

**Doug Kellner:** Well good afternoon everyone. My name is Douglas Kellner Co-Chair of the Board of Elections. I'll ask the other Commissioner's to introduce themselves.

**Jim Walsh:** Jim Walsh

**Greg Peterson:** Greg Peterson

**Evelyn Aquila:** Evelyn Aquila.

**Doug Kellner:** And I'll ask the staff to identify themselves.

**Robert Brehm:** Robert Brehm

**Liz Hogan:** Liz Hogan

**Bill McCann:** Bill McCann.

**Anna Svizzero:** Anna Svizzero

**Joe Burns:** Joe Burns

**John Conklin:** John Conklin

**Dave Loomis:** Dave Loomis

**Paul Collins:** Paul Collins

**Todd Valentine:** Todd Valentine

**Tarry Breads:** Tarry Breads

**Bob Warren:** Bob Warren

**Doug Kellner:** And then I'll ask the guests to identify themselves and their organization. Dennis why don't you start?

**Dennis Ward:** Dennis Ward Commissioner Erie County Board of Elections and my wife Michele.

**Amie Allaud:** Amie Allaud, League of Women Voters of New York State

**John Lento:** John Lento, Election Systems and Software

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**Josh:** Josh \_\_\_\_\_

**Doug Kellner:** Thank you all. And a special welcome to Dave Loomis our new Information Technology Director glad to have you with us.

So the first item on the agenda is approval of the minutes of June 12, 2012. Is there a motion?

**Evelyn Aquila:** Motion to approve

**Doug Kellner:** Those in favor say aye?

**All:** Aye.

**Doug Kellner:** Opposed? The minutes are adopted.

Now we'll have the unit updates. We'll start with the co-executive directors Bob Brehm and Todd Valentine.

**Bob Brehm:** Well the last couple of weeks have been interesting with federal primary and the petitioning for state and local candidates has been very busy. All of the activity leading up to today. It was a little bit different having the Congress out of the way in order to get our work done but still it was a challenge with a number of objections we had in order and it was pretty much the entire agency chipping in to make that happen. In addition, as you mentioned, we the new head of the IT Department started during the period of time since our last meeting and it's been a welcome addition to the staff and we wish David well. Todd and I have been meeting weekly with David to go over you know, it's almost like jumping in the deep end. He knows the work that's involved and we wish him well and every success.

Some of the highlights of the activity in our last several weeks, we did complete the filing with the State of our Internal Control Report. That's an annual review that we do and that is on file. We, we did the last leg I think of our restacking, you know when we moved into this space. There were a number of punch up items, the staff from the restacking group met with us and we went through the final list and they're in progress, but the last stage was to move the warehouse from Menands to this building and they were all busy doing everything else. They finally came around to meet with us to identify specific space in the basement. There are two areas that will be ready and caged and we will be able to mostly move the stuff from Menands that is of value. Really it's almost an out of sight, out of mind kind of storage. There were probably a number of items that were there that over time could have been removed that we really didn't need to keep. So it's a matter of destroying what we really don't need to keep and moving here. And from a functional point of view, I think it will be easier, because we don't

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have to coordinate going to Menands once a week for a special trip, it'll just be in the same building.

Other than that, Todd do you have a?

**Todd Valentine:** No those are the big updates. Yeah there are projects that we did as far as the petitions were to do in response to request for copy was to implement a scanning project and the copy was scanned and the idea behind that was an investment in scanners, but since it would cost the agency in money and paper and wear and tear on the copiers to make the photocopies, it's going to save us money in the long run by providing digital copies of the petitions and you know while we haven't tallied how well it went, I mean anecdotally when the people received the copies from our staff, the processing went very smoothly so that's something we're going to continue to work on to perfect. I mean there's always wrinkles with rolling something out for folks when you need it but by in large I think it was successful.

**Doug Kellner:** Great. Anything else?

Alright then, we'll hear from Legal, Kim Galvin

**Todd Valentine:** Kim is in court so we'll have to turn it over to Paul

**Paul Collins:** Yeah, the report pretty well talks for itself. The accompanying three items that are not in the report and are subsequent to the filing of our report is that in the case in which Mr. Germalic on out of state petitioners which the court dismissed a Ritz with the Supreme Court of the United States and quite honestly they don't regularly grant those grants. Also in the Schultz case in which Schultz was challenging the use of any voting machine, be it level or electronic, the prejudice panel through him out and he has moved for a non en banc or entire court reconsideration and that motion is pending. And again, that's not a motion that is regularly granted.

**Paul Collins:** And Kim is over in Supreme Court enjoying herself this very case.

**Doug Kellner:** Paul one of the items on the unit report was that New York City is working on updating the NYSVoter registration records and would you just briefly summarize what's going on there and what the estimated date is for New York City...

**Paul Collins:** I'm not certain there is a precise date for them to be completely in compliance at this point in time. What's going on is we're hitting them with reports and they're putting them in and we hope to have at least by the end of the year a projected date at which they will be in full compliance.

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**Doug Kellner:** Bob my understanding was that they were actually going to have that system implemented by the end of the year.

**Bob Brehm:** Yes. I want David to speak to that. I know it's one of the projects that he's been monitoring because it's a priority that we discussed with them and I know his unit has regularly been updating on that.

**Dave Loomis:** Right I can talk just generally about it at this point. There's two major projects that we're working on, the move back data exchange and then the ability for the felon, deceased to get updated. Sorry, what we've been trying to do is work to test the Move Act changes and then we're at the same time attempting to pass these changes for the New York City Found maintenance. The changes that we've done on our end are out and ready to do and we're trying to coordinate the testing schedules with them, with NTS and New York City. So we're trying to do both projects at the same time but the goal is still to have that done by the end of the year.

**Doug Kellner:** So that's the important news that they will be in compliance by the end of the year, that's good. Okay anything else for Legal?

Then we'll turn to Election Operations. Anna Svizzero?

**Anna Svizzero:** Well we're just a bundle of information on election ops. Our report does speak for itself. We don't have much to add to it except that under new business I'm afraid we will not be able to certify our upgrades to the voting system, but we can adjust that under new business rather than within the context of the monthly report if you'd like. Whatever the Board's pleasure.

