

>>CHAIRMAN KELLNER: We'll call the meeting of the state Board of Elections together. If you would all cooperate, I would like to have everyone, make sure you speak up clearly. Because we're being recorded. And it's also on television, which is exciting for all of us. And so if we can, I'm commissioner Neil Kelleher.

>>CHAIRMAN DOUGLAS KELLNER: Douglas Kellner.

>>COMMISSIONER EVELYN AQUILA: Evelyn Aquila.

>> Stanley Zallen.

>>ELIZABETH HOGAN: Elizabeth Hogan.

>>ANNA SVIZZERO: Anna Svizzero DeeDee Deirdre Hammer.

>>TODD VALENTINE: Todd Valentine.

>>PETER KOSINSKI: Peter Kosinski.

>>NEIL KELLEHER: And if you will I would like to tell all the people visiting today tell you we appreciate it very much starting over here on my right side.

>> I'm Bo Harding with (inaudible).

>>WOMAN SPEAKER: (Inaudible).

>> John brady(inaudible).

>>WOMAN SPEAKER: (Inaudible).

>>MALE SPEAKER: (Inaudible).

>>MALE SPEAKER: Paul Thomas.

>>NEIL KELLEHER: Thank you very much. And moving along, we'll start the agenda minutes of June 27th.

>>MALE SPEAKER: I move that we adopt the minutes as prepared.

>>NEIL KELLEHER: All those in favor?

(Chorus of ayes.)

>>NEIL KELLEHER: So moved. And we will begin with the unit updates, legal, Todd Valentine.

>>TODD VALENTINE: One thing to start with to make sure that it's on new business, we do have an objection to rule on that you're aware of. Just as noted for new business.

>>MALE SPEAKER: And Todd, could we also add to new business responding to the request for an opinion from New York City?

>>TODD VALENTINE: Okay.

>>MALE SPEAKER: I think we should do that in new business.

>>TODD VALENTINE: That hadn't come to me yet. I mean, I had seen copies of it. But that's fine.

Just quickly, it's been a busy week. We've had oral arguments on the Suffit County state HAVA case for yesterday it's an article 78 lawsuit.

Additional briefing is due next week. The AG was there as well Suffik and Nassau County was also represented in an amicus party on that. No decision from the court yesterday.

>>NEIL KELLEHER: Bob Brehm there's a problem with the tape here. My guess is it's on play here rather than on . . .

>>MALE SPEAKER: Maybe it's this one.

>>MALE SPEAKER: Sorry for the interruption.

>>TODD VALENTINE: That's all right. This morning with the AT's office and Liz was there, as well, we had oral argument on a temporary restructure order application regarding the case challenging the delayed effective date for changes of enrollment. We worked with the AT's office to put a response to that yesterday. And actually the case was dismissed from the bench today. That's an interesting surprise.

>> Congratulations.

>>TODD VALENTINE: We continue the meetings as

well although we're not meeting this week so due to some meetings with the schedule of justice and we continue to update them on various things.

As I said related to the objections, a proceeding has been brought in state court.

An objective procedure to follow up on that.

It's returnable tomorrow in Montgomery County.

And whatever the Board decides today, that's what they'll get tomorrow.

And I'll answer any questions.

>>MALE SPEAKER: Todd, on the Lopez-Torres case, I know that the reply briefs and the emicus were filed.

>>TODD VALENTINE: Yes.

>>MALE SPEAKER: I've heard rumblings that there's still disputes over the argument of the time.

Have you been involved in anything.

>>TODD VALENTINE: Not as far as the allocation time, no.

That has been an issue.

It was an issue early on due to the large number of defendants that felt that this is an important

issue.

I haven't spoken with our counsel about this.

I mean, I assume that we will have time.

I just don't know how much.

>>MALE SPEAKER: Okay.

I just wanted to check whether you were in the loop.

>>TODD VALENTINE: No, we haven't discussed that.

We did receive --

>>MALE SPEAKER: I think they are close to resolving it.

>>TODD VALENTINE: I assume that they will resolve it.

I don't know exactly how much time we had.

I think we had an hour to start with and they had to difficulty it among the various parties.

>>MALE SPEAKER: It's a half an hour.

It was my hope -- well, all right.

We don't have to go into the details now.

>>TODD VALENTINE: As you said just to finish that thought for completeness, there are a large number of emicus briefs filed.

I have shared those with you because I know you're interested directly.

If other Board members want them.

They can have them and they are rather voluminous.

>>MALE SPEAKER: I appreciate that.

Is there any other pending litigation?

>>TODD VALENTINE: Not that's active that I know of.

We -- there's always old cases that hang out there. But nothing that's active.

>>MALE SPEAKER: Okay.

Good.

Thank you.

>>NEIL KELLEHER: Anything else, Todd?

>>TODD VALENTINE: No.

>>NEIL KELLEHER: Any questions or comments from anyone for Todd?

If not we'll move onto election operations.

Anna Svizzero.

>>ANNA SVIZZERO: Thank you.

I did prepare some talking points which I shared with you this morning.

I'm sorry I was out of the office for a few days

and couldn't get those into your Board packet for you.

But those are pretty succinct.

The only thing I would elaborate on is the section on the contract for voting equipment.

We need to have one more phone call.

The document that you have with you in the manila folder is the latest revised appendix B.

And also a copy of an opinion from counsel's office at OGS as to why additional penalties can't be assessed.

That was something the city Board wanted to see done.

So they have a position on that particular point.

And I've provided that to you.

There were about four issues that the group never got to.

And we can resolve those in a single phone call.

And then this revised document and that opinion also needs to be shared with the advisory committee.

So we need one more session with them.

And then this whole deliberation will be done by

way of the advisory committee.

And the issues will be for the Board to actually vote on and adopt their -- the OGS questions still remains as to whether or not this should be rebid or simply renegotiated.

I explained that informally at the last Board meeting we all thought rebidding was the way to go. All the advisory committee members on the phone felt rerebidding was the way to go.

