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**Jim Walsh:** Good afternoon everyone, welcome. We will first start off with the Board of Canvassers and New York State Board of Elections and then the second portion of our meeting will go into the regular meeting and we'll all introduce ourselves but we'll just take care of one item of business if we may.

Number one, the certification of election results for the November 5, 2013 general election. We are voting to certify the results. Do we have a motion?

**Douglas Kellner:** I move that we approve the certifications drafted by the staff which have been circulated for our signature.

**Jim Walsh:** Second?

**Evelyn Aquila:** Aye

**Jim Walsh:** All in favor?

[chorus of ayes]

**Jim Walsh:** Opposed? Carried. Thank you.

We will go into the meeting of business. Again, good afternoon my name is Jim Walsh. It's my honor to be chairman of today's meeting and if we may introduce our fellow commissioners and everyone around the table and our guests at least indicate where you're from. We know this is a special day.

**Douglas Kellner:** Douglas Kellner

**Evelyn Aquila:** Evelyn Aquila.

**Gregory Peterson:** Gregory Peterson

**Todd Valentine:** Todd Valentine

**Kim Galvin:** Kim Galvin

**Paul Collins:** Paul Collins

**John Conklin:** John Conklin

**Tom Connolly:** Tom Connolly

**Dave Loomis:** Dave Loomis

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**Joe Burns:** Joe Burns

**Anna Svizzero:** Anna Svizzero

**Bill McCann:** Bill McCann

**Bob Brehm:** Bob Brehm

**Jim Walsh:** Your Honorable Stanley Zalen

**Stanley Zalen:** Thank you. I'm Stanley Zalen as Commissioner Walsh just mentioned. I'm going to sneak ahead of everybody who wants to make remarks and just simply say it was wonderful to work with Evelyn. Truly a pleasure and now that I've cheated that way I'll go on for the rest.

**Andrew Molecki:** Hi I'm Andrew Molecki I'm Commissioner Aquila's son-in-law

**Gregory Peterson:** We've got a few things to say about the women's ... (laughing)

**Dennis Ward:** I'm Dennis Ward Commissioner of Erie County Board of Elections. I'll just throw my bid in. Commissioner Aquila has been here since I was a Commissioner and I think I can always say that she was a common sense commissioner not that there aren't other common sense commissioners but I think everybody whose a commissioner at the ground level appreciated those who saw her in person and watched the meanings that she did appreciate what we do at the ground level and on a day to day basis. Thank you for your services.

**Evelyn Aquila:** You're welcome.

**Amy Allaud:** Amy Allaud League of Women Voters of New York State

**Tom Wilkey:** Tom Wilkey former Executive Director of this wonderful organization of the State Board and just came to wish my very best to Evelyn for many years together and we had some great times, and good times and bad times and in between times but I just want to wish you the best.

**Evelyn Aquila:** Thank you very much.

**Bill Frucci:** Bill Frucci Saratoga County Commissioner also President of the Election Commissioner's Association and I am here also to wish Evelyn a very well deserved retirement and I will be reading a letter for you.

**Evelyn Aquila:** Thank you very much.

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**Tom Ferrarese:** Tom Ferrarese Monroe County Commissioner and President of the Election Commissioners Association also here to wish Evelyn the very best on her retirement and we're thankful for the many, many years of service and always wonderful ear when we talked to her about things and the various often very good advice and council and we've very appreciative of that and glad to be here for this.

**Evelyn Aquila:** Thank you 24 years almost 25.

**Bob Warren:** Bob Warren Election Operations

**Donna Mullahey:** Donna Mullahey Executive Secretary

**Carol Couser:** Carol Couser Enforcement

**Jim Walsh:** Thank you everyone. Now some have jumped the gun and that's my fault Stanley started it. I think what I will do now is I'm going to call for a vote on the minutes and then we will go into our general, then we'll have our comments about our honored guest and our fellow commissioner. But let me get that basic bit of business out of the way please. On the minutes is there any additions, corrections or deletions or if not we'll take a motion to accept.

**Douglas Kellner:** I move that we approve the minutes as drafted

**Jim Walsh:** Second?

**Gregory Peterson:** Second

**Jim Walsh:** All in favor?

[chorus of ayes]

I should say let the record indicate that Evelyn seconded the motion.

**Evelyn Aquila:** See that's a friend. I've been trying to teach him but

**Jim Walsh:** I got you up to the second you know, Doug beat you on the first.

**Evelyn Aquila:** No he's wonderful.

**Jim Walsh:** And now I'd like to pause before we get into our formal meeting and I'll go around the room so we do have some sort of a formula here. I mean not the people at the table we'd be last but back to Stanley, Stanley if you have anything further. Anyone like to make a presentation.

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**Douglas Kellner:** Well Mr. Chairman I'd like to start with our own motion and resolution that we have prepared for Evelyn from the, I'll make this formal motion that we recognize Commissioner Evelyn J. Aquila's 24 years of dedicated service to the State Board of Elections.

Whereas Evelyn J. Aquila was appointed a Commissioner of the New York State Board of Elections on January 08, 1990 by Governor Mario Cuomo, and whereas during Commissioner Aquila's tenure of the State Board she was diligent in facilitating compliance with the National Voter Registration Act of 1993. And whereas she was equally as dedicated to ensuring the State of New York's compliance with the Help America Vote Act of 2003, and whereas Commissioner Aquila had a particular and constant concern for the enfranchisement of Military men and women serving our country along with US Citizens residing overseas, she was most pleased to aid in the implementation of the Military and Overseas Voter Act of 2010. And whereas Commissioner Aquila took every opportunity to deliver aid openly and subsequently secure support for the State Board's Legislative agendas and the concepts set forth in each year's proposals. And whereas Commission Aquila advocated faithfully and tirelessly for strengthening each of the State's 62 County Boards of Elections, we may have to change that its 58.

**Anna Svizzero:** We count the city as 5

**Douglas Kellner:** Whereas Commissioner Aquila visited pole sites during each election held during her tenure at the State Board, witnessed first-hand the varied election day experiences of her New Yorker's and shared her findings with a constant eye toward improving those experience. And whereas Commissioner Aquila has regularly supported positive and broad-based programs aimed at not only facilitating voter registration but also the Get Out the Vote initiatives, and whereas Commissioner Aquila consistently advocated for the State's pole workers urging that they be given more and better training and receive compensation commensurate with the responsibilities they bore and the civic duty they performed. And whereas Commissioner Aquila's deliberations of and support for each of her decisions had as a foundation common sense. And whereas Commissioner Aquila's counsel was sought by many of New York's Election Administrators each of whom appreciated her attention to their issues, and whereas Commissioner Aquila maintained not only her integrity but also a complimentary and healthy sense of humor which helped so many in New York face many difficult election related issues. And whereas Commissioner Aquila's support of State Board staff was steadfast as to was their appreciation for her efforts on their behalf, and whereas Commissioner Aquila had given so much to ensure the State Board was engaged, viable and diligent while always being concerned for each voter and each vote cast. Now, therefore be it resolved that in appreciation for all of that which is mentioned in this resolution, and more, the New York State Board of Elections extends to Commissioner Evelyn J. Aquila it's most heartfelt appreciation for her personal and professional contributions to the Board, to election administrators throughout the state and to voters everywhere. So I move our resolution

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**Jim Walsh:** I'll second it.

