
Douglas Kellner: Good afternoon everyone. We'll call the meeting to order. My name is Doug Kellner, I'm the Co-chair.

Peter Kosinski: I'm Peter Kosinski the other Co-chair.

Gregory Peterson: Gregory Peterson.

Andy Spano: Andy Spano.

Douglas Kellner: we'll ask the staff members to introduce themselves please.

Bob Brehm: Bob Brehm.

Brian Quail: Brian Quail can't hear.

Anna Svizzero: Anna Svizzero.

Tom Connolly: Tom Connolly

Risa Sugarman: Risa Sugarman

John Conklin: John Conklin

Bill McCann: Bill McCann.

Kim Galvin: Kim Galvin

Todd Valentine: Todd Valentine

Douglas Kellner: And now would our guests please introduce themselves?

Bob Warren: Bob Warren Election Operations.

John Ferri: John Ferri, Elections Operations

Bill Mahoney: Bill Mahoney, Capital New York

Susan Cohen: Susan Cohen, Voting Access Solutions

Aimee Allaud: Aimee Allaud, League of Women Voters of New York State.

Douglas Kellner: Welcome to all our guests. The first item on our agenda is our meeting as the Board of Canvassers to certify the election results of the Special Election for

Congressional District 11 and Assembly District 43. Are we all agreed with the results prepared by the staff?

Bob Brehm: This is the 11th Congressional District for the Commissioner's signatures. And this is the 43rd Assembly Seat for the Commissioner's signature in those spots.

Douglas Kellner: Alright. Thank you. Now we'll turn to the regular meeting of the Commissioner's. The first item of business is the approval of the minutes of April 16, 2015.

Risa Sugarman: Can I just say the new attorney's name is Jay not Jake on my part.

Douglas Kellner: On the Executive minutes?

Risa Sugarman: Yes on the second page. The regular minutes, second page.

Douglas Kellner: Well thank you. Okay. Jay. And I note that the version that's in front of us today is slightly changed from what circulated in the e-mail. Okay. Those in favor say aye?

(Chorus of ayes)

Opposed? Alright the minutes are adopted with that correction.

We now have the unit updates. We'll start with the Co-Executive Directors, Bob Brehm and Todd Valentine.

Bob Brehm: Sorry. I will do it, he's still signing. A number of items that I would like to bring to your attention; one I think we mentioned briefly at the last meeting but we have a new Deputy Secretary that we coordinate with at the Executive Chamber. Her name is Elizabeth Delio-Fargava and we also have a new Counsel assigned to us and that person is Jeremy Attie. We're a little bit familiar with Jeremy because he was Deputy Secretary, Alfonzo David's assistant so he's now a Counsel and he is our contact. So since the last meeting Todd and I and a few others have had a few conference calls just kind of go over status, what are we doing and what are the issues, pressing issues that we have? So just in case you want to know who those people are in case you want to talk to them, that's our contact group at the State at the Executive Chamber.

Presidential primary, I know there's number of discussions we kind of point out we still don't have a bill but as soon as we do we'll get that calendar set for next year. At some point we'll have to go before Judge Sharp for whatever we need to propose as a calendar if the federal calendar for 2016 isn't incorporated any legislative changes this year. So that's work that is still out there in order to set the calendar for next year. It's important that they do it now because one, we need to set the calendar depending on what dates are

picked, we'll begin either way the dates begin this fall. I think on any of the plans I've seen there are certain activities that start as early as November of this year so it's important to know the calendar so we can be prepared, the counties can be prepared, and they can make arrangements for the various polling sites. The other item that is a big issue that we did since your last meeting was we did move the data center for the state board. Our equipment had been hosted at the State Campus and now it's at the Nanoscale Science and Engineering Complex. It took an awful lot of work. It's always a little bit jittery for us to take such old equipment and turn it off, move it, turn it back on and hope that everything works as well as we thought. I think the staff here did a great job preparing and working with the ITS staff for the State and some private contractors that came in to help with the move. It worked. I think we had very minimum if any problems. We thought it would come up on that Monday after the conference in Cooperstown and it did in the morning but then it kind of jittered out a little bit in the afternoon but they had to go reinforce some of the connections. But that was a major issue for us, it took our eye off some of the other projects we were working on but it was one that was needed to be done and its done and it was successful.

I think with regard to workforce issues, we have all the approvals for the hearing officer classification for their positions. They're posted on a state job site. We are starting to collect the résumés. We just have to get to the next step of reviewing and setting up a process to interview and prepare to recommend to the Commissioners a list of people to serve in a hearing officer capacity.

The IT director position we spoke about at the last meeting and Todd just handed me the updates. It might be easier if Todd gives that part if you want. If you saw that it's on my desk here but generally if Todd wants to do the IT one. We will have a number of BDA freeze waiver applications in. We were told they were all approved except for one is still pending. We had five at the last meeting. One is still pending for our confidential clerk to backfill someone we promoted to be a compliance reviewer. The Deputy to Election Operations position which is a personnel matter for today, that position was approved and a few other, compliance auditory and compliance review positions were done. I'm not sure we've had all of the DOB approvals, as of yesterday they were still pending but at least at the other level they were. So that is a good sign because it will finally bring us up to what our full staffing plan was submitted last year it is a period of time to train the new people and bring them in in time for this years' election cycle so that they are ready and up to speed on doing the compliance reviews. But it's a really good team of people. I think we are very proud of the work they do and it is going to be helpful to have a full tea after working for a year to make that happen.

Other than that, I think the noteworthy events certainly is the Election Commissioner Conference that we attended. I think it was a very large group of people because it was their 100th anniversary but we had a number of presentations and certainly the Q&A that all of us had whether formally or informally I think helped to answer a lot of questions.

And the only other item I'll throw out there is an NASET meeting is coming up that Todd will be attending at the summer meeting in June in Ohio.

Todd Valentine: And we did canvass the list for IT Director and waiting for responses to come back on that. I did keep a record and they should come back in the next 10 days or so.

Douglas Kellner: Anything else? We'll ask our Council's to report, Kim Galvin.

Kim Galvin: Thank you Commissioner. The training unit has been on the road doing campaign finance seminars some of which also give continuing legal education and accounting credits. It's a very busy year for many of the counties locally and we've had several requests. We'll be headed to Syracuse tomorrow and then Long Island next week so they're doing a good job. All reports are positive from those training and they're being very well attended.

The Compliance Unit itself continues to do compliance reviews.

Peter Kosinski: I'm sorry can I ask a question before you go on, is that okay? I just had a, these training seminars are they something that we do as a regular course of business? Is it something we have a regular schedule on or we do it as requested or how does that work?

Kim Galvin: I think generally there's a regular schedule printed out and then if a county requests it, we do our best to accommodate that county in particular.

Peter Kosinski: So how many regularly scheduled training sessions are there?

Kim Galvin: I believe there was only 9 this year.

Peter Kosinski: And they're done regionally around the state?

Kim Galvin: Regionally and some counties specifically like Nassau was supposed to be the regional one but Suffolk requested their own so we added Suffolk into the back end of the schedule. Erie was regionally supposed to go I believe to Onondaga but they requested their own so we separated the Erie out to go.

Peter Kosinski: Okay so how many total training sessions will we do this year?

Kim Galvin: Nine

Peter Kosinski: Oh it's nine even with the add-on counties?

Kim Galvin: Yep.

Peter Kosinski: So is that like 6 regional and 3 county based?

Kim Galvin: Yes I think that's the way it worked out I think.

Bob Brehm: The legal number of web based continuously and I think it's the in person but they also will do some web if they can accommodate it that way on a regular basis. Because sometimes when we're done its just when the local candidates are just starting to get treasurers so if we can accommodate some of those through a web training, I know the staff does those on a regular basis.

Andy Spano: Wouldn't it be a good long-term investment to invest in some really sophisticated systems that allow us to do this online? With large screens, rooms, etc. in all these places throughout the State?

Kim Galvin: Commissioner, when talking to the training people and the people that have been doing it for years, while there is some benefit to that, I think the actual physical interaction and the ability to ask questions in a large group amongst everyone from all accounts, because I raised the same issue you did, it seems to work much better.

Andy Spano: I'm on a College Board, that's what I get from the faculty. The same thing and it goes against everything that corporate is doing.

Kim Galvin: We're doing the same amount of training now that we did before we even had a training staff and the cost is like \$3500 a year. I mean it's not something that...

Andy Spano: That's what you do now. I'm saying it might be a system that would allow you to do more kinds of training, more kinds of communication, etc. with the state and...

Kim Galvin: They're working on that. We just don't have the capability to do a good webcast or broadcast at this point. I know the training staff has gone to local colleges to see about recording the programs, and there's training things up on the web. They're looking to expand it. We've only had a training unit for a couple of years.

Andy Spano: There's so much more sophisticated equipment out there today.

Bob Brehm: One I think our staff is looking at what maybe we could do better, but we're trying to also understand that it's the treasurer that has to have access to it also and so is it their computer? Is it their telephones kind of to connect in? And I know that we've talked before about trying to get our own better video equipment or sound equipment so that we can hear them, they can hear us and I know the staff is looking at a number of items. And to your point, we do discuss it regularly and we just haven't come up with a better solution yet, but certainly I know all of us have talked about what can we

do better and we've been looking for something that one, we can afford and put in place, but also the treasurers scattered around the state could also dial into and get that same level of interaction with us.

Andy Spano: Do you mind if I pursue this? When you say we can't afford, do you mean out of your pocket?

Bob Brehm: Well I mean out of our budget.

Andy Spano: Well where does the budget come from? I don't want to sound.

Bob Brehm: I know where it comes from and I know how tight it is.

Andy Spano: So, why wouldn't we put together something and ask?

Bob Brehm: Oh, I have no problem with the concept, I just don't think we're ready yet to say to you we've got a good solution yet. They are trying a number of different approaches to see if it works because they're trying a number of say different web approaches to see if we've nailed one yet.

Andy Spano: Because you're asking questions about webs about this about that, we should be asking questions about other types of technology. People are going to be walking around in holograms and we're going to be dealing with webs. Actually people are sending all of their...

Douglas Kellner: The same is true with co-worker training too right Commissioner? That we should be doing that for counties.