But if you had an opinion or decided to take some action on that point that might help OGS with finding how this would work out.

I don't have anything else to add except I do have a candidate list for the 105th District congressional election if anybody wants that.

And I think that was all I had.

The other document, the political contribution statements from the various vendors are in your Board packet.

And those are also now posted to the web site.

And they are all current.

I didn't have anything else.

>>NEIL KELLEHER: I'm sorry; Anna, is that

complete?

>>ANNA SVIZZERO: Yes, sir.

>>NEIL KELLEHER: Any questions or comments?

Thank you very much, Anna.

We'll move onto NVRA and PIO.

I understand George is ill.

I certainly hope he has a speedy recovery.

In his absence, Leigh?

>>LEE DAGHLIAN: Okay.

Excuse me.

We're conducting our normal business of answering phone calls and preparing for upcoming events like the state's fair in Syracuse.

All those are ongoing.

The County funds program, again, is an effort that we work on every day.

We're in a position where we're now retracking some counties that haven't given us all the information we require.

So that we can have finalized contracts and also issue funds.

That's going along well.

We had some face-to-face meetings with County

officials to get those that are lagging behind up to speed.

I think that program will escalate as far as spending money goes over the next three to six months.

We have a lot of money to spend.

That's another issue.

There's a new Federal grant from AG Jess that we received.

There's a memo in your packet.

The grant itself is administered by us, like the others are.

We figured out how much money each County would get on the standard formula.

That chart is in your packet.

And either now or in new business I need you to vote to okay that distribution.

If you want to wait, we can wait.

>>MALE SPEAKER: Let's wait.

>>MALE SPEAKER: I move that we approve the proposal at this point.

>>NEIL KELLEHER: All in favor.

(Chorus of ayes.)

>>NEIL KELLEHER: Opposed?

So carry.

>>LEE DAGHLIAN: That's all I have.

>>NEIL KELLEHER: Let me have a custom to calling George Stanton at that point in the caliber.

But my loyalty to him prompted me to say so.

So if I confused you people who have an agenda, George is still ill.

And we'll see to it that you will understand that when we get to him on the agenda.

Thank you very much.

>>LEE DAGHLIAN: Yes, sir.

>>NEIL KELLEHER: Campaign finance, Elizabeth Hogan.

>>ELIZABETH HOGAN: Thank you, commissioner.

I would like to report that as of the local filing project, Bill has worked very hard to address the concerns that were raised by the local boards at the summer conference.

Incorporated a lot of their comments and concerns.

And has drafted what we think is just about a final memo to go to the counties asking for their return

information by August the 1st.

And I think that's going to go today, Bill?

>>WILLIAM MCCANN: Uh-huh.

>>ELIZABETH HOGAN: We're also having discussions with George on how to deal with the information that we get in terms of holding it in the database.

Because this is an interim step.

And I think we're close to resolving that issue.

The '05 report to Council on excess contributions by corporations will be coming within the next couple of weeks.

And we will follow that up with the final letters.

We're working on getting the '06 in gear.

And that should be instituted shortly after the end of the 05.

The phone system was installed in the unit on July the 9th in time for the July filing, which occurred on the 16th.

It seems to be working very well.

I think it has positively affected the staff response to callers.

And it seems to be dealing with their issues in a

really good way.

I think actually the IT part of the telephone calls
I think George is actually going to agree to expand
his unit's involvement in that so that he's more --
his system is pretty much mirrors the one we have
in campaign finance.

So it seems to be working very well.

There was an issue that I think was raised
yesterday in terms of the filings.

And something that had been discussed previously.

And it has to do with the vista compatibility
issue.

Supposedly that had been resolved.

But we had gotten some telephone calls yesterday.

I think we and Bob actually got the calls that
there was a problem in people who are using vista
systems.

So if I could ask Bob, maybe could you expound upon
what the question and what you found out was.

>>BOB BREHM: (Inaudible) actually took the
calls.

I'm not sure of the specific problem.

But it was a person had a new vista operating

system having difficulty dealing with campaign finance program.

And I know Leigh reached out to George to say that --ly reached out to George to say they had a work around but the person with the operating system contact IT and they talked them through whatever the work-around is.

I don't know the steps that solved that problem.

But they have a solution.

But it takes putting IT together with the person with the problem to talk about the workaround.

>>ELIZABETH HOGAN: So I think we'll have to look into this vista compatibilityable a little bit further.

>>MALE SPEAKER: I remind everyone of the comments I've been making from meeting to meeting about the need to revise the system so that it would be a web based system rather than dependent on filing from Microsoft Windows.

My understanding of the compatibility issue with vista is that there is a workaround but that we don't broadcast that in the instructions that are posted on the web.

And that the workaround ought to be posted in the first instance on the web so that people who use vista will know this is what they have to do without having to go through trial and error to find out it doesn't work.

And then out of frus perhaps after spending literally -- out of frustration perhaps after spending literally hours to find out why it's not working to call IU to figure out that there's a compatibility problem.

So that that ought to be laid out in the first instance so that people don't waste a lot of time.

And then I would ask again that we get a meaningful report on what is happening to do a web based filing system.

And it's really unacceptable in my view that I've been asking for this for -- I was appointed in December of '05.

And we really aren't making any progress at all on this.

And I think it's an important issue.

Thank you.

>>ELIZABETH HOGAN: The process server contract

that we're in the midst of discussing with OGS is ongoing.

We will probably be meeting with them within the next couple of weeks to define the parameters of what we need in the RFP.

The HAVA administrative complaint procedure is in the works we have a third meeting scheduled tomorrow with Nystec (phonetic) they have presented us with some really fine documents in terms of analyzing the procedural flow required to effectuate the statute.

And they've also developed some forms for our use. So that's going very well.

And as I said, we'll meet again tomorrow.

The proposed new hires for the campaign finance enforcement unit that we discussed at the last meeting, I did draft a response document and submitted it to Peter and Stanley, Bill.