**Douglas Kellner:** Alright and maybe hold it up and present it to Evelyn.

**Evelyn Aquila:** May I say something?

**Gregory Peterson:** Why don't you wait until everybody says something? It's a lot to take in.

**Douglas Kellner:** Evelyn Thank you

**Evelyn Aquila:** Thank you so much

**Jim Walsh:** We'll go around I think we will have guests go first. I'll go last, I'll go before Evelyn but not last and the people at this table, people at this table will go prior to that. Our guests first

**Douglas Kellner:** We should do Bill Frucci as Chairman of the Election Commissioners Association.

**Jim Walsh:** Oh yeah Bill do you have a proclamation?

**Bill Frucci:** Dear Commissioner Aquila, on behalf of the members of the Election Commissions Association of the State of New York, thank you for your 20 years of leadership at the New York State Board of Elections. During your tenure, you were instrumental in shaping and implementing landmark changes in the electoral process for New York State. While new regulations were mandated by the Federal Government, such as the National Voter Registration Act of 1993 and the Help America Vote Act of 2002, you worked to ensure their incorporation into New York State Election Law and into the daily operations of all 62 Boards across the state. You were influential in selecting new statewide voting equipment and helped guide county boards over the hurdles of bringing new procedures to millions of voters. Among many other contributions, you worked to amend the application process for absentee ballots for civilians, military personnel and overseas voters, to reform the requirements for designating and nominating petitions in financial filings and to establish a statewide voter registration database. In short, you sought solutions to comply with Federal and State law while simplifying election procedures at the local level. Winning the support and appreciation of Board of Election Commissioners and employees in the process, New York has been fortunate and privileged to have you leading the way. We will miss your guidance at the State Board, your positive attitude even when changes were giving everyone headaches, your openness to hear all the sides of the issues, and your sense of humor always ready with a fitting quote for the situation at hand. We hope you enjoy your retirement, you deserve it. Thank you very much

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**Evelyn Aquila:** May I say I just want, I was a little part of all of those changes and all of those helped with these, these fellows here, with the staff here, I was just one of many, but thank you for saying that. I appreciate it.

**Douglas Kellner:** Amy should do the

**Amy Allaud:** Good morning Commissioners and specifically Commissioner Aquila. I present a letter to you by the New York State League of Women Voters, but under the signature of our President Sally Robinson.

Dear Commissioner Aquila,

The League of Women Voters of New York State commends you for your long service to the voters of New York State. You have served faithfully for 24 years, rarely missing the monthly meetings of the Board and have shown a deep concern for the rights of voters throughout your term. In particular, you regularly visited pole sites on election days, especially in your home borough of Brooklyn to learn how elections are administered at the grassroots level. You then brought those insights and observations to the State Board to ensure that the mission of the agency "To preserve citizen confidence in the democratic process and enhancement in voter participation in elections would be fulfilled". The league extends our best wishes and thanks for your long service and devotion to the voters of New York State. Sally Robinson President. Thank you.

**Evelyn Aquila:** Thank you Sally so much. More women, more women.

**Bob Brehm:** There are a few individuals who weren't able to be here but sent their words of appreciation. One I'd like to read is from Governor Cuomo.

I'm proud to offer my warm congratulations as you retire as Commissioner of the Board of Elections after nearly 24 years of exemplary service. For over 2 decades your leadership, knowledge and experience have made you an invaluable asset to the Board of Elections and your fellow New Yorkers. With tireless commitment you have helped ensure the integrity of our State's elections while providing a model of public service and leadership to others across the state. On behalf of all New Yorkers thank you for your many years of dedicated service. You have our very best for a happy and healthy retirement.

**Evelyn Aquila:** His father appointed me, Mario Cuomo appointed me and I've known the Governor since he was barely a teenager fighting for his father to get elected and I'm very thankful to hear he commended me today and I send my best wishes to the whole Cuomo family, his father, his mother and his family.

**Douglas Kellner:** Evelyn, Christine Quinn the Speaker of the City Council and the City Council have also done a proclamation and it's a very nice one that they gave you. Well let me just say they added a couple of things in here that we haven't talked about. They talk, well I'll just read the first whereas cause that's new. Evelyn Aquila a Brooklynite

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for most of her life has truly proven herself as one of New York's great public officials. Even before her appointment she provided exemplary service as a member of the Democratic National Committee and as Vice Chair of the New York State Democratic Committee, served as a member of Community Planning Board 12 in Brooklyn and on the consortium of Pace University School of Education, and as we know, one of your most courageous activities as President of Community School Board 21 and she continues to support many other civic, educational and professional organizations to this day.

Then it goes on at great length to recite your accomplishments as Elections Commissioner many of which we've heard about already. So

**Evelyn Aquila:** Well Board 21 we integrated it was at the beginning of integration and one of the school districts in New York City, I guess there were 8 but we integrated Coney Island and the children from Coney Island. We made some missteps. I was President of the Board at the time, but it was I got white feathers in the mail. I was told I was being watched all the time by people who were very unsavory. So it was a scary time but all of us on that Board we had such courageous people. We did what we were supposed to do and we even got noticed by the President of the United States privately for our efforts in behalf of integration. So I've always been very proud of that.

**Bob Brehm:** We have just a few more, I won't read the whole letter but Speaker Silver sends his best, I'll point out that which is different than what we've already said. I think one of the most important items that people probably don't know is that you're the longest tenured commissioner that we've had in the history of the Board of Elections so that is certainly, I came to Election Administration in 1991 so I don't know a State Board without you. It will be different. Speaker Silver sends his best. For those who know the workings of the Board, your position is a recommendation of the State Party, so Chairman Keith Wright sends his best wishes and wishes you well for your tenure for all that time. And Assemblyman Cusick who is Chair of the Election Committee also sends his best and also a letter that we'll read to you. So we have a number of

**Evelyn Aquila:** It's embarrassing

**Bob Brehm:** There are a number of county commissioners who have sent their cards that we'll give you later and just want them to know that we appreciated receiving those.

**Evelyn Aquila:** Oh I do, I thank everyone. I thank all of you who I work with and have made me look good evidently because I had no idea I was so spectacular. I would have fought for a raise for all of us.

**Jim Walsh:** Does anyone else have anything they'd like to say, before you give the wrap up. Around the table anyone who would like to contribute?

**Kim Galvin:** I don't know how we follow those people. Let's leave well enough alone

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**Evelyn Aquila:** I just want to say one brief thing that I had thought about, it has nothing much to do with the work here, is the television program of long ago that has a nice intro that I thought fit for me here. It says making your way in the world today takes everything you've got and I think that's true. I think that's true. And then the next line is I want to go where people know my name and they're glad I came. And it's a bar, its Cheers. I don't want to go to a bar, I don't want to go to a bar. I've always felt here that people knew who I was and they were glad that I came and maybe that's an assumption that I have no right making but that's how I feel and especially today. Thank you all so much. It means a great deal to me and I'm gonna have to I guess look for a new house. But really thank you, thank you so much. It's you people that make the difference. The people in this office who work themselves so hard and I've always had the best, the best no matter which side of the isle I work on, the best people to work with up here the finest. This, I mean the brains and the insight that these 3 men have is unbelievable and I don't know how we could do it without Bob and so many of the women on this Board have just been so great and I've been lucky to be here. It's been a wonderful experience for me. And without Donna I wouldn't know which day the meetings were. She has just been wonderful to me. So thank you all, thank you who came. I appreciate everything and I know in these kind of things, things are always well over stated and I'm not going to let it go to my head but I still say I'm always glad I came for the 24 years and it has always been an honor for me to be here and I thank you all.

