

Douglas Kellner: Good afternoon everