

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

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PREMIER ELECTIONS SOLUTIONS, LLC,

-Petitioner,

-against-

NEW YORK STATE BOARD OF ELECTIONS, and  
DOUGLAS A. KELLNER, EVELYN J. AQUILA, NEIL W.  
KELLEHER and HELENA MOSES DONOHUE, SAID  
COMMISSIONERS TOGETHER CONSTITUTING THE  
NEW YORK STATE BOARD OF ELECTIONS,

-Respondents  
-----

**Notice of Motion to  
Dismiss**

Index No.

**NOTICE IS HEREBY GIVEN THAT**, on the 6<sup>th</sup> day of February, 2008 or as soon thereafter as counsel may be heard, defendants Donohue and Kelleher of the New York State Board of Elections will move this Court for an order:

- (a) pursuant to CPLR 3211(a)(7), dismissing this action on the ground that the complaint fails to state a cause of action; and
- (b) for such other, further and or different relief as may be deemed appropriate.

This motion is based on this Notice of Motion, and the accompanying Memorandum of Law, dated February 4, 2008, and on all pleadings and papers on file in this action.

Dated:

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Allison M. Carr", written over a horizontal line.

ALLISON M. CARR, ESQ  
New York State Board of Elections  
40 Steuben Street, Albany, NY 12207  
Tel: (518) 474-6367 / Fax: (518) 486-4546

To: Thomas Marcelle, Esq.  
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Albany, NY 12207

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

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NEW YORK STATE BOARD OF ELECTIONS, and DOUGLAS A. KELLNER, EVELYN J. AQUILA, NEIL W. KELLEHER and HELENA MOSES DONOHUE, SAID COMMISSIONERS TOGETHER CONSTITUTING THE NEW YORK STATE BOARD OF ELECTIONS,

-Respondents

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***MEMORANDUM OF LAW***  
***IN SUPPORT OF MOTION TO DISMISS***  
-----

ALLISON M. CARR  
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## **PRELIMINARY STATEMENT**

Petitioner brings this action in an attempt to force the New York State Board of Elections to allow the AutoMark ballot marking device to be added to the list of Ballot marking Devices to be included in the vendor selection process. The Respondents Kelleher and Donohue make this motion pursuant to CPLR §3211(a)(7) to dismiss for failure to state a cause of action.

## STATEMENT OF FACTS

This case was brought by order to show cause received by Respondents Kelleher and Donohue of the State Board of Elections on February 2, 2008. A Verified Petition was received concurrently with the order to show cause.

The underlying facts of the case arise out of discussions and a determination which were made on January 23, 2008 and January 24, 2008, respectively at the State Board of Elections' board meetings. At the Board meetings, the Commissioners met to approve ballot marking devices to proceed to testing and be available to the counties for purchase in time for the September 2008 elections.

The State Board is currently under Federal Court Order and required to certify Ballot Marking Devices. Pursuant to such, the State Board is required to determine each machines basic statutory compliance and then submit an approved list of voting systems to be purchased by the counties pending final testing and State Board certification. See, Valentine Affidavit at ¶ 4, annexed hereto as Exhibit A and Federal Court Order, annexed hereto as Exhibit B.

On or about October 17, 2007, the New York State Office of General Services published bid specifications<sup>1</sup> relating to Ballot Marking Devices seeking certification, those bid specifications referenced the New York State Election Law and Regulations in whole. See, Valentine Affidavit at ¶ 5. The bid specifications specifically state that "all ballots shall meet the requirements as to the form and content provided in the Election Law." 22300 Voting Systems Contract Template at page 17. Further, the bid goes on to state that "the types of ballots used and their form, type size and

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<sup>1</sup> The Voting Systems Bid (Group #22300, Bid #21231) is available at the NYS Office of General Service website: <http://www.ogs.state.ny.us/purchase/ContinuousBid.asp>

arrangement must be approved by the NYSBOE.” 22300 Voting Systems Contract Template at page 17. The bid specifications require: “The Ballot marking Device shall be constructed so as to allow for a voter to vote for all candidates who may be nominated and on all ballot proposals which may be submitted.” 22300 Voting Systems Contract Template at page 20. The bid specifications also require that the Ballot marking Device be examined to determine whether it meets the requirements. 22300 Voting Systems Contract Template at page 23. Both the NYS Elections Law and the NYS Election Code and Regulations were Exhibits to the Bid Specifications, Exhibits 1 and 2, respectively. 22300 Voting Systems Contract Template at page 26. See, Valentine Affidavit at ¶ 6.

Pursuant to the requirements of the RFP, petitioner also submitted one complete AutoMark system to the NYS BOE offices for review. Pursuant to the Election Law §7-202 and the State Board’s regulations found in Title 9 NYCRR §6209.4, the State Board is required to determine whether a voting system shall be considered for certification and the applicant shall be notified of such determination. See, Valentine Affidavit at ¶ 7. Petitioner Premier submitted an application for certification of its Ballot Marking Device, known as the Premier AutoMark. See, Valentine Affidavit at ¶ 8. On January 18, 2008, Commissioners Kelleher and Donohue met at the State Board of elections to review six ballot marking devices, including Petitioner’s system, to assess their compliance with the minimum requirements of NYS Election Law and the Voting System Standards found in Title 9 NYCRR §6209. See, Valentine Affidavit at ¶ 9.

On January 23<sup>rd</sup> and 24<sup>th</sup>, 2008, the Commissioners of the State Board<sup>2</sup> met to determine whether or not the Premier Automark met the requirements of §6209.4. See, Valentine Affidavit at ¶ 10. On January 24<sup>th</sup>, the only vote actually taken with regard to the Premier AutoMark was whether

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<sup>2</sup>Commissioner Evelyn J. Aquila was not present at the meeting.



or not the machine, with the proposed modification, would satisfy the requirements of § 6209.4. Commissioners Kellner, Kelleher and Donohue voted unanimously to find the Premier AutoMark only to be in compliance with the requirements if it was modified. The Board of Election delegated the authority to determine if the modifications in the ballot marking device were sufficient to the Co-Executive Directors. See, Valentine Affidavit at ¶ 11.

### **Argument**

#### **POINT I**

#### **COMMISSIONERS KELLEHER AND DONOHUE'S VOTES AT THE TWO BOARD MEETINGS WERE NEITHER VAGUE NOR AMBIGUOUS.**

Pursuant to Election Law §3-100(4) the affirmative vote of three commissioners shall be required for any official action of the Board. On January 24<sup>th</sup>, the only vote actually taken with regard to the Premier AutoMark was whether or not the machine, with the proposed modification, would satisfy the requirements of § 6209.4. The three Commissioners present: Kellner, Kelleher and Donohue, voted unanimously to find the Premier AutoMark only to be in compliance with the requirements if it was modified on or before Monday January 28, 2008 at 5:00pm. See, Transcripts annexed hereto as Exhibit C. The Board delegated the authority to determine if the modifications in the ballot marking device were sufficient to the Co-Executive Directors. See, Valentine Affidavit at ¶ 12.

Certainly Premier can not be heard to argue that they did not understand the Commissioners' directive, since on Monday January 28, 2008, Petitioner submitted its firmware change to the SBOE offices, as directed by the Commissioners at the meeting.

The votes and the conditions placed on the Premier AutoMark by the Commissioners at the January 23<sup>rd</sup> and 24<sup>th</sup> Board Meetings were neither vague nor ambiguous, as evidenced by the record and by Petitioner's subsequent actions.

## POINT II

COMMISSIONER KELLEHER AND DONOHUE'S DETERMINATION THAT THE AUTOMARK DID NOT MEET THE MINIMUM REQUIREMENTS TO BE CONSIDERED A BALLOT MARKING DEVICE WAS FOUNDED UPON A RATIONAL BASIS, AND NOT ARBITRARY AND CAPRICIOUS.

The judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record. *Matter of Pell v. Board of Education of Union free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 (1974). An agency's construction and interpretation of its own regulations and of the statute under which it functions is entitled to the greatest weight. *Matter of Herzog v. Joy*, 74 AD2d 372 (1980), aff'd 53 NY2d 821 (1981). In general, an interpretation of a statute by an administrative agency charged with its administration is entitled to great deference. *Liberty Election Law Election Systems, LLC v. New York State Board of Elections, et al.* (Index No. 789-08). Once it has been determined that an agency's conclusion has

a sound basis in reason...the judicial function is at an end. *Paramount Communications v. Gibraltar Cas. Co.*, 90 NY 2d 507, 514 (1997).

On January 23<sup>rd</sup> and 24<sup>th</sup>, 2008 Commissioners Kelleher and Donohue were acting pursuant to their responsibilities under Election Law §7-201 which requires the Board of Elections to determine whether a voting system complies with the requirements of Election Law §7-202 and can be safely and properly used by voters and local boards of Elections. The determination by Commissioners Kelleher and Donohue (to reject the AutoMark as it existed on the date of the votes and only approve the system if it was modified to display a full face ballot consistent with NY Election Law) was founded upon a sound basis in reason and neither arbitrary, nor capricious.

Petitioner argues that AutoMark system meets the full face requirement because it starts with and ends with a printed ballot which shows a full face ballot, however, the intent of the full face ballot requirement is to ensure that the voter sees a full face display while making his or her selections. As this very Court stated in its Decision and Judgment in *Liberty Election Law Election Systems, LLC v. New York State Board of Elections, et al.* (Index No. 789-08) subdivision 8 of Election Law §1-104 states that: "The term 'official ballot' refers to the paper ballot on which the voter casts his vote, or the face of a voting machine as prepared for the voter to cast his vote" and subdivision 18 states that the word "ballot" can mean the portion of the electronic display which contains the name of the candidate and the emblem of the party. Just as in *Liberty, supra*, the proceeding at which the Commissioners officiated "involved the approval of a voting machine or system, and not approval of a paper ballot."

As the Court further noted, §7-202 (1)(j) "expressly and clearly contemplates that the 'ballot' be printed or displayed on the machine or system, not that it be a 'paper ballot.'" AutoMark is a

voting machine, so the “ballot” is the display, and the display is the must comply with the full face ballot requirements. It is important that the Court know that prior to the vote on the AutoMark, by a unanimous vote, the Board rejected as non-compliant the Ballot marking Device submitted by Avante OpScan. This had the same ballot display as the modified AutoMark. See, Valentine Affidavit at ¶ 13. At the same January 24<sup>th</sup> meeting, the Board, by unanimous vote, approved the Ballot marking Device submitted by Sequoia. This had a ballot display that provides a full face ballot in which the voter is able to interface with when making his or her selections for candidates. The initial display to the voter of the ballot when the system is in voting mode focuses on the upper left corner of the ballot. At anytime the voter can zoom out to display the full face ballot. See, Valentine Affidavit at ¶ 14.

Regrettably, the AutoMark does not comply with the full face ballot requirements. The display of the AutoMark ballot simply does not allow voter to cast their vote on a full face ballot display. The only full face displayed briefly to the voter before the display shifts to a race by race type of display. See, Valentine Affidavit at ¶ 15. For the foregoing reasons, on January 29, 2008 Co-Executive Director Valentine determined that display of the modified AutoMark was insufficient as a BMD. See, Valentine Affidavit at ¶ 16. The Co-Executive Directors then issued a letter to the Counties advising that they were “constrained to find them to be non-compliant by a split determination.” See Ex B. Joint Letter of Co-Executive Directors Stanley Zalen and Todd Valentine.

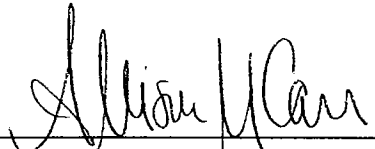
**POINT III**

**PETITIONERS FAILED TO NAME A NECESSARY PARTY  
PURSUANT TO CPLR §1001(a).**

CPLR §1001 (a) states that persons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action shall be made plaintiffs or defendants. As for any and all allegations that the bid specifications and bid procedures were contrary to law and /or impermissably vague and violative of due process, the Petitioner is advised that the NYS Office of General Services is responsible for all issues relating to the soliciting and awarding of contracts relating to voting systems.

**CONCLUSION**

WHEREFORE, it is respectfully submitted that Commissioner Kelleher and Donohue's determination was not arbitrary and capricious, but rather based on Petitioner's failure to comply with law, and the Petitioner's action should be dismissed.

  
\_\_\_\_\_  
ALLISON M. CARR, ESQ  
New York State Board of Elections  
40 Steuben Street, Albany, NY 12207  
Tel: (518) 474-6367 / Fax: (518) 486-4546

# **EXHIBIT A**

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

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PREMIER ELECTIONS SOLUTIONS, LLC,

-Petitioner,

-against-

NEW YORK STATE BOARD OF ELECTIONS, and  
DOUGLAS A. KELLNER, EVELYN J. AQUILA, NEIL W.  
KELLEHER and HELENA MOSES DONOHUE, SAID  
COMMISSIONERS TOGETHER CONSTITUTING THE  
NEW YORK STATE BOARD OF ELECTIONS,

**Affidavit in Support of  
the Motion to Dismiss**

Index No.

-Respondents  
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Todd D. Valentine, an attorney duly licensed to practice law in the State of New York, affirms  
as follows:

1. I am a Co-Executive Director of the New York State Board of Elections(State Board).  
I have been in the position since January 24, 2008. Prior to that I was the Special Counsel for the  
State Board since 1997.
2. Douglas A. Kellner, Neil W. Kelleher and Helena Moses Donohue are  
Commissioners of the State Board with offices located at 40 Steuben Street, Albany New York.
3. The State Board is responsible for the administration and enforcement of all laws  
relating to elections in the State of New York.

4. The State Board is currently under Federal Court Order and required to certify Ballot Marking Devices. Pursuant to such, the State Board is required to determine each machines basic statutory compliance and then submit an approved list of voting systems to be purchased by the counties pending final testing and State Board certification. See, Exhibit B.

5. On or about October 17, 2007, the New York State Office of General Services published bid specifications<sup>1</sup> relating to Ballot Marking Devices seeking certification, those bid specifications referenced the New York State Election Law and Regulations in whole.

6. The bid specifications specifically state that “all ballots shall meet the requirements as to the form and content provided in the Election Law.” 22300 Voting Systems Contract Template at page 17. Further, the bid goes on to state that “the types of ballots used and their form, type size and arrangement must be approved by the NYSBOE.” 22300 Voting Systems Contract Template at page 17. The bid specifications require: “The BMD shall be constructed so as to allow for a voter to vote for all candidates who may be nominated and on all ballot proposals which may be submitted.” 22300 Voting Systems Contract Template at page 20. The bid specifications also require that the BMD be examined to determine whether it meets the requirements. 22300 Voting Systems Contract Template at page 23. Both the NYS Elections Law and the NYS Election Code and Regulations were Exhibits to the Bid Specifications, Exhibits 1 and 2, respectively. 22300 Voting Systems Contract Template at page 26.

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<sup>1</sup> The Voting Systems Bid (Group #22300, Bid #21231) is available at the NYS Office of General Service website: <http://www.ogs.state.ny.us/purchase/ContinuousBid.asp>



7. Pursuant to the Election Law §7-202 and the State Board's regulations found in Title 9 NYCRR §6209.4, the State Board is required to determine whether a voting system shall be considered for certification and the applicant shall be notified of such determination.

8. Petitioner Premier submitted an application for certification of its Ballot Marking Device, known as the Premier Automark.

9. On January 18, 2008, Commissioners Kelleher and Donohue met at the State Board of elections to review six ballot marking devices, including petitioner's system for compliance with the minimum requirements of NYS Election Law and the Voting System Standards found in Title 9 NYCRR §6209.

10. On January 23<sup>rd</sup> and 24<sup>th</sup>, 2008, the Commissioners of the State Board<sup>2</sup> met to determine whether the Premier Automark met the requirements of §6209.4.

11. On January 24, 2008, the only vote taken with regard to the Premier AutoMark was whether or not the machine, with the proposed modification, would satisfy the requirements of § 6209.4. Commissioners Kellner, Kelleher and Donohue voted unanimously to find the Premier Automark only to be in compliance with the requirements if it was modified. The Board delegated the authority to determine if the modifications in the ballot marking device were sufficient to the Co-

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<sup>2</sup>Commissioner Evelyn J. Aquila was not present at the meeting.

Executive Directors.

12. On January 29, 2008, the Co-Executive Directors reviewed the Premier AutoMark portion of their voting system, as modified, to determine if it complied with the ballot display provisions. The Co-Executive Directors reviewed the modifications as offered by Premier and were “constrained to find them to be non-compliant by a split determination, Stanley Zalen voting that the modification is compliant and Todd Valentine voting that the modification is not compliant.” See Ex B. Joint Letter of Co-Executive Directors Stanley Zalen and Todd Valentine.

13. Prior to the vote on the Automark, by a unanimous vote, the Board rejected as non-compliant the BMD submitted by Avante OpScan. This had the same ballot display as the modified Automark.

14. At the same January 24<sup>th</sup> meeting, the Board, by unanimous vote, approved the BMD submitted by Sequoia. This had a ballot display that provides a full face ballot in which the voter is able to interface with when making his or her selections for candidates. The initial display to the voter of the ballot when the system is in voting mode focuses on the upper left corner of the ballot. At anytime the voter can zoom out to display the full face ballot.

15. The display of the Automark ballot simply does not allow voter to cast their vote on a full face ballot display. The only full face displayed briefly to the voter before the display shifts to a race by race type of display.

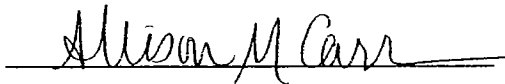
16. For the foregoing reasons, on January 29, 2008 Co-Executive Director Valentine determined that display of the modified Automark was insufficient as a BMD.

DATED: Albany, New York  
February 4, 2008



**TODD D. VALENTINE**  
Co-Executive Director  
New York State Board of Elections

Sworn to before me this 5<sup>th</sup> day of February, 2008



NOTARY PUBLIC

Comm. Expires: 3/07/2009

**ALLISON M. CARR**  
Notary Public, State of New York  
Qual. in Albany Co. No. 02CA6123605  
Commission Expires 03/07/2009

# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 06-CV-0263
	)	(GLS)
NEW YORK STATE BOARD OF	)	
ELECTIONS; PETER S. KOSINSKI	)	
and STANLEY L. ZALEN, Co-Executive	)	
Directors of the New York State Board of	)	
Elections, in their official capacities; and,	)	
STATE OF NEW YORK;	)	
	)	
Defendants.	)	
	)	

**SUPPLEMENTAL REMEDIAL ORDER**

On November 5, 2007, plaintiff United States filed a Motion to Enforce this Court's June 2, 2006 Remedial Order, alleging defendants' continuing noncompliance with the Remedial Order and the Help America Vote Act, 42 U.S.C. 15301 et seq. ("HAVA") (Docket # 134). Following the defendants' filing of responses to the United States' Motion (Docket ## 151, 153-157), this Court held a hearing on December 20, 2007 (Docket ## 175, 176), at which arguments of the parties were heard. Pursuant to this Court's directive at that hearing, on January 4, 2008, the defendants filed with the Court a revised HAVA implementation plan (Docket # 179). On January 11, 2008, the defendants supplemented this plan (Docket #180). On January 11, 2008, the United States responded to these submissions of the defendants in a letter to the Court and submitted to the Court a proposed Order. The Court now enters this Supplemental Remedial Order, which, in conjunction with this Court's previous June 2, 2006 Remedial Order, is intended to direct the remedial course of this litigation in the future.