**Jim Walsh:** I don't think we're totally finished. I think Greg came with an hour speech, he'd like to give it.

**Gregory Peterson:** Well I don't think all of the nice things that were said actually do you justice. I don't think they were over stated at all Evelyn and as a matter of fact I can remember reading about you and your accomplishments back when I was in college, I was going to say high school. I've been on the Board a little over 5 years now and when I first came here I tried to keep my mouth shut and my ears opened so I'd learn something. And one of the things I'd like to observe were the way people acted and how they reacted and you have been a teacher just by your actions. And what you have done, in my mind, you had a soft spot for each of the separate county boards and what they have to go through on a day-to-day basis and those were the things that you brought up all the time. You had a real soft spot for the staff here who worked very hard. You've always praised their diligence and their good work. You had a soft spot for the individual voter who comes out and whatever travailed as they go through to get to the voting booth and get it accomplished within a reasonable period of time. And those are concerns I saw you were genuine just as you are as a person speaks a lot about you, the way you were raised, and the person that you are. You have been a delight to work with and it's been my pleasure to serve with you.

**Evelyn Aquila:** I worked with the Diocese of Brooklyn for almost 25 years and Bishop Mugavero I worked directly for Bishop Mugavero as one of his administrators and it was

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a wonderful experience there too. God has been very good to me and I tell him that every night. All of you have also been very good to me and I appreciate it so much.

**Jim Walsh:** Well I have a couple of things to say

**Evelyn Aquila:** Well at least I had another Irishman here. My name is Aquila but Farrell is my maiden name and I see another Irishman over there.

**Jim Walsh:** And you can follow me, I don't want to be last in this and I was just writing down some notes. Everything that's been said I share this, can just put a different spin on it I suppose. I think the ending of your remarks show the great humility that you have with all the fine things that were said about you there was no puffing up your chest and saying, yeah I did a great job didn't I, I think it was quite the opposite.

Often you were the voice of reason and sometimes that's very necessary among some of us sometimes when we have our very difficult decisions to make. You were always the peaceful one, the calm one, the reasonable one and sometimes maybe it's my Irishness that made me a little bit more excited than was necessary. And your humor was always there, it would help calm things down if things were a little bit sticky you would always have something funny to say or something humorous to say that helped to make the point but yet keep the decorum.

You're a woman of family and government. You're involved in the government and community and your church. Again attest to the type of person you are. And I guess all in all I'd say you're always a lady a very special lady and something I've never done but I just found a card that I liked so much I thought rather than just plain give it to you I'm going to read it. It's just some nice words in here I think that would, I think everyone would feel the same.

It says, celebrating your success as you retire. Time is not measured by the passing of the years but by what one does, what one feels and what achieves by Naru. Retirement is a very special time for you. A time to celebrate all you've accomplished, a time to feel proud of your hard work and dedication. A time to celebrate and you've done everything you are yet to be. Congratulations and best wishes for the years ahead. And for everyone I wish you the best of happiness and health. You will be really missed, I know that's always said, you'll really be missed. You'll be missed particularly by me, we've had quite a few years together here and we have all gotten along well. A republican or democrat whatever maybe that common ground that we've had that made us work together, made us accomplish what we're here for and do the job for the people of the state of New York. You're a great lady and a great public official.

**Evelyn Aquila:** I'm glad my son-in-law is here to hear all this.

**Gregory Peterson:** We'll order the DVD and make them watch it.

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**Jim Walsh:** Is there any family comment you would like to make in public or no? Thank you for being here and thank you for sharing her with us. She's a great lady.

Okay ladies and gentlemen we will go to our agenda for the day. The unit updates, Executive Robert Brehm and Todd Valentine?

**Todd Valentine:** On the mundane work of government. Well I mean the biggest thing is we continue to work as we're at the end of the fiscal year we're still struggling to get the exact amount of where we are with our budget from both OGS and the Division of Budget. We were able to at least extract that our HAVA funds are better than we had anticipated as far as getting the numbers because with the change over to the state financial system I'm not saying money was lost, but the ability to tell us how much we have as we go through the year has been a bit of a struggle so that's a little hard to estimate when you don't know how much money you have. And we have been working lately with the Election Commissioner's Association as we prepare for their January conference. It's the 13<sup>th</sup> through the 16<sup>th</sup> here in Albany. We have a program committee meeting on Monday and we met with both Commissioner Ferrarese and Frucci yesterday about some of the logistics for the rooms. And those are the big items. Bob?

**Bob Brehm:** The money item is a big one because as we put in your packet last month the statewide voter registration list NYSVoter is at that point where we know it's going to have end of life issues in April of 2016 as far as the software and some of the hardware issues and we have started the planning process to refresh that system before it is outdated. So the available HAVA funds are important since that system was purchased entirely with federal money and it's a substantial amount. It could be as high as 4 million dollars to refresh it. To one, know what the financial picture is, and two to start making the plans do we keep it fresh because it serves such a vital purpose and that we can do it in a way that is as economical as possible. So part of that meeting with budget is to one, better get forecasting out of the state financial system and it really has been a challenge but they are making progress and our next call was supposed to be this afternoon, but it's early next week now because of today's meeting. But the good news is everybody's confident that we think we have enough money to cover probably all of the anticipated refresh items. So Division of Budget has given us the green light to move forward with the next planning step so Dave is really leading that effort for us and we'll have to come back at some point for the actual votes to commit that money. But that being said, it's important to know we're very close to having used all of the available HAVA money at that point. So we have to give some serious thought to there might be amounts around the edges, but if we get into another major issue of refreshing voter, the voting equipment, certification, etc. we need to identify the resources that will help us to pay for those efforts because they are quickly, the federal pot is becoming dry.

I think the only other item, I did attend the Assembly Electional Hearing on Monday in New York. It turned into more than just what the agenda indicated so there were a number of issues going forward. The major issue of course for the agenda was a uniform calendar that would make the election, solve all the issues we've talked about over time

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for the election calendar that simply doesn't work. There also were other ideas on how to improve the Election Day operation. But there were a lot of questions too and mostly from the suburban areas, Nassau, Westchester, at that session of the use of voting equipment, the scanners particularly in non, elections not administered by the Board of Elections and there's a number of ideas out there to deal with that issue. We don't necessarily see that as an issue, we don't hear that as an issue in other areas of the state. It seems to be working well. So the coordination in those larger suburban areas, I think Nassau County has 34 villages, but they're in upstate with smaller staff the boards are able to provide that assistance whether they're running, administering that village election or not. But I imagine we'll hear more as the legislative election gets going. It was a long day but there was a lot of interesting ideas that were shared there.

**Douglas Kellner:** Would you just mention very briefly I know that the Executive Directors sent a note to New York City responding about the Chinese ballot issue. I mean initially the New York City ballots in Chinese had the same text for proposition 4 and proposition 5. The two Chinese employees have since separated from the City Board of Elections but there were also statements publicly made that part of the fault for that was with the State Board of Elections and we want to just explain what you did to investigate that and what the conclusion was.

**Bob Brehm:** Sure it started round 1 I'll say on election day, mid day when we heard that there was a problem with the ballot and we immediately reviewed what we had submitted to them and the fact that the city absentee ballot that was provided to military voters was correct, helped to reassure us and our review of what we actually submitted to the city as way of translation was correct. So we quickly relayed that information to the city board because it was in the press that it was the State Board gave us the translation and therefore the State Board made an error. What appeared in that form of the question is they just put 4 and 5 together and put it, copied it incorrectly when they were making the Election Day ballot, although the absentee was correct. So that solved the Election Day issue. Last Thursday we heard from the City Board Executive Direct, Todd and I took the call where they indicated, he indicated that in their review of the issue they thought the translation was still a mistake that the State provided with regard to propositions 4 and 5 and that he asked us to look at it. And we did. We pulled our certification and examined it and we could understand how they may think it looked the same because proposition 4 and 5 for those who don't follow the numbering, both amended the same section of the state constitution to do a land swap in the Adirondacks and what we provide to them in translation form is the text of the law, the form of the question and the abstract. So when you examine the text of the law 98% of it is going to be exactly the same. And you will see you know the mountains and the various communities in the Adirondack that overtime had been amended. But if you look at proposition 4 it specifically provides the change to that only, and then if you look at proposition 5 it provides the change to that only. So we responded to New York City had a phone call on Friday that that was the result of our review because we did tell Michael Ryan that we would get back to him on Friday and then we followed up with a letter on Tuesday, just to provide it in writing. And I did talk to him about it briefly.