Andy Spano: That's why I said the possibilities are endless once you have an appropriate system. I saw a system, well I saw a Cisco system where I sat on one side of the table with 3 other people, we're talking to people on the other side, 2 are from Holland and 2 are from Houston. And one guy got up to shake the other guys hand at the end of the conference, that's how personal it seemed at the time. So I asked them about holograms and they showed me a video of the Cisco, I'm not saying we should go this far of the Cisco CEO walking out on a stage meeting two other guys from India and China, and the other two were not there and it was real time. There's an incident of a, I can't remember which band it is, very famous, maybe its Black Eyed Peas or one of them...

Douglas Kellner: Maybe we should hold our Commissioner's meetings like that.

Andy Spano: Well we could do that too but one band member could not appear in France, in Paris and they put him in as a hologram and he played with the band. So I mean that's where other people are. We're like in the dark ages. Now I'm not saying we should go that far, I'm just saying we should be looking in other places.

Bob Brehm: I'm willing, I think we're all willing, I don't think we disagree. I think we just haven't found the right mix yet. Because even if we found the Cisco system to put in on our end we have to find ways to get that, I'm assuming that person was in Holland might have had a Cisco system on their end right? That's where the treasurer has to have access on their end some how that's the mix we haven't quite settled on yet.

Andy Spano: There's going to be a time within the next 5 years you're going to take your phone, put it...

Bob Brehm: I'm amazed by all of this and I'm not the technology person. Okay.

Douglas Kellner: Okay I think we interrupted Kim.

Kim Galvin: I'd be happy to work with the staff to put together a proposal to take elsewhere to explore more opportunities to do more precise, because right now what we have its better to do it in person but I understand we are in the dark ages on this.

Andy Spano: And when you have to do it in person you do what corporates do, then they go in person.

Kim Galvin: Okay. I forget where I was. The Compliance Unit continues to do compliance reviews. This being a bit of a slower time for filings. We're trying to break off little groups of staff to visit more targeted area like the Legislative over contribution audit we have some working on that. We're training some on treasurer resignations. We're doing some on dormant committees and the training staff also works in-house to train all the new employees and those little subgroups on how to be more effective. They are all working very hard. We've actually made a new hire to fill out the intake and processing center, he started I think a week ago or 2 weeks ago. As you're aware, the Board the Commissioners get continuous requests now for formal opinions. We've been working together and trying to work together to come to consensus on these in as timely a manner as possible. We're expecting that we're going to receive more based upon the new statute. So we're endeavoring to get a process in place to make it an effective way to share these and comment on these and get them to you as soon as we can.

We're worked with the Co-Executive Directors in the other units on some things that go to or from Enforcement. We had advised the Co-Executive Directors on some of those items.

We also filled out the subpoena and FOIL requests that for some reason seem to be increasing in popularity these days. There's been numerous calls and questions from the county board on a variety of issues that we all have to take, and in addition, many from the unit participated in the ECA conference.

And one other thing, not related but one of our staff people did perform the Heimlich maneuver and save another member of our staff the other day, literally saved them. So I wanted to say good job to her as well. I mean that's a positive. Because it was a real instance of not good. But that's all I have. Brian do you have anything else?

Brian Quail: That was a pretty thorough review. The only couple of small adds I would make are that the regulations that the Commissioners instructed us to file at the last meeting are moving through the process towards publication and hopefully that will happen very quickly.

Peter Kosinski: I'm sorry do you have any timeframes on that?

Brian Quail: Yeah, we quickly moved them from us into the final...

Peter Kosinski: When do you expect them to be published, do you have any idea?

Brian Quail: I don't have an exact date at this point, they're at the Dep Secretary review point and there was a conference call that included Council and the Co-Executive Directors but we made very clear that it's important that these move expeditiously and as quickly as possible and we will continue to do that. We know this is an important priority for the agency and for the Commissioners to move along and we've expressed that.

Then the only other small item that I would note is the Compliance staff is continuing to work with IT on the FIDAS redesign.

Douglas Kellner: For the record, you may recall that I've never agreed that the Governor's Office has the right not to publish or hold up the publication of our regulations and I stand prepared to press that issue. My recollection is at the last meeting we were told that these would be published by the end of May and so I'm very disappointed to hear that they're not being published, and as I say I don't think it's a subject for review that when we send them the regulations, they have to publish them.

Peter Kosinski: I mean is there a possibility they would be refused or something? Is that part of this?

Brian Quail: I don't anticipate that.

Peter Kosinski: But could they? Is that an option?

Brian Quail: I, to Commissioner Kellner's point I think that because we've never come to broaching that. Generally there's been a discussion back and forth and they've offered comments that turns to the agency, particularly the decision makers of the agency which is you, whether or not you want to heed those comments. But at this point I think it's an

amicable review where they're trying to understand and understand the framework of how all these things fit together and I'm not anticipating that we're going to get to that point. So the ill is just that its causing a delay and I think that's the point that Commissioner Kellner is concerned about and doesn't think should be the case.

Douglas Kellner: And it's unnecessary in my view because if they had suggestions they should make them but not hold on to it and not get back to us.

Peter Kosinski: I agree, if there are changes to be made, we entertain them but...

Douglas Kellner: Alright well anything else?

Brian Quail: Nope.

Douglas Kellner: Alright, then we'll ask Ann Svizzero to report for Election Operations.

Anna Svizzero: Thank you Commissioners. I will highlight our unit report that's in your packet. If anyone has any questions, I'm happy to answer them. In the more critical areas we are continuing with our certification of a clear ballot central count voting system. We received a new technical data package from them today. We're expecting a new build from them within the next several days so our work on those document reviews and our functional testing is continuing. We are working with our lab and with NYSTEC to review procedures for voting systems that use off the shelf scanners. There isn't any way to conduct a hash code of those scanners which is normally a part of our pre-election procedure. Just this morning we got a report from NYSTEC I can make copies available to you and the opinion from our lab SLI that both acknowledge that there is no way to conduct a hash code, a confirmation of the software of those systems. But because they're central count systems and they're resident at the Board of Elections that the lab and NYSTEC believe that our physical controls would address those pre-election testing concerns. So none of that requires a Board vote but we're going to review the procedures and amend them to reflect all of the physical controls that would be on that central count system such as locks and seals and that kind of thing. If it were a scanner that went out into the polling place, that's not a commercially available scanner, those are proprietary and we can do hash checking because the source code is here. The vendors make that available so there's a way to deal with that scenario. But with something that's off the shelf, the vendor doesn't own it, we don't own it, it's kind of like our Microsoft issue when we first got into scanners, something along those lines. But I'll make the NYSTEC report available to you. Bob may be able to speak a little more intelligently on the subject, but I wanted you to know that it had been resolved it wasn't still in the getting opinions from the two entities. We got those today so we'll have the ability to revise those procedures for those Boards that are using off the shelf scanners for those central count purposes. Peter.

Peter Kosinski: I just, I guess I'm not clear on all this I guess but so if I buy an off the shelf scanner you cannot do a hash tag check but you're telling me that they have decided that since they have physical custody of the machines at the Board that is sufficient instead of doing a hash tag check?

Ann Svizzero: Yes, because the software that everything is resident on the device and that comes from the manufacturer to the County Board. There's no vendor intervention. They don't have to tweak it to make it work with their system. So it is a pristine package that would come from the manufacturer. The only thing the County Board would have to do then is lock it down and conduct all of the other pre-election procedures to go along with that.

Douglas Kellner: And how do you know that there's no virus installed in that machine off the shelf?

Anna Svizzero: We do virus...

Bob Warren: We're talking about scanners that were Canon, Fujitsu...

Kim Galvin: Just the scanner portion not the whole machine?

Bob Warren: Just the scanner that takes the image of the ballot is what we're talking about. That's the, so the other caveat is that if a county is going to purchase these, the scanner will come directly from the manufacturer, and it won't go through the vendor. The vendors are using these off the shelf scanners so...

Douglas Kellner: Yeah, but nobody's ever testing whether there's anything in the machine that can corrupt the software that subsequently added on to change the voting process.

Bob Warren: Well again, the scanners...

Douglas Kellner: I mean I'll read the NYSTEC report, I haven't seen that report yet.

Anna Svizzero: No, I just got it this morning before we came down here.

Douglas Kellner: You have a report after that. We'll I would ask you to hold off doing anything until we review those.

Anna Svizzero: Right, we haven't amended our procedures or anything, that's just the opinion they came up with.

Douglas Kellner: Well you said that Board action wasn't going to be required and I think that...

Anna Svizzero: Well on our procedures I don't know...

Peter Kosinski: It raises questions. I agree I don't know how alarming it is but a question I have too is too...

Bob Warren: These are the same scanners that are being used worldwide. So they're being used in all different industries. If there's issues with the firmware that's on that scanner, its going to be detected because they serve the same function no matter what industry they're being used it. They're not doing anything special for elections that they wouldn't be for health records that they would be for engineering records. It's all the same.

Douglas Kellner: You don't want me to start reviewing all the cases where people have said things like that and have lost billions of dollars because of malware that snuck through one way or another.

Andy Spano: These machines are capturing images?

Bob Warren: Yes.

Andy Spano: There's no recognition of anything else?

Bob Warren: No, the processing of the image takes place on the PC.

Douglas Kellner: Right, and that may be the real answer. I've got to read the NYSTEC report.

Bob Warren: There's no tabulation, there's nothing to do with the voting process on the scanner, and it's all done on the PC.

Douglas Kellner: Right. You recall the issue I raised about what do they call them, the memory devices where they have discovered methods of providing trapdoors and malware through the off the shelf memory devices. So it just needs to be addressed and I'm not sure...

Anna Svizzero: No, we're not wrapping anything up today we're just letting you know we got those opinions and we have to share them. I just got them before we came down here. I can e-mail them, I can make hard copies before you leave today whatever you'd prefer.

We collected results for the Special Elections which you certified at your Board of Canvassers meeting. We provided party calls to the County Boards of Elections. We updated our March certification, there was an additional Supreme Court retirement that

needed to be amended for the second JD in New York City. We continue to work with our County Boards that are requesting reimbursement for HAVA and other related purposes. And we are sharing with you today the request from Dominion for an upgrade. I, again don't think that you're prepared to vote on that today, but I think it again opens the door to the concept of whether Boards in New York will be running different versions of software or whether this Board wants there to be a uniform version of software across the state which is the case at present. So we provided that request from Dominion.

Douglas Kellner: We have 2 sets of voting systems in New York right?