This Court, having carefully considered the filings of the parties in this matter, and the extensive arguments heard at the December 20, 2007 hearing, finds as follows:

1) This Court agrees fully with the United States and finds that the defendants have failed substantially to comply with the voting systems requirements of this Court's Remedial Order and that New York remains in noncompliance with the voting systems requirements of Section 301 of HAVA, 42 U.S.C. 15481;

2) As this Court made clear at the December 20, 2007 hearing, noncompliance with HAVA is not an option for defendants and, to the extent that State law and procedure stands in conflict with full compliance with HAVA's federal law mandates, such State law and procedure must give way to federal law requirements;

3) This Court finds that the defendants' unacceptable and continual delays in meeting the voting systems requirements of HAVA that became effective January 1, 2006, has made full compliance with these HAVA requirements in time for New York's February 2008 presidential preference primary, and for the September 2008 federal primary election and November 2008 federal general election, not currently possible;

4) This Court finds, based on the filings and arguments of the parties and consistent with the January 4, 2008 submission of defendants (Docket #179), and having considered relevant submissions of amicus curiae, that partial compliance with HAVA's voting systems requirements, in the form of ballot marking devices and/or voting systems accessible to persons with disabilities available for use in every polling place in the State of New York during the fall 2008 federal primary and general elections, is possible and must be accomplished;

5) This Court finds, based on the filings and arguments of the parties and consistent with

the January 4, 2008 and January 11, 2008 submissions of defendants (Docket ##179, 180), and having considered relevant submissions of amicus curiae, that full compliance with HAVA's voting systems requirements, and the replacement of all lever voting machines in the State of New York, must be accomplished as soon as possible but in no event later than in time for use of fully HAVA-compliant voting systems during the fall 2009 State primary and general elections.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that:

1. The United States Motion to Enforce is hereby GRANTED, as set forth below;
2. The defendants' Plan B for the deployment of ballot marking devices accessible to person with disabilities in every polling place in the State for use in the fall 2008 federal primary and general elections, as set forth in the defendants' January 4, 2008 filing with the Court and according to the specific timetable set forth in Exhibit C to that filing (Docket # 179), shall be implemented in full by the Defendants;

3. The defendants' Plan A for the deployment of fully HAVA-compliant voting systems throughout the State of New York, specifically including the replacement of all lever voting machines in the State, by the fall 2009 State primary and general elections, as set forth in the defendants' January 4 filing, as revised by the defendants' January 11, 2008 filing and according to the specific timetable set forth in the January 11, 2008 filing (Docket #180), shall be implemented in full by the Defendants, subject to the following:

- a) Consistent with the January 11, 2008 submission of defendants (Docket #180), the defendants shall carry out certification of Plan A voting systems concurrently with certification of Plan B ballot marking devices;

- b) It is the clear intent and Order of this Court that, where possible, New York

counties be able to utilize, for the fall 2008 federal elections, voting systems that are fully compliant with HAVA. Accordingly, consistent with defendants' January 11, 2008 submission (Docket #180), the defendants shall make all possible efforts to provide for certification of a Plan A voting system(s) in time for use of such system(s) in the fall 2008 federal primary and general elections by such counties as wish to utilize fully HAVA-compliant voting systems in such elections;

4. Beginning on the first Friday following the entry of this Supplemental Order, and continuing thereafter on each subsequent Friday until further order of this Court, the defendants shall file with this Court, and shall submit by electronic mail to counsel for the United States, a detailed report concerning the previous week's progress in implementing the terms of this Court's Orders;

5. The defendants shall provide immediate notice, by filing with this Court, and by electronic mail to counsel for the United States, concerning any deviation, no matter how minimal, from Plan A and/or Plan B as ordered implemented by this Court, including any deviation from the specific timelines set forth by defendants for those plans, such notice to include the nature and causes of such deviation, and the immediate steps the defendants propose to take to resolve the possible delay caused by such deviation and ensure that such delay does not recur in any part of the State of New York;


6. Time is of the essence in carrying out this remedial process. Accordingly, this Court, where possible, will make itself available on short notice by any party, to deal with any issues that may arise that threaten timely compliance with the Orders of this Court;

7. Unless superseded by more specific terms in this Order, all provisions of this Court's



June 2, 2006 Remedial Order are incorporated herein and shall be in effect until further order of this Court. Moreover, this Court retains jurisdiction to take any and all other actions, including specifically the appointment of a special master or other entity as necessary to ensure that the obligations imposed upon the defendants by HAVA and by this Court's Orders are carried out forthwith.

ENTERED this 16<sup>th</sup> day of January, 2008, at Albany, New York.

  
GARY L. SHARPE  
UNITED STATES DISTRICT JUDGE

1 New York State Board of Elections Plan for HAVA Compliance  
2 January 4, 2008  
3

4 Pursuant to the December 20, 2007 direction of the Court, upon the  
5 Record, the Defendant State Board of Elections (NYSBOE) offers the following  
6 as its Plan of Compliance with the Court's June 2, 2006 Remedial Order:

7 A. Ballot Marking Device:

8 Since the submission of the two separate Plans of Compliance by NYSBOE  
9 and the Defendants' submission in Opposition to the Department of Justice's  
10 Motion to Enforce the June 2, 2006 Remedial Order, NYSBOE respectfully  
11 advises the Court and the Department of Justice that:

- 12 • Attached as Exhibit "C", is a time line which identifies the tasks required to  
13 achieve interim HAVA compliance in 2008, via the deployment and  
14 implementation of at least one ballot marking device in each polling  
15 location in the State of New York. Defendants NYSBOE, Kosinski and  
16 Zalen are committed to this facet of the proposed Plan of Compliance  
17 which they believe would address the minimum level of compliance which  
18 the Court will accept, as indicated upon the Record on December 20,  
19 2007.
- 20 • NYSBOE has completed initial tasks related to the re-bidding of contracts  
21 for accessible ballot marking devices in order to allow the State to have in  
22 place no later than February 29, 2008 a mechanism for increasing the  
23 number of such devices from which county boards may make their  
24 selections.

- 1       • To date the New York State Office of General Services (OGS) has  
2       received submissions from the following vendors for both Lot 1 (full voting  
3       systems) and Lot 2 (ballot marking devices) machines: Premier, ES&S,  
4       Avante, IBS and Sequoia.
- 5       • NYSBOE and OGS have completed initial contract negotiations with  
6       Premier, Avante and ES&S and negotiations with Sequoia are being  
7       scheduled as set forth in Exhibit C attached hereto.
- 8       • Although much has been already accomplished to implement this Plan Of  
9       Compliance, in many respects NYSBOE is at the mercy of the production  
10      schedule of the vendors who have responded to the Notice to Bid and  
11      their ability to produce a sufficient number of ballot marking devices in  
12      time for the implementation of this Plan.

13

14   B. Testing, Certification and Selection of Voting Systems:

15   Moving forward, NYSBOE respectfully advises the Department of Justice that:

- 16      • NYSBOE has completed the tasks related to re-bidding to secure the  
17      services of an Independent Testing Authority (ITA), for the purposes of  
18      conducting certification testing for all voting systems being proposed for  
19      sale in New York. A complete contract award has been made as of  
20      December 11, 2007 to SysTest, Inc. of Colorado which is currently  
21      working up testing protocols.
- 22      • NYSBOE is proceeding with voting system testing forthwith, by reason of  
23      completion of a contract award to the successful ITA, and currently

1 anticipates the start of testing on or about January 10<sup>th</sup> as vendors deliver  
2 their submission to SysTest, Inc.

- 3 • In order to comply with the Court's December 20, 2007 direction, the  
4 testing to be undertaken in 2008 may not be full New York Compliance  
5 Testing resulting in full certification at this time but rather testing to ensure  
6 that the Ballot Marking Devices meet the statutory requirements set forth in  
7 42 USC 15481(a). As testing may not be sufficient to ensure compliance  
8 with all New York statutory and regulatory requirements, NYSBOE will,  
9 pursuant to New York Election Law 7-201(4) authorize the use, in 2008, of  
10 ballot marking devices not formally certified by it upon an experimental  
11 basis to insure that it is logistically possible to have a ballot marking  
12 device at every polling place in accordance with the Court's December 20,  
13 2007 Directive and 42 USC 15481(a)(3)(B).

- 14 • The time required to complete testing to enable NYSBOE to formally  
15 certify such ballot marking devices pursuant to New York Election Law 7-  
16 201(1) as compliant with New York's requirements 9 NYCRR Part 6209  
17 which include New York Election Law Section 7-202 and the 2005  
18 Voluntary Voting System Guidelines adopted by the US Election  
19 Assistance Commission, is dependent upon each submitted system's  
20 readiness to comply with same. NYSBOE estimates the time required to  
21 test to the standards identified herein is approximately nine (9) months. It  
22 is respectfully pointed out to the Department of Justice that no voting  
23 system has as yet been certified by the US Election Assistance  
24 Commission as being in compliance with the 2005 Voluntary Voting

1 System Guidelines adopted by the US Election Assistance Commission,  
2 let alone the additional statutory requirements imposed by the New York  
3 State Legislature in Election Law Title II, Sections 7-200ff. It is for that  
4 reason that NYSBOE will authorize the counties to use machines pursuant  
5 to New York Election Law 7-201(4) in 2008.