We are about to wrap up the first portion of the grant that we got from the EAC regarding test deck training. Their final edits were submitted. We're very pleased with the DVD that we've created. County Boards will be able to have their staff trained. We can do face to face training but it's nice to have something to go back and refresh staff, use it to train new staff. They will be able to put it on a computer and stop and pause it and review a process within the text deck. And text decks are so critical to ensure that the election is conducted appropriately that we feel it's been worth the time we put into it and as I said we're very happy with the DVD. As soon as those final edits are done, which we're expecting in the very near future, we'll make a copy of that DVD available to all of you. We have to submit it to the EAC and make it available to any state that that chooses to. We'll post it to the county informational portal that we have for the County Boards and we'll also provide them a hard DVD for their use.

The second part of that is automating the post election audit process which is going very well. We will be going to Boston to do some on-site review with that vendor. The vendor's name, corporate name is Clear Ballot and the gentleman that runs that firm has

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been working hand-in-hand with our folks on this process. When we got to Boston, we'll certainly let you know, if anybody wants to come along. It might be something that you're interested in but we'll share that date with you and we'll make those travel arrangements accordingly.

I don't think I have anything else to add do you Joe?

**Joe Burns:** Just to mention I think Bob and Todd mentioned already that we for the first time scanned in petitions and we owe thanks to Bob Warren and John Ferri and the whole team for making a success on the topic of ballot redesign I think we've received for the September primary two county ballots and we expect over the next few weeks to get everybody else that's received that.

**Doug Kellner:** I have a couple of other issues I wanted to weight in for election operations. At the Election Commissioner's Conference there were a couple of inquiries about revising the election commissioner's handbook. Can you report on that Anna?

**Anna Svizzero:** We are about half way through. We have all the units in the building; they submitted their rewrites to us. We shared those with the, excuse me, the AdHoc Committee the association assigned us to work through those and we have four chapters of that guide that have been reviewed by those commissioners and their comments are on record with us too. We have to find the time to compile it and bring that up to speed. We're hoping by may years' end that we, that guide will be completely finished with the input from those county board commissioners because that will take some time for them as well. We did offer, we have offered in the past, we've had two boards contact us Herkimer and I can't remember the other. We've invited boards here if they're brand new commissioners and Herkimer does have that scenario. But they're welcome to come here and spend the day with us and meet with unit heads you know that have project areas that are of concern to those new commissioners. And we would spend the day with them. One of the big things is the petition process that we would go through everything that was of concern to them or interest to them and any, obviously, information that we wanted to be sure they were on board with. So we have heard from a couple of boards and we expect that they'll be coming to visit us and that might be a good program to have a little one on one and not have them fearful of comments made in a bigger group, you know, they're, everybody thinks they have a dumb question, and we believe there is no such thing as a dumb question so. We're hoping that that will be a nice face to face for us as unit heads and especially in the ops area.

**Doug Kellner:** The next question was on the status of electronic poll books. Is there anything being certified and have you had any communication from any vendors on the subject of electronic poll books?

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**Anna Svizzero:** We have not officially been approached by vendors with a product that they'd like us to review. Erie County did a little AdHoc pilot project with electronic poll books. Orange County did one last year. We did get a report from Orange County. I think they were generally pleased with it. We here at the State Board have issues with what the statute requires and what an electronic poll book does or doesn't do. But since the vendors haven't really submitted a product to us to review, it's hard to assess how that system functions and where it runs contrary to the election law. We do have that feedback. Erie both commissioners were kind enough to come and speak to us face to face about their experiences and Orange County did a written report last year.

**Doug Kellner:** And the statutory issue is just that the law now provides for a hard copy registration poll book and doesn't explicitly authorize an electronic version right?

**Bob Brehm:** It does many places in the statute where it speaks on electronic list or blah blah blah, except at proposed site on Election Day. So if we, you know there would be a little

**Doug Kellner:** So a couple of words right?

**Bob Brehm:** Just a or an electronic list.

**Doug Kellner:** Is it feasible to get a draft bill that we could look at our next meeting and have the commissioners consider whether it should be on the on our legislative proposal?

**Anna Svizzero:** I don't know who you're asking for that information. I guess my concern in the public area is the statute speaks to adding information to a poll book. Logging whether a voter has to present ID, does the electronic poll book give you a chance to do that. It requires you to add to the poll book the address of a mover who is moving within the ED on Election Day, that's added to the poll books. I don't know that these electronic poll books enable all of those features that the statute required, and if they do not don't do you want to remove the statutory requirements for that or do you want them to amend their software which I am loath to say out loud.

**Doug Kellner:** We're doing it on paper

**Anna Svizzero:** Exactly is there a companion sort of poll book

**Doug Kellner:** You've got a button that says see paper

**Anna Svizzero:** Again without seeing the product and being able to go through it ourselves, and absent any submission to that degree, it's hard to say what we should change.

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**Doug Kellner:** We get ahead of the curb, especially if it's not complicated to do the legislation. If it complicated I understand because there are more important legislative issues that I'd rather be working on.

**Anna Svizzero:** It's the next progression for us and I think we all agree that there is tremendous value to having an electronic poll book. Again, you need a fail safe at the county board level. What happens if that poll book doesn't work when you get it to the polling place? Things like that that administratively operationally we have to look at. But we all like the concept. We think there's much value to it but have not had the chance to assess the product or review it compared to the statute exactly.

**Doug Kellner:** Alright. So I've raised it. I sort of put it on the to-do list.

**Evelyn Aquila:** I feel it's difficult this year with the Presidential election and everything else that's going on and we don't have a huge staff. I mean you have to be practical.

**Anna Svizzero:** We'll share with you the Orange County report and if Erie did a written, I don't remember that you did the follow up. When we asked Orange to do the report, we asked you guys but I don't ever remember getting one. It doesn't mean you didn't do one but if Erie has one they could send, we'll make those available to the commissioners and we'll do a narrative on our own from ops and just give you an idea of where we're at and maybe that would help in the amending legislation end of things.

**Evelyn Aquila:** Like Chairman said it's on the to-do list. I'm sure Anna you had some other to-dos before that.

**Anna Svizzero:** This one I would like.

**Doug Kellner:** Alright. That's on my little list of elections operations which is our project in certification. Right now am I correct that we are not listing our certification applications on the Internet?

**Anna Svizzero:** The applications are on the Internet yes.

**Doug Kellner:** So where where are they?

**Tarry Breads:** They're a link on our home page

**Doug Kellner:** To?

**Tarry Breads:** The individual vendor applications

**Doug Kellner:** And and what applications do we have pending right now?

**Tarry Breads:** I'm not sure.

**Doug Kellner:** My understanding is that there are four?

**Anna Svizzero:** The two special accounts and the two upgrades

**Doug Kellner:** Is that it? And all four of them are posted?

**Tarry Breads:** Yes.

**Doug Kellner:** Okay. I'll have to go through it with you Terri after the meeting to see if I can find it. The, pardon?

**Bob Brehm:** I just asked her to go have someone print the screen so we'll know before the end of the meeting.

**Doug Kellner:** Well it's just the path to it that's all. Alright. So that's my final operations. So now we go to the NVRA Public Information. John Conklin.

**John Conklin:** Thank you commissioner. We submitted a written report and I'll do a couple of highlights of the meeting. We're very busy at the PIO right now. Obviously a lot of people are asking questions about the petitions and the challenge reports and who's on the ballot and who's off the ballot and are there hearings. So we're answering a lot of questions with regard to that. We also have the July periodic filing in the middle of July. While that's very busy for campaign finances, it's also very busy for the Public Information Office. Reporters pay a lot of attention to who's filing and how much money they have and what's in the filing. So we answer a lot of questions on that. The Public Information Office also helped out in petition filings at the front counter. Patrick said in terms of what Todd said anecdotally and what Joe said whether the scanning project was a success, he said from his vantage point people were very pleased with the scanning idea. They were very happy to get scanned petitions back on a disk or e-mailed to them if the petition was small enough to fit inside an e-mail. So he asked me to pass that along. Greg and Patrick have continued doing their NYSVoter board visits. They visited Chenango and Dutchess during the past month. Greg also did an NVRA training in Broome in June and there's a major one scheduled in New York City in September. I think that's about it. If there's any questions in addition to the written report?

**Evelyn Aquila:** Could I ask please. I've been concerned about getting out the message you know that people should register and vote and I see a lot of public information lately, at least down in New York City the advertisements on the television one as you know Fourth of July is coming remember you're American or something like that and there was another one for something else. And I was wondering at one time this Board did get

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some on and worked with the counties in getting something on just to remind people to register. If their religious, it is a Presidential year and to vote and I was wondering if there was anything we could do to move that along or to reach out and get some network that would be willing to do something like that?

**John Conklin:** I would absolutely be willing to do something like that. Typically what we have done in the past at least for the time period that I've been here, we absolutely do a press release just before each voter registration deadline. And depending on whether the press considers it an important election, it gets picked up and widely broadcast that there's a voter registration deadline and people pay attention to it. A few years ago when we had the new machines, we had the money to do some advertising. I, we did work with the New York State Broadcasting Association and they were willing to help us but it wasn't necessarily free. So that's been the primary obstacle to doing something more significant on either the radio or television to advertise that kind of thing.

**Evelyn Aquila:** At least we can ask, the worst they can do is say "No you need \$10,000 and we don't have it" but you know I think it might help. I think that a lot of people you know they say "Oh I'm not gonna vote" you know "It doesn't make any difference it's always the same old people no matter who they are" or something like that. They give you answers like that. And because I belong to a lot of organizations and I'm always reminding them about elections and things, and I just think that if there was some way the press, you know whether it be the newspapers or the television could do something closer to these dates, get people to register. Remind people to vote that it's a good thing and it's something we should really do if you can. I understand all we, you know the things you have to overcome to get something done I know and if we don't, we don't. But I really would like to see something if it's possible.

**John Conklin:** Absolutely

**Doug Kellner:** Anything else? Campaign Finance Liz Hogan.

**Liz Hogan:** Good afternoon Commissioners. I pretty much will stand on the report that's been submitted to you relative to the you know basically ongoing plugging along stuff that we do in campaign finance. It's very repetitive and each month give you the numbers as to where we are. If you'll note the registered active filer is up to almost 12,500 so that number is big. And the other, there are a couple of things of note in the report. The one thing that I point out of course is that we're entering the enforcement period for the no filing of the July periodic. There were on our original list in order to prepare for the five day letter, there were just over 1700 no filers of the July periodic of registered filers. And you know that entailed a tremendous amount of work in-house. The judgment for that is going to be initiated on August 16<sup>th</sup>. Now we have sent to each county list of filers in their county that have not filed. And you know we ask them we don't want to see these people the fine is now up to \$1000 for no filing. The court will

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impose that \$1000 fine and you know we really don't want to do this but of course statutorily we're compelled to but we try to enlist the assistance of the county in order to contact people that have been delinquent in their filing to get them to file. As I said the 16<sup>th</sup> was the day that we will initiate the law suit. So we ask the counties to assist in that. But other than that, it's basically the routine stuff that you know for each subunit in our group. And if you have any questions, I'll be happy to answer them or Bill if you'd like to talk on anything specific.

**Bill McCann:** Yeah we are really in the home stretch on our operations with the mutual software we just need a few more tweaks after the beta but we're actually we have a meeting scheduled for Thursday with IT to resolve a couple of minor points we think and then at that point we'll be implementing a strategy, you know obviously we have some logistics that we have to encounter relative to having 12,000 active filers and how do you handle that or accommodate that depending on how you release the new software. So we have some information currently on that but I anticipate that somewhere in line with the general election filing we can do a soft serve so to speak and see where it takes us. We're pleased by the results and hopefully...

**Doug Kellner:** That will bring us into the 21st century and then we can start working on the upgrade to bring us current.