Anna Svizzero: But each is running a statewide system.

Douglas Kellner: So we have two systems not a uniform system.

Anna Svizzero: Yes, I'm sorry did I not make that clear, sorry. So the packet is there so that you can see the scope of the upgrade that they're looking for. We've requested county feedback and the predominant question isn't whether they think the upgrade is necessary or not, it's whether they're going to have to use it or not because not every Board purchased software support or even intends to. So that issue is in our monthly report and the document is in your packet to perhaps start that conversation so that there can be some answers down the road.

I don't have anything else of note in our monthly report but I'm happy to...

Douglas Kellner: Well did you send out anything to the New York City Board with respect to their compliance with the 30 minutes rule for the November 2016 election?

Anna Svizzero: I've done that several times. I provided several e-mails to them. I provided a hard copy FedEx package of information to them. I have not heard back.

Bob Brehm: Maybe on that issue, I know Todd and I attended a meeting at the request of Henry Berger assistant to Mayor De Blasio at City Hall and Dawn was there and so was Mike Ryan and a number of items I think at that time were discussed as an appropriation that the city had given an appropriation for the City Board of Elections to look at some other tools and how they were going to use those tools to help alleviate lines. And I know they discussed their new tablets that they piloted the tablets in the Special Election; one for the operation during the day but also to get the results at the end of the night. So, one, they were happy they had the results very quickly at the end of the night and accurately. But also, they thought that the pilot was promising with regard to moving the lines through. I know there was a lot of discussions about other things they could do and in my understanding I think the city had testified after the conference in Cooperstown to the City Council on some of the steps that they are doing to help with the line issue but I know they were supposed to come up with a response to Henry Berger at that meeting. Some of the steps they're taking analyzing the pilot, how will this tool help them so help

alleviate that? We asked for a copy of that report. We haven't seen it yet but that was just a couple of weeks ago that we went down and had that meeting. So, one they seem to be doing something. They are trying that out. We did talk about other items they might do in the long run to help alleviate that from a staffing point of view, flex staffing, we have those peak hours. I think there was some discussion on what other kinds of technologies might be available in the long run to help queue those lines a little better but at least they were looking at that tablet as some form of tool one to help move people along better, get them to the correct building, if they were in the wrong building. I don't think its going to be the end all of every issue they have but it did seem to be that they were working on a plan, City Council has another plan. I know Anna has followed up on the repeated statements that they have to give us a plan and we did ask them for a copy of the plan when they get it ready to give to the Mayor's office.

Douglas Kellner: I think we need to stay on top of this situation. I'm aware of their tablet proposal which addresses only 5% of the problem in my view. That their fundamental problem is that they do not have enough space and enough poll workers and enough poll books to handle the crush during the heavy turnout hours, and that given the current proposals that are on the table in the city, we're going to see lines far in excess of the 30-minute rule. And they need to be addressing those issues now and I don't believe that they're doing enough to comply with the state regulation. So I think we need to stay on top of it.

Okay, anything else for Election Operations? Then we'll turn to Public Information, John Conklin.

John Conklin: Thank you Commissioner. Public Information has been busy with media and public inquiries. It's a local election year which brings a lot of questions about petitions and ballot access. Tom and I have been part of all the meetings on the data center move. We attended the Election Commissions Association and did several presentations. We're keeping up with the FOIL requests, there were 38 in May. We're part of all the NYSVoter Refresh and CAPAS FIDAS meetings as well.

For the website we've posted the 2015 political calendar. The full schedule for the Campaign Finance Seminars, the legislative agenda that was adopted. We did election night reporting for the Special Election for Congress and the 43rd Assembly District. That went very smoothly.

During the data center move, the website went dark for a few days from the 27th through the 30th. We had an under construction page that was hosted by the Office of Information Technology Services. And that sent visitors to links to the County BOE sites if they could get some of the resources addressed there. But we actually were back up on Saturday rather than going all the way to Monday or Tuesday which was the initial thought. So that worked out pretty well.

For the NVRA staff reviews Patrick and Greg visited Orange and Greene Counties since the last meeting, but they also were in Ulster last week and they're at Lewis today so they're keeping up with their NYSVoter reviews and they continue to process the applications for unused HHS funds that are due to expire at the end of September this year. Do you have anything to add Tom?

Tom Connolly: Just yesterday we posted the Campaign Finance Filing deadlines on the website and also just as a follow up we did do presentations on this at the conference but over the next week we will be sending out information on the Military NCOA and the Cross Check efforts.

Douglas Kellner: What are we doing with respect to monitoring compliance with NYSVoter updates and basically auditing the accuracy of the voter registration list?

John Conklin: Well, Patrick and Greg do the County Board visits, in addition Patrick does reviews from the reports that come out of NYSVoter periodically to make sure the counties are staying on top of their felon maintenance, their deceased maintenance and the other parts of the Statewide Voter Database maintenance.

Peter Kosinski: I was just going to ask, what are these visits? What do you do at a visit when they visit Orange and Greene Counties, what's that about?

John Conklin: Well they review the procedures that the counties are undertaking to maintain a statewide voter database. They usually go in with a list of people that may be a part of the felon maintenance process so they'll have them look up individuals for that and make sure they're going through the process that we expect them to go through in canceling a felon or determining whether he should or she should or should not be cancelled, whether they've met the qualifications for that. They run through the deceased maintenance procedures. People who have moved between the counties, the notices that they're required to send out. They have a catalogue of those that they bring with them to make sure that the county has all the notices we expect them to have and what they're sending out in the proper order.

Peter Kosinski: So, do they visit every county in the state eventually?

John Conklin: That's the intention.

Tom Connolly: They're supposed to do that once every 2 years.

Bob Brehm: When we established NYSVoter there is a certain audit list and there's different things that we can audit at different times of the year so there's a routine list like routinely doing a list maintenance. There's some if the audit has failed the record between the county and the state then that name is not supposed to be in the poll book as an example. With that kind of list they do spot at that time of the year when somebody's

printing up a whole book they can't really look at that today. But there is a document that we've prepared that we give to the counties. They do a little bit of a welcome wagon to new Commissioners and give them the document if you're a new commissioner and say, "You're new, here's what you're supposed to be monitoring in NYSVoter and we will come visit you from time to time" but some of the visits might be to a new Commissioner just to bring him the material, explain to him in an initial fashion. And then they do have a regularly scheduled visit to make sure that over 2 years that in a 2 year time period they get to every county.

Douglas Kellner: Are all the counties doing everything that they're supposed to be doing?

John Conklin: I think "all" and "everything" are very strong words. They are doing substantial compliance, I am more comfortable saying that. But what they're not doing we're correcting them on and making sure that moving forward, because there are some that are new people but there are some that are just people who are maybe engrained in a procedure that they learned from somebody else that they're perpetuating something that may not be according to what we want them to do.

Douglas Kellner: Does that include New York City?

John Conklin: It does.

Peter Kosinski: Do you get a report back from them on the county visit as to what happened, what procedures were being followed and were not and corrective measures that were taken? Is there a written report that comes back?

John Conklin: Yes.

Peter Kosinski: I'd like to see those.

Andy Spano: Are there any kind of algorithms on a database to draw out like people who haven't voted for like 10 years and that kind of stuff?

John Conklin: Not that I'm aware of because...

Andy Spano: Wouldn't that make it a little easier?

John Conklin: Well the mere fact of not voting by itself is not going to be anything that's going to impact...

Andy Spano: I'm talking about other things, cross-referencing databases.

Tom Connolly: Well that's what we're doing. We do the standard NCOA every year. We're doing the Military NCOA now which is really a smaller subsection of the voters. The Cross Check we're doing a pilot program but I mean the Cross Check is also a significant amount of potential matches for information between states. So we'll evaluate the utility of those two new programs and if they are valuable in helping to keep the list clean, then we will probably continue going through that statewide. I mean the Military NCOA originally we were looking at doing it as a pilot program, but there's only 37 counties that have matches and there's only a total of 292 matches. So, as I told them at the conference, there's no reason for me not to give out all those 292, it's certainly a manageable number for you to deal with. The Cross Check, we started with about half a million matches with other states and through whittling it down to a little bit more specific data, we ended up with about 60,000 which is still significant and we got about 13 or 14 counties that have agreed to kind of participate in that and some of them are sizeable. So we'll be looking to get the feedback from them as far as what the quality of that data is.

Andy Spano: This is a pilot, a voluntary pilot?

Tom Connolly: Yes.

Bob Brehm: The other routine items that the databases set up is we routinely provide electronically the pending felons adjudicated incompetent, although that's a small list, moves from one county to another, but also the system nightly will look to see if a similar person, there's a name sequence, date of birth, data elements that it looks for and it will give some information to the older county that there may be a potential match of someone whose in a new county by the similar name, similar, so it pops up a certain amount of data. So based on what we had set up the requirements when NYSVoter was done, we created, as we call it an audit, a document that describes what is supposed to take place and how would we routinely look at those occurrence in order to monitor? Is it staying current? So those are the kind of reports I think John mentioned. They reviewed that whole list, that document and print out those reports, look to see is there anything when we're sitting in the chair that's an anomaly so when we're at that county visit, now they're reviewing that documentation and say, "This is showing your 90 days old, why are you 90 days old as opposed to keeping current" kind of an issue. And also the rest of the items that are on that list, are you doing what you're supposed to? A lot of times there's new people. Again, they'll do that either as, what they're really trying to do in a welcome wagon when we get a new is send that document out. Do you know that you even have this thing? And it kind of helps to keep current, different times of year if there's a special election that crops up in the middle of NCOA sometimes its not happening that exact day because of those other problems, the printing the poll book at the same time you're trying to alter that data that needs to be made in the poll book.

John Conklin: So even with those reports that Bob mentions, if there are things that pop up when we're reviewing them regularly between visits, we'll reach out to that Board and

tell them there's something that's appearing in our reports that's out of whack and you need to review it. So we have the follow up with that.

The other thing I just want to mention is for deceased voters we get a report from the State Department of Health and also from the New York City Department of Health regularly to update deceased voters and that gets distributed to all the counties throughout the State on a regular basis.

Douglas Kellner: Thank you. We'll next have a report from Information Technology.

Todd Valentine: Bill Ryan is not here today he had something he had to do at home but Bob and I wanted to fill in on that. He put a report in there. The biggest feature that the staff was working on was obviously the data center move which by enlarge went successful. Certainly kudos to all the staff that had stayed late and worked hours. There were some minor hardware failures in the move, old equipment turning off, coming back on was less than expected, so that was positive.