- 6 • In order to provide for this experimental authorization, Defendants are  
7 interpreting New York Election Law 7-208 as not requiring the escrowing  
8 of the source codes for nonproprietary commercial off the shelf software  
9 for ballot marking devices but to require the escrowing of the Vendors'  
10 proprietary source codes for such ballot marking devices.
- 11 • On January 23, 2008 the Commissioners of NYSBOE shall determine  
12 which ballot marking device systems shall be offered to the counties for  
13 their selection, subject to the approval of the contracts for their purchase  
14 by the Office of State Comptroller and the Attorney General.
- 15 • Immediately following voting system authorization pursuant to New York  
16 Election Law 7-201(4), the County Board selection processes will be  
17 completed. The ultimate selection of a replacement voting system rests  
18 with the commissioners in each County Board, and in the City of New  
19 York, with the City Board of Elections. In view of the Court's December  
20 20, 2007 directive, County Boards must complete their selection/purchase  
21 process by February 8, 2008 and upon their failure to do so NYSBOE  
22 shall select and order for them.

- 1 • For the purposes of this solicitation, the pricing information may be  
2 disclosed to the counties upon the approval of the contract(s) by the New  
3 York State Office of General Services.
- 4 • In order to affect a substantial time savings, acceptance testing will be  
5 undertaken by NYSBOE at a central location rather than by the various  
6 County and New York City Boards of Election as was originally proposed  
7 by the Compliance Plans previously submitted.

8 C. Full HAVA Compliance for 2009:

- 9 • To implement lever machine replacement, NYSBOE has completed tasks  
10 related to the re-bidding of contracts for complete voting systems,  
11 including the publication of a Notice to Bid (appearing in the New York  
12 State Contract Reporter on September 24, 2007), the drafting, adoption  
13 and distribution of voting system requirements identified as 9 NYCRR Part  
14 6209, and is drafting, in conjunction with the Office of General Services,  
15 contracts with those bidders which have responded to the Notice to Bid to  
16 date.
- 17 • Attached as Exhibit "E", is a time line which identifies the tasks required to  
18 implement lever machine replacement and move the State to HAVA  
19 compliance. Voting system certification includes testing, an independent  
20 review of the testing, the creation and review of corresponding reports,  
21 review of the voting devices by the Citizens Election Modernization  
22 Advisory Committee, and final consideration by the State Board  
23 Commissioners.

1 • In the event that a county does not make a selection in the time frame  
2 established by NYSBOE, NYSBOE is statutorily authorized to determine  
3 the type and number of systems to be purchased and implemented in  
4 such county and shall order such voting systems for such county.<sup>2</sup>

5 • NYSBOE staff is crafting a program for the training of personnel on and  
6 the deployment of an acceptance testing program for new voting systems  
7 and ballot marking devices, as required by Election Law Section 7-206.

8 These tasks are represented in the time line.

9 • On September 20, 2007, the Commissioners of NYSBOE approved  
10 proposed regulations related to the use of new voting systems. The  
11 proposed regulations have been published and the 45-day Public  
12 Comment Period will expire on January 22, 2008 after which the proposed  
13 regulation may be formally adopted by NYSBOE.

14 • NYSBOE staff continues to draft and distribute for comment, procedures  
15 related to the ownership and use of new voting systems. These initiatives  
16 are represented in the time line.

17 • It is anticipated that these voting systems will be ready for implementation  
18 statewide in time for the Fall 2009 elections.

19 D. Conclusion:

20 • NYSBOE appreciates that this proposed implementation plan is  
21 extensively aggressive in order to comply with the Court's directive that, at  
22 a minimum, there shall be one ballot marking device at every polling place  
23 in time for the September, 2008 Primary. Although much has been

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<sup>2</sup> Election Law Section 7-203 (3).





Exhibit C: Proposed NYSBOE Ballot Marking Certification Testing & Electronic Voting System Implementation Master Timeline (Plan B)

ID	Task Name	Estimated Start Date	Estimated Finish Date
1	<b>Lot 2 - Electronic Ballot Marking Device Implementation Plan</b>	Mon 8/13/07	Thu 7/31/08
2	<b>Provide Contracts for Counties to procure voting systems</b>	Wed 9/12/07	Tue 2/26/08
3	Resolve issues in contract language & Ballot Marking Requirements	Wed 9/12/07	Wed 10/10/07
4	Prepare & Distribute Solicitation	Thu 10/11/07	Wed 10/17/07
5	Advertisement in Contract Reporter (Done)	Mon 9/24/07	Mon 9/24/07
6	Bid Opening Date (duration mandated by law)	Thu 10/18/07	Thu 11/15/07
7	Contract negotiations with individual voting system vendors	Fri 11/16/07	Fri 1/18/08
8	BOE Review & Sign-off	Mon 1/21/08	Tue 1/22/08
9	Contract is sent to OSC for Approval (assumes 30 day approval process)	Wed 1/23/08	Mon 2/25/08
10	Contract is complete	Tue 2/26/08	Tue 2/26/08
11	<b>Conduct NY State Testing of Electronic Ballot Marking Devices</b>	Thu 12/27/07	Thu 2/28/08
12	<b>Determine which Ballot Marking Devices will be in scope for testing and begin initial review</b>	Thu 12/27/07	Fri 1/11/08
13	Vendors submit in scope systems for testing (10 days after bid opening date)	Thu 12/27/07	Thu 1/10/08
14	Planning for and testing may begin (ITA contract finalized and available for testing on 12/07/07)	Thu 1/10/08	Fri 1/11/08
15	<b>Test Phase</b>	Thu 1/10/08	Thu 2/21/08
16	Test Plan Preparation	Tue 1/8/08	Thu 1/10/08
17	Final Test Run (Run for Record - all changes frozen)	Tue 1/8/08	Thu 1/10/08
18	Test all Systems	Mon 1/28/08	Thu 2/21/08
19	<b>Documentation Phase</b>	Mon 1/28/08	Thu 2/21/08
20	Preparation of final test results	Fri 2/22/08	Mon 2/25/08
21	Submit final test results to SBOE Executive Board	Fri 2/22/08	Fri 2/22/08
22	<b>Complete Recommendation of Vendor-Machines</b>	Mon 2/25/08	Mon 2/25/08
23	<b>System Recommendations</b>	Tue 2/26/08	Wed 2/27/08
24	Review test results	Tue 2/26/08	Wed 2/27/08
25	Approve/reject machine	Tue 2/26/08	Tue 2/26/08
26	Deliver necessary software to escrow agent	Wed 2/27/08	Wed 2/27/08
27	State Board to approve and provide list of recommended machines to counties to be ordered	Thu 2/28/08	Thu 2/28/08
28	<b>Ballot Marking Device Ordering, Delivery &amp; Acceptance Testing</b>	Thu 2/28/08	Thu 2/28/08
29	<b>Assist Counties With Ordering Machines</b>	Fri 1/25/08	Fri 1/25/08
30	Prepare Ordering Packet and informational materials for Counties	Mon 8/13/07	Thu 7/31/08
31	Create Informational Packet	Mon 8/13/07	Fri 4/18/08
32	Create cost lists & order forms	Mon 8/13/07	Fri 4/18/08
33	Develop process for collecting and accounting for 5% match (Done)	Mon 8/13/07	Fri 10/12/07
34	Collect 5% matching	Mon 8/13/07	Fri 4/18/08
35	Contracts Awarded and in Place (awaiting OSC approval)	Mon 8/13/07	Mon 9/10/07
36	Distribute packets to Counties	Mon 8/13/07	Fri 4/18/08
37	Define County requirements and obtain written proposals from vendors (Service & Support)	Mon 1/28/08	Mon 1/28/08
38	Return ordering information to OGS	Fri 1/25/08	Fri 1/25/08
39	<b>Coordinate County Orders</b>	Fri 1/25/08	Mon 2/4/08
40	BOE to Process Certificates at DOB to ensure funds are available to place orders	Fri 2/1/08	Fri 2/8/08
41	Create list of non-compliance & deliver to BOE	Mon 2/11/08	Tue 3/11/08
42	Select Machine for common submission Counties	Mon 2/11/08	Fri 2/15/08
43	Collect Orders for common submission counties from BOE	Mon 2/11/08	Mon 2/18/08
44	Record requisitions and purchase order processing	Mon 2/11/08	Mon 2/18/08
45	Issue Purchase Orders	Mon 2/11/08	Fri 2/29/08
46	County Board and Voting System Vendor negotiate individual delivery date(s)	Mon 3/3/08	Mon 3/3/08
47	Voting System Vendor accepts Purchase Order	Mon 3/3/08	Tue 3/11/08
48	<b>Delivery - Note actual delivery date will be negotiated with machine vendor at time of PO</b>	Thu 4/3/08	Tue 3/11/08
49	Estimated start time for delivery after PO is finalized (Thirty day estimate for first delivery - actual will	Thu 4/3/08	Thu 7/31/08
50	Document inventory	Thu 4/3/08	Thu 7/31/08
51	<b>Acceptance Testing of Ballot Marking Devices</b>	Thu 4/3/08	Thu 7/31/08
52	Test each device	Thu 4/3/08	Thu 7/31/08
53	Accept or reject	Thu 4/3/08	Thu 7/31/08

# **EXHIBIT C**

>> NEIL KELLEHER: The first thing I'm going to do is something I don't think I should do.

If I care anything at all about my life. That is to apologize for what we did to you this afternoon and I guess what I'm saying is, I'm afraid to apologize because if I was out there with you, I wouldn't accept it.

>> AUDIENCE MEMBER: Oh, we accept it--  
(Applause.)

>> NEIL KELLEHER: But there's only one steering wheel in this bus and it was my day to drive.

(Chuckles.)

>> NEIL KELLEHER: Our reason for the delay was because we were hung up in some communications with Albany having to do with language and perhaps improper language that was in something we were going to deal with today and some additions to it.

And that is primarily the reason why we waited that long.

And I want you to know that I promised my wife I would be home at 4:00 o'clock

(Chuckles.)

>> NEIL KELLEHER: Thank God, I'm 85 or she would --

She would probably by this time decide I ran off with one of the attractive Commissioners here.

(Laughter.)

>> NEIL KELLEHER: Incidentally, if there's anybody else got that kind of thought, at least share it with me.

(Laughter.)

>>: I'll go, I'll go.

(Chuckles.)

>> NEIL KELLEHER: I've got to tell you a story.

This is a true story.

I've got every kind of a doctor.

I've got nine doctors.

Every part of my body is covered by at least one doctor.

My urologist is a man from India.

An absolutely fantastic guy.

You talk about a guy who cares about his

patients.

He's too serious sometimes.

So over a period of seven or eight years, I had had just about everything available to the doctor in terms of examination without going right in and taking out my hoo ha.

(Laughter.)

>> NEIL KELLEHER: I had that treatment that you get --

It's an examination where you put your two legs over the top of these metal racks?

I think you women who have children had something to do with those.

This is a true story! This is a true story.

(Much general discussion and laughter in the audience.

).

>> NEIL KELLEHER: That's exactly what I'm talking about, the ones that go like this.

So anyway, on top of that after that bout, I guess a year later he decided that he wanted --

That was an outpatient exam.

The following year he gave me the roter-roter, which requires a certain exercise by the doctors and then you spend five days in the hospital walking up and down the hallways carrying a bag of you know what inside your bath robe.

I'll get right to the punch line because he said to me one day.

Very serious man and I'm telling you the truth.

He said to me, Mr. Kelleher, the monotones of the Indians, it's beautiful, the accent, whatever it may be.

He said you have had just about every examination possible.

He said you're coming along okay.

He said you're right at this age --

This is probably four or five years ago.

He said you're right at that age where I wonder what effect these treatments I'm giving you, these roter-roter things --

That's my language, not his.

He said I have to get some idea of how much damage I might have done in the process.

He said how would you feel if I asked you to

try a little Viagra.

>>: No!

>> NEIL KELLEHER: And it wasn't Viagra.

It was something called muse.

I thought the pronunciation was moose and I got me into a lot of trouble.

But it was called muse.

I said doctor, let me say this to you.

If this is very important to you in terms of my condition and perhaps for future reference with other patients, I probably would do it.

Unless it's absolutely necessary, I would just as soon not.

He got all apologetic.

Oh, Mr. Kelleher, no, no, he said it's fine.

I said okay, fine.

Let's talk about it another time.

He said do you mind?

I want to ask you a question, Mr. Kelleher.

He said do you mind telling me why you are reluctant?

He said there's no, there's nothing negative that can happen to you as a result of taking this medication.

Except I find --

I'm not going to go there.

But he said would you mind telling me why you decided that you would rather not?

Well, I said doctor, it's a very simple explanation.

I said if I tried that drug and it worked, I can't remember what the hell you do next.

(Laughter.)

(Applause.)

>>: Where the hell --

>> DOUGLAS KELLNER: You have any more stories?

>> NEIL KELLEHER: No.

>> HELENA MOSES DONOHUE: I don't have any stories.

I just also have an apology that we took so long today.

We were attempting and we have been attempting to resolve this issue.

It's imperative for us to do this because it will affect generations to come.

As you know better than most people.

Now, as soon as Allison comes in, we have worded this proposal and we will give it to you exactly the way we feel that it should be worded.

And then we will vote on it.

And whatever the results are, I hope that it works for you and I hope it works for the state of New York. We'll send somebody out to get her.

Just a second.

(Pause.)

(General discussion)

>> HELENA MOSES DONOHUE: Now, tell them now.

Enough is enough.

>> NEIL KELLEHER: Yeah. It really happened.

>>: Did you hear norm's story before about the infomercial.

>> NEIL KELLEHER: Did you hear that if you use it and such-and-such hasn't happened in so many hours, head for the hospital?

I wouldn't head for the hospital.

>>: You're going to be more famous than you thought because this is going to be webcast tomorrow.

(Chuckles.)

(Loud discussions in the audience.)

).

>> NEIL KELLEHER: We've got to come to the bottom of this shit later.

>> HELENA MOSES DONOHUE: I hope so.

>> NEIL KELLEHER: Did they find her?

(Pause.)

>> NEIL KELLEHER: You done good.

Dominion?

Dominion?

>>: Did you explain that this is an important decision?

>> NEIL KELLEHER: Thank you very, very much again for the --

(Applause.)

>> NEIL KELLEHER: I wish I could find a good reason for it, but I can't.

I thought the Assembly was crazy.

I was over there for 26 years and come over

here to get a little peace and quiet.

Apparently it gets too quiet sometimes.

Anyway, I would like to make the following proposal, introduce the following resolution, I believe it is, for the approval of four machines that has been the result of a great deal of conversation.

I'm speaking for those people you obviously are familiar with up here.

And some changes, as a matter of fact, today.

Or rather touching some bases to be sure what the impact, what the result will be.

I would like to have Allison, would you describe them?

>> ALLISON: Absolutely.

Resolution number --

The resolution is that the following voting machines shall be approved as ballot marking devices.

The Dominion, the Liberty, and the following ballot marking devices shall be approved with conditions.

The Avante DRE, pending approval by the co-executive directors of a scanner to be attached for independent verification.

And the Automark pending approval of a firm ware change to allow the system to display a full-face ballot.

>> NEIL KELLEHER: Do I have a second on the motion?

>> HELENA MOSES DONOHUE: Second.

>> NEIL KELLEHER: Seconded.

All those approved say eye?

>> HELENA MOSES DONOHUE: Aye.

>> DOUGLAS KELLNER: You going to discuss it at all?

>> NEIL KELLEHER: If you want to.

Don't be bashful.

Don't be bashful.

>> DOUGLAS KELLNER: Obviously I don't approve of the resolution as written.

While you were out, I know we had gotten word you were going to come back at 3:30.

While you were out I did go on for about half an hour explaining the outline of my views on the subject.

And just to repeat it for the record, I have no problem with approving the Dominion machine and I have no problem with approving the Automark.

I would approve the Automark unconditionally, but I can probably go along with your request that there be a firmware change.

The, it is somewhat inconsistent, however, to be having conditional approvals at this point because of the time line.

And that we are under serious pressure to keep the calendar moving and to get the selection process moving.

And that is why we had agreed to a January 10 deadline for the submission of the systems that would be considered by the State board for approvals to the Commissioners.

So --

So at this point I will vote against this resolution.

I will offer a separate resolution following that to approve the Dominion and Automark machines and if you are inclined to support that, then we could discuss whether to make it conditional on the firmware change.

>> NEIL KELLEHER: Thank you, Doug.

Do I hear a second?

Did you introduce an amendment by any chance in that language?

>> DOUGLAS KELLNER: No.

>> NEIL KELLEHER: All right.

>> TODD VALENTINE: Already seconded.

He voted.

>> NEIL KELLEHER: Okay.

On my motion or on Allison motion for the approval of the four machines, I'll call the roll call.

Doug?

>> DOUGLAS KELLNER: No.

>> NEIL KELLEHER: Helen?

>> HELENA MOSES DONOHUE: Yes.

>> NEIL KELLEHER: And the chair votes yes.

As far as I'm concerned, that's all the business we were going to deal with tonight unless you have some parting words to share --

>> DOUGLAS KELLNER: Well, I'm going to make



a motion that we approve the Dominion machine and then after we vote on that motion, I will make a separate motion with respect to the Automarks.

So I would call for a vote on the motion to approve the Dominion machine.

>> HELENA MOSES DONOHUE: Discussion on your motion.

>> DOUGLAS KELLNER: Actually, I'm sorry. We shouldn't be calling it Dominion because none of the paperwork that was submitted uses that name.

It's the Sequoia Image Cast.

>> NEIL KELLEHER: Is there a second on that motion?

(There is no response.)

>> NEIL KELLEHER: If not, it will not bring about a call for a vote.

>> DOUGLAS KELLNER: All right.

And then I will make a motion that we approve for selection by the counties the ES&S Automark submission and the premiere Automark submission.

>> NEIL KELLEHER: Do I have a second on that motion?

>>: No, no.

>> NEIL KELLEHER: If not, it obviously can't be voted on.

Any more, anything else to be brought before the board?

Doug?

>> DOUGLAS KELLNER: So at this point I just want to emphasize that at least on my part the decisions were made on the basis of my analysis of the statutes as I reported in summary fashion earlier.

I believe that we are under court order to proceed.

I would ask my fellow Commissioners if by their vote against or their refusal to vote on the Dominion machine they are indicating --

I'm sorry, I'm using Dominion again.

Their refusal to vote on the Sequoia Image Cast, they are indicating that they believe that the Sequoia Image Cast does not comply with the New York legal standards.

>> ALLISON: It was a package deal.

It was a package deal.

>> NEIL KELLEHER: Do you want to add on --

>> ALLISON: Commissioner, with all due respect, we too, our Commissioners reviewed every machine for its legal compliance with New York state statute.

We offered a deal of four machines that do pass New York state statutes.

Two of them with amendments.

We simply feel that this is a \$50 million expenditure and is the machine that is intended to be used by the disabled for the next generation.

We feel it is extremely important and that the county should have a choice.

These four machines are excellent options.

We offer them as a package deal.

>> DOUGLAS KELLNER: Okay.

Well, so I just want to emphasize that basically then I understand that the Republican Commissioners are arguing that the Dominion and the Liberty comply with New York law.

I've set forth my reasons why I believe that the --

I'm sorry, I did Dominion again.

The Sequoia Image Cast and the Liberty machine, that the Republicans are arguing comply with New York law.

I set forth my reasons on why I believe the Liberty machine does not comply with New York law because it does not produce a ballot and a ballot marking device needs to produce a ballot as New York law prescribes.

Secondly, because the Liberty machine does not provide for independent verification as required by seven-202.

So on that basis, I think we need to notify the Department of Justice that the Commissioners are not able to agree on sending a machine to the counties for selection and I would ask that we agree that that should happen first thing tomorrow morning.

>>: Do we agree on that?

