

>>NEIL KELLEHER: Can I have your attention, the attention that you've been too long waiting for but, we want you to know that this had nothing to do with people of my ilk.

We are having debates among three lawyers, and I think we've managed after all this time to change about seven words.

The mechanics of what led up to that, I don't think you would find that interesting, or I dare say it would wind up on the cutting room floor.

Here we are and it's a special meeting. A special meeting to comply with the courts order on voting machines, and it's the only subject of business that will be brought up today.

The court has ordered that---(inaudible) that the resolution is, the court has ordered that the state boards prior determinations regarding Liberty, ES&S, and Premier are vacated and annulled. The court has ordered the State Board of Elections to approve the Liberty voting systems on or before February 8th, 2008.

The State Board of Elections concludes that in respect to Liberty, that determination shall not effect the general conditions applicable to all approved ballot marking devices

that petitioners system must still pass the performance testing to be conducted upon all initially approved machines and systems.

The court has directed The State Board of Elections, to approve the ES&S and Premier voting systems without any additional conditions on or before February 8th,2008.

The court further ordered that with respect to ES&S and Premier, that this

determination shall not effect the conditions applicable to all approved ballot marking devices that petitioners systems must still pass performance testing to be conducted upon all initially approved machines and systems.

The court further ordered that pending such approval,

The Board of Elections is directed immediately to examine petitioners systems, to include them in the vender's selection process, and to distribute the information with respect to petitioners systems to all County Boards of Elections.

As such in furtherance of the court orders set out above, reserving all rights previously set forth, be it resolved that Liberty Voting Systems, Liberty marked BMD with Liberty approved IVD, ES&S voting systems, ES&S Automark 1.3A200, Premier voting system, Premier Automarkvoter assist terminal A300 are immediately included in the vendor selection process. Any information regarding these systems not previously disseminated to the counties be done so immediately.

The Board directs that any counties which have previously submitted an order, should reaffirm their order no later than Tuesday, February 12th.

On the resolution?

>> I motion.

>>I second the motion.

>>All those in favor?

>>DOUGLAS KELLNER: Well, can I be heard? I will be escorting the resolution.

I wanna make it clear that the reason I'm doing that, is to comply with the court orders. I view the the function of the commissioners meeting today is purely ministerial and is done for the purpose of formal compliance with the court

orders.

That at least with respect to my vote on these, it is not on the basis of independent judgement, on the advice of counsel, that at this point in the process that the commissioners have no judgement to make in adopting this resolution which is required by the court orders.

Notwithstanding the language that is used in the court orders, where they say it doesn't effect the general condition applicable to all approved ballot marking devices. The petitioners system must still pass a performance testing to be conducted upon all initially approved machines and systems.

I interpret that meaning the process for final certification of the machines that had always been envisioned as part of the time line in the Justice department order and that this resolution is simply tracking the words of the court order

and that it's my understanding that we're going to finish the certification process with these machines that we will get reports from our independent testing authority which informs us that they are still on schedule in accordance with the Department of Justice timelines,

and at the end of February the commissioners will be meeting and reviewing those certification test reports from our independent testing authority.

Then the commissioners will make a final decision on certification as required by election law 7-201. On that basis I support the resolution.

>>NEIL KELLEHER:Do you want to make your motion again?

>>DOUGLAS KELLNER:The motion is that we adopt as read and as with the written

copies that have been distributed.

>>NEIL KELLEHER: Commissioner Donahue?

>>HELENA MOSES DONAHUE: I vote yes.

>>NEIL KELLEHER: The chair votes yes, the resolution is passed. A motion to adjourn is in order.

>>DOUGLAS KELLNER: Can I just raise the issue of our next meeting?

That we had originally agreed that we were going to meet, I acquiesced to Friday.

If there are a significant number of counties that do not make their ordering decision. I don't know that we will have enough time to have a full mediation process, in one day.

If we just meet at noon on Friday we may not have time to conference with the commissioners of all the counties involved, we don't know at this point what the scope would be so, I would suggest that we tentatively schedule the meeting for Thursday, to be put off till Friday if we have fewer than five counties.

>>HELENA MOSES DONAHUE: Do you have any idea what Thursday is? And what I do for a living?

>>DOUGLAS KELLNER: Valentines Day, so that's why the date got changed.

>>HELENA MOSES DONAHUE: No they told me that you could be here on Friday.

I can't meet on Valentine's day.

>>DOUGLAS KELLNER: I thought we had said we were originally going to meet on February 13th.

I'm a little bit put out, though, because I had to drop everything to come up here

today.

>>HELENA MOSES DONAHUE: So did I.

>>DOUGLAS KELLNER: Alright, it just means that if we don't finish Friday we'll have to go into Saturday, which is alright with me.

>>HELENA MOSES DONAHUE: That's ok.

>>DOUGLAS KELLNER: So we should tentatively -

If we can't finish on Friday then there's going to be business on Saturday.

And we ask that the Executive Director's make arrangements so that will be possible.

I think we were agreed that we would try the remediation procedure the same way we did two years ago?

Therefore, we're asking the counties who do not make a determination- that those commissioners be available

either to come physically to Albany or to be available by telephone so that they could confer with us.

>>NEIL KELLEHER: Any problem, Todd?

>>TODD VALENTINE: We can ask that, yeah, that's not a problem.

>>DOUGLAS KELLNER: I'm not suggesting we would subpoena them, but they should just

be aware

that if they get a determination in to us that we do expect them to be available to

>>TODD VALENTINE: Well on phone, to answer any questions. Yes.

>>NEIL KELLEHER: We'll remind them in case they don't understand what their next move should be.

>>TODD VALENTINE: Yes, that's not a problem.

>>NEIL KELLEHER: On the motion to adjourn?

Yes, until Friday?

>>STANLEY ZALEN: I apologize for interrupting.

>>NEIL KELLEHER: It's alright.

>>STANLEY ZALEN: If the counties do not re-affirm, what are you going to do?

>>DOUGLAS KELLNER: Well, on Friday-

>>STANLEY ZALEN: Okay.

>>TODD VALENTINE: That's what Friday's for - if they do not re-affirm.

>>DOUGLAS KELLNER: That will be an issue also for Friday.

And, we use the words "if they don't re-affirm" but they also have the right to change.

>>NEIL KELLEHER: Alright I will make one more attempt to say thank you very much, the meeting is adjourned.