They continue to work on the development for NYSVoter obviously where part of it is one of the resolutions before you a little bit later in the meeting is for the continued expense for that to work with the HP which is the primary contractor to help us bring that up to the new platform that it's operating under.

The CAPAS FIDAS redesign, the Campaign Finance and the Financial Disclosure redesign. They've been working on the migration of the old data to the new platform but we're still in the early design phase for, because this is nice just to bring everybody up to speed on the dates, NYSVoter we're expected to complete this year. We should have the platform up, ready to run. We're hopefully by September with the turnover after the elections so there's no impact on the election.

CAPAS and FIDAS is actually scheduled to go the following year. So it's a much bigger project because what that's involving is a redesign not only of the architecture that it runs on but also the interface for the users who enter data, the staff here, the treasurers for the Campaign Finance System and then also for the public side for their ability to more on the campaign side than the candidate site their ability to research, mine the data however you want to, whatever term you want to use for actually looking at user interface. That's the phase that we're going to be starting soon. First was get the old data up to where we need to in the new platform, look at the architect, now looking at the architecture from kind of what do you want that website to look at, and that's what we'll do over the course of the next year will be that design phase. The third thing...

Bob Brehm: I think on that item there's a concern that seems to be cropping up for CAPAS FIDAS when we estimated the project, we estimated \$2.3 million that \$2.4, that estimate was before they changed the law to provide the independent enforcement and I don't know if there's particular items that are different that we need to accommodate but

we at least need to sit and make sure that if we're going to spend money and update the system that we do it at that time. But also we're taking something that's really, really old and trying to update it. Somehow all these projects kind of got lumped together because the technology, instead of just the simple, analyze this project and update it, it also turned into the data center needed to move and the NYSVoter is moving and they're all moving to some virtualized environment. So the virtualized environment, once we create it, all of these things will work together. And there are many people who have explained this to me and they do it much better than I can. But in the long run the economy of operating that system will be cheaper for us to maintain and the technology is one so that the level of staff to support it will get some synergies of not having to have these specialists of oracle that don't exist anymore. In the interim, we have this oracle data, we have to get support to figure out how to migrate it to the new system. We have outdated Microsoft that is no longer supported soon. So we have asked a number of questions of the State Information Technology, we the State Board, State Information Technology, the Division of the Budget, our Deputy Secretaries, anybody who will listen to us, anybody who is in this room, where does the money come from for these old technologies to gap? Because some of the MS support is running out and what is the best way to bridge until we get the brand new system in place, that issue? Microsoft. So we have such an old version that Microsoft says, "We're not supporting it anymore". So the risk is what are the, there are no more patches that will come after a certain amount of time.

Peter Kosinski: So you're concerned about the gap between the conversion from the old to the new and there's going to be a gap in there and you're worried about how it's going to work?

Bob Brehm: How is it going to work and who will support it when we have questions as we try to take the old data and migrate it to the new system? There might be some support we need in the middle of that.

Peter Kosinski: You're thinking the \$2.4 million is not sufficient to cover all these costs? Is that what you're saying?

Bob Brehm: We're concerned that it may not be. And from our goal is to try and spend the summer to make sure that we either know for sure we're on track or not, that by September we can say, "Here's the list of all the units have gotten together what we must do, maybe there's a few we'd like to do, and here is the estimate of the cost". Certainly if we don't have enough money, the like would have to go to a different phase or we have to go to make the case to Budget and others that this is important enough. We've only fixed it once every 20 some years maybe we'd like to do it right and we just need this little bit to make it whole. We're analyzing that, we're just kind of letting you know that's the kind of issues we're not sure of. We might be able to do, instead of doing things in some of these multiple phases, if we maybe lump the phases together that might give us an economic, help us to close if there is a gap. So we're looking at a number of items that are both what would we like to do, what do we need to do, and then how do we

pay the bills? That last part is still a little bit open because there's still feedback on the middle parts but our goal is by September to have a recommendation to you. Either we think we can pay for it all or we're going to make the case to Budget and we'd like to do that as uniform as possible to get the support because I think the case could be made if we only have a little bit and we need to pay that bill to ask them for that additional finance support.

Peter Kosinski: But you're going to have to prioritize then which items you want to do. Is that what we're talking about?

Bob Brehm: Certainly.

Peter Kosinski: There's a laundry list I assume and you have to prioritize the ones you want to do and you pay until you can't pay anymore, but I think a priorities list is critical to me so that you get the most important things done at a minimum if for some reason we don't get the additional funding.

Bob Brehm: I agree. The problem is if we're down to all the musts and we still don't have enough money, that's a bigger problem.

Peter Kosinski: Well that's a different issue I agree but there is another budget cycle that will go through before this has to be completed so I would hope we get support across the street for completing this. And to Commissioner Spano's point, we're pretty behind on a lot of things around here, I agree as far as our capabilities, so I think bringing them up-to-date is the minimum we should do. I don't think it's asking for a lot.

Bob Brehm: I agree. That's why I don't think there's a lot of wants in there.

Douglas Kellner: It took 10 years to get this approval but that's good.

Peter Kosinski: You're right but we should keep pushing to get it done.

Douglas Kellner: Alright, anything else for Information Technology? Risa Sugarman for Enforcement.

Risa Sugarman: Thank you Commissioner. I have to add my thanks to IT for their work for the conversion of the move. I think that they did a yeoman's job in making the shutting down as minimal as possible. I think at least my division was able to work for longer than we expected. They let us know beforehand what we were going to lose and when and we were able to prepare and use our laptops, move our documents over to our laptops so that we knew we could work on documents. So we were able to do the work that we needed to do and only lost that I think for a day before the system went down in terms of our work. So I thank them for that and everything came back on Monday so that was great.

When Kim gave her report, she mentioned the compliance and we did have a meeting with Bob and Todd and Kim, Kathleen, Brian and my attorneys and myself and we worked on a lot of issues about the work between compliance and my division and I think that that was a good meeting and I know we will be continuing to do that. So that we worked on discussing things movement between files, between Compliance and Enforcement and Enforcement and then back to Compliance and mentioning. Kim mentioned about cleaning up the old committees the dormant committees which I think that would be an important thing if we could do that. So we're working on that as well and we're continuing to do our investigations. Our management system is up and running and we're populating it and that's about it.

Andy Spano: I have a question. I got a letter that was sent to you, a copy from the Brennan Center talking about LLCs.

Risa Sugarman: NYPERG

Andy Spano: NYPERG? Okay. Is that going anywhere or are you looking at it?

Risa Sugarman: We've been looking at LLCs for a while in the Division. We have a lot of different things that we're looking at so I'm hoping that each of them will be fruitful. We're doing a lot of different work on different things. People make suggestions we've been looking at. Commissioner Kellner made a suggestion the last meeting, we have been looking at that before that. We have a couple of things going and I think it should be interesting. So yes, we are looking very intently on LLCs. We have a lot of things going on.

Douglas Kellner: Anything else? Thank you. So the first item on old business is a request for a Board opinion on personal use that was laid over from the last meeting. Kim and Brian is that the one that we're laying over again?

Bob Brehm: We have 2 in the packet that I think...

Douglas Kellner: Those are new ones right?

Bob Brehm: These are old. There's 3 we're still working on that we don't have.

Kim Galvin: There's one on personal use and then there's one of the Sheriffs. One is old and one is new.

Bob Brehm: The Sheriff is old and at the last meeting the travel one the Commissioners directed staff to send a letter and to bring to this meeting.

Douglas Kellner: Alright so let's start with the travel expense. Are we ready to vote on it? Does anyone want to discuss it? Alright those in favor say aye.

(Chorus of ayes)

Opposed? Alright that's adopted.

Next is the opinion on police officer uniforms. Sheriff campaigning for election of Sheriff.

Andy Spano: The change here is that any police officer can wear their uniform even when they're endorsing another candidate.

Bob Brehm: Not that, no that's not authorized.

Douglas Kellner: You can wear the uniform in your own literature.

Peter Kosinski: Does somebody want to quickly explain how this...

Kim Galvin: Basically what it says is that a Sheriff running for elected office can wear his uniform in his campaign materials or...

Risa Sugarman: I'm sorry I didn't mean to interrupt. The Commission asked how it came about.

Peter Kosinski: No I was just asking if somebody could just explain it quickly so Commissioners understood what it said.

Kim Galvin: No, it's a longstanding request that the Board has made and had been made to the Board and that's basically been expanded to allow a police officer that's running for any elected office to wear his or her uniform in their campaign materials or in paying productions.

Andy Spano: Any police officer running for office.

Douglas Kellner: For their own campaign.

Andy Spano: Endorsements are not included in this right?

Douglas Kellner: Correct.

Risa Sugarman: If I may, last election cycle I received a complaint from a candidate who was running for reelection for Sheriff against a candidate who was a Chief of Police who was running against him who had on his website a video clip of him in his Chief of Police uniform in his police car. And the complaint by the Sheriff was that he was

violating not only the 141 opinion but the penal law and the Public Officer's Law. And the response that I gave to him was that there was no decision by the Board as to the response that he was seeking. He was seeking the response from Enforcement that he was in fact violating the Public Officer's Law and the opinion that the Board had rendered about the Officer in Uniform making an endorsement of another candidate as opposed to someone in uniform running in his own election. So that again, when I discussed with Todd and Bob that I had received this complaint and it had really not been directed, the opinion did not directly answer that question, I also asked for an update of this opinion.

Bob Brehm: That's right we had started as Kim had said, we had received a request a while ago with regard to Sheriff running and then Risa had asked us law enforcement running. So we had to put the two together.

Douglas Kellner: Alright so everybody's comfortable with this draft? Those in favor say aye

(Chorus of ayes)

Opposed? It's adopted.

So new business, requests for additional opinions which is that?

Bob Brehm: We have a number of other opinions that have been requested; one with regard, all with regard to personal use, sorry.

Douglas Kellner: Do we have any that have been distributed?

Bob Brehm: We have talked many times over the last week or two. We've shared ideas. We've gone back and redrafted based on the conversations and offered additional, so we hope to have all 3 of those ready. 3 are pending but we are actively drafting and talking and comments and we hope to have probably all 3 for you at the next meeting.