>>: We agree.

>> TODD VALENTINE: We will agree to send a joint e-mail.

>> STANLEY ZALEN: Saying there's a failure

to select because it takes three votes?

>> TODD VALENTINE: Yes.

>> DOUGLAS KELLNER: Okay.

We should discuss the date for our next meeting.

>> NEIL KELLEHER: You understand, of course, that the intention of myself and Allison was to, after a great lengthy discussions over the past couple of weeks, was to make several machines available to you people that you can finally get your teeth into and make up your mind just what direction you want to go.

That's why we spent a great deal of time today talking about language that was involved in all four contracts having to do with the different manufacturers.

That's where I am right now, still am.

And I feel a lot better about what we did, in some instances did not do today.

I feel a lot better if I knew you would be able to take out of here tonight the opportunity to scan, look over your self those four machines and give you a chance to digest it and certainly you had to wait long enough to finally get something in your hands that you can consider and get on with your work.

The time, I know, is of the essence.

I'm sorry it worked out that way, but today we intended to give you a choice that was worthwhile.

That's why we came up with four machines.

And as far as I'm concerned, that's where we should leave it right there.

>> HELENA MOSES DONOHUE: The question was asked when our next meeting would be.

We are prepared to meet tomorrow.

>> DOUGLAS KELLNER: Okay, I'm here.

>> STANLEY ZALEN: 11:00 a.m.?

>> HELENA MOSES DONOHUE: 11:00 o'clock okay?

>> NEIL KELLEHER: That should be okay.

>> STANLEY ZALEN: Todd, if there's going to be a meeting of the Commissioners tomorrow at 11, then I don't believe we will be notifying DOJ until after that meeting.

Right?

Agreed?

Very good.

>> ALLISON: Okay, the meeting is tomorrow at 11.

Let them know --

>> NEIL KELLEHER: We'll meet tomorrow at 11.

The board will meet tomorrow at 11:00 o'clock.

And hopefully you won't have to sit in these same seats for a long length of time waiting for some kind of a product to come from this end.

Rest assured if that happens we'll make sure that we scatter through the corridors and make sure you're brought back in here.

We owe you at least that much.

So the board will now stand adjourned until 11:00 o'clock tomorrow morning right here.

Thank you.

Thank you very, very much.

(The meeting adjourned.)

>> HELENA MOSES DONOHUE: How are you?

>> DOUGLAS KELLNER: Okay.

Good morning, everyone.

I am calling this meeting to order.

Present are Commissioners Donahue and Kelleher

Donahue and Kelleher.

We will avoid calling the roll of the staff again.

I take it we don't have minutes from yesterday's meeting yet?

>>: Not yet.

>> DOUGLAS KELLNER: We will not do that.

Are there any staff reports on anything new since yesterday?

We have four items of old business that we had put on for the agenda for the next meeting.

Is there a motion to continue them for the next meeting?

>> HELENA MOSES DONOHUE: I move that we continue them for the next meeting.

>> DOUGLAS KELLNER: Okay.

Those in favor say aye?

(All members responded "aye.")

>> DOUGLAS KELLNER: The old business is continued.

Are there any new items for this morning?

>> HELENA MOSES DONOHUE: Yes.

Before we go to the voting on the machines, I have a very brief statement in explanation of yesterday.

I had heard by the grapevine and in the halls that we the Republicans

renege on a deal to accept one machine.

I will tell you there was no deal, at least not one that included me.

If it were I wouldn't broadcast it because according to Mr. Freeman, it is illegal.

I have been consistent in my belief that there should be a choice.

If you end up without one, please remember who prohibited it.

I will not leave here today without a vote.

I will not afflict upon you a 40 minute dissertation on my reasonings for voting and the way I do it.

I was raised by a lovely Irish lady who reminded me from time to time that God created us with two ears and one mouth, and act appropriately.

>> NEIL KELLEHER: Thank you very much, Mr. Chairman.

Before we get into whatever vote is going to be placed before the board this morning, let me once again make sure

that you understand Commissioner Kelleher's position here.

A position I've stuck to for several weeks.

That is to make as many machines as possible available for you local Commissioners to make a choice.

Now, for some reason it seems that some people on the board, be they the Commissioners or part of staff,

seem to think that you're not capable of doing that.

That what we've got to do is make a decision for you and take away the possibility of your picking a machine

that you think might do a better job for you or your people.

You look at these people who are here with all this equipment.

Millions of dollars, evidently, have gone into the research and the engineering departments and so on to make equipment

available that they think will do the job.

These people have got to be exhausted, lugging those machines on and off of trucks, traveling all over,

following us like kids on a birthday party wondering what the heck we will do next and it will probably be the wrong thing.

We've certainly done some wrong things in the last 24, 48 hours.

And you know the one that we can all hang our hat on is the one that found most of you asleep by 3:15 yesterday afternoon.

I guess all I'm going to ask you before we get into this and I guess maybe in order to give you something to take home,

there's going to be some reluctant votes taken this morning.

I want you to understand as far as I'm concerned, there's something a lot worse than reluctant.

And I guess so I know just exactly whether or not I performed as you want me to perform, I would just ask you before

I turn the microphone over to Commissioner Kellner how many of you people here stick with me that you want to have the opportunity

to look at as many machines as possible?

Raise your hands.

Thank you very much.

>> DOUGLAS KELLNER: And Commissioner Kelleher, I just want to endorse that.

I agree that the county Commissioners should look at as many machines as possible.

The question now is what's possible.

Our decision is not a political decision.

It's a legal decision.

That at this point it is our job to make available to the county Commissioners for selection every machine that

complies with the New York rules and law.

And if a machine doesn't comply with the law and regulations by this point, then there comes a point where we have to say no,

they can't keep going on because we have to start making decisions and plan for the primary election in September.

So I had been very careful to base my decisions strictly on whether or not the machine complies with the law and regulations.

And the issue is not whether the machine is an optical scanner or whether it's a DRE, because I think each has their pros and cons.

The issue is whether the machine complies with the very detailed requirements that the legislature put into the statute.

And then, of course, we also have to consider whether or not the machines comply with the federal help America vote act as well.

All right, we've gone through those issues.

Is there a motion?

>>: I'm sorry, is that tape on?

Wait a minute.

Our

>> DOUGLAS KELLNER: All right, now it's on.

>>: Is that the solo owe all right, thank you.

>> HELENA MOSES DONOHUE: Yesterday we tried to put a vote up as a package.

It did not succeed.

So I am recommending that we put the machines up individually and we can vote on each one and that will be our vote.

Do you want me to read them?

>> DOUGLAS KELLNER: Let's do them one by one then.



>> HELENA MOSES DONOHUE: The first one I have here and it is by no coincidence or anything else how they got here.

It ain't political.

(Chuckles.)

>> HELENA MOSES DONOHUE: Avante DRE.

Should we vote as we go along or put them all up at once?

>> DOUGLAS KELLNER: No, I think we should do each one of them.

I think we should do each one of them and on the Avante DRE, maybe I should call on staff to go through the report on the legal issues

>> HELENA MOSES DONOHUE: I think they all know this.

>> DOUGLAS KELLNER: I'm trying to make a record, too, in case a vendor objects.

>> HELENA MOSES DONOHUE: Just vote.

>> DOUGLAS KELLNER: Well

I'm just going to state for the record that the Avante DRE did not comply with election law 7 104,

did not comply with the accessibility provisions of the help America vote act with respect to the independent verification.

Did not comply with the election law 7 2021e with respect to the verification requirement.

I add that I have nothing against it because it's a direct recording electronic machine.

It's just that it fails to comply with those legal requirements.

>> ALLISON: We have a statement.

>> TODD VALENTINE: You want to say it?

>> ALLISON: On the other hand, our position on the Avante DRE is that it does comply with New York State's election law.

It displays a full face ballot in the entirety.

They brought in a scanner for the independent verification when Kellner was referring to 7 2021e.

That's why we're voting yes.

>> HELENA MOSES DONOHUE: You want to call the vote?

>> DOUGLAS KELLNER: Okay.

We'll call a vote on the motion.

Those in favor?

Commissioner Donohue?

>> HELENA MOSES DONOHUE: Aye.

>> DOUGLAS KELLNER: Commissioner Kelleher?

>> NEIL KELLEHER: Let me just for a moment reiterate what I said a few moments ago.

That is, you heard Commissioner Kellner make some decisions having to do with whether or not this machine meets the legal requirements.

That's not our job to decide whether or not it meets legal requirements.

Our decision is to meet with you people and find out just exactly what your problems are and what we can do to help solve them.

And the most important one, as I say I'll be glad to listen to any one of you or all of you telling me I'm wrong.

I guess I have a respect for your people's ability to make sure it meets the legal requirements and everything else.

And I'm glad and I'm happy and I trust you enough to let these decisions be made by you.

But I guess up here we're going to have some people who do not want you to make your own choice.

The choice is going to be made by the State board and that's not

As a matter of fact, we may not even be legal in doing so, in preventing you from having the opportunity to vote or make the decision on more machines.

I'm not going to tell you you haven't got legal brain enough to make a decision on these machines.

I'm going to tell you as I told you yesterday and the last couple of weeks, let's have at least four or five machines.

We finally got there and now we are going to start tearing them apart because we are not going to

So up here we're going to have people not only going to do their job as Commissioners, but they're going to do your job.

They're going to make a decision as to what you should have the opportunity to inspect and review and make a decision

on because you don't have the ability, apparently, to perform accordingly.

I'm going to vote on this thing because we've got to take something home.

But I want to keep reminding you that my decision was to make sure that you were able to show just what kind of ability and talent,

legal or otherwise, that you people have got.

It's a real sad day when we have taking this kind of action after all the effort you put into trying to make this possible

and to move along with our responsibilities.

Aye.

>> DOUGLAS KELLNER: All right.