**Anna Svizzero:** And we're gonna need money for that.

**Doug Kellner:** Well let's put it in the budget.

**Liz Hogan:** We do. We do every year.

**Doug Kellner:** Okay well great. Thank you Bill that's good news and we'll keep working on that.

And so Dave Loomis your Information Technology.

**David Loomis:** Good afternoon. I have nothing specific to add to any report. I've been fortunately I have a great staff that's been putting up with me and all the projects that we're working on. A lot of our time, a lot of my time has been focusing on the move back and on the data exchange project so that's something that we're really targeting to get up and running.

**Doug Kellner:** Well thank you. We used to tell your predecessor that a short ITU report is good news.

**Dave Loomis:** I'll remember that.

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**Evelyn Aquila:** Maybe you can work with him that I asked him for getting the word out about registration and election. I think we should collect all the fines that they owe so we can pay

**Doug Kellner:** It doesn't work that way. Alright. So first item on old business is a discussion of Independent Expenditure Regulations. I guess we have the draft reg that was published and my proposed amendment to include functional equipment. Does anyone want to discuss it further today or should we hold it over until September? Okay. So we'll put this over to September.

Next are the determinations regarding designating and nominating positions and objections that the board has received.

**Paul Collins:** The copies are all in your files commissioners. You should have them all and...

**Doug Kellner:** Now how do we break down the resolutions? Are there, we were going to separate out the Howard Leib item

**Bob Brehm:** The first report you have is summary of determinations based upon objections, a two-page report

**Doug Kellner:** Okay and so that's Katz 94 assembly district. The candidates are Katz 94 assembly district, valid

**Bob Brehm:** Right that's the first page

**Doug Kellner:** Weider 98<sup>th</sup> Assembly District valid and the McQuade 98<sup>th</sup> Assembly District valid, OTB 98<sup>th</sup> assembly district conservative valid, independent invalid, Carter under first assembly district invalid, Scavo 108<sup>th</sup> assembly district invalid, Java 114<sup>th</sup> Assembly District invalid, Kimmel 115<sup>th</sup> Assembly District valid, Duprey 115<sup>th</sup> Assembly District valid, Butler 118<sup>th</sup> Assembly District valid. Humisten

**Bob Brehm:** Butler above that, there's two Butler's sorry

**Doug Kellner:** Is it Humisten is that how you?

**Bob Brehm:** Correct

**Doug Kellner:** 147<sup>th</sup> Assembly District valid, Valentine 38<sup>th</sup> Senate District invalid, Breslin 44<sup>th</sup> Senate District valid, Blake 51<sup>st</sup> Senate District valid, Leib, we're speculating about, Esworthy 52<sup>nd</sup> Senate District invalid, Moriarty 62<sup>nd</sup> Senate District valid.

**Paul Collins:** Do you want to move make a higher staff report with that one exception and vote separately on that? You'd rather do it as a package.

**Doug Kellner:** Okay that's the motion before us? Alright those in favor of adopting that staff report say aye.

**All:** Aye

**Doug Kellner:** Opposed. Alright that's adopted. We have a staff report on Prima-facie review.

**Bob Brehm:** Well it will come back to Leib? Alright

**Doug Kellner:** Do you want to present the Leib issue or why we separated it out? Do you want to do a follow up?

**Bob Brehm:** Yeah I'm just pulling out the sheet. The Leib issue it had been in during the hearing on the Democrat petition and it was raised as a failure to follow our part 6204.1 reg that proof of service be made upon the candidate on or before the date the objective specification was filed with the state board. The state board objection was received in person on the 20<sup>th</sup> of July and the affidavit proof of service that was provided within the timely period clearly states that the that the person saw that it was on the 23<sup>rd</sup> day of July served with the specification upon the candidate. So the objection was that the specification was not timely therefore we lacked jurisdiction in order to rule on the underlying objection. So therefore it would remain valid. So I don't know if you want to...

**Doug Kellner:** And there was a prima-facie review and it was proved valid on the prima-facie review?

**Bob Brehm:** At that point correct.

**Doug Kellner:** Okay. Do you want to say anything else?

**Todd Valentine:** Just with regard to petition or signatures, we don't, we cannot count the signatures until the general objectives been filed. We don't wait for the specific objection. So I mean just based on the report it does not have the sufficient number of signatures.

**Doug Kellner:** But we always did that not on the prima-facie review but only after an objection that...

**Todd Valentine:** A general objection and...

**Doug Kellner:** Rule jurisdictionally defective alright. So procedurally I'll do you want to make a motion?

**Evelyn Aquila:** I will make a motion to....

**Doug Kellner:** Do you want to make a motion to add Leib to the prima-facie list is that the motion?

**Todd Valentine:** Ah yes cause that was the recommendation to invalid added to that, a motion would be to invalidate, there has to be three votes to invalidate starting with valid. The underlined position starts with valid.

**Doug Kellner:** Alright so that's the motion. Is there a second?

**Evelyn Aquila:** Second

**Doug Kellner:** No it's alright. That puts it on the table. Alright. So those in favor of the motion say aye.

**Todd Valentine:** So the act to vote yes would be to invalidate the petition.

**Jim Walsh:** Okay, oh one of those? So we are voting to invalidate those opposed?

**Evelyn Aquila:** Aye

**Doug Kellner:** Nay

**Evelyn Aquila:** Nay

**Doug Kellner:** Commissioners Walsh and Peterson are voting to invalidate and Commissioners Kellner and Aquila are opposing. So the motion fails by a two to two vote. Alright now

**Paul Collins:** The candidate is now on the ballot

**Doug Kellner:** He remains on the ballot

**Doug Kellner:** Now we have the staff report on prima-facie review and I guess it's not necessary to read it but I'll move that we adopt the staff report on the prima-facie review. Those in favor say aye?

**All:** Aye

**Doug Kellner:** Opposed? And there is a staff report here on no acceptance, no authorization. Is that in addition to the prima-facie review?

**Bob Brehm:** Correct

**Doug Kellner:** So we need to I move that we adopt that report which would invalidate these six petitions based on their failure to comply to file the proper the required authorizations. Those in favor say aye.