And I apologize to the commissioners for not having that final document in your packets when you received them.

The document that we handed out this morning is in final form.

And I'm prepared to discuss it or go forward with it, whatever you want to do at this point.

>>MALE SPEAKER: That's fine.

I mean, as you know, we've been hoping to get this --

>>MALE SPEAKER: So should we approve this?

>>MALE SPEAKER: Well, yeah, I mean I think we're fine.

I think the only issue that I had was I think the jobs need to have qualifications attached to them as well as a description to make sure that we can get this approved by civil service.

And I know that Bill had proposed something.

And I didn't know if that was also part of this.

Because I think we need -- as we discussed at the last meeting, there's really three things.

It's the description, it's the quals and it's the pay grade that I think the Board needs to approve.

>>MALE SPEAKER: Have you see this, Stanley?

>>MALE SPEAKER: Yes, I have.

>>MALE SPEAKER: So should we approve them as a package.

>>MALE SPEAKER: I would if this is a necessary

component.

>>MALE SPEAKER: I think all three components are necessary to get them done.

>>MALE SPEAKER: Let's for the record be clear on what all the three components are.

>>MALE SPEAKER: I just want to make sure you have all three.

Do you have copies, Stan.

>>MALE SPEAKER: Just when we're voting. I have duties and responsibility of new hires. So that's one part of it.

>>MALE SPEAKER: Right.

>>MALE SPEAKER: There's the qualifications for initial hires.

That's the second part.

>>MALE SPEAKER: And I think attached to that is the pay scales; is that also part of that.

>>MALE SPEAKER: That's part of the duties.

>>MALE SPEAKER: That's part of the duties. I'm sorry; that's also on the duties, the pay scale.

Right, I see it.

>>MALE SPEAKER: Peter, could you just show it

to me.

>>PETER KOSINSKI: It's right here.

It's at the top of each one.

>>MALE SPEAKER: Okay.

All right.

>>NEIL KELLEHER: Do you want to make a motion.

>>ELIZABETH HOGAN: I make a motion we accept the qualifications and the duties and responsibilities for the new person -- new people to be hired in the campaign finance division.

Or should we just say --

>>MALE SPEAKER: The reports.

>>MALE SPEAKER: On the motion and the language as submitted.

All in favor.

(Chorus of ayes.)

>>NEIL KELLEHER: Opposed?

So moved.

>>MALE SPEAKER: I would just note that this is sort of the beginning of some hopefully we can over the next couple of meetings maybe bring some more of these to you.

Because there's -- I think the total appropriations

is a million and a half dollars for this project.
And I think that there's some expectation that this
be developed even further as we go along.

>>WOMAN SPEAKER: I guess we had hoped that we
would have finance legislation.

And we didn't get it.

That would have been -- we could really have our
eye on what we needed to have by having that.

But since we don't have it, you know, it makes it a
little more difficult.

>>MALE SPEAKER: We still have a two-year
backlog of investigations.

>>COMMISSIONER EVELYN AQUILA: I know.

>>NEIL KELLEHER: All right.

Liz, anything else?

>>ELIZABETH HOGAN: No.

Oh, I'm sorry.

>>NEIL KELLEHER: Anything else.

>>ELIZABETH HOGAN: No.

>>NEIL KELLEHER: Any questions or comments on
Liz's presentation?

If not now we get to ITU with George Stanton.

Is there someone here who is going to --

>>NEIL KELLEHER: Mr. Brehm.

>>BOB BREHM: I'm sure I can't say everything that ITU was on but if there's an item in the packet with the statewide database it was discussed previously.

To extend the Saber through September now because that's when we expect the work to be completed with the remaining counties coming online.

And you know we need their participation.

There also are a few enhancements that we need.

We've seen some work that they need to do.

And there's three items on the list.

One is we want to create the public lookup for where people go to vote and that they are registered on the web site.

And there's an issue of when they are doing the duplicate checking, if they make an error, there needs to be a workaround in order to -- you know if they identify somebody as a duplicate by error, that this needs to do the workaround to fix that.

Because human beings make errors so we have to have that workaround and the third one is the verification system with the DMV needs a little

touching up.

So the proposal is for \$420,000.

And it requires a Board vote to extend the contract or the scope of work.

>>MALE SPEAKER: I so move.

>>NEIL KELLEHER: All in favor.

(Chorus of ayes.)

>>NEIL KELLEHER: Oppose nay?

>>BOB BREHM: Again, George did send an e-mail this morning indicating we did receive the data files in every county.

There are a number of them that are actually live in production.

But the remaining jurisdictions were Nassau, Westchester, Delaware county and we did receive the remaining ones from New York City.

Richmond County we got last week.

And the rest of them we received.

So we have all of them in finally.

And that's been quite a task to get to this point.

>>NEIL KELLEHER: Any other questions?

If not thank you very much.

>>MALE SPEAKER: I just have one quick comment

to just say that I was very pleased that they took the initiative to add in this new feature so that voters will be able to go on this safe web site and have access to their own database information to confirm whether or not they registered (inaudible). That's a positive step.

I'll look forward them to actually implementing it.

>>WOMAN SPEAKER: Well, we'll tell them I hope.

>>NEIL KELLEHER: Thank you.

Anything else?

We'll move on then to old business.

Anybody --

>>MALE SPEAKER: I just have the new business.

The objections, the New York City opinion and then I have one personnel item.

>>MALE SPEAKER: Well, Todd wanted to do the objection in the 105th assembly District.

>>TODD VALENTINE: There's a special election scheduled for July 31st.

Certificates of nomination were filed.

At issue was a certificate of nomination for the independence party.

Timely objections were filed to that on the

document underlying the certificate of nomination was filed July 9th.

The objections were filed on July 12th, which was timely and specific objections were also filed with that -- specifications to objections were filed at the same time as well as proof of service on the candidate were also contained in that.

We also received in the package I guess a response I would call it to the general and specific objections filed by an attorney for the candidate. And I mean these have been distributed among the staff for review.