I vote no.

Therefore, the motion fails to attain a majority.

Want to do the next one, Commissioner?

>> HELENA MOSES DONOHUE: The second one that I would like to put up for a vote is the Premiere Automark.

Supposedly it is in the process of being delivered with the full face quality.

I put that up for a vote.

>> ALLISON: Give them until Monday

>> HELENA MOSES DONOHUE: Oh, they are supposed to be here by Monday, but I think it will be before then.

>> DOUGLAS KELLNER: I am going to vote in favor of this also.

I believe that the, it's my position that the submission that was already made does comply with the law in that it starts with a premarked,

a preprinted full face ballot and that it ends with a marked full face ballot.

Therefore, it complies with section 7 104 and that it also complies with the help America vote act disability access requirements.

I understand that they want to make a modification that has been requested by the Republican Commissioners.

In fact, I saw a version of that modification this morning which unlike the Avante did present a full face ballot that was legible and therefore,

I don't have any problem with that modification either.

So I will vote aye.

Commissioner Kelleher?

>> NEIL KELLEHER: Aye.

>> HELENA MOSES DONOHUE: I will vote aye with the improvement that we mentioned.

You want to do the next one?

>> DOUGLAS KELLNER: Go ahead.

>> HELENA MOSES DONOHUE: The third one is the Sequoia Dominion.

I would present that for a vote.

>> DOUG: Sequoia Image Cast produced by Dominion.

Okay.

I have no issues on that.

*Kellner*

All right.

I believe that it does comply with the help America vote act disability provisions and the New York statute and so I vote aye.

>> NEIL KELLEHER: Aye.

>> HELENA MOSES DONOHUE: Aye.

The next one for consideration is Liberty.

>> DOUGLAS KELLNER: With respect to the Liberty machine, it is my view it does not comply with the help America vote act disability provisions

and the provisions of election law 7 2021E for independent verification of the ballot in a usable form.

And in addition, it does not produce a ballot that meets the requirements of election law 7- 104 and for that reason

I would also incorporate by reference into my remarks the memoranda that was submitted by the Brennan center of law and also by the League of Women Voters,

by the center for disability advocacy.

What is it?

Susan, what is the name of your group?

>>: New York State independent living council.

>> DOUGLAS KELLNER: Thank you.

The League of Women voters and the New Yorkers for verified voting.

So I'm voting opposed.

>> ALLISON: May I?

On the Liberty system, Liberty has brought in a new independent verification system.

We have no problem with accepting this modification which will allow the machine to meet 7- 2021E.

On producing the full face ballot we find no provision in 7 -104 which requires a machine to produce a full face ballot at the end of voting.

Therefore, I'm encouraging my Commissioners to vote yes.

>> NEIL KELLEHER: Don't you wish you had the opportunity to vote on this yourself?

(Chorus of yes and no.)

>> NEIL KELLEHER: But it's going to be taken away from you.

I vote aye.

>> HELENA MOSES DONOHUE: Aye.

And the fifth one.

>> DOUGLAS KELLNER: Let me announce the result.

Two votes in favor, one oppose the.

It fails to gain the required three votes.

>> HELENA MOSES DONOHUE: The last one is ES and S Automark with modification.

>> DOUGLAS KELLNER: All right.

I have the same remarks as with respect to the Premiere Automark, that the

It's my opinion that the system as originally submitted did comply with the help America vote act and New York legal requirements.

I have no objection to the modification and so I will vote aye.

>> ALLISON: With the modifications, vote yes with the modifications.

>> HELENA MOSES DONOHUE: With the modifications.

>> NEIL KELLEHER: And I vote aye with modifications.

>> HELENA MOSES DONOHUE: I'm sorry, there is one more.

The Avante ballot marking device ops scan.

>> ALLISON: No on that one.

>> DOUGLAS KELLNER: So, with respect to the Avante optical scan ballot marking device, it's the same issues that it presented what purported

to be a full face ballot for three seconds.

But if you actually freeze frame it and magnify it it's illegible because the pixels are so small that when they are magnified, they are not legible.

So it did not comply with the ballot requirements 7- 104 and then in addition there was no adequate means of independent verification

as required by election law 7- 2021E and did not comply with the help America vote act disabilities requirements.

>> HELENA MOSES DONOHUE: Just for interests sake, I agree with Doug and will also vote no.

(Laughter.)

>> HELENA MOSES DONOHUE: I want you to know there is an open minded person hanging out up here.

(Applause.)

>> NEIL KELLEHER: In case you're wondering which one of us up here has a closed mind, I guess it's me.

Because I'm on your side.

>> DOUGLAS KELLNER: So how are you voting?

>> NEIL KELLEHER: Vote no.

>> DOUGLAS KELLNER: That fails.

A no vote in favor.

Any other business?

We need to set our next meeting date.

>> HELENA MOSES DONOHUE: We may have to do that ...

>> ALLISON: Set your next meeting.

>> NEIL KELLEHER: Recess?

>> ALLISON: We need to meet on the day after counties are to select so that if they haven't selected, we can select for them.

>> DOUGLAS KELLNER: Right.

>> ALLISON: So February 9, February 10

>> DOUGLAS KELLNER: The 11th is the first day we have on the time line for doing that was Monday, February 11th.

>> NEIL KELLEHER: Mondays are bad for you.

>> HELENA MOSES DONOHUE: It doesn't make any difference ...

>> ALLISON: We can do

>>: Stay with that?

>> ALLISON: Yeah.

>> NEIL KELLEHER: February 11?

>> HELENA MOSES DONOHUE: Does that work for you?

>> DOUGLAS KELLNER: Whatever date it is.

>>: What role does the staff need after February 8 so the Commissioners have something to vote on.

I know we have timing issues

>>: We gave you

>>: Are we submitting the order for the county or are we submitting the products and the county submits the order?

>> DOUGLAS KELLNER: Do you remember what happened two years ago when we ended up.

(Overlapping speakers).

>> DOUGLAS KELLNER: Commissioners on the phone and we tried to

Do you want to do it the same way at least in the first instance?



>> HELENA MOSES DONOHUE: Whatever is legal.

>> DOUGLAS KELLNER: Strikes me that's probably the best way to start out because if it's partisan, it's going to be

>>: Quiet please!

>> DOUGLAS KELLNER: So if it's all right with you, I would announce to the county Commissioners that if they don't agree,

then what we've discussed is that the State Commissioners will inspect the two

>> AUDIENCE MEMBER: Would you tell us which machines were passed and which ones weren't?

>> DOUGLAS KELLNER: So the ones, there were three that were adopted.

The Sequoia Image Cast, the Premiere Automark with modification and the ES&S Automark with modification.

Have we got a date?

While the staff just reviews what the date options are, the three Commissioners suggest that what we would do in the event that the county

does not make a selection by the February 8th deadline is that we would attempt to mediate between the two county

Commissioners to help them reach a decision.

Obviously with the weight of the State Commissioners being able to

Hopefully break a dead lock if the dead lock exists.

So that whatever date we would select, if the county Commissioners have not put in their orders and are on that list where the State board

has to make the choice for them, we would ask they be available either to come to Albany to meet with us in person or to be available

by phone at the time the State Commissioners hold their meeting to determine what machines to order for the county.

Commissioners Scanapicio. Do you want to use the mic?

>>: I think I

>> DOUGLAS KELLNER: Come up here so you'll be on the camera, too.

>>: If the majority of this room thinks the same as you and can't

(Overlapping speakers).

>> DOUGLAS KELLNER: Each of the vendors has assured us that they would be able to meet the full requirements statewide.

My suggestion would be that if in fact the vendor doesn't do that, there will not be primaries at every single poll site in September.

So the first allocation that would be made would be to have those jurisdictions that don't have primaries in September give up their machines.

And if there are still

You know, I don't even see that scenario happening.

The vendors have all said that they are able to meet the schedule, even if all of the counties should choose the same vendor.

Does anybody else want to address that issue?

>> ALLISON: Well, they said 6500.

They didn't say the 8,000 because we already have a couple hundred out there.

>>: Are we going to see the

>>: Modifications, disapproved three machines, based upon modifications you were received. We have to make registration by February 8.

When are we going to see those modifications?

>> HELENA MOSES DONOHUE: They should be in tomorrow, Monday at the latest.

>>: Hopefully tomorrow we can see them here?

>> HELENA MOSES DONOHUE: Will they be here?

I don't know if they are sending them to our office or not.

>> ALLISON: Do you want to see them here?

>>: Of course!

>>: If they are here, we can

We have a choice of three, it will be helpful.

>> ALLISON: We can tell the vendors.

I'm sure that if they have a modification that they can make while they're here

>> DOUGLAS KELLNER: I believe that the Premiere machine already has the modification that's out there.

I want to make clear just for the legal record that the reason I went along with this is because in my view this machine already met the State legal

requirements and that the modification is a very minor change that is surplusage.

Essentially the only modification that I understand it that is going to be made is that the first screen that will appear to the voter

will be a full face ballot rather than simply a listing of candidates for the first office on the ballot, which is how it appears now.

But I believe if you want to see what it looks like, you can look at the Premiere machine that's here.

It is an example of what they are doing.

>> ALLISON: Well, again, we haven't seen the modifications yet.

We've got to make sure that we accept the modifications as well.

>> DOUGLAS KELLNER: I have agreed to that.

>> NEIL KELLEHER: Yeah.

>> DOUGLAS KELLNER: I've agreed.

>> TODD VALENTINE: Right.

>> DOUGLAS KELLNER: I'm not trying to block you from doing that.

I want to make it clear legally that the only reason I'm going along with this is because I believe it already complied, as distinguished

from other vendors who wanted to still submit modifications but did not meet the January 10 deadline.

>> ALLISON: We are not accepting it like it was.

We are accepting with modifications.

>> TODD VALENTINE: We've got it.