**All:** Aye

**Doug Kellner:** I see Kim is back. Welcome back Kim. Any news to report?

**Kim Galvin:** Nothing that pertains to anything that you've just did

**Doug Kellner:** Okay. Alright. Is there alright any other business with respect to the designating and nominating petitions? So the next item is says Vote on the resolution to certify upgrades to ESS and DS 200 voting system and AutoMark. Anna you reported earlier that the staff is not prepared to recommend at this time.

**Anna Svizzero:** We're withdrawing that resolution yes.

**Doug Kellner:** Alright. I think it would be productive to have a short discussion though on the subject for the system upgrades because this certainly was an issue of great alarm at the Election Commissioner's Conference and indeed the Election Commissioner's Association passed a resolution urging us to very carefully consider how we go about implementing these upgrades. One of the issues is that the systems are not the same, that the Dominion upgrade is more complicated than the ES&S upgrade because the Dominion upgrade requires not only the installation of this new voting system software, but it also changes the election management system and required hardware upgrades as well in order to accommodate the new election management system.

**Evelyn Aquila:** Does our office agree with them?

**Doug Kellner:** What's your question Evelyn?

**Evelyn Aquila:** I said do we agree with that?

**Doug Kellner:** Well I think those are facts that...

**Evelyn Aquila:** No I mean do we agree with those same facts?

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**Doug Kellner:** The, and ES&S has been a little bit further along in the certification process. We were hoping that we would be able to certify them today, but Anna specifically what's remaining that prevents certification today.

**Anna Svizzero:** The ES&S is for source code review. ES&S in order to comply with some VDFE interpretations that the EAC made have changed how their source code is structured so that review of the source code from one version to the next used to be able to happen with some tools and with manual review, and you could compartmentalize the changes and review those and make sure that nothing else was disaffected. Because of this move by ES&S to be more in line with what the EAC wants to see in source codes, the source code review can't happen. There is no constructive way to look at those differences from one version of the source code to the next so it's a completely manual, you can't use tools to identify that either. So it's become a completely manual process. And in that manual process, you only know from day to day what that day gives you and what that means, how long it's going to take you to finish the project. And in the estimates that we got were as far as that time period goes, were much more aggressive than the work has actually been able to demonstrate. So we're not prepared to have those final source code reports from our labs in the ES&S world. I don't even know that we would have them in time for a web meeting that we had briefly discussed off line in the next week or ten days. That manual source code is intense. We're working with ES&S to see if they can help identify for the labs where those changes are in their source code so that would expedite the source code review, but I'm not a fan of that. You know how I feel about vendors, especially this week.

**Doug Kellner:** No no but it defeats the purpose of the source code review if the vendor is able to say well look at this, but don't look at that.

**Anna Svizzero:** Right but while we reach out to them to see if there was anything that could happen, I'm not sure that what they're proposing would happen we'd actually let happen. So for and that conversation was only happening this morning. So we're just, it's hard to estimate when it would be done. Our last conversation with the lab yesterday was that perhaps in two weeks time this manual review would be completed on the ES&S side.

**Doug Kellner:** Now assuming that we did certify this, added before our next meeting which I think we're talking about September 12<sup>th</sup>, is it still viable for at least some of the jurisdictions using the ES&S to install this for the general election?

**Anna Svizzero:** Well our conversation with a couple of them has been positive. I don't know that all of the ES&S counties would be able to do so. Our concern is two fold, one is there are items in that upgrade that counties specifically asked for that they'd find helpful in using it for the November election. They followed their vendor's direction, they made some incremental...

**Doug Kellner:** examples of those upgrades that the counties have requested?

**Anna Svizzero:** I'm not sure I have the ES&S...

**Doug Kellner:** Now these are going to access the ballot images was one of them?

**Anna Svizzero:** That's one of them that would be restored in this and that was one that was of particular interest to Rocklin for the write in features and the New York City, well I can certainly provide them to you on customer request. No I have several pages of them, for example a public count pop up number that reports the number of ballots processed, these are translated screens from ballot exception conditions updated at the customer's request. Synchronized translation to English text is more smooth...

**Doug Kellner:** Did New York City also request the break down by election district to the public counter numbers?

**Anna Svizzero:** Yes

**Doug Kellner:** So that's something that's important

**Anna Svizzero:** And the ability to find the write in ballot whether the voter has filled in the oval or not. Those are all features that would be of use. Whether this board was inclined to have this upgrade if it was certified at the September meeting implemented by those boards that could do so, that's our decision that the board would have to make and perhaps we'd have to have a little more conversation with the ES&S counties.

**Doug Kellner:** Commissioner Ward from the Erie County is an ES&S user. Dennis is there anything you want to add

**Dennis Ward:** Well I think although I was attending the conference of the commissioners and I wasn't deputized to represent the ECA, I think I certainly could speak on behalf of the commissioners to say that at the very least, there is grave concern at all levels throughout the state. Now that may differ from the size of the county and the types of machines that county has. But I think I'd be remiss if I didn't convey that to the board that as you all know, it's not secret that this is a very busy year, it's the presidential election. And one of the concerns that without getting into the technical side of it because I'm relying on my technicians who are supposedly having a conference call within the hour with ES&S to talk about the practicalities of it. But I don't think that there is any secret that if there were anything that were done to these sometimes sensitivity machines that would cause long lines at certain polling sites where machines for whatever reason we're functioning and we had to shift to emergency ballot situations, as I mentioned to my counterpart, I'm calling in sick that day. I mean the presidential