I don't . . . I don't know if we've gotten to the point where we're ready to make a recommendation. My recommendation under the reading would be I believe the objectioners are correct and that the certificate of nominations should be invalidated because this is an office that crosses County lines.

And under the article 6 subdivision 2 the independent state committee rules, if an office is -- falls within more than one county, which this does, it contains all of Montgomery County and a

portion of Skenik County then it should be made the state representatives of the party.

>>MALE SPEAKER: With due deference, I don't agree with the interpretation.

First of all, I think the objection itself does not clearly state the basis for the objection.

And then furthermore, careful reading of the independence party rules shows that there is an additional subdivision, which is the provision that apparently was the basis for the filing here that specifically says that where it falls within two counties, that the -- and only -- that where it falls within two counties, it's done by weighted vote of the County chairs.

And that -- I mean, it's the procedure that they followed here.

So my motion is to dismiss the specification.

>>WOMAN SPEAKER: I will, too.

I agree.

We know there's plenty of other people who'll decide.

But I -- they say they weren't made within the rules of the party.

>>MALE SPEAKER: Your motion is to disagree with the report.

>>MALE SPEAKER: That's right.

Well, my motion is specifically to dismiss the specification because it fails to actually set forth the motion to rule on the objection, rule to uphold the objection.

Isn't that what the motion should be?

>>MALE SPEAKER: Dismissing the objection would -- if there's -- if there's a vote of no more than two commissioners to discuss, maybe the objection is upheld.

I think the motion would be to uphold it.

>>MALE SPEAKER: No, it doesn't uphold the objection.

>>MALE SPEAKER: But it means that the -- the petition is prima facie valid and stays on unless there's a vote of the majority of the commissioners to . . .

>>MALE SPEAKER: I think you could make either - - you could either rule on the objection as filed or the motion before that that the objection itself is improper.

Or that there's a disagreement with -- the objection is the form is proper.

>>WOMAN SPEAKER: Yes.

>>TODD VALENTINE: I don't know if there's any issue as to that.

>>MALE SPEAKER: Specific enough, but then the second argument is that we are pretty much following along the lines of the responses that all the rules are the same because only one county has a rule and that's Skenti County and all the rules are the same and therefore Skenti County would apply.

>>TODD VALENTINE: What do you want to do.

>>MALE SPEAKER: I made a motion.

>>TODD VALENTINE: That's what I'm saying.

>>WOMAN SPEAKER: Yeah.

I second the motion.

>>MALE SPEAKER: I vote no.

>>NEIL KELLEHER: So the --

>>MALE SPEAKER: So the motion fails because it did not have three votes.

And then I'll make a second motion to overrule the objection.

To rule that the objection fails to state -- first was a motion to dismiss the objection.

Now I'm making a motion that we overrule the objection.

>>TODD VALENTINE: I understand.

>>MALE SPEAKER: And that would be on the basis of the independence party rule that provided the authorization procedure that was used by the committee that filed this certificate.

>>WOMAN SPEAKER: I agree.

>>NEIL KELLEHER: On the motion.

I'm sorry; I didn't hear you.

>>COMMISSIONER EVELYN AQUILA: I agreed with --

>>NEIL KELLEHER: Doug in.

>>CHAIRMAN DOUGLAS KELLNER: Aye.

>>MALE SPEAKER: It's to uphold it.

>>MALE SPEAKER: That would mean the certificate of nomination is valid.

>>CHAIRMAN DOUGLAS KELLNER: Correct.

>>NEIL KELLEHER: Let me add, if I may --

>>TODD VALENTINE: I just interject.

There's confusion among the staff as to our typical vote --

>>MALE SPEAKER: Pardon?

>>TODD VALENTINE: Just to refer everybody why the staff is looking so confused is that in the past our typical votes on these -- easy for public consumption is to determine whether the underlying item is valid or not valid after we've accepted the objections.

So it's just a question of form.

But we have done --

>>CHAIRMAN DOUGLAS KELLNER: That's what the second vote was supposed to do.

>>TODD VALENTINE: I understand.
We just tend to use different words.
That's all.

It's the same result.

There's no problem.

That's why the staff was looking a little confused.

>>CHAIRMAN KELLNER: What were the words you would use.

>>TODD VALENTINE: We would vote that the underlying document we use is valid or invalid.

>>CHAIRMAN KELLNER: Whether the certificate of nomination is valid.

>>TODD VALENTINE: Right.

>>CHAIRMAN KELLNER: Do you want me to make another motion.

>>COMMISSIONER EVELYN AQUILA: Maybe clear it up.

>>CHAIRMAN KELLNER: I make the motion we find the certificate of nomination valid and that the objection is overruled.

>>COMMISSIONER EVELYN AQUILA: Agree.
Is that clear?

>>TODD VALENTINE: It was clear before.
Now -- I just wanted you to explain because we were looking confused.

>>CHAIRMAN DOUGLAS KELLNER: That was what my second motion was the first motion was to introduce the specs as not being proper specifications for content of the specs.

And then the second motion --

>>TODD VALENTINE: Understood.

>>CHAIRMAN KELLNER: The intent of that motion was to find the certificate valid and to overrule the objection.

>>TODD VALENTINE: Okay.

>>NEIL KELLEHER: And that motion, Evelyn?

>>COMMISSIONER EVELYN AQUILA: Yes.

>>TODD VALENTINE: Back to the same spot.

>>COMMISSIONER EVELYN AQUILA: Yes.

>>NEIL KELLEHER: Let me say something I started to say and then we got further into it.

It's got to be a year or two years ago when I sat at this table as a commissioner and suggested that whatever we had matters that could be discussed with staff during the week so that when we got to the meeting, these kind of things had already reached some kind of a conclusion as a result of the people who were interested, the commissioners and staff agreed.

And I don't like surprises any more than anybody else.