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**Douglas Kellner:** So the bottom line is that the State Board's Certification was correct?

**Bob Brehm:** Correct.

**Jim Walsh:** Any questions? Thank you. Legal, Kim Galvin

**Kim Galvin:** Thank you Commissioners. I really don't have much to add to our written report except for to reiterate that we have started meeting on the legislative program because I know that's important to Commissioner Kellner.

**Douglas Kellner:** It's important to everyone

**Kim Galvin:** Well in particular Commissioner Kellner and we've looked at what we had from last year and we also have some new ideas that we're putting forward and should have the packet to you shortly or soon. Paul, do you have anything to add?

**Paul Collins:** Yeah I do. The proposed amendments for the 2014 federal elections are before Judge Sharpe awaiting his signature. All of the parties to the actions have indicated that they have no objection to him entering another supplement remedial order based on the calendar which we submitted. In addition, today with regard to the amendments to our regulations part 6206 having to do with pole side accessibility surveys and parts 6210 and 6211 they have gone through Divisional Budget review and have been sent to the Executive Chambers for their action.

**Jim Walsh:** Any questions?

**Kim Galvin:** If I could just add for those within the sound of my voice that might be panicking it's the federal calendar just relating to the federal elections that we're talking about here.

**Jim Walsh:** Election Operations Anna please.

**Anna Svizzero:** Thank you Commissioner. We have through much struggle and heartache are finally launching our new Asset Management System. We've done a pilot in Saratoga County and thank you both for posting that, you and Commissioner Schiera and we did a second phase of the pilot in Westchester County we just completed that on Monday. So we're happy to move that forward. We're doing region 2 first and we'll be doing implementation and training with them, again hosted at the Saratoga County Board of Elections and then we'll move through each of the regions in the state and finally have a system which the state board is bearing the cost for. It has not cost any county boards anything to finally have a system that's interactive that produces data that is of value. Right now we're using Excel spreadsheets and it's really hard for the county boards to maintain those sheets and for us to incorporate them in anyway to explore the data that's contained in there and come up with anything of any value. So, we think it'll be easier

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for them to track everything from traffic homes to scanners and anything in between, all of the items are purchased with federal dollars, we'll be able to monitor as well as the use of the systems. When systems are out for repair, whether the repairs are made by the county boards or are of a degree that they have to be returned to the vendor or the vendor is on-site to make those fixes. And all that will be documented within this single system. Its web based and it's a really nice product and we've very happy. I'm personally happy it's finally happening. It's been a long time in coming.

In any event, moving on, our unit staff worked with IT. I'm sure Dave Loomis can comment further concerning receiving, aggregating and posting the election night reports using memory cards. We did have some hands-on with several boards that required a little more intensive interaction with our team using those memory cards. We had 6 boards that did not use the memory cards for this project and we're going to be concentrating on getting those 6 on board with that program and again, Dave can comment further.

We're continuing to visit boards doing the physical asset assessments, the monitoring, the scanner use, reviewing procedures that they have collecting them, sharing some of the better ones with boards that do not have procedures across the board. We're working with the leadership at the Commissioner's Association to participate in several panels at the upcoming January conference. We've prepared all of the certificates that you signed today, we'll be sending out all those notifications to candidates after today's meeting, and the routine work of the unit. We've provided assistance to boards when they were building ballots, topics that came up and the use of the scanners through the audits and certification of their election results.

There will be some amendments to the election results you certified today. There is some local litigation that's holding up a few of our counties. The results would not impact the outcome of any races you certified today but we'll be bringing those amendments to you when those county board races are resolved, the litigation is resolved.

I don't have anything else to add. I'm happy to answer questions. Joe do you have anything to add?

**Jim Walsh:** Thank you Anna

**Anna Svizzero:** Thank you

**Jim Walsh:** Campaign Finance, Bill McCann

**Bill McCann:** NVRA is first but I'm happy to

**Jim Walsh:** Oh yes. John you gave such a good report.

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**John Conklin:** I don't really have too much to add from our written report I'll just take a couple of the highlights. Anna mentioned the election night reporting that was a big deal for us. IT worked very hard on that. We participated in the preparation and creation of that. I think it was generally a success. Most of the counties virtually more than 95% of them all gave us results on election night which I considered to be a resounding success since our expectations were lower. Not to cast dispersions on our colleagues at all. And the ones who didn't make it election night got it to us very early the next morning. So people worked very hard on that and again I consider it a great success.

We also worked with IT in putting a district look up on our website for the House of Representatives, the State Assembly and the State Senate so people can look up their political districts now and find out who their representatives are. It's taken a little while to get going but it's now up and running.

Lastly, Greg and Patrick visited Chautauqua, Orange and Greene County since the last board meeting for NVRA reviews. And in addition to the ballot propositions we also had unofficial results for the supreme court and the 3 assembly special elections the day after election day that were also posted to the website so do you have anything to add Tom?

**Tom Connolly:** Yeah just about I know that Greg also had gone to Steuben and Alleghany as well last week. But right now we're working on making sure that all the county boards are updating their voter history for both the primary election and then shortly the generally election would be expected so that we can get that into NYSVoter and I think the only other thing and Dave might cover in his report but we've been working with IT with regard to transitioning our units needs technologically as he goes from one database system to another. So we're trying to make that transition with them to best suit the needs of our unit. Other than that, I'm good.

**Douglas Kellner:** Tom do you want to report on the status report that we gave Judge Sharpe. Every 6 months we are required to give Judge Sharpe a status report on how the compliance and where we are with New York City on compliance with the HAVA voter registration.

**Tom Connolly:** We've been looking at, we did provide some information in the status report where New York City has been using NYESS order now to do their list maintenance. We've been looking at their activity. I know there was a technical glitch that our IT department was working with their vendor Ntier with the clear up which helped really get a better idea of the numbers and I think as we stated in that status report that we'll continue to monitor the activity of the board and we will certainly address any sort of anomaly that presents itself with the City Board.

**Douglas Kellner:** But the bottom line is that you have concluded or the staff at the state board has concluded that New York City is now in compliance.

**Tom Connolly:** They are yes, they are continually using the system.

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**Douglas Kellner:** Which is a positive accomplishment. Maybe several years late but better late than never.

**Evelyn Aquila:** I have to defend them because I'm from New York City. When you don't hire enough people to do the job and don't pay them enough, you have to understand it's not going to be terrific

**Kim Galvin:** I'm going to miss their champion, they're going to miss their champion too.

**Evelyn Aquila:** I think I'm leaving but I think that your job has been very diligent really in everything that's done and I hope he understands that it is a little tough for the people in the city. Millions of voters and not...

**Kim Galvin:** ...if the continued maintenance continues then maybe next month they'll be up to date and we can stop the status reports maybe

**Douglas Kellner:** And that will close the case right?

**Kim Galvin:** I think it's already closed technically but that will end our reporting and I don't know if they'll let us yet but we're close.