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year is difficult enough because there is heavy turnout in some areas more than others and I would just hope that the board would consider that and I realize that there are issues and they may have to reapply to the federal court and whatever and I'm getting into the legal niceties of that but we certainly have heard from ES&S to say that they don't feel that the ES&S problem is as great as the Dominion problem. I don't know if that, that doesn't necessarily mean it's not a problem, I guess it's just that they're worse off than we are. If that is to be some sort of a comfort to us I guess I will take small comfort in that. But nonetheless, I had some conversation with a unit representative from the Brennan Center called me yesterday. I don't know how I was selected out of the directory but I was lucky. We had a very nice conversation and I hopefully conveyed to her the fact that certainly from Erie counties perspective, and I don't speak for my counterpart he's out of the country this week, so I don't want to say that we're, this is our position, but we don't want to appear to be "chicken little" and run around and say "oh it can't be done, it's terrible". On the other hand we also if there is a choice between and smooth functioning election or the implementation of this new process this new software upgrade, I think any commissioner that administers elections would say that we're going to opt for a smooth voting process at a very heavy turnout election rather than risk the possibility of chaos. I would emphasize just one more point that sometimes gets lost, two points maybe on the practical, down at the ground level where we are, number one is that we are often jacks-of-all trades with our staff and we are administering and doing other things other than this and as the time approaches closer to the general election, if the product is not certified and we are given the product sometime in September, let's just say, there is a little date in September called primary, I don't know if you've heard about it. It's the third one this year, we're getting good at it. But when the primary occurs, things happen you know. We're doing other things you know like other county ballots and the like. So please keep that in mind when you start to talk about the timeline that we're going to be on because we could be tied up for weeks if not days after the primary. And then to start suddenly saying "Oh gee it's the end of September, beginning of October, we're going to start to put this, or to install this" that could be problematic. And the other thing is a very practical thing, I know it doesn't always make the radar screen, but all of the boards go through a training of inspector. Inspector training is and I know in our county is about two thirds complete for this year, most of the counties I know that I spoke with a lot of them have completed it and when you complete it and they've all got their manuals and they're all secure and they know exactly what's gonna happen and then we say "Oh yea but here's another insert" and then it has a wave of sending shivers through the whole administration of the election. And so I, keep that in mind as you're considering what we would do or what we would ask the federal court on this particular case. That's from the ground level and we certainly want to administer a good election first and foremost in November and we want to hope, we hope that everybody keeps that in mind.

**Evelyn Aquila:** Thank you very much, we appreciate your insight.

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**Doug Kellner:** Anna on the issue of the litigation concerning the over vote notification screen is there any way to separate out the screen so the screens can be revised in accordance with the settlements of the litigation without doing the full system upgrade?

**Anna Svizzero:** We did talk about that. Bob Warren could certainly speak to it better but if we did that, the vendor would have take the time necessary to push those out, they will still require source code review and the independent source code review and regression testing. We're, that's the step to actually putting something before the four of you for your vote on.

**Doug Kellner:** Are you saying its not feasible then?

**Anna Svizzero:** I would not want to risk it and then again having to deploy it for an election. Every election is critical, but certainly a presidential election, I'd rather not meet Chris Matthews under these circumstances.

**Doug Kellner:** So Paul at this point are we in a position where we really need to notify the plaintiff's in litigation and

**Paul Collins:** Absolutely, our consent indicates if we feel we're not going to be able to implement this for the November election, we have to notify them by September 1<sup>st</sup>. They've already had communications with the Attorney General's Office who is representing the Board in that litigation and they are they are just abiding today's meeting and we've had a very candid discussion and I'm suspecting that they are watching it and a lot of people are and that's where we'll go.

**Evelyn Aquila:** I think in the end though we have to think about the voter. And if the voter walks in to vote and sees chaos at the voting place, he turns around and walks out.

**Greg Peterson:** Hopefully those who are watching us right now, if they listened to even two words that Commissioner Ward sets before us I think puts it in very plain English as to where we're situated right now and to jump into something where there's a possibility of a problem, you know under tremendous stress for the presidential year, I think it would be, it would be just wrong for us to...

**Evelyn Aquila:** People have to come first, the voter...

**Greg Peterson:** Timing is bad and I for one certainly would not support it.

**Paul Collins:** And the consent decree contains a provides, we're not going to be able to it in good faith to continue to notify the voter of the over vote issues.

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**Anna Svizzero:** We have signage in place from last year election to do that. The inspectors were trained on that signage so we're at least at a status quo where it comes to inspector training of voter interaction. And there are over vote screens such as they are to whatever extent anyone wants to like them or not are still on the system. It's not that the system is without a notice to the voter. But that implementing this is of concern to us in election operations as well. We don't mean to mitigate anything. We don't mean to not pay attention to the concerns that the county boards have. We have them as well, obviously the four commissioners do. My only concern is that we still proceed on a conscientious path as we can to certify this as soon as we can because that would enable the county board to assess the steps required to implement the upgrade to make the purchases that they need because of we waited to certify until after the general election, then we're waiting on pre-clearance and if there are special elections that arise as a result of this general election, we're not going to be able to use this newer system in that and I don't want to be there. I don't want this board to be there, at that point in time. So the sooner we can get our package to the extent that we're comfortable with it, it's exhaustive testing and you've heard us say that before but clearly our testing reveals problems as recently as last week in what the vendor put before us in Dominion's case and that's important for people to know. Contrary to what the vendors portray at these conferences, especially when we're not there to counterman their conversation, it's important for people to know that. But we would like to get a package before the board so that the county boards can then be reasoned in how they approach the upgrade and do that in a way that's timely for any election that may come up early in the year and any elections that they loan their equipment out for, village, library, school district etc. All of those would be key.

**Doug Kellner:** And Anna election operations is still doing a follow up on the audits of the over votes?

**Anna Svizzero:** Yes we have two issues in New York City, the 13<sup>th</sup> congressional district and we're still looking at data and we're requested more data on the difference between the hand counts and the machine counts in that 27<sup>th</sup> SD special elections in New York City. We have launched, we've come up with a protocol for reviewing elections around the state and we are again pleased to say that Schenectady and Saratoga have offered to be our pilot projects for monitoring elections. We're going to randomly select counts for each election, have them randomly select election districts and scanners within their counties and we will look at valid images, over votes or anomalies in vote counts, look at their audit results that are test deck process etc. and that will give us I think a much more hands-on approach to monitoring the use of the systems in getting feedback directly from each individual county moving forward. So we will be doing that. In those two counties with the federal primary that was held in June, we'll be doing it again with six counties for the September primary.