And my suggestions and it was then and Doug maybe because he's the only one that wasn't here that if we do have these kind of matters I don't see any reason in the world why they can't be discussed prior to the meeting so that there aren't any surprises.

>>COMMISSIONER EVELYN AQUILA: We're not allowed

to have those kind of conversations.

>>NEIL KELLEHER: Pardon me?

>>COMMISSIONER EVELYN AQUILA: We're not allowed to have those conversations.

>>CHAIRMAN KELLNER: The commissioners.

>>NEIL KELLEHER: You are allowed to call staff and ask them --

>>COMMISSIONER EVELYN AQUILA: We can talk to the staff but we can't talk to one another. We can't talk to one another --

>>NEIL KELLEHER: In other words we can't deal with it here officially as commissioners.

>>COMMISSIONER EVELYN AQUILA: We can. In public we can deal with it but not privately.

>>NEIL KELLEHER: We're in public now, aren't we.

>>COMMISSIONER EVELYN AQUILA: We're not allowed to do it privately. They won't let us. There's a law against that.

>>CHAIRMAN KELLNER: Let me see --

>>MALE SPEAKER: I understand what you wanted and I think we did have a brief conversation about

this last summer.

>>CHAIRMAN KELLNER: I think you're correct.

One of the things that is on my to do list is to propose revisions to the state Board rules to this process so that we have a staff report that is distributed in advance of the meeting.

And then if Council wants to comment on the -- the Council for the candidates and the objectors want to comment on the report, that they can then attend the meeting and the commissioners would make the final decision.

Essentially it would be to bring to this agency the procedure that New York City adopted in 1995.

So that for one thing, it would not tie up the senior staff in holding hearings on line-by-line objections which I realize this year is not a big issue because we just have judicial petitions.

But that that should be done at a junior level of clerks who would prepare a report that would come up to the -- on a bipartisan basis that would come up to the commissioners.

And then the commissioners would hear essentially appeals from those reports.

>>NEIL KELLEHER: I'll tell you on other occasions where I very much appreciate the thoroughness that you offer in every single case that comes before us or any material that we are discussing.

If I may, I want to get back to what you just indicated I might be doing something illegal here Evelyn.

>>COMMISSIONER EVELYN AQUILA: Oh, no, I know you wouldn't.

But I know they told us we couldn't have private conversations.

Am I right or wrong?

We're not supposed to discuss things in private.

>>MALE SPEAKER: I think the commissioners can have conversations with staff on an individual basis.

I think that's what the commissioner was saying if you have a question on a topic that you feel free to call staff and have that discussion.

>>COMMISSIONER EVELYN AQUILA: I think you said us.

>>MALE SPEAKER: I don't think that's a

suggestion I think it was more of a staff discussion.

>>MALE SPEAKER: I think you commissioners can also talk to each other so long as it's not enough to make a quorum of three talking to each other privately.

>>COMMISSIONER EVELYN AQUILA: I don't know about that.

>>MALE SPEAKER: If you want toed to talk to Evelyn, you could.

>>COMMISSIONER EVELYN AQUILA: As long as it's not a forum of three.
All right.

>>NEIL KELLEHER: We do have an executive session now that's available prior to the meeting. Is that illegal?

>>MALE SPEAKER: well, for the proper reasons, it's always legal.
You take a formal vote and if it's passed by majority and it's for the proper reasons, you could be in executive session.

>>NEIL KELLEHER: I think the end product by doing it by my suggestion is that it will certainly

be available to the public.

It will just be by the time it gets there, it's a completed document.

And any criticisms that might have been forthcoming have been corrected and agreed upon by the people who discussed it.

Okay.

Well thank you very much.

And thank you, Doug and Evelyn.

And particularly Todd.

Now we will move onto new business.

Anything else on old business?

>>MALE SPEAKER: I think we're on new business.

The next item was responding to the request that was in our packets from the Board of Elections and the city of New York for a formal opinion with respect to the statute.

And I know that it is still possible that the legislature may come up with a resolution on this issue.

And I would certainly urge the legislature to do that.

But just as we couldn't agree on the text of the

legislation to propose, it's an increasing possibility that the legislature will not resolve this and our County boards of elections are entitled to guidance from us on our view of what they should do.

There are two separate issues right now.

One issue is are they -- should they use lever voting machines in the coming elections.

Or should they use only paper ballots?

And that we need to make a recommendation on that.

And then the second issue is that the statute requires that there be one fully accessible device in every poll site.

The statute does not spell out the procedures for implementing that.

And last year we were able to do it by virtue of a Federal Court order that we do not have this year.

So there are two separate issues.

I am making a motion that we direct Council and I guess Todd, that means you're in charge of it.

But I would hope that you would get some help from other staff, as well.

And that the final result would be done on a

bipartisan basis but that we direct counsel to prepare an opinion of the state Board of Elections along the following lines: First, that -- to review the actual legislation that was adopted that would explain the text of the legislation.

And to acknowledge that the text of the legislation by its terms prohibits the use of lever voting machines.

And then to explain that it is the agency's opinion that it was never the intention of the legislature that paper ballots would be the only legal method of voting in the event that the Board was unable to certify new voting equipment.

And that the legislature had not contemplated the situation where new equipment would not be certified.

And that therefore, to carry out the intent of the legislature that we should allow the continued use of lever voting machines until the certification of new machines.

Now, the authority for that proposition I pulled out my little favorite book of max ums, the volume on statutes which is the first volume of Mc

Kinney's and the first maxum on statutory construction is Section 111 generally.

And it says: The courts may in a proper case indulge in a departure from literal construction and will sustain the legislative intention, although, it is contrary to the literal letter of the statute.

And in the Mc Kinney's treatise, they go through a number of different cases where in fact the courts have said: Yes, the statute may say A, but we're going to read it as B because that's what we really think the legislature meant.

And I think that it's our duty to provide the guidance for the county boards of elections.

If we're wrong, we can be challenged in court.

And that's every citizen's right to challenge us in court.