Andy Spano: Is this unusual?

Bob Brehm: Well it's new in this year's budget that the request, I mean anybody could have asked for a formal opinion but now it was actually when they adopted the budget the chapter, I forget which chapter...

Kim Galvin: It actually directs them.

Bob Brehm: It actually says by asking its kind of binding on some of the issues with regard, if you take our advice and follow it you can't enforce against them if they took our advice.

Kim Galvin: Yeah, when they expanded the personal use section, they said any questions should be directed essentially to us for formal opinions on the matter. So that's why we anticipate a severe up-tick in the number of requests.

Andy Spano: That's what it seems to me.

Douglas Kellner: Alright, next item of business is the resolution to authorize an amount not to exceed \$450,000 from the State Operations HAVA fund for the NYSVoter Refresh Project. Is there any discussion on this? Those in favor say aye.

(Chorus of ayes)

Opposed? Then we have the resolution to authorize up to \$83,580 from the State Operations HAVA fund for the Microsoft Premiere Support Agreement. My question is what would happen if we did not continue the Microsoft contract? Or to put it alternatively, I have never been particularly persuaded that we get \$83,000 worth of value out of this contract.

Bob Brehm: The difficulty is not having William here but...

Tom Connolly: My understanding of it is again going to some of the concerns about the software being outdated, there is no currently statewide or enterprise initiative to kind of mitigate that down time that Commissioner Kosinski said by the time we plug in the new stuff and we're still using the old stuff.

Bob Brehm: This is the NYSVoter so it's different.

Tom Connolly: Well yes but NYSVoter moving onto the new virtualized systems we're trying to make sure that we at least have that kind of security blanket of the maintenance should anything go wrong with any of the existing software.

Douglas Kellner: Do we really use them?

Bob Brehm: They have, I mean representatives of Microsoft have been here meeting with us regularly to make sure that the architecture we're designing and the planning that we're doing, they give us feedback and comment. I think they're really concerned when they actually go into production if there are issues that we need their help that we have that help available as we're going from the current system into the virtualized system in December. We're hopeful that once we get everything over to the virtualized system that we can then re-evaluate the support because it will be uniform, the knowledge transfer. There may be some levels of support that are needed but I think that would be the time to re-evaluate how much support we need. But right now, we think this is...

Peter Kosinski: Is there a time period on this?

Bob Brehm: It's an annual, we had it last year.

Peter Kosinski: So it's an annual cost. And can I just ask, 83,580, am I missing something, is it kind of an unusual number.

Todd Valentine: Well it's divided into three parts, the scope is in there. There's account management, support assistance and problem resolution.

Bob Brehm: And if we don't need it, we don't pay for some of it.

Todd Valentine: Yeah, those are the hourly rates based upon...

Peter Kosinski: So this is an estimated number of hours they're going to spend maximum?

Todd Valentine: And the staff has been, we do utilize them.

Peter Kosinski: How many years have we been using these?

Douglas Kellner: Since 2006.

Peter Kosinski: It is that long. So every year we give them an \$83,000 contract?

Douglas Kellner: It's been much more.

Peter Kosinski: Oh, it's been a lot more. So this is actually down?

Bob Brehm: This is the cheaper one. The one I'm worried about...

Douglas Kellner: I gave you a little hard time about this in 2007.

Peter Kosinski: Doug, There were so many of those things, they all blurred together.

Bob Brehm: If you don't like this number, I'm glad I can tell you my fear under the CAPAS FIDAS is its \$300,000 as a gap to get us until next year and one that we don't have \$300,000 to pay for a gap and every person we've talked to from that perspective, other state agencies had the same problem. Because the minimum license you buy for that gap is 100, we have 5 servers that need this system. So we've been looking for other state agencies that have the same problem. If we go in together and buy it, lets say DMV already has 80 servers, if they already bought it well they already have 20 licenses they're not using, could we come in under that? And nobody has yet answered us on it. But this one we can't find anybody else, a way to get this blanket that when we convert from this

to the new virtualized environment, if we need your help, we need your help because we have to get to this December because end of life and NYSVoter is middle of next summer and we're in the middle of a Presidential and everything else, now is the time we have to actually bridge to it.

Douglas Kellner: Alright those in favor say aye.

(Chorus of ayes)

Andy Spano: I'm recusing myself.

Douglas Kellner: Okay so 3 ayes and 1 abstention. And last is not a resolution but a discussion on voting system change management. Anna what would you like from the Commissioners?

Anna Svizzero: A bullet to the head. This is just such a big deal and there are a lot of different opinions and I just wanted to start the conversation because the initial question isn't whether or not you approve the Dominion request that's in your packet, which I expect you won't be doing today because the initial issue is does this Board expect that every county using Dominion systems and every county using ES&S Systems will be running the same Dominion and same ES&S version of software? That's the case now. But moving forward, when upgrades are brought to the Board's attention for review and approval, which they have to all come to you, do you think that counties should go down that path to say this is a change that I don't really want? Or this is a change that I don't really need in my county? Do you think that counties should go down that path to say this is a change that I don't really want or this is a change that I don't really need in my county? And then the vendor and we support all those different versions? It's not a problem for this initial version, but it's a problem for the next 2 or 3 applications for upgrades that come in because now you may be down the road to a point where there's some change in statute or some state required change in that software and how does that gap from what was allowed to be used today get brought up to the degree of the upgrade that you might approve somewhere down the road.

Peter Kosinski: Well, let me just ask. As I understand the situation is Dominion is currently making software changes to their voting system. Is that fair to say?

Douglas Kellner: No, they are proposing.

Peter Kosinski: But they are preparing them internally as I understand it. They're doing changes which I, and I don't know this that have been requested by the counties or Dominion on its own has decided would be better systems for the counties.

Anna Svizzero: And ES&S is as well, they just haven't submitted their application yet.

Peter Kosinski: And Dominion has actually filed an application with us for this so as I understand it, any changes would have to be approved by the Board before any county were to use them. And there's how many counties on Dominion?

Anna Svizzero: Fifty-two.

Peter Kosinski: Fifty-two so the vast majority of counties, although most of the big counties are not like New York City and Erie...

Anna Svizzero: Voter wise it's probably half-and-half.

Peter Kosinski: It's very similar but it's a very large number of counties that are on. Okay. So there are some counties who have a maintenance contract with Dominion which will automatically make them eligible for the upgrade that's being created by Dominion and there are some counties that do not have a maintenance contract and so will not be automatically given, they could buy it I guess right?

Anna Svizzero: Yes.

Peter Kosinski: But if they don't buy it they don't get it. So the potential is out there that the counties on the maintenance, and how many is that by the way, of the fifty-two how many have a maintenance contract, do you know for software upgrades? Ballpark.

Bob Warren: There's 11 that don't have any maintenance. There's about 6 that have firmware only, and there's 3 that have EMS only, that's about 20 so say about 32 counties have the maintenance.

Peter Kosinski: and the other 20 do not?

Bob Warren: There's 9 that have some form of maintenance.

Peter Kosinski: Well let's say for these purposes yeah how many would get the upgrade of the fifty-two how many would automatically get the upgrade?

Bob Warren: Well this upgrade is a little different than future upgrades because the upgrade for this, the counties that have the ICP only machines they're still under warranty so they would get that.

Peter Kosinski: I'm sorry Bob you've got to help us here. ICP only.

Bob Warren: It's a machine with just a scanner not the BMD portion. So if a county has no support but they have the scanner only machines and they have the BMD machines, their scanner only machines are eligible for this upgrade because they're still under warranty. So you could have a different version within the county at that point.

Douglas Kellner: Bottom line is still how many counties will get the upgrade as part of their current contract relations with Dominion and how many won't or will have to pay for it separately?

Bob Warren: I'd have to not look at the breakdown of the machines because...

Douglas Kellner: It's roughly about 35/15 something like that.

Peter Kosinski: That's close enough I don't think we need an exact number Bob, I don't want to drill down too far on this. But I guess the point is some counties will and some counties won't. So the outcome then is you have some counties running their system on the new upgrades and some counties continuing to run it on their current platform.

Bob Warren: Yes.

Peter Kosinski: And then what are the ramifications of that? I guess that to me is the question. What are, I mean these are not vote counting issues as I understand. None of this stuff goes to the counting of the ballots or anything of that nature. Its upgrades I understand it the counties want and maybe you could help me what they are, is to poll worker, keeping track of poll workers or something like that?

Anna Svizzero: Font sizes on tapes, battery alerts when batteries are...

Peter Kosinski: It's internal stuff not something a voter would, it does not affect a voter interaction.

Anna Svizzero: In this package, no.

Peter Kosinski: So, it doesn't matter there but you would still have some counties running on a different system than other counties even though they're using the same machine.

Anna Svizzero: And within the county we would if some machines were under warranty and some weren't. Within the county you could have 2 different versions.

Peter Kosinski: Okay so within the county you could even have 2 different versions running okay. So I guess the question is, what are the ramifications of that? What are the downsides to that? What are the issues related to that? Anna alluded to this out year issue as I see it which is five years down the road the State Legislature adopts a change in our voting systems, all the counties now have to take that on. We pay for that as I understand it because it's a state mandated change?

Douglas Kellner: We'll I've been advocating that we pay for it but that's not the law.

Kim Galvin: If there's a statutory change.

Bob Brehm: Well we think so, that's not what the statute says.

Peter Kosinski: Its not, something we've adopted.

Douglas Kellner: Well it's just something we would recommend, assuming we all agree that we would recommend to the legislature. But I have always said that if there's a mandated change then that should be a state expense not county expense.

Peter Kosinski: But if it's not then the counties would have to upgrade then. I mean the counties wouldn't have a choice, even the ones without maintenance would have to do an upgrade because there's a statutory change they would have to adapt to that by upgrading their system and even those who don't update let's say today which is an optional upgrade, would have to upgrade then because it's a mandatory upgrade and how would that impact them if I'm a county sitting here today saying, "Well I don't have a maintenance contract because I can't afford it. I'm not going to do the upgrade that Dominion is offering". Now I haven't done that upgrade but 5 years down the road I have to do an upgrade because the state tells me I have to, what kind of costs am I going to incur? What does that mean to me as a county now that I'm going to go from here to here where everybody else is going from here to here, I'm going to blow right by that interim step and go all the way to the top. How much is that going to cost me? What are the ramifications of all of this?

