them on the --

EVELYN AQUILLA: You want us to vote on them when it's closed or --

DOUGLAS KELLNER: Alright, let's do it now. We'll take it out of order. So 7-18, 7-36 and 7-44 - you'll see they're all consolidated.

All three of them were in that same one. We're closing them on the basis of the Appellate Division decision

in Wilke vs. Delaware County Board of Elections.

BILL McCANN: -- 18 was not one of those.

18 was on an Orange County matter.

The fact that they were in that one memo means that they were being referred to Ops initially.

DOUGLAS KELLNER: Oh, I'm sorry. Alright. So you'll sort that out?

yes.

DOUGLAS KELLNER: Alright.

BIILL McCANN: 36 and 44 are linked together.

DOUGLAS KELLNER: 81, 84, 60 and 67 are the ones that were local filings, and you're going to take another look at whether they comply.

All the rest of them we're adopting the recommendation to close the files.

So that's the motion.

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JAMES WALSH: So moved.

DOUGLAS KELLNER: Those in favor say "aye".

(Chorus of ayes)

DOUGLAS KELLNER: Opposed?

Okay, so we stand adjourned until March 3.