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**Doug Kellner:** Well I certainly concur with Commissioners Peterson's remark and so that's a consensus for all of us at this point to proceed cautiously

**Evelyn Aquila:** Cautiously. We must say that. I mean it's not mandatory for this year. I think we have to say that.

**Doug Kellner:** Well right now there's nothing certified so they can't do it until it's certified but...

**Evelyn Aquila:** Oh okay. I just I just feel...

**Doug Kellner:** And I guess that's the point we've said is that we'll proceed cautiously and

**Sue Cohen:** Could I make a statement before you, because there's another side to this story. I know that you're about to approve it so I'm not going to take much time.

**Doug Kellner:** Okay go ahead.

**Sue Cohen:** But I feel like I need to say something before. My name is Nicole and I'm with Voting Excess Solutions. I've worked for five years on the challenges of Disability Acts to vote. Now in the Dominion I'm really only going to speak about the Dominion machine. I'm not an expert on the AutoMark. I have worked with Dominion as a consultant for the last three years to do upgrades and I helped co-author the upgrades for ballot marking device. Those upgrades were the result of a huge influx of negative testimonials in different franchise voters, especially blind voters who these machines were intended for. I spent three years co-authoring those upgrades and I guess I'm gonna express disappointment for myself and the whole disability community because that means that the same voters who have been disenfranchised are going to continue to be disenfranchised for the presidential election. A great amount of time and effort has been put in to try to educate co-workers, educate voters on using these.

**Doug Kellner:** Sue, specifically which upgrades are you talking about?

**Sue Cohen:** We're talking about specifically the ballot marking device upgrades that improve the instructions and improves the navigation of the machine. I have a book full of testimonials of difficult people who's experienced anywhere from a 45 minutes vote to an hour and a half vote. We have created a voter guide; we tried to adhere to the ADA to give reasonable accommodations. This was a great amount of effort that went into both on Dominion's part and my part to improve voting for these individuals. Now one more year the presidential election of disenfranchised voters is really a huge setback. And the truth is the disability community has lost faith in using machines as is shown by the really low usage of these machines and I don't have to say that a tremendous amount of tax

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payer resources go into these machines and by 2013, no disrespect, people have totally lost faith. So we put all this effort and this money into these upgrades and by that time nobody is going to be interested in using them. Now on September 12<sup>th</sup> is a huge meeting in Onondaga County of the disability community. I was really hoping and Tim Dexter the national, we call him the voting guru for the American Person with Disabilities to help write to Help America Vote Act he's the key note speaker. I was really hoping to be able to show the prototype or at least announce that these changes were going to happen. This community could sue I'm gonna be very honest with you, they are angry as can be. I must admit as a consultant for Dominion I tried to prevent that from happening. I no longer consulted with Dominion and I'll truthfully, if they are angry enough, they can get pro bono with attorney who would jump on this. So I think there's bigger issues here. I'd like to see a solution for the BMD portion of this. I don't know if there is one but I would like the board to consider a solution. Cause you're gonna have a whole room of very angry people. Thank you.

**Doug Kellner:** That's a helpful comment

**Anna Svizzero:** May I respond?

**Doug Kellner:** Yeah go ahead

**Anna Svizzero:** With all due respect, it's if Ms. Cohen and others are dissatisfied with this decision today, they could take it up with Dominion. Dominion did not submit their source code in a timely way to us, they did not submit their upgrade to us when ES&S did which was very early on in the process, and Dominion did not even submit the source code for their BMD to a lab for certification until last week. So if there is any disappointment from you as a consultant for Dominion or for anyone who uses the Dominion system it should be taken up with Dominion. This board has done everything humanly possible to work with these vendors to get a product out there that the community can work with. You had said repeatedly you've had issues with these scanners. I have yet to have anything submitted by you to our unit, no conversation between you and Bob Warren to address any of these issues that you've raised. We're happy to do that. But to say today that you're disappointed in this board is a disservice to this board and the staff involved in doing the work on these voting systems. Your dissatisfaction should be directed to your employer Dominion voting system, not this board. And I apologize.

**Greg Peterson:** Thank you Anna. The bottom line here we're out of time and to do something under the constraints to put on at this juncture would be too hard.

**Doug Kellner:** Alright. So I think that's our consensus for right now. There's nothing to vote on.

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We all agreed on how to proceed and I certainly take to heart Sue's comments and as Anna pointed out you know some of the upgrades are functions that the county boards had asked for but nothing before it's time. We want to make sure, as I say in my law firm we would not upgrade our Microsoft Word the day before a major deadline.

**Evelyn Aquila:** And I think that these electronic devices all of them are always having upgrades. We will thank this staff, maybe not me but you will thank us in years to come.

**Doug Kellner:** Alright. Well next is the vote on the resolution to adopt the amendments to the rules and regulations this is to update the address.

**Paul Collins:** This is to update the address. It was done on a contingent basis upon the expectation that there would be no comments of a negative nature. In fact the forty five days have well run and there have been no comments at all. So the board is now free to adopt the change of address of the directive notwithstanding that we've been here a couple three months.

**Doug Kellner:** So moved. Those in favor of the resolution say aye.

**All:** Aye

**Doug Kellner:** Opposed? Alright. Item D, discussion of the election night poll site procedures and ballot redesigns. I had asked that this item go on. I was hopeful that I would have a revised draft but assemblyman Kavanagh to his credit worked very hard in working with the City of New York to try to revise the bill that we had drafted earlier this year and it did pass the assembly and it did not pass the senate. My own view is that the bill in its current form is better than the existing law, but have a lot of problems built into it. The major concern that I have is that in his effort to accommodate New York City, that there are numerous provisions in the bill that have separate election night closing procedures for New York City and the rest of the state. And my own view is that there should be a uniform statute and if there are legitimate options that are local options, then those local options ought to be available to everybody. But there's nothing about election night closing that is unique to New York City that would justify having a separate statute for the city. So I would hope that this could be a priority within the next couple of weeks to try to get the staff to go through this bill and revise Assemblyman Kavanagh's revisions so that there will be a uniform set of procedures and they're consistent with the actual capabilities of the machines. So that that that we can then turn around and say "okay these are the procedures and everybody has to follow them" instead of a status quo now where there are so many inconsistencies that to a great degree the counties feel they're on their own.