But I believe that we should recommend to the County boards of elections that it's our understanding of the intent of the legislature that lever voting machines should be used because of our inability to certify replacement voting machines. So that's one.

Part 2, based on the same justification of the failure to replace the lever voting machines, I'm recommending that we urge the counties to follow the same procedures as set forth in the Federal Court order last year.

And so I'm doing this by a motion today so that we can get this process started that at least the counties will know that we voted to start this so they'll know what our thoughts are on this.

And then hopefully by the time of our next meeting, we would actually have the text of a formal memorandum that we could submit to the counties.

>>COMMISSIONER EVELYN AQUILA: I think we have to keep the lever machines.

If it was just maybe this one, we knew this was it and that was it and we would be right to the new machines, I think we don't know.

We have no idea when this is going to end.

And it could go as far as January, the election in January, will be very big I think.

A lot of people coming out.

And I think for that reason, we must keep the lever machines.

Not just go back to the paper ballot.

This is not 1908.

This is going to be 2008.

100 years later.

So I think the least we can do is with the help of God go back to the lever machine and keep working on getting our other machines ready.

But to go backwards, I can't see going backwards.

>>NEIL KELLEHER: would anybody like to comment.

>>MALE SPEAKER: well, I would just comment that I think we all agree that the lever machines should be continued.

The alternate to the lever machines nor better than the lever machines at this point.

We all agreed as an agency and we agreed on that when we met with our county commissioners we were urging the state legislature to do what we all thought should be done which is to amend the law to Alleviate us of this obligation which everybody in the elections committee feels which is unwarranted for this year and we would be penalizing our voters in a way that we shouldn't penalize them but removing the levers.

Certainly my hope has always been the legislature would do what they should do, which is to amend the law and relieve this obligation on us.

It appears there's a good chance it's not going to happen now.

That does put us in a bad position and more so our County boards because they are the ones under the gun of it's their obligation to run the election.

It's their obligation really under the law to replace these voting systems this year or face the consequences it's a big concern.

And I still think one of the things we should be doing is urging the legislature to visit this issue to do the right thing and amend the law to relieve this obligation on our counties.

So I would hope that whatever we do, that that be part of it.

Because there still is time.

It's July.

There's still time for the legislature to meet to enact a law to do what she should do to relieve this year and avoid the problems.

The options here aren't good.

In my own mind we as an agency do have an obligation to take a position and assist our counties in any way we can here.

My concern is that we don't really have that authority under the law to determine this.

It's really a statutory issue that ought to be dealt with in a statutory way.

But I clearly think we should be taking the lead on advising our boards as to how we think they should proceed to ultimately protect our voters this fall.

And so --

>>CHAIRMAN KELLNER: So Peter, do you agree that in the absence of legislation -- I mean I completely agree with you that the legislature is the appropriate body to resolve this issue.

>>COMMISSIONER EVELYN AQUILA: Absolutely.

>>CHAIRMAN KELLNER: And not our agency.

And of course the courts will make the ultimate ruling.

But do you agree that based on the current law that we should be advising our county -- advising our County boards of elections to use the lever machines.

>>PETER KOSINSKI: I would like to see what legal arguments we can create I'll call it for this purpose.

I do have a concern which I'm sure -- and other counties do that there could potentially be court action here.

You know, regarding this.

And we should be able to give our boards whatever legal assistance we can as far as what the legal basis would be to continue the way they are continuing.

>>CHAIRMAN KELLNER: That's what I'm proposing. Is we start drafting it on this basis. As I said, I started out with citing the maxum with the rules of statutory construction. You know, which say that in a proper case that you can depart from the literal text of the statute. And the whole point is that the courts and the government agencies are supposed to carry out the intent of the legislature. And what we have here is a failure of the legislative intent. In other words, the legislature did not think

through in drafting that statute.

what would happen -- they never dealt with the possibility that we would not certify a new voting system in time for that September 2007 deadline.

so I feel comfortable that I'm carrying out my constitutional oath and vowing people that there is a legal basis for continuing the use of the lever voting machines not with standing the legal use of the statute.

One of the cases that I ran across very early Goldstein I believe was the case a 1979 case dealing with the civil elections in New York City the state Constitution said civil court judges should be elected from Districts established by the legislature.

And every year from 1960 on the legislature would pass a bill extending for one year extending the old dyss.

And then lo and behold there were no longer technically any civil court Districts in effect.

And the court of appeals said that was very bad on the part of the legislature for letting that lapse. Ordered them to take care of that which the

legislature proceeded to ignore for many years after that but said we could still go ahead with the elections even though the Districts had not been established as required by the Constitution. And I think in reading the books and going through the cases that cite this maxum you'll see there are plenty of instances where the courts have ignored the literal words of the statute to carry them out. Now, does this mean that we will definitely win in court?

No it's up to a judge.

I can see if Steve Rich man were the judge he would say vote on paper ballots and these are the consequences of the legislature's failure to revise this statute.

I just don't think that we would be doing our jobs if we -- first of all, we shouldn't dodge the question.

We owe it to the County boards to tell them what our policy is.

And I believe our policy should be to continue to vote on lever machines.

And also that would be a notice to the public that

that policy is out there so if somebody disagrees with us, they can take us to court.

>>COMMISSIONER EVELYN AQUILA: Can I say something.

I was told that -- I'm not a lawyer but the best laws are made up of common sense.

I don't know if anybody else in this room has ever been a Board inspector which I was many, many years ago and I will tell you that paper ballots are very, very difficult to that really bottom line that really -- you know the people who are really out there.

Paper ballots for everyone coming in is difficult for the inspector, for the people.

Sometimes they see it.

They will vote on one thing and walk out because they get carried away say: I can't do this.

Also, the cost that it will cost everyone to print these ballots is I guess five times the cost of what it takes to put in the machine.

So I think we have to do what's common sense and right for our counties.

And that's that we take the burden.

And we say: Go ahead.

Use the lever machines.

If they take us to court, they will take us to court.