**Jim Walsh:** Well and the legal question, as chairman I was just given information that Judge Sharpe just signed the 2014 federal election calendar order. Take that one off the books.

**Douglas Kellner:** So I hope if I can use that to give another project out is that, that you'll promptly get that calendar posted on the web, that we put together the 2014 federal election calendar and get it up so that everybody knows what the rules are now.

**Evelyn Aquila:** We'll have them send it to us today

**Paul Collins:** They just did

**Evelyn Aquila:** Oh they just did okay I missed that

**Paul Collins:** Commissioner they have a wonderful federal system. Everything is electronic and when Anna was speaking I got it over the Blackberry telling me they had signed it and I just printed it and it's signed. The federal court system is magnificent that way.

**Jim Walsh:** Thank you for bringing it to our attention. Campaign Finance William McCann.

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**Bill McCann:** Thank you Commissioner. Just to amplify some of the items in our report. Taking processing at the board continues to be robust. This year we processed about 3300 new registrations, we continue to do a large number of terminations. Our active filers to date to keep you impressed with that is over 14,000 now that we're assisting in processing. Our calls year to date again for our call center which is just a couple of folks is over 13,000. And then on top of that I would point out that the Public Information Office is rather robust in request for FOIL compliance etc and so it's the same group of people that does all that compliance as well as the subpoenas we get. They're very active with subpoenas from the federal courts etc. so they're doing a lot of work in that regard.

Just a couple of highlights for our education outreach and training, we're constantly trying to improve our education and outreach so that we can assist filers to come into compliance. A new program that we're implementing, in fact they're on the road today with their first one, is called Winding Down Your Campaign. We felt that it might be beneficial to have a program for candidates and treasurers. They come to the end of a cycle and now they really don't know what to do to wrap up their affairs. Instead of having things linger and then fester, and so we developed a program in-house to assist treasurers and candidates on how to wind down and close out their obligations.

We're also working on a CLE campaign finance at the January conference of the ECA, they specifically requested that we do a CLE. A lot of the Commissioners are attorney and staff etc. so I know Commissioner Kellner has been keen on that and so we have some, we have offered the CLE's the participation starting to increase I think as the word gets out to the election bar and to those candidates and treasurers who are attorneys. It's a win-win in the sense that they can attend and become educated in the process but at the same time get those desired CLE credits.

We'll also been working with IT continually looking at, we have our scanning process essentially an electronic filing cabinet. So we're implementing a new software through our vendor.

On the enforcement front, we had the July judgment went to judgment in November and 179 individuals were brought to judgment. We did file the Order to show Cause for the 11-day pre general 2013 relative to Supreme Court Justice's statewide ballot propositions and there were no statewide ballot proposition committees on that order to show cause but 5 Supreme Court candidates and that's returnable in January. Today the late notices for the 27-day post general will go out on the Supreme Court and statewide ballot props and that's returnable or the order to show cause will be filed in January as well. And then as folks call it colloquially The Three Strikes lawsuit, we brought that on November 21<sup>st</sup>. It's returnable in January and there were 9 individuals, committee candidates and treasurers who were sued on that. I know that in light of recent interest in enforcing the campaign finance staff has been working to essentially try to figure out where to best place our resources at the board. We've been working with management and staff to look at our procedures and policies. I know there'll be a segment in new business where we'll

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talk more specifically about that. But again, I think staff, under the circumstances, is doing a great job and if you have any questions I'd be happy to take them.

**Jim Walsh:** Any questions? Thank you Bill. IT, Dave Loomis.

**Dave Loomis:** Thank you Commissioner. I just want to highlight, it's a good thing about going last. I just want to add to a couple of items that people talked about. With the NYSVoter refresh project, as Bob mentioned, we are pushing forward on that project and we are working with all the control agencies now to set up how the project will move forward over the next year or so. We do anticipate that over the next, within the next couple of months here we'll have proposals for you to look at as far as how the expenditures would work on that project so using HAVA funds. So we should have a lot more details in the next couple of months on that.

For the election night reporting project, I just want to point out that we are working now to go forward for the next years' election so that for this current year we just handled the propositions which was a different a little bit simpler format for us to put out on the web. So we need to be able to handle all of the different types of races for the next year so that's what we're focusing on internally for the technical side.

We also recognize that we are asking the counties to do extra work on election night so we want to make sure that we're well aware of that and trying to make it as easy for them as possible and has least amount of impact on their work as possible. At the January conference we'll definitely, I know we're doing a session on that and we'll try to get some feedback in that area and try to work through any issues that we found in this election, and certainly any time any counties have feedback for us or ideas that we can add to the system, we want to be able to incorporate that.

Finally on the Campaign Finance Redesign Project. As Tom mentioned, we are working since we are still short on the funding of the project, we're trying to take this time now to retrain staff in our technology and also we're working on some of the smaller systems like the NBRA system to move that from our old platform to what will be our new platform so at the point when we are able to fully move over the Campaign Finance System and the Candidate Management System we'll be able to have every system off of our old hardware so that we can retire that and not have to continue paying maintenance on some of that so those are some of the planning that we're at least doing in the background.

**Jim Walsh:** Questions? Thank you. That's old business. New business updates on Campaign Finance procedures.

**Todd Valentine:** Well you know Bill was right I mean obviously there's an interest in this and we're not going to, we've been meeting focusing on working with Campaign Finance and our first area of focus was the one that received some of the largest criticism was the complaint process. And part of what we've been doing was instituting a, we'll

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call it a Management Structure, whereby we sit with a committee that meets on a regular basis to get updates on the operations of the unit. We've been focusing on right now 3 key areas I would say, and you could debate how many areas they are but certainly one wasn't included in your report was the complaint log updating the process for that so that's it more inclusive and provides more accurate information. And then is also sortable. So it's bringing that into the 21<sup>st</sup> century. I mean I know that's a small thing but it's certainly one of those items that we can just address right away and that is on its way. And obviously, things if you see there elements you think there might be another data field or something that you think if a point of information that might be helpful to you as you review it, that's the kind of feedback we like to see.

Now related to that is also what we as often commonly refer to as the Triage System. I mean we've had various incarnations of that but that's certainly something that we're working with the, as the Management Committee working with Campaign Finance to make sure that it's not a first in first out rule. I mean what we want to do is make sure that as anything comes over the door in whatever format, whether its e-mail, mail, phone, probably not phone calls or letters, as they come in that they get processed but they get processed in a way that's not just, okay you go in the line and wait there. It has to get processed within a very short period of time and that goes to the third item I'll get to in a second, so that they're identified as things that we can work out immediately either a filing issue or something that takes can be dealt with or needs to be dealt with in an expedited fashion. For example, such as something that has to relate to a specific election problem that could be addressed by adding the Election Operations Unit. You know part of our triage system has always been there a little bit in the background, but we've been certainly working out to make sure that those get addressed, and related to that is the third item, third major item and again it's still a work in progress. We will have some policy things that we're going to be coming back to the Board with to make some determinations on as we got forward, but it is to put in place, you know Campaign Finance has been around for a very long time or Enforcement I should say, but one of the things that we really wanted to demarcate or make a difference in is you can call it a process or a flow chart that we're developing to impose internal timeframes on our self or guidelines really because there's always going to be things that fall outside. There's always going to be exceptions to the rule that's the nature we've learned in election. Nothing is ever, we don't have standards, it's never been exactly the same thing every time, and there are always exceptions. But what we need to do is to make sure, and make sure this is true on an operational level from the staff who gets the mail through to the staff that makes the initial review, to the council's office, to the Election Enforcement Specialist that participating in that, that they're aware of these timeframes that we, or expectations or guidelines that again we're going to come back to you with those and we have some drafts that we'll share shortly or soon, to get a sense that we know we want it done within so many days. And that if we do send it to audit for review that there's a process to circle back to make sure that that loop was closed, or that the follow up was done necessarily. And obviously, if a complaint is open that there's an expected timeframe for you to at least address it to the Board. We understand facts may vary with a particular complaint and it may take longer to resolve it depending upon the nature of

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the investigation so I don't know that you can ultimately put an end date on closing a complaint, but there certainly has to be an expectation that things will move along and that's where our focus has been as I said, and Bob can add this is he wants, there are still some open items that we're working on with our management committee and that includes Paul and Kim as well as staff on the Campaign Finance Unit to help go through the process.