**Todd Valentine:** Was there was there a revised version of bill introduced after this?

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**Doug Kellner:** Yeah they're up to a B version. There were actually two amendments after our draft.

**Todd Valentine:** Were they passed or?

**Doug Kellner:** No, no but the version that passed the assembly but not the senate as I say it's not the same as what we drafted and in some places it's better than what we drafted. One of the things in our draft that we overlooked is, the statute says at the close of the polls, the inspectors shall do certain procedures in a particular order but if you go to the state, to our website, our procedures don't follow that order.

**Todd Valentine:** That's a problem

**Doug Kellner:** Yeah and then then as I say there are half a dozen places in the revised Kavanagh bill that have a separate rule for New York City. And I don't want to repeat myself but I think we, the problem here is who's actually going to get this legislation straightened out? And as between council for the senate and council for the assembly, the Governor's Office and us the expertise is here. And if we don't do it, we're going to be able to do it better than anybody else in my view. Maybe that's a presumption on my part.

**Evelyn Aquila:** I think what's very wrong I guess is that each county like for years I was an inspector in New York City but those procedures when we closed were given to us the New York City Board of Elections and we followed that. They were simple, they're nothing you know. If you graduated from elementary school you can do them. But I didn't know we had to have, there was a state law that governed them I really didn't and I don't know why it's necessary for every county around the state to have to do it exactly the same way you know really. I just don't see that.

**Doug Kellner:** Well right now there's a law that requires them.

**Evelyn Aquila:** But it didn't pass

**Doug Kellner:** but the existing law is much worse than this even with this revision.

**Evelyn Aquila:** You know I think that our time if you change things enough times then you mess things up you know.

**Doug Kellner:** New York City is fighting the existing statute as the reason for very complicated closing procedures which if I recall Reub Goldberg procedures and are unnecessary but but a lot of counties just did their own procedures or followed the procedures that the State board has recommended that are much simpler but don't necessarily conform to the letter of the statute in the eyes of the law.

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**Evelyn Aquila:** And you want us to vote on that today?

**Doug Kellner:** No cause I don't have my draft ready you know. I'm asking that the staff do work on this before September 12<sup>th</sup> if at all possible to try to go through to get the Cavanaugh bill to conform to what our recommended procedures.

**Evelyn Aquila:** And I would urge that the procedures be as simplistic, I know this sounds ridiculous, as simple as they can be you know. Check the number on the machine, check the number that you, I mean there's enough ways to make it simple. They're out making it people read it and they say "oh my gosh I don't know how to do this", we don't want that. I hope nobody takes offense by that, the people are tired by the end of the day and should be one, two, three, four, five whatever and done.

**Doug Kellner:** Okay.

**Todd Valentine:** You know currently the issues in regards to the poll closing procedures was raised very late in the season which you know is difficult, trying on a bill when given ample time when other issues are also being debated so and the fact that there are existing procedures. So albeit not as simple as they could be, I think we can all agree on that. So you know...

**Evelyn Aquila:** They're never 100% simple but its...

**Todd Valentine:** No to put it in plain language is hard and not skipping steps and not making assumptions is difficult to provide for all that so. But certainly if you have a draft, I mean I know that Bob worked with the assemblyman very closely on that.

**Doug Kellner:** So I'd ask operations in legal if they can spare the time to try to work on it after. Let me add also legislative agenda was a major subject at the Election Commissioner's Conference. The Election Commissioner's overwhelmingly again renewed their priority number one priority request is to get the June primary. And

**Evelyn Aquila:** Is what I'm sorry?

**Doug Kellner:** Is to have the legislature approve the June primary bill

**Evelyn Aquila:** Oh okay.

**Doug Kellner:** And there are two main concerns; first is the historic concern with the Commissioners that doing it in June provides more time, less need for overtime and the ability to use season staff because of spacing out the difference between the primary. So even for next year they're asking for a June primary. The second thing is

**Evelyn Aquila:** Can I just say this?

**Doug Kellner:** No let me finish. Let me finish. The second thing is that the reason for moving up the primary is to give military voters time to get their ballots. And there's no reason why military voters should essentially be discriminated against in the local and state primary elections to get their ballots on time.

**Evelyn Aquila:** I was going to say that.

**Doug Kellner:** Alright I'm sorry. So that is still the Association's number one legislative priority even for 2013 and of course, they're very concerned that if it's not pressed, the legislature might let it go until late in 2014 and then everybody will be scrambling again. So that's number one.

Number two the Association did pass a resolution asking us to work on the election night poll procedures bill and that passed unanimously and they also unanimously passed a resolution endorsing the ballot usability act that passed the assembly but also got hung up in the senate at the closing hours. And then they had a number of items that are left from last years' agenda but they are lower down in the priorities but still something that they'll be pushing.

Thank you for indulging me on that report. Last item on the agenda are the determinations from the campaign finance unit. We have the long list of numbers here. Does anybody want to discuss any of them in Executive Session? Alright so I move the adoption of the staff report. Those in favor say aye.

**All:** Aye

**Doug Kellner:** Opposed? Okay. And then we had discussion that our next meeting will be September 12<sup>th</sup>?

**James Walsh:** Correct yes

**Doug Kellner:** Which is the day before the primaries.

**Bob Brehm:** There's one item which Terry did bring the link of the website and indicated that the applications are on the link. That's the link and you can see the top of the list or I think it's at the bottom of the list but it just reconfirms that question you had earlier that they're there, the application.

**Todd Valentine:** What section do you navigate to?

**Doug Kellner:** Yes it starts with 2007. Are the other ones there?

**Bob Brehm:** I think that the opposite. The most recent maybe we could organize to put on the top and real older on the bottom or something like that.

**Todd Valentine:** Oh alphabetical by vendor?

**Male:** Right

**Liz Hogan:** We can do it chronologically. We'll talk to Dave Loomis and John Conklin about it.

**Todd Valentine:** I think the EAC does it alphabetical by vendor too.

**Doug Kellner:** Thank you very much I appreciate it. Thank you Terry for pointing that out. I think if there's no further business. All in favor of adjourning?

**All:** Aye

**Doug Kellner:** Alright thank you all.