And we'll go in and we'll fight for our position.

And if we don't get it, we don't get it.

But at least we'll know we did what's necessary for us to do.

Thank you.

>>CHAIRMAN NEIL KELLEHER: Evelyn, do you like the lever machines as much as I do.

>>COMMISSIONER EVELYN AQUILA: I love them. But the young people -- I know if it were me, I would agree with you.

>>CHAIRMAN NEIL KELLEHER: I'm still looking for an answer as to why we're taking away the lever machines.

Just quickly I put my name on those machines 17 times.

And never had a problem.

Once in a while we would have a breakdown.

But it was --

>>COMMISSIONER EVELYN AQUILA: Once in a blue

moon.

>>CHAIRMAN NEIL KELLEHER: You would hardly notice.

I don't know.

I'm a lever machine man.

And I'm not going to be satisfied until I think the first spaceship arrives with a real sophisticated piece of machinery we can use.

And I would be glad to support that.

Thanks, Evelyn.

>>COMMISSIONER EVELYN AQUILA: You're welcome.

>>CHAIRMAN NEIL KELLEHER: Doug anything else.

>>COMMISSIONER DOUG KELLNER: No thank you.

>>CHAIRMAN NEIL KELLEHER: Anybody else have any comments or suggestions they would like to make.

>>MALE SPEAKER: I'm sorry; can I just follow up on that.

Now, do we leave that that the counsel will prepare a memo for the Board to review or to act on at the next Board meeting will adopt this agency's position on the statute and the obligations of our County Board for this fall; is that where we were.

>>COMMISSIONER DOUG KELLNER: Right.

And that the sense of the three commissioners is that we should -- in the interim we should advise the County Boards to continue using the lever voting machines.

And to implement Plan B as provided in the Court order last year.

>>MALE SPEAKER: We've got it.

>>MALE SPEAKER: As to that portion I think you put it in the form of the motion when we began this discussion.

>>COMMISSIONER DOUG KELLNER: Yes.

And let me add to the motion that we are also urging the legislature to act immediately to resolve this issue.

>>COMMISSIONER EVELYN AQUILA: Okay.

>>CHAIRMAN NEIL KELLEHER: You might send a letter to the three leaders from the commissioners pointing out how important this is to us.

>>COMMISSIONER EVELYN AQUILA: Whatever you want.

If you think so, that's fine with me.

>>COMMISSIONER DOUG KELLNER: I think they are well aware of it.

>>COMMISSIONER EVELYN AQUILA: I think they know.

>>COMMISSIONER DOUG KELLNER: They had the same problem agreeing that we had last week. They are still arguing over words. They all agree to the principle that the lever machines should be continued. And that Plan B should be continued. But there seems to be great difficulty over actually agreeing on the words. On how to do that. which is -- well, I won't renew the debate that we had last month where I had specific language at the election commission association.

>>COMMISSIONER EVELYN AQUILA: Do you want to -- do you have to call the vote.

>>COMMISSIONER DOUG KELLNER: So can we vote on the motion.

>>CHAIRMAN NEIL KELLEHER: Yes, on the motion by co-chair Douglas Kellner.

>>COMMISSIONER EVELYN AQUILA: Aye.

>>COMMISSIONER DOUG KELLNER: Aye.

>>CHAIRMAN NEIL KELLEHER: So carried.

Any other new business.

>>COMMISSIONER DOUG KELLNER: I have one other item.

And he was in court this morning so I didn't have a chance to personally introduce you to him before the meeting.

But I would like to introduce Paul Collins.

Paul, please stand up.

That Evelyn and I remember nominating Paul to be the special deputy counsel for litigation to be --

>>COMMISSIONER EVELYN AQUILA: Todd's deputy.

>>COMMISSIONER DOUG KELLNER: Todd's deputy.

>>CHAIRMAN NEIL KELLEHER: Thank you, Doug.

Paul, welcome.

And best of luck.

>> Paul Collins: Thank you, commissioner.

>>COMMISSIONER EVELYN AQUILA: Do you have to call the vote?

Do we need a vote?

Okay.

All right.

>>COMMISSIONER DOUG KELLNER: So Paul, welcome aboard.

And we're looking forward to having you.

>>COMMISSIONER EVELYN AQUILA: Yes, thank you.

(Applause).

>>CHAIRMAN NEIL KELLEHER: Anything else for old business?

Then we'll move into new business.

>>MALE SPEAKER: I think that was the new business.

>>CHAIRMAN NEIL KELLEHER: Pardon?

>>COMMISSIONER DOUG KELLNER: That was new business.

>>CHAIRMAN NEIL KELLEHER: Oh, I'm sorry. I'm having so much fun here, I didn't hardly notice.

(Laughter).

>>CHAIRMAN NEIL KELLEHER: Already then those parts of the -- all right then those parts of the agenda being completed.

The Board will now move into executive session.

>>COMMISSIONER DOUG KELLNER: My understanding is the issue for executive session is to deal with

the contract for the independent testing authority.

Is there anything else?

The three campaign enforcement issues I have -- I don't see any reason for needing to do with any of them in executive session, as long as we don't deal with the names on the first two.

We have to vote on them publicly.

>>CHAIRMAN NEIL KELLEHER: What are the cases now?

>>MALE SPEAKER: Unless you have some issue, you could vote on the case now.

But if you have some issue to discuss, you could go back into executive session --

>>COMMISSIONER DOUG KELLNER: Very minor issues on the first two.

So I think we can take them up.

>>CHAIRMAN NEIL KELLEHER: I don't think there's any objections, is there?

>>COMMISSIONER DOUG KELLNER: Then we could do the executive session after we finish these three motions.

Let me just find the part of the folder that had these cases in it.

589.

CMP05-89.

That was on a voter registration issue.

And I think the memorandum was revised, Liz, is that correct.

>>ELIZABETH HOGAN: It was, commissioner.

>>COMMISSIONER DOUG KELLNER: All right.

So it addressed the objection that I had.