**Bob Brehm:** I think putting the expectations as procedures, written procedures that we can at least understand the process that should be taking place. We are working hard to come up with goals which are the expected time period. Looking at the communications that go out to make sure they're clear to some treasurer or person that there is an expectation that you'll bring this to fruition within a fixed period of time to request that. So that we actually have at least thought through the steps to ratchet it up from an initial communication and then what are the steps where we will come back and say, we've contacted, because what we've found is when we have preliminary communication with people, a very high percentage of them come into compliance willingly. So we don't want to overuse resources where we have found that result has worked. So we're hopeful that that will bring positive results quicker if we institute that.

And then where we see meaningful dialogue with a treasurer, time periods for that and where we don't see to bring that recommendation to the Board in a more expedited manner to say those are issues that need to be addressed. But we will, we are working through those issues and we're trying to create guidelines around those policy issues that we discussed at our last meeting for confidential investigations during those times of year close to elections. We're still trying to work out some of those issues so that we can come back to you with a plan. We hope to have that for you very soon. We do meet weekly, one for overall steering process to get a status update, but then more often than weekly on the nuts and bolts of the issues so that we can complete our review and try and provide a better direction and a more efficient use of our people.

**Douglas Kellner:** I have 3 sub-items under this I wanted to discuss. The first is one which is a policy decision that we have talked about at our last meeting and I got the impression that the staff thought that this needed to be a commissioner decision and that is my proposal that the next order to show cause commencing and enforcement proceeding would provide for service by ordinary mail and I suggested certified mail rather than having the current requirement that we submit in the proposed text of the court of having personal service by a process server. That I think it would provide just as much notice while saving considerable costs and expense, and ultimately it will be the decision of the judge to whom we submit the order to show cause on whether or not they'll go along with it. But I'd like to at least try it and see what happens.

**Bill McCann:** Well if I might suggest something in the alternative. I know Paul and I have been meeting about this, I agree with the Commissioner that the election law is broad in it's authority to allow the court to grant us to serve processor to commence the

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litigation in the liberal way but certainly I think under the CPL forbids and the notice I mean certainly it would be a derivation from that

**Douglas Kellner:** Bill just to be very specific its 16-116 is the provision and it says that the special proceeding under the provisions of this article shall be heard upon a verified petition in such oral or written proof may be offered and upon such notice to such officers, persons or committees as the court of justice shall direct. And that is the statutory provision that governs the notice which means that it's whatever the court provides in the order to show cause that commences this special proceeding and as we know, for decades now, special proceedings in petition challenged cases for example and that's the most common where the courts have allowed service by mail. And the courts have generally used a sliding scale that if you're giving sufficient notice long in advance like if you file your proceeding 10 days or more before the return date then they're going to allow you to use service by mail. As you get closer to the return date they're going to have more aggressive service requirements. Our Enforcement Proceedings are not of particular urgency that 3 or 4 weeks notice would be satisfactory and therefore it should be acceptable to do it by mail as long as...well it's up to the judge ultimately.

**Bill McCann:** Right right.

**Douglas Kellner:** But if we don't ask we're never going to get it and we spend a lot of money on process servers that I don't think benefits the respondents in the proceeding and the funds could be put to better use.

**Bill McCann:** Fair enough.

**Todd Valentine:** Just on that issue, what I would suggest at this point because we don't always see the same judge in terms of the order to show cause, but we are in the same, we stay in the Albany County Courthouse and I think there might be some value in order so we have consistency, so we don't go like one month and one judge says great do it, and another month another judge says no, you've gotta do it this way. I think there might be some value in to talking to the administrative judge so that we, it would be helpful to us to our planning purposes to know if there's going to be a rejection upfront on their part because you know, just trying to see what they would, see what their reaction would be.

**Douglas Kellner:** We're going to submit an order...

**Todd Valentine:** I understand that but you know I don't want to leave it up to the whim of a particular judge that...

**Douglas Kellner:** ...at the Commissioner level, I was told that no one would even try this unless I got the Commissioners to approve the policy change and so I'm asking the Commissioners to do this.

**Evelyn Aquila:** I think you're right.

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**Douglas Kellner:** So Mr. Chairman it sounds like we have consensus that we'll at least try this out and see what happens. And Todd and Paul and Bill we'll leave it to you on how to do it.

**Evelyn Aquila:** Should we take that vote so everybody knows we voted?

**Douglas Kellner:** It's a consensus that's all. Alright, the next issue I just wanted to raise was the interest policy again. I was very pleased to learn that in general now the staff has in fact been collecting interest as judgments are paid. There are still a couple of vague areas in our interest policy and that I don't have a problem with the general rule that they proposed in the procedures where there are special circumstances and how that would escalate up to the directors of the unit to apply those special circumstances. But, one of the things is they said if somebody just sends in a check to pay an outstanding judgment and it's for the principal of the judgment but doesn't include the interest that we would take it. And it seems to me that there ought to be a deadline attached to that so that if somebody has, one is a deadline. The deadline is arbitrary but that ought to be in the policy on what the deadline is, or an amount. That if the amount of judgment exceeds some number that we also wouldn't accept it without payment of the interest. So I would just ask that we come to something on that. If I were just throwing out proposals and as I said I'm not wedded to any of these time periods, I would say that if they haven't paid the judgment within 6 months after notice of entry, that we'll take the payment and apply it to the interest and partial satisfaction of the principal but they'll only get a partial satisfaction because they haven't paid the full amount that was due. That basically would give a 6-month grace period for payment of the judgment without collecting the interest.

**Evelyn Aquila:** Somebody's going to go to court you know that.

**Douglas Kellner:** That's kind of open and shut though that I mean, we could be very picky and say that cause you're entitled to interest on a daily basis so even if they're one day late your entitled to interest for that one day, and that's the second point. Is that in the policy it says if people call up they tell them what the amount due on the judgment is including the principal and interest as of the day that they call up. And I would suggest again that there ought to be a deadline on when we will accept that number without the accumulating daily interest. Again, it's an arbitrary date but I would suggest 10 days it would be 2 weeks, as I said it's an arbitrary date but there ought to be a policy so that, I'm not necessarily picky that you know we have to get every days interest when they pay but if they call us and say what's the number, and we tell them what the number is as of that day and they don't pay it that day, that doesn't mean a year later we'll take that payment because they said, oh...So I just suggested that be written out. If others have thoughts and want to talk about it we could. And then I'll go into my next issue.

Alright the next issue that I know Bob Brehm and I have talked about but I don't think has worked it's way into any of the drafts I've seen yet is this issue of what our policy is

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going to be in terms of how we deal with people who don't comply with the filing part of the orders that we get at the same time that we get the judgments for the fines.