I see what you're saying.

>> DOUGLAS KELLNER: All right.

Date?

No, no, wait

All right, go ahead.

>>: I'll wait.

>> DOUGLAS KELLNER: Come up.

>>: Come up so

>> DOUGLAS KELLNER: Come up so you can appear on the screen.

>>: Shall I get a shave first or something?

(Chuckles.)

>>: If a county does work to go with the Image Cast and had the large amount of unspent capital money in the allocated funds,

are we going to be able to use that for bat lot printing purposes spread over more than one year?

Which I estimate we probably would have, should Essex county go that route, particularly if we consolidated poll sites.

We will have a lot of money left.

>> DOUGLAS KELLNER: Do you know the answer to that?

Go ahead and say it.

>>: I believe that will be an issue that will be talked about this afternoon in the OGS session and beyond, but it is my understanding

that when you see the contracts and the terms and the pricing that the vendors had proposed, that that would be something that you could buy through

the contract and to the extent you haven't, if you have funds available you can

That's an approved use of the funds.

>>: The contracts are five year contracts?

>>: And the contracts are five year contracts, Anna added.

>> DOUGLAS KELLNER: Let me take a moment to discuss one other issue with my fellow Commissioners here.

That is, there are six counties that have gone on record saying that they would like to replace the lever voting machines this year and it is my view

that that will be feasible for those six counties.

And for any other county that wishes to pursue that.

That thinks that they can do it in a way that they can complete the necessary training and poll worker recruitment in order to implement it this year.

What involved is that we are getting all of the plan A submissions.

The deadline is tomorrow for submitting the hardware for certification testing under plan A.

The some of the systems are much further along in the testing process than others.

For example, the Sequoia Image Cast submitted to the certification commission and that certification process is nearly complete.

We have agreed at the State Board of Elections that any tests that were done for the federal certification can also apply to the New York certification

so that all that sys test will have to do to finish testing for the Sequoia Image Cast is to do the additional tests required by New York's regulations

that are not already required by the federal regulations.

So that it's possible that New York will have full certification for the Sequoia Image Cast this summer.

Even if we don't have full certification, if the three Commissioners agree with any of the systems that they can be safely used on an experimental basis,

we also have the authority to authorize that and I would certainly be inclined to do it if there were no known problems with the system.

So for those counties that do want to do this all in one step and think that they can do it without any the problems that other states have experienced

in doing the transition, then certainly I have no problem in authorizing them to do that.

>> TODD VALENTINE: We agree.

That's certainly part of the plan we put forward to the Department of Justice was that if that machine got to the point where the testing satisfied

what we believed that it works, we're ready to approve that.

And that process has started.

We are looking at the machine now.

>> DOUGLAS KELLNER: Dates?

>>: Another question.

>> DOUGLAS KELLNER: Who has the question?

>> DOUGLAS KELLNER: Come on up.

>>: Prices before February 8.

>> DOUGLAS KELLNER: The prices are supposed to be released today.

So Bob and Anna are saying that the prices will be distributed to you this afternoon here in Saratoga.

Come on up, Dave.

(Applause.)

>> DOUGLAS KELLNER: Dave?

Dave, stand up here so that the camera

>>: That's a contract price.

>> DOUGLAS KELLNER: Go ahead, Todd.

>> TODD VALENTINE: There will be a session this afternoon by the office of general services explaining the terms of the contract.

The prices that have been set are a ceiling.

If you are able to come to lower terms with the vendor, you have that ability.

We've said set, you know, the top price that they can charge depending on if you want to negotiate a lower price, you are free to.

Prices can always go down.

They can't go up.

>> ALLISON:

One system.

>> DOUGLAS KELLNER: Sorry.

>> STANLEY ZALEN: Specifically

Sorry, Dave, you'll get it back.

Specifically OGS should be here the last third of the 2 to 3:00 o'clock hour that we were assigned.

So you'll want to be here for that when OGS shows up, somewhere between 2:30 and 3:00 o'clock specifically.

Okay.

>>: Anybody else?

(Chuckles.)

>>: No, I would just like to say, I think we have to put this into context a little bit.

We are being told that two weeks from tomorrow we have to make the choice.

I don't need to say that I'm very disappointed in the lack of choice because it really is lack of choice, but that said, to put it further into context,

not only are we asked to do this in two weeks without full information, we have a primary to run February 5.

And you're talking about us making a decision that will impact the voters, tax payers in all of our counties in two weeks when this process

has been going on for years.

I just think this is a bad day for the voters.

I think it's a bad day for us.

And you know, I'm very disappointed.

I do want to

People are putting things on the record.

To ask us to do this in two weeks because in the real world that we live in, our decision is going to be put under the microscope, as it should be.

We'll be asked for cost analysis, does this system cost X?

And it's a lot more than what the machine costs.

It's going to be warehousing, storage, manpower, people power.

We are going to be asked a lot of questions to justify the decision that we are going to make with a gun to our head.

Again, in just two weeks when it's right in the middle of running a Presidential primary.

So you know, again this is not the only board at the state or the only people in the State that put the gun to the localities,

and I'm confident that we are going to do our best job possible, but it's a really disappointing day when we are asked to do a job

like this in two weeks and run a Presidential primary.

Thank you.

(Applause.)



>> DOUGLAS KELLNER: Is there anyone else who wants to address the Commissioners?

Susan, you had asked

>>: We will know how much HAVA money we have?

>> HELENA MOSES DONOHUE: Yes.

>> DOUGLAS KELLNER: Yes, you will know what your HAVA fund availability is.

Susan, would you come up?

>>: Thank you.

>> DOUGLAS KELLNER: Introduce yourself.

>>: Thank you, Commissioner.

Thank you, Commissioner Kellner.

My name is Susan.

I'm with the New York State independent living council.

I also coordinate the statewide disability coalition called New Yorkers with disabilities getting equal voting access.

Its comprised of 20 major not for profit disability organizations.

I want to say first of all we take this issue very seriously.

I have worked night and day.

I worked as close to as many hours as you guys do.

Been working on it for four years.

We are very disappointed in the whole process.

I have been to every meeting for four years, both at the legislature and the State board.

It has been very difficult.

Individuals with disabilities want to vote.

They want to be part of the electoral process.

They don't want to vote absentee ballots.

They want to be part of the communities and be active citizens.

This help America vote act was our opportunity to do so and we have been very excited with the passage.

We have not been excited with the process, all of the lawsuits that have gone on.

The process ended up with three machines and we want to let the counties know we are there for you.

We have a strong network throughout the State.

There are independent living centers and other experts.

I will be sending you all of you an amicus brief we sent to Judge Sharp, talking about some of the technical issues, the pros and cons of the different systems,

the different accessibility features that we need.

All I ask from the group here, this is to consider

I know the speaker before said it very articulately.

You have a huge task.

All you want to

All we want to do is make it go as smoothly as possible.

It includes poll site access, includes transportation, poll worker training, all the aspects related to disability.

I want you to know that we are there to help.

We will sending you all packages as soon as I get the right e mail.

You can call us for technical assistance.

We want to help you make the best decision possible.

Know it's important to us and voters are dependent on your decisions.

We really care.

You are not alone.

Thank you very much for all your hard effort.

Thank you.

(Applause.)

>> DOUGLAS KELLNER: Thank you, Susan.

All right, I'm told that in terms of dates for our next meeting that we should meet February 11th or soon thereafter.

So should we agree on February 11th today?

>> NEIL KELLEHER: That's fine.

>> TODD VALENTINE: That's one day.

That's a Monday.

That's up to you.

>> DOUGLAS KELLNER: We will agree that February 11 is our next date.

Are there any other Commissioners that want to address this before we adjourn our meeting?

Go ahead, of course.

>> HELENA MOSES DONOHUE: I would like to tell you that Evelyn is not here.

Most of you know that she had serious surgery and then she fell.

>>: Oh, my gosh!

>> HELENA MOSES DONOHUE: So if any of you would like to send a card to her, I think she's going to her daughter's house,

but you can send it to the State Board of Elections and I know that Donna will send it on to her.

I'm sure she misses you as much as we misses her.

Thank you for your kindness.

I appreciate all the advice I got last night.

You're wonderful.

>>: Motion to adjourn.

>> HELENA MOSES DONOHUE: Motion to adjourn?

>> DOUGLAS KELLNER: Come on up.

>>: I'm from Avante.

>> DOUGLAS KELLNER: Come on up. Come on up here.

>> NEIL KELLEHER: The microphone

Could you go Doug the camera is there.

You can stand there if you want to try to address both the camera and us.

>>: Quiet, please.

>>: I'm Glen Beasley from Avante international. Our CEO Charlie is going to make a brief comment about what has been going on.

>>: Thank you very much for permitting me to make a comment.

Of course, as a company we are very disappointed.

However, we also think equally speaking there are two aspects.

I think Commissioner might have made mistake judgment in terms of how to read the code.

Here is two comments.

One is called independent verification of the vote.

Basically based on supposedly federal guidelines, so the software independent verifications.

All the current system have proved uses a bar code to retract that to get templates from the machine that map the device.

So therefore it's not software independent.

Legally that interpretation is totally false and mistaken.

So I believe that should be rejected at the end and we will put legal challenge against them.

Number two is that the same law requires full face presentation of the ballots.

Actually also requires should be in spirit full face presentation and selection by the voter at all times.

So if that's the case, our 42 inch ballot marking device is the only system that satisfies that requirement as well.

Again, I think the Commissioners probably in this case make a wrong judgment as well.

That's my comment.

Thank you very much.

(Applause.)

>> HELENA MOSES DONOHUE: Make a motion to adjourn.

>> DOUGLAS KELLNER: So those in favor, say aye?

Aye.

(Chorus of aye).

>> DOUGLAS KELLNER: We are adjourned until February 11.

(The meeting concluded.)