So I'm comfortable with moving the adoption of 05-89.

>>CHAIRMAN NEIL KELLEHER: Okay with you Evelyn.

>>COMMISSIONER EVELYN AQUILA: Yes.

>>CHAIRMAN NEIL KELLEHER: Motion to close all in favor aye.

(Chorus of ayes.)

>>CHAIRMAN NEIL KELLEHER: Opposed?

Okay.

So moved.

>>COMMISSIONER DOUG KELLNER: 7-32 I move to adopt the report, which is also to close.

>>CHAIRMAN NEIL KELLEHER: Motion to close all in favor.

(Chorus of ayes.)

>>CHAIRMAN NEIL KELLEHER: Opposed nay?

Motion is carried.

>>COMMISSIONER DOUG KELLNER: I've asked enforcement Council to send a copy of the decision to the election commissioner involved, if that's okay with everyone.

All right.

Then in 7-33, there was just one mistake where it referred to an office -- a town office where it should have said village.

And with that one revision, I would accept the proposal to close.

>>CHAIRMAN NEIL KELLEHER: On the motion to close all in favor.

(Chorus of ayes.)

>>CHAIRMAN NEIL KELLEHER: Opposed nay?

So moved.

That takes care of the executive session.

>>COMMISSIONER DOUG KELLNER: There was one more, there was the Debol.

>>CHAIRMAN NEIL KELLEHER: Yes.

>>COMMISSIONER DOUG KELLNER: Counsel drafted -- we received a letter from Diebold's attorney

actually specifically the attorney for Diebold enterprise security systems, Inc., which is the entity which made the excess contribution.

And he proposed that Diebold follow the procedures that had been used in the past, which I believe is generally acceptable.

That as -- at the last two meetings I've been discussing a proposal that I still wish to advance before the commissioners.

And that I understand will be proposed in more concrete detail when the campaign finance unit deals with the 2005 excess corporate contributions.

And specifically just to repeat that, is that when it is determined that a corporation has made a contribution in excess of the \$5,000 ceiling that's provided in election law 14-116, that that corporation be made a party to either a consent order or an involuntary order where the party agrees to refrain from any excess contributions in the future.

And acknowledges that the failure to comply is enforceable as a contempt of court.

So that the response that we would give Diebold

enterprise security systems Inc. would be that same form that's being prepared for that new policy should the commissioners agree with the policy. So I would ask that we lay this over in other words, if that's okay.

>>CHAIRMAN NEIL KELLEHER: Any objections?

Okay.

We'll lay it over until the next meeting.

>>COMMISSIONER EVELYN AQUILA: One quick question.

That's anyone who does business with us you're referring to?

>>COMMISSIONER DOUG KELLNER: No, the policy is that any corporation which makes a contribution in excess of the amount provided in election law 14-16 would be made a party to a Court order that enjoins that corporation from repeating the offense.

>>COMMISSIONER EVELYN AQUILA: Okay.

I understand that.

>>COMMISSIONER DOUG KELLNER: Because the statute does not provide a penalty for violating the statute.

And so this is the only way that we can effectively -- I don't think it's even the most effective enforcement.

But I think it's the most that the State Board can do given the current statutory elements.

Mr. Chairman on that basis the only thing left is the discussion with the ITA contract which staff indicates will raise confidential issues about the vendors.

And therefore I move that we go into executive session for that purpose only.

>>CHAIRMAN NEIL KELLEHER: Okay.

>>MALE SPEAKER: Could I make a request, commissioner.

>>COMMISSIONER DOUG KELLNER: Yes, Bob, what is it.

>>BOB BREHM: If this goes to the web siting and this -- if this goes to the webcasting and this webcasting is great.

And I want to congratulate the Board on the much more openness. But there's a real problem for all of us that attend these meetings and for webcasters now have, particularly when staff is giving reports

we have no context very often about what you're talking about.

An example today was Anna.

Not to single Anna out because everybody tends to do it.

But she launched into a thing about talking points.

And those viewing on the webcast or us here, we don't even have a context.

It would be very helpful if A, either the agendas could be released beforehand with a little more detail.

And when staff is talking to at least just introduce the topic that you're discussing so that those of us viewing do have the context at least of what you're talking about.

The commissioners it tends not to be a problem.

Because by the time you're talking about it, context tends to have been established.

So just to request, remember you're now talking to hundreds of people.

And it would be much more clear for everybody to understand what kind of business you're discussing.

Thank you.

>>CHAIRMAN NEIL KELLEHER: Thank you.

I don't want to -- he was given the floor and I will let this lady get up.

But that's it because --

>>WOMAN SPEAKER: I was just going to make -- how you're going to extend the voting for the '07 and '08.

I'm in Saratoga County.

I've been trying to be very patient and I vote on paper which is much better than a touch screen paper with V RES that we had.

I think that needs to be separately addressed in your discussions.

I would prefer to see Saratoga County have to go back to leavers and paper for the next coming elections and finally get rid of the touch screen machines that are not certified that are in use.

So I would appreciate it if you would put that into your discussions.

President and I disagree with the notion of paper being so horrible.

There's nothing wrong with paper.

>>COMMISSIONER EVELYN AQUILA: I can't see it

was -- I didn't say it was horrible.

I said it was difficult.

>>WOMAN SPEAKER: I disagree.

>>COMMISSIONER DOUG KELLNER: I call on my vote for my motion to go into executive session.

>>CHAIRMAN NEIL KELLEHER: All in favor.

(Chorus of ayes.)

>>CHAIRMAN NEIL KELLEHER: Opposed?

Thank you very much.

And that you have for your attendance today.

>>COMMISSIONER DOUG KELLNER: Just to warn you I don't think we're coming back.

We're not going to take any votes in the executive session.

So there's no reason for anybody to stay for our motion to adjourn to the executive session.

>>COMMISSIONER EVELYN AQUILA: Bye bye.

>>CHAIRMAN NEIL KELLEHER: Thank you all.