So the judgment has two parts to it; one part is an order to comply by filing the missing paperwork, and the second is a fine. Now right now in effect what our policy is, is that we refer all these out to the DA to DA Soares in Albany County with a single log list. and there were I'm not sure I should say the comments were well taken in the Moreland Commission Report because I think they were very unfair in terms of holding us to a very high standard, while somewhat blithely dismissing the fact that the DA's don't follow up on anything that we ever send them. But one of their comments was that we don't really that we don't prioritize the cases for them and that we don't really package them for them. So I have two thoughts on this;

First of all, if we're going to continue the policy that our main mechanism for enforcing compliance is going to be through referrals to the DA, which to me is an effective policy. Because what the DA has to do is a very simple misdemeanor proceeding. But that perhaps what we ought to do is spend a little bit of time to help the DA put together that misdemeanor proceeding. There are in fact several DAs in the state who have brought these proceedings. The forms are very simple that perhaps we should just get the standard, and I'm not a criminal lawyer so, but the

**Paul Collins:** Information/complaint

**Douglas Kellner:** Thank you Paul and that we should just give the DA the form and say here and then attach a little folder of the evidence that the DA needs in order to file that complaint and win a successful conviction. Because it is that simple to package. And that's why I take umbrance with what was in the Moreland Commission Report on that because if the DAs thought this was, if they thought Campaign Finance Enforcement was a priority, they certainly could have done it without a whole lot of effort on their part. But I don't think it's a significantly greater effort for us to at least send them the form that they need which was implicitly requested in the Moreland Commission Report. So that's one option that I'd hope we'd consider.

The other option is for us to bring contempt proceedings or to ask the DAs to bring criminal contempt proceedings. For us to bring a contempt proceeding it's a little bit complicated because we would have to prepare in order to show cause for each proceeding and seeking the contempt, and I'm talking about doing it for civil contempt where you get a \$250 fine and then if they don't comply with the fine, there's an arrest order. I think in the long run the simpler process is to get the DAs to actually prosecute these. But I think the status quo, everybody's complaining about the status quo and maybe we ought to take a look at that. And I don't think it's so much work that we can't add it to the agenda even though all of this stuff is one more straw on the camel's back in terms of projects we're giving to the Campaign Finance Unit.

I don't know if Commissioner's have any reaction to this or...

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**Gregory Peterson:** Well the criticism was that they weren't packaged so to speak and delivered to them with a nice neat ribbon for them to prosecute, we could certainly oblige by doing that and then let's see where the criticism falls at that point. so if we can do some of there spade work for them, send it over there, even prioritize some of the more egregious problems that we've had with these people then send it over there to them, let's see what happens. I mean I could count probably on one hand the number of prosecutions in the entire state when these things have gone to the DA.

**Douglas Kellner:** Two hands

**Gregory Peterson:** Two hands alright. It certainly would go a long way toward enforcement. I think that as soon as this happens a couple of times all of a sudden message will go out, you really have to comply with what the law states.

**Bob Brehm:** Just so I understand, option A, packaging is what we'll look at first and see how that works and then we'll come back to you with that result? Good. I just wanted to make sure.

**Jim Walsh:** Yes thank you. Item B, discuss uniform interpretation regarding election law 7-104, 7-106 at the request of Commissioner Kellner.

**Douglas Kellner:** Paul do you want to explain the two conflicting federal court cases or do you want me to do that? Should I do it?

**Paul Collins:** Yeah because you and I have difference of opinion on that.

**Douglas Kellner:** Well the bottom line in this which is fine, which is fine that's why we should talk about it. But the bottom line on this now is that you have varying interpretations from the county boards on the rules governing the assignment of ballot positions for independent bodies, and the root of the problem right now comes from the heading of 7-104, oh no, 7-104 has the rules for ballot positions for independent parties, but it has the heading that says it applies to voting machines and 7-106 does not have limitations on the lines with respect to independent bodies and does not have any heading that would suggest it applies only to voting machines. Our agency, if I understand this correctly, our agency has always said that 7-104 applies to the scanners regardless of the language that said voting machine. There have been varying interpretations by the county boards, most significantly New York City has taken the position that 7-104 does not apply to ballot scanner ballots. And the result of this is that we do not have uniform ballots statewide and that can be a significant issue in the legislative and congressional districts that cross-city boundaries. So

**Kim Galvin:** The legislatives are exempt by statute, they're

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**Douglas Kellner:** You're right, it's just the congressional. And then statewide races too. So it seems to me that we should be setting a uniform policy so that it's the same statewide and to me I don't really care which one you go with, but to just say this is the one we pick and we instruct the county boards to follow it.

**Jim Walsh:** Does the law define a voting machine?

**Douglas Kellner:** No and the city, frankly the city policy in interpreting it this way is because the rules on rotating ballots in primary elections, that is 7-114 say that you have to rotate the primary ballot for the ballot on voting machines. So they're saying, well if it's the, and they have interpreted it and I believe with our blessing, that they don't have to rotate the ballots using the scanners. And we have blessed that interpretation I think Anna

**Anna Svizzero:** Yes with the central county absenteeism so everybody knows what that blessing means.

**Douglas Kellner:** But the other side of the coin is that they're saying well they use the same language in 7-104 about voting machine ballots and so how can you interpret 7-116 one way and 7-104 the other way? And I say because it doesn't make sense to interpret it otherwise, and the legislature really didn't pay attention to that distinction when they passed the law and that you can argue legislative intent was to keep the independent body rules in effect for the scanner ballots even though they didn't say it. So, as I say, I don't think it's important to decide one way or the other, but I do think it's important for us to make a decision so that it's uniform.

**Evelyn Aquila:** Can we hear Paul's decision?

**Paul Collins:** On your last day you're going to put me through this?

**Evelyn Aquila:** I'm interested. What can I tell you? Would you rather not, then don't.

**Paul Collins:** No I shall, you're entitled to my opinion for whatever little value it may have. This may be a very elusory discussion because while my eminent commissioner talks about two competing federal court decisions, I don't quite see it that way. In the Credico matter, this Board was a party and that court found the limitation on the number of independent body lines that Mr. Credico could have to be volative of his constitutional rights. I'm not particularly interested as to whether or not you'd characterize that as an abide challenge or not, but

**Kim Galvin:** Even though that's what the court said it was

**Paul Collins:** Yeah. Certainly, this Board is, I think may very well be collaterally stopped from taking a different position. And by that, that's an old legal doctrine that essentially says, hey you get one bite at the apple not two and if you don't like that

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decision, you should have appealed it. Now contrasting that is a decision in the eastern district, Gonsalves I never pronounce it right, where the court found on essentially the same set of facts, because they created the controversy that you could indeed limit the number of lines you got. The difficulty is we, the losing plaintiff in that litigation filed a notice of appeal to go to the second circuit and then you would have had some degree of clarity on what the law is. They have subsequently withdrawn with prejudice their notice of appeal, but I think there's a judgment out there that says that, hey your statute under these sets of circumstances as abide is unconstitutional.

**Douglas Kellner:** And another court of the same level of jurisdiction has found just the opposite on the same set of facts and this happens all the time.

**Paul Collins:** Yes it does, my issue is I think we were a party to that first one.

**Douglas Kellner:** Yeah but the decision says its only as applied in this case and we were a part, we are also a party to the other case the Gonsalves case but we took no position but we were still a party to it.