Bob Brehm: I think that's generally what we've been grappling with for a number of years and there's so many different questions and do we think that's a good idea. But let's assume in this case you have a Dominion say a frozen version that we current have and then this upgrade version. So two; enhanced and basic. And then we get to that fifth year from now do we add that statutory change to go to combine these to one new version in five years? Do we have a basic now it's basic plus the new statutory change and enhanced plus the statutory change and we keep 2 going forever? That's, well not forever but until the next round.

Douglas Kellner: See this comes down to pricing and it's not a question, the marginal cost to the vendor is the same. Remember we're not changing the equipment. There's no hardware here. So the equipment is completely separate. The issue is software and in effect once the vendor prepares the software and from the vendor's point of view, the marginal cost to the vendor for each county that upgrades is virtually zero. So it's just a question of vendor profit. And then when you, if there's a mandated change.

Peter Kosinski: well I'm sorry Doug it's not just vendor profit to me its always who shares the cost?

Douglas Kellner: That's exactly right.

Peter Kosinski: If I'm county A and I just paid for the whole upgrade and now you get a free one, that's not fair to me. So it's not just vendor profit it's also sharing the cost across the entire state of New York in a fair way.

Douglas Kellner: Correct, that's exactly right. And then the question is whose regulating that? Is it the vendor that is setting the cost and saying this is how much you charge and we're going to mandate that they pay whatever the vendor asks or are we going to intervene and have some sort of regulatory role to make sure that the price is reasonable? What happens now in order to make it reasonable is the county can say, I don't want it. And so the vendor has to price it reasonably or nobody's going to take it. So, right now we have sort of a hybrid free market approach to these vendor upgrades. If we mandate them, then we eliminate them but we do then share the cost.

Andy Spano: Why don't we negotiate these things from a central point and then offer those? Why don't we do that? Why didn't we do that in the first place on the maintenance contract?

Anna Svizzero: This question came up at that time but there was no decision.

Peter Kosinski: I'm sorry, what was that time Anna?

Anna Svizzero: When the warranties were about to expire and...

Peter Kosinski: When was that?

Anna Svizzero: Three years ago and the Board never reached a decision on that issue because the warranties were about to expire, the vendors were then soliciting...

Peter Kosinski: And then the county had to make a decision, am I going to continue maintenance or not?

Anna Svizzero: They got the price list for what kind of maintenance was being offered and what it was going to cost and counties had the option then to make that decision. And from that point on, because scanners were purchased at different times, warranties were expiring at different times, it just kind of snowballed into where we are today. It's not an answer but it is the answer. It started when the warranties started to expire.

Andy Spano: It doesn't make any sense. Forget about cost because we don't even have to get involved in cost we just have to get involved in negotiating a price for everybody.

Anna Svizzero: For the upgrade?

Andy Spano: For the upgrade or whatever and on any of these mandates we should at least get involved in that process if we're not going to pay for it.

Anna Svizzero: Well their prices are in the OGS contract and those...

Andy Spano: What do they know?

Anna Svizzero: Well they had to defend them to OGS but it's whatever an industry standard is.

Peter Kosinski: There's two different things too commissioner because these are not mandated currently, these are optional so it's a question whether you want to do an optional upgrade would we get involved? I tend to agree when there's a mandatory upgrade there's probably more responsibility on our part as a state because state is going to do the mandate and it seems to me if we're mandating things to the counties we should have a role in controlling costs and in some way impacting that so that the counties aren't getting gouged or in anyway incurring costs that aren't legit. That's a little different to me frankly than an optional upgrade where a county says, I want to do AB and C vendor would you do this for me and maybe they have a negotiation there of what its going to cost them and then the county decides, yeah, I'll do them or no, I won't. I don't want to do this its too much money or whatever. So to me there are two different issues in a sense but the problem with the negotiated, what's going on right now to me is that we're running the potential right now of having a non-uniform systems out there and what are the impacts of that going forward? I mean if its okay this year because we don't care let's say that this county has decided to keep their poll worker track on their machine and this county didn't but down the road when there is a mandated change there may become a real issue then for us to deal with.

Douglas Kellner: Well when there's a mandated change then we should just require everybody to get the upgraded mandated software which I think we ought to pay for but that's a separate issue because that's the new software that comes out. But we have to make sure the cost of that new mandate is reasonable.

Andy Spano: But the mandate may be on top of everyone else's prior issues going out and buying their own stuff and then consequently the new mandate is going to be more expensive because you can't have things talk to each other and relate to each other.

Douglas Kellner: No it's the same hardware. Andy no, no Andy

Andy Spano: When they tried to put everything together you seen that with County Clerk's Offices, you seen that with a lot of things.

Douglas Kellner: Commissioner that happens because the hardware is changing and you don't have uniform hardware. When you have uniform hardware, the software is fully

interchangeable. It's the same hardware, you just simply replace the old one. It's not an add on, it's a replacement.

Kim Galvin: But you could get to a point where the versions differ significantly that to put a State ordered change in you'd have to engineer it separately into the old language perhaps or the old platform vs. the new language and the new platform.

Douglas Kellner: You would simply engineer it on whatever we decided was the highest grades system to make the improvement.

Kim Galvin: Right but then those counties that paid maintenance for all those years, why would they bother to pay it. What benefit?

Douglas Kellner: That's a good question but its been answered by, there are counties that want upgraded features and are willing to pay extra for that.

Kim Galvin: I think the fundamental question and I hate to, and someone correct me if I'm wrong because I probably am, but we're envisioning, okay we'll allow this, we'll allow 3, we'll allow 6 but will the vendor support? I can't imagine that there's a vendor that's going to support varying degrees of the software system.

Douglas Kellner: See we're getting back into support. And we have to define what support is here. There's so much misunderstanding on this issue.

Anna Svizzero: Well there are gaps that have to be spanned. How does the county that did not buy maintenance and does not take any of the upgrades that we saw are optional, thank you and then comes this upgrade that is not optional. The vendor has to bring my version up to that level, your version up to that level, his version up to that level. I didn't buy the software, you didn't buy the software but you did.

Douglas Kellner: See that's not a true statement. Alright the vendor only needs to provide one version that meets the new mandated change.

Anna Svizzero: But I'm going to get it for free because it's mandated and you've been playing a million dollars a year.

Douglas Kellner: So.

Anna Svizzero: How is that fair to that county that paid a million dollars a year that bought that...?

Douglas Kellner: Because that county wanted it.

Anna Svizzero: They don't know that they wanted it. They've been paying maintenance every year on the off chance that...

Douglas Kellner: Then don't pay the maintenance which is by the way what I have been recommending to those commissioners who seek my advice on it.

Kim Galvin: But then the vendors will leave the state altogether.

Douglas Kellner: Why?

Kim Galvin: They don't have any obligation to stay here.

Douglas Kellner: They won't be providing software upgrades because nobody's buying software upgrades, okay. What's wrong with that?

Kim Galvin: If you don't let them do the program what else would they do?

Todd Valentine: How do you get them around for the program when you need a mandated change down the line?

Douglas Kellner: Then you pay them for the mandated change.

Kim Galvin: At the back of the line depending on their national projects.

Douglas Kellner: Well, listen if the idea is that you're going to pay the vendor every year just so he's around and he's your pal, so be it, but when you need to get something then what it is that you need you should put out to bid and by the way we have written our contract so that they don't necessarily have to be a sole vendor. In other words Dominion is not...

Kim Galvin: But I don't think we can allow another person to come in and work on their proprietary software.

Douglas Kellner: Yes, we can. We wrote that into the contract.

Anna Svizzero: I think we tried to and I don't think they let us. We tried to get that in.

Douglas Kellner: We can't change their proprietary software but we can add onto it and that's how we wrote it. And that was done intentionally so the vendor would not have monopoly control over upgrades where we're forced to go to that vendor or else buy all new hardware. But we have to understand the definitions here. But if people want to take the approach that we should mandate that the counties buy every upgrade that the vendor offers, I think that that's foolish myself.

Gregory Peterson: That's a recipe for disaster.

Kim Galvin: I think we should freeze one and require all those that accept changes to stay on one level and another level. Two versions.

Bob Brehm: Not next year I have another and another and...

Douglas Kellner: Why?

Kim Galvin: Because otherwise you're going to have potentially over the years 6 counties at this level, 4 counties at that level, 6 counties, and I understand your point that the vendor makes one change but...

Douglas Kellner: No but that's, yeah but that's the county is deciding that there's a feature that they want to pay for that other counties are not prepared to pay for because the vendor is charging more than what they want to pay.

Kim Galvin: I think we need to figure out what the out cost potentially could be and advise them of the same.

Andy Spano: Could we have this looked into a little bit more so we don't have a discussion of this at the table? I just think we need more information.

Anna Svizzero: This is just trying to flush out the overall issues not pointed with a lot of detail to back them up.

Douglas Kellner: Well let me set forth what I regard as my principle on this which is that if a county wants an upgraded feature and they are prepared to pay for it then they will have to go through the appropriate certification process and they can have that feature. If other counties want to also buy it, they can buy it. Software as opposed to hardware you can have multiple versions of software and the hardware will still work effectively. And until there are mandated changes the counties should be free to do that and we should not be meddling into artificially limiting the number of voting systems, software versions that are out there. Arbitrarily. If there are reasons to limit it, then we should limit it based on reasons why there's a negative to it. Those are my principles.

Gregory Peterson: Has there been anything set forth by the industry, their rationale? I always like to hear the other side of the story other than obviously the profit.

Douglas Kellner: Well they want upgrades, voting is different than most software. So for example in our offices we get regular upgrades of our software perhaps once a month. The Apple operating system is upgraded once a month and most of those upgrades are given out free but there are constant upgrades. And on any given computer, if you took 15 iBooks in my office there might be 10 different operating systems on the book. But in

voting we can't do that because the cost of certification of each change is very substantial because of the security requirements for the voting application. So we basically freeze voting system software and we don't upgrade it. And there's nothing wrong with that. You can go and take a 15-year-old version of Microsoft Word and it will still work fine. It won't work necessarily if you're using 15-year-old hardware. So there's no requirement to upgrade the software other than convenience. And so then that's a cost factor. Is it worth the cost of going through this process to get the benefit of the upgrade? But if we change the law, that's a whole different kettle of wax. Now for example, New York City has been debating having instant run off voting in place of the run off primary. So you would have to rank choice, say your top 3 candidates in the citywide primary. That requires a software upgrade and ES&S has said it will cost about several hundred thousand dollars. They've given pricing for it and then when you add on certification costs it comes out to like $\frac{3}{4}$ of a million dollars.