**Paul Collins:** Yes but you cannot, our position prevailed if you will in Gonsalves but

**Douglas Kellner:** Well you say our position, I'm not advocating necessarily either side on it. I really am relatively neutral as to which we should adopt. But we should have a policy that's uniform throughout the state and this is an issue that the federal Department of Justice has addressed because frequently there will be decisions involving federal agencies that vary throughout the country. It most commonly occurs with Internal Revenue decisions. It also is a very frequent problem that the Social Security Administration has. And the policy that the federal government uses is that they indicate whether or not they use the word acquiesce in the decision of the lower federal courts and so a lower federal court may challenge a policy of the agency and come up with a new rule and the agency will indicate whether or not it acquiesces in that agency's, in that particular federal court ruling or whether it's going to continue to challenge that policy and await until there's final resolution. Sometimes they will change their policy when there's a court of appeals resolution of the issue and then they'll acquiesce in the court of appeals decision, or sometimes they will wait until there's a US Supreme Court decision.

And we're in the same position in the state. It's not as lofty but in this particular case you have two federal judges on the same set of facts who have come up with opposite views. You have boards of elections that are coming up with opposite views and I just think we ought to resolve it and I'm not suggesting we'll resolve it this afternoon but my suggestion would be that the Executive Directors and the councils look at this and make a recommendation to us at the next meeting.

**Gregory Peterson:** There maybe some nuances that are important and I think that staff should take a look at this in that light, we can come up with something on both sides let's say and we'll make a decision as to what we feel is the appropriate policy.

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**Jim Walsh:** Okay thank you. Item C. Discuss access to ballot images, election law 3-222 at the request of Commissioner Kellner.

**Douglas Kellner:** Sorry to be taking up everyone's time on this but I think

**Jim Walsh:** You're just trying to impress the outgoing Commissioner

**Douglas Kellner:** I don't have to be long about it today and maybe its better that we talk about, I'll start out with my bottom line which is I think that after the election procedures have gone their course and certification has occurred, that the public should have access to the ballot images if they're so inclined. That that promotes transparency and I don't believe that the statute precludes that from happening. There have been a number of boards of elections throughout the state that have allowed public access to the ballot images and there have been several very effective studies that have resulted. Some confirming the accuracy of the machines, perhaps the most noted one however was the New York Daily News report where they discovered a serious problem with the New York City scanners when they finally got access to the ballot images and determined that New York City was registering as over votes, that the scanners were improperly counting ballots as over votes because of malfunctions in the machines that had not been picked up in the audit process.

So, I think that there's a very valuable positive public policy goals in having the images released. It's a closer call as to whether the images should be released as part of the litigation process, but I think that we certainly have power to make rules with respect to that and by having a uniform procedure that we think through in advance would also promote more efficient resolution of election contests without having to dump the issue in any given contest on the court to determine whether there would be access to the ballot images.

What I would suggest is so for example, we have this issue now as you only get escalation in the audit if you can show that there is a discrepancy and both Commissioners have to agree that it is in fact a discrepancy. So that effectively gives either Commissioner veto power over the escalation through the Commissioner route. The Commissioners don't veto whether the courts allow the escalation, but the courts don't really know whether or not to allow the escalation and with relatively, what we could do is very easily switch the burden from the court and the Board of Elections to the candidates. If we gave the candidates access to the ballot images, the candidates relatively quickly can go through the computer and see whether or not that the cast vote record for the ballot images differs from what they perceive to be the proper way to count the vote. And then, they'd be in a position to go to the court and say, look we found a dozen cast vote records inaccurately reflect the voter intent on this particular ballot and these ballots should be reviewed by the court and that would give the, it would expedite the process and as I say change the balance of litigation. But they're really two separate issues.

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One is whether we set up procedures for using the ballot images in close contests of elections. And the second is just the broader issue of outside the timing of election contests, will we recommend that the county boards give public access to the ballot images? Which as I say I strongly favor because I think transparency in the end is best for showing the public that the system works. Or to the alternative finding out where it doesn't work and where we need to fix it.

**Gregory Peterson:** Well the other side of that coin is also that I'm all for transparency and I think that's very important especially as a board that's our charge so to speak, one the one hand. On the other hand, you know you'd like to know somewhere along the line the election has been done, people have voted, it's been a look at it, there's been a certification, that yes so and so is in that office. Rather than dragging the thing out over and over, say wait a minute I think there was 2 votes here, my Uncle Harry came in, blah, blah, blah. I want to take a look at things and upset the entire apple cart sometimes just to be obstinate, not necessarily for transparency. And I don't know that there's that much to gain. Now certainly if something looks like an egregious error or something like that along the way, you still do have the court system to back you up. So I'm not quite sure, and I'm arguing the other side of it but I'm not so sure I can't be convinced that you know that what you're saying would be appropriate. But my first take on it is, hey when an election is over and let's face it, we've had things hang out there for months after an election's been over, counting a vote, recounting it, taking a look at the canvas and so forth. Looking at absentee ballots and what have you, there's got to be an end to somewhere along the line say, okay it's done, finished, that's it.

**Douglas Kellner:** I certainly agree with that. I don't think my suggestions affect that at all.

**Gregory Peterson:** We may differ on that point.

**Douglas Kellner:** Well can we keep this on the agenda and talk about it again?

**Gregory Peterson:** Absolutely, it's worth talking about.

**Douglas Kellner:** Well thank you.

**Jim Walsh:** We do not have, we're going into Executive Session, just a question.

**Bob Brehm:** Yes we need to go into Executive Session

**Jim Walsh:** Assuming we are, we will be set our date we can do it when we come out I suppose.

**Douglas Kellner:** What's our tentative date? Did we talk about it? We agreed it wasn't going to be the day, the last day of the conference.

**Todd Valentine:** We know when it's not.

**Jim Walsh:** We were looking at the last week of January, the first week of February. The 27<sup>th</sup> might work in January.

**Douglas Kellner:** That's a Monday?

**Jim Walsh:** Or Tuesday sorry.

**Douglas Kellner:** Well what's your preference? I know Commissioner Aquila did not want us to do, but the others may not care

**Jim Walsh:** You mentioned February and possibly, because I have I'm going to be gone the end of February for 2 weeks.

**Douglas Kellner:** I would rather do it at the end of January if that's okay.

**Jim Walsh:** February is going to be a little sticky.

**Bob Brehm:** Tuesday the 28<sup>th</sup> if Monday is a bad day, Tuesday

**Douglas Kellner:** Monday is not a bad day

**Todd Valentine:** I'd rather Tuesday than Monday.

**Douglas Kellner:** Okay Tuesday the 28<sup>th</sup>

**Gregory Peterson:** 29<sup>th</sup>, oh 28<sup>th</sup> I'm sorry.

**Bob Brehm:** Whatever I could do either. Tuesday the 28<sup>th</sup>.

**Douglas Kellner:** What are we going into Executive Session for?

**Bob Brehm:** To discuss an enforcement issue. I don't think we have any, I talked with Bill about the two that we discussed ahead of time so I don't have any with regard to that but the enforcement issue that I don't think we need to take action when we come out.

**Douglas Kellner:** So we're laying aside CMP 1333 and CMP 1345? And the others we're adopting the report as prepared by council, that's my motion.

**Jim Walsh:** Okay. All in favor aye

[Chorus of ayes]

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Opposed? Carried.

Lay aside you mean to Executive Session or

**Douglas Kellner:** No to another date if that's okay. Bill said he would revise the report. And so we'll go into Executive Session to discuss Campaign Finance Enforcement matters and we will not be taking up any business after that so we can turn off the tape

**Bob Brehm:** We just need to, did we take the vote on the recommendation of the enforcement matter?

**Kim Galvin:** Yes we did. They put aside the two and they accepted the terms

**Bob Brehm:** Okay sorry.

**Jim Walsh:** Alright. Our next meeting will be January 28, 2014 and before we go a Merry Christmas, Happy Holidays everyone and best wishes and good luck and best of health to Commissioner Aquila.