Kim Galvin: That would be a legislative change wouldn't it?

Douglas Kellner: Yes. So if the City Council or the legislature adopt that new system they will have to upgrade their software and they will have to negotiate price with ES&S to do that.

Todd Valentine: But then do you make the other ES&S counties take that same upgraded software because there's a mandated change?

Douglas Kellner: Well in that particular case, maybe yes but New York City has already paid for it, why should they pay for it because New York City changed the law to mandate the upgrade?

Bob Brehm: Well they're the only ones doing the instant run off also.

Kim Galvin: Requirements that only apply to New York City.

Douglas Kellner: Yeah but they don't. The other counties wouldn't need to do it, the other 5 counties would...

Kim Galvin: If it's ES&S my understanding is that only 2 of their counties have actually signed maintenance agreements one of which is not New York City. They're the big dog so they get it.

Peter Kosinski: So what else does maintenance provide besides, why else would a county enter into a maintenance contract?

Anna Svizzero: Well there's phone support. There's on-site support. There's other kinds of support that you can cut out.

Douglas Kellner: Well that's support that's not what they call software maintenance.

Anna Svizzero: Right, you can cut that out of their support package and price that differently or negotiate it differently.

Peter Kosinski: So maintenance would really only refer to upgrades like this.

Douglas Kellner: Making automatic upgrades.

Bob Brehm: And one other item we've talked about a little bit which is still kind of floating out there, we still have as a principle thing, if the state passes a law to change the requirements that we should, the state should pay for that. We have no mechanism to do that and the statute still says the vendor pays for testing. So if we think that, if the four of you or at least the majority of the four of you think that is a good idea, we should at least come back to you with some kind of proposals as an agency to go and recommend that, and one, set money aside or some way to make that happen. I mean personally what I say when people ask me about a legislative proposal that directs us to do something, I say where's the money going to come from to pay for it? There's no appropriation here. I also add on the timing. When we talked the last time we had one of these in front of us I think it was ES&S as a concept we talked about making this decision in January, February of a year and perhaps voting to authorize it in say December as a cycle but then the counties would have that fall's budget session to at least put money in place if they needed to to pay the bill. But one, if the state should pay the bill then how do we do that? What are some of the ideas? And then we should take that proposal and go up the hill and see if they agree with us. If they agree with us and authorize it, well then I think that takes some of the unknown and some of the burden off the vendors and the counties as to whose responsible for this might help make what they're paying really focus on their wants and their software needs.

Douglas Kellner: We're assuming that there's going to be a change in the statute that requires changing our election system hardware before it wears out.

Kim Galvin: Court settlement.

Bob Brehm: The courts we paid for right, didn't we do that for the notice changes. We paid for all of that.

Kim Galvin: Yes a million dollars.

Bob Brehm: Right so we've paid for court ordered requirements but not any of these other. So if we think it's a good public policy then maybe we should, you know if you think that we should come back to you with what we think a way to do it, and if you agree, then we should be prepared to sit down with the Division of Budget and others and

say, "Here's what we think we need in the budget to make happen" and to the extent that they agree with us, then we can do that.

Peter Kosinski: I have a question. Do we know what other states are doing in this context?

Anna Svizzero: We're reached out to ES&S because they have the bigger footprint. Dominion really doesn't have a good frame of reference and the liaison at ES&S thought that the other states do use a single version. There might be some features that are optional to a county within that version software that some counties use or don't use, but there is one version. We asked them to validate that and let us know for sure and we're waiting for that phone call back. Bob reached out to them last week.

Peter Kosinski: So, you're not aware of another state that allows multiple versions?

Anna Svizzero: Multiple versions. I mean there's, no, not personally, no. And we'll share that answer from ES&S as soon as we get it.

Peter Kosinski: Does the vendor have any cautions about going down this road?

Anna Svizzero: We haven't really had those kinds of conversations with the vendor because we didn't want to broach any subject we weren't prepared to respond appropriately to or to get into the conversation of money which might impact some sort of negotiation regarding current costs that they have contracted for, for software development and programming, and that kind of thing. So we just haven't opened that door with the vendors yet. We thought it was appropriate to try and start this again with the Board.

Peter Kosinski: Well I mean, my view is I don't necessarily disagree with Doug's analysis with the end caveat that we would be okay with it as long as there isn't some problem, downside, ramifications of allowing these counties to go out and purchase software on their own in essence that would change what they're doing. So I mean I don't have a problem with it unless we have information that that will create a problem. But I don't know the answer to that. That's what my problem is. I don't know if it will or won't. So to me we need to make that determination some how, I'm not sure exactly how we do that. I think input from the vendors would be useful.

Douglas Kellner: I've been asking that question for a year and half now and no one has come forward with anything that makes any sense that would be a negative. But I agree with your formulation.

Peter Kosinski: Yeah, I mean I would be interested in talking to the vendors too just to see if they identify any issues for us that they see with having different systems either cross county lines or within counties that raises any issues with them. I mean one issue to

me, will they have the personnel to continue to provide the support for those systems if we get multiple systems in this state? When does that become too much of a burden for Dominion to service or provide the services to the county? At what point do they reach that, I'd like to know? How far can we go with this? How many versions can we have before they start to say we can't support everybody anymore?

Anna Svizzero: Is there concern for the public face of this where a district, senate, congress, or assembly crosses county lines and all those different versions are...

Peter Kosinski: I can't say it, I mean I don't know but my understanding is this does not change the way votes are counted, the way votes are cast, and anything that relates to voting is not impacted by these changes.

Anna Svizzero: True but the headline is still the headline. We have, that's what I was going to say, we have the right answer for that question when it's raised. But the question is never raised directly to us, it's raised in the media.

Peter Kosinski: No, one of the reasons I think we need to have this discussion publicly is that I think we need to get this out there so that if it gets out there that we've made these changes, people will understand what the changes are, and that we've vetted it and that we've discussed it and that we've reached this conclusion. Because I think you're right, voters might be concerned, "Why am I voting on a different system than you are"? That's a legitimate question. We'll we should have an answer for that.

Anna Svizzero: Or a candidate that wants to contest the results.

Peter Kosinski: Or a candidate who has the same question, "How come in Westchester I'm voting on one system but over here in Ulster it's different when I'm representing both counties"? I mean not to get into this too much, I have some issues we currently have in the state that way and one of them goes to New York City. But that said, I just think we need answers before we go ahead and certify a system that the counties can buy that's all.

Kim Galvin: And the presumption that continues is that these upgrades will never affect the security, voting or whatever.

Peter Kosinski: No, I think if that became an issue, that's a whole other discussion. I mean...

Kim Galvin: Because sometime there will potentially be...

Peter Kosinski: Okay well then that's a whole different issue but...

Andy Spano: Sometimes they don't know.

Kim Galvin: That's right.

Anna Svizzero: That's a bigger concern.

Andy Spano: I have to reboot my computer periodically. That's supposed to work perfectly. I have to frequently, not periodically. This is, usually you allow multiple groups to go off on their own when you want to set up a creative environment. This way they compete and they look at things differently. They look at what best practices are here and there. This is voting, and down the line, no matter what you think today, I think Doug is right about today, I mean this is like having a safe nuclear plant. Once in a while if there's an accident you may have a big problem. It could happen every 40 years. This is voting, it's essential that we keep it the same way, better safe than sorry, that's all. I mean it's a logical framework. It's not that it won't work the way Doug says, or might not or that isn't the advice right now but we don't know that and these things have, I call them poltergeist and every once in a while you've got to manage them and sometimes it costs you a lot of money. Having bought millions and millions and millions of dollars worth of systems.

Peter Kosinski: So, where are we in the process now?

Anna Svizzero: We'll try to get, we'll get the answer from ES&S...

Peter Kosinski: No, I'm sorry...

Anna Svizzero: But my question to you on Dominion is, "Do you approve this upgrade"? I mean it isn't fair to keep them hanging while we debate this greater issue. They have an upgrade, some boards are entitled to it because their machines are under warranty. Some boards want it because they paid for it. I'm not sure what happens to everybody else, but do we approve the upgrade and let the testing go forward with the caveat that it's not allowed to be rolled out until it comes back to the Board. Because you can always not certify it.

Douglas Kellner: Wait a minute, it has to be certified.

Anna Svizzero: That's what I'm saying. We'll it's not certified today, are you going to approve this moving forward with the certification process and then certification...

Douglas Kellner: This is the new system. Assuming this is the new and improved system, how could we not certify this? The issue will be do we decertify the old system?

Peter Kosinski: Well I don't think that's the only question. I don't agree. I think you could either...

Douglas Kellner: Just tell them no, we're not going to let you upgrade?

Peter Kosinski: Yeah, that's an option, I don't think that's...

Douglas Kellner: So the counties that have already paid for the maintenance will get nothing.

Peter Kosinski: That's true and that's a problem.

Kim Galvin: When I said that you said, "Too bad".

Peter Kosinski: I'm not disputing there's an issue. There's definitely an issue there. I'm not suggesting but I think...

Kim Galvin: This would allow varying versions within the same county.

Peter Kosinski: I got that, I just think I would like to know the answer to these questions.

Douglas Kellner: Yeah, but what county would do that?

Kim Galvin: The ones some have sorts of maintenance and others that don't.

Douglas Kellner: Well why would a county have 2 systems in the same?

Kim Galvin: Because some are still under warranty and some are not and they didn't purchase the maintenance, so some are entitled to the upgrade and some are not. The BMD component would not get...

Douglas Kellner: You're using, you're not...

Kim Galvin: I'm just saying what Bob Warren said.

Douglas Kellner: No, he didn't use the word some.

Kim Galvin: He said some.

Douglas Kellner: Some what?

Anna Svizzero: Some counting systems are still under warranty within the county, they would get the upgrade because it comes as part of their 5 year warranty. They bought those units later on in the process. The units that were purchased initially are no longer under...

Douglas Kellner: The county does not have to do that if it doesn't want to.

Bob Brehm: You don't have to take the upgrade even if it's covered under warranty if you don't want it is what I...

Anna Svizzero: I get that now. I'm hearing it differently now.

Douglas Kellner: So, if there's a negative of the county having 2 different systems within the same county, the county can solve that problem and they're not taking it.

Anna Svizzero: It's in their power to solve it. Okay.

Douglas Kellner: Or by paying for the upgrade and change.

Anna Svizzero: I didn't hear it that way when you went through that before.

Kim Galvin: But would we still allow it?

Douglas Kellner: Why wouldn't we allow it?

Kim Galvin: I mean for a county to take it and run 2 different versions in the same county.

Douglas Kellner: Why wouldn't we allow it? What's the negative.

Peter Kosinski: I think that's what we're trying to decide at least I am.

Douglas Kellner: To me the burden is on the person whose suggesting that there's a problem to identify the problem.

Bob Brehm: Would you want the staff, if we looked through whatever in this case this vendor is proposing to us, if we use those principles should we come back to you saying, "Do we think" I mean there's like 3 or 4 things they're doing. What our staff analyzes and say to you, the first item they want to do is this energy use of this machine. What would be the harm of they had 2 different energy readings within the county? You would have to analyze each one. Is there a harm on each one? Because you'd have to look what are they proposing and if we come back to you and say, they're going to have 2 different tapes with different fonts. I don't know that's a big harm. If there's two different energy readings it just means you're going to have to take more maintenance on this one instead of that one. Maybe that's a problem, maybe its not. But would you want the staff to analyze if there's 8 things in here that we would say to you, we've looked at all 8 and we think or NYSTAC thinks that we would live with all of these. Maybe 3 years from now something is in there we can't live with, but at least you'll have that information.

Peter Kosinski: I think there's two issues; I think the first issue is whether or not the changes that are being asked for would have any negative impact on either a county or the state itself by having some people adopt it and some people not. That's the first question.

The second question to me is "What is the long-term ramifications of doing that"? If we have a, if we allow this to go forward and 5 years down the road there is a mandated change, how would that be handled? How would be adopt that? How would counties that haven't done the upgrade adapt to that? How would that all work? I would like to try to answer that question now rather than waiting the 5 years and then having us in a bind where we're going, "Oh geez we've got a problem now because we've allowed these systems to go forward. We have 2 different systems and now this mandated upgrade is a big problem for us". I'd rather anticipate that, because I think its going to happen at some point.

Douglas Kellner: Of course.

Peter Kosinski: And knowing its going to happen, we should have an answer now as to how that's going to be handled then rather than waiting for the crises to occur and then trying to deal with it at the time. So those are the 2 issues to me.

Douglas Kellner: I agree with the way you framed the issues. I think the latter question I'm prepared to answer now, that I've thought about it and indeed what we have been doing so far since 2008 has been that system which is that if there is a change mandated by state law that the state will pay for the change. And so I propose that we continue following that practice and that at that time, since we're doing a state mandated change, we would require everybody to get the updated software.

Peter Kosinski: That's fair enough to me.

Douglas Kellner: In other words, I have an answer for it now. You don't have to agree to it today but I've thought about it. As to the first, I think you frame the question the same way I frame it which is, is there a negative by having 2 versions either for the county, within the county or for the state and so far, whenever I have asked that question, no one has identified to anything that I would find sufficient to say, "No, we won't allow that to happen". And so on that basis, I'm prepared to say that they can go ahead with these proposed changes and that assuming that they get it right and it passes our certification testing, I'd be prepared to vote to certify it and I would not be prepared to vote to decertify the existing system which are the legal questions that will eventually be presented. Because at this point we're only asked, "Are we inclined to grant certification for this new system"?

Andy Spano: I'm not inclined to vote today.

Peter Kosinski: No, I'm not either. No I don't think we've been asked to vote.

Andy Spano: I think the suggestion is good, the staff ought to take a look at this and give us answers in those 2 frameworks.

Anna Svizzero: And that fact finding involves conversation with the vendors?

Peter Kosinski: I would, I mean I think they're an important part of this...

Andy Spano: How long would that take you, do you have any idea?

Anna Svizzero: Depending on when your next meeting is I'm happy to start this today. We've been talking about it daily in our unit and as recently as last week Wednesday I think it was with Todd and Bob so we're happy to continue that conversation, bring the vendor into it and put some facts together, not pros and cons but just lay out some facts you can absorb. We can arrange a conference call with the vendors if you all want to be on it. We're happy to do that too. But we can start today.

Andy Spano: It would be helpful too if some of you have experience with other things that think maybe related to this forward discussion if you add that to the report.

Kim Galvin: Boy that new guys going to have a lot of work to do.

Gregory Peterson: Better get him onboard sooner rather than later.

Anna Svizzero: I'm not noted for delegating but there's a first time for everything.

Kim Galvin: Don't worry, he'll just be like this.

Douglas Kellner: Alright I think we have discussed setting July 27 as the date of our next meeting? I think we're ready for a motion to...

Peter Kosinski: Doug there's just one more thing I'd like to mention if I could. I just want to clarify the record on an issue that came up that I just want to make a statement on, I don't expect a discussion necessarily. But, I know that last week there was a letter sent out regarding next year's primary and there were two commissioners that signed and two that didn't. And I just wanted to clarify my position at least related to that so that there was no misunderstanding. But the letter, as I read it, said in essence there was a request that the state put the 2 primaries together; the June primary for Congress with the April Presidential primary. And that would save the counties some money. And I understand that issue, I understand that running those elections does cost the counties money. But my issue with the letter I guess was twofold; one was I thought the amount of money that was stated in there was over stated, that's just a detail maybe but I think \$50 million significantly overstates the amount of money, it might be 20 or something.

So it's still significant but not quite that much. But the real issues to me were changing a primary date is more about money, its about a lot of other issues which I think needed to be considered before a request like that would go out. For example, if you move the primary to April, you move the petition period up to January, February. January, February certainly in upstate New York is a very trying time weather wise. Asking people to go out on the streets and do petitions in January, February and the weather, and particularly upstate weather that we experience I think should be very seriously considered. And I think that could be a really heavy burden on a lot of candidates to try to get on the ballot if we're going to shift it that way.

Secondly, that would elongate the election season. I mean now we, instead of running June primaries, you're moving them back 2 more months, you're extending the election season, all that goes along with that, raising money and all the other issues. We have voters being inundated with information. Our election seasons are already pretty long. The courts moved, as you know, our primary back from September to June. They've already elongated the congressional season that would further elongate it. Again, a consideration that should be taken into account before we would ask the state to move a primary up. So, I just wanted to raise those. I think those are considerations that would need to be weighed before I would be ready to make a request that the state move a primary or even a suggestion that the state move a primary because I think while money is a factor, I think there are other considerations that need to be weighed in as well. So I just wanted to mention that's why I didn't want to sign the letter frankly, because I thought it was a big simplistic as far as how to address that 3 primary elections.

Andy Spano: I thought it was clear. I thought it was clear that we have a single primary at some particular time and we suggested one in this particular letter. But a single primary so that we would be able to incorporate electioneering. We would be able to incorporate the savings of money, etc. Sure, if you and I want to sit down and make all primaries in June that would be okay with me, I would be in favor of that, assembly, senate, everything should be in June, that would be pretty good. That would save a lot of money. But that wasn't in the cards. And by taking the assembly and senate out of this, we took that element out where it's a bigger problem and a bigger fight right now because there's preferences in there that can't be imagined. This lists 2 federal elections and I think it was appropriate that's all. And I appreciate what you're saying.

Peter Kosinski: Well I just wanted to mention it because I didn't want to have it misunderstood.

Douglas Kellner: Yeah, let me just add on that I don't understand the petitioning argument at all because you've got to petition for the Presidential primary at the same time that we were proposing you'd be petitioning for the congressional primary. So if you don't want people petitioning in the cold, then the goal is to set the Presidential primary at a later date but still have them both at the same time. Indeed you can set the congressional, the Presidential primary for at least the first week in June.

Andy Spano: You have village elections up north. They are in March most of those.

Peter Kosinski: Yes they are and a lot of them do caucusing.

Douglas Kellner: Unfortunately the 4 of us don't get to decide this.

Peter Kosinski: Fair enough I just wanted to mention it.

Douglas Kellner: There's no discussion, if you want to just make it in public we can vote on it now.

Peter Kosinski: I want to move we were hiring Brendan Lovullo to the position vacated by Joe Burns. I would move that we make that appointment.

Douglas Kellner: Those in favor say aye.

[Chorus of ayes]

Opposed? Alright. It's done.

Andy Spano: Now I move we go into Executive Session for discussion of items that are confidential.

Peter Kosinski: I'll second that.

Douglas Kellner: Okay and I would just make note that I may have remarks after the Executive Session concerning subjects that we discuss on that so that our

Peter Kosinski: Public should stay.

Douglas Kellner: Right. I figure we ought to wait for our discussion and then I'll make the public remarks after just to make a record.

We are resuming from Executive Session. I wanted to make some remarks about one of the issues that we discussed in Executive Session. I think there needs to be clarification of how our Compliance staff is handling the issues of Political Action Committees and Independent Expenditure Committees. One of the issues that we discussed was whether a Political Action Committee can make independent expenditures. I raised the issue that 14-118 (1) said that Political Action Committee which makes no expenditures to aid or take part in the election or defeat of the candidate other than the form of contributions is not required to list the candidates being supported or opposed by such committee. In my view, if that Political Action Committee decides that it wants to start spending money by way of independent expenditures it may do so but it first has to file the list of candidates it supports and then comply with all of the requirements of 14-107. Right now, it appears

that our Compliance staff and our forms don't really accommodate that kind of transition so my suggestion is that the Commissioner's direct the staff to prepare an advisory opinion and just investigate that situation and report back to us.

A second issue that came up that I hope will prompt further investigation is the threshold factors that would trigger an investigation of whether expenditures are in fact independent and, I for one advocate that we follow the factors that are set forth in rule 1-08 (f) of the New York City Campaign Finance Guidelines rules and that again, that the Commissioners should articulate if there are other factors, the Commissioners should articulate what those factors are. So I appreciate everyone letting me make that statement and unless you want to have further discussion, I just ask that there be consensus that we instruct the staff to report back on the issue of Independent Expenditures by Political Action Committees.

Peter Kosinski: I'm fine with that.

Gregory Peterson: It's very appropriate.

Douglas Kellner: Thank you. If there's no further business we can adjourn and our next meeting is July 27th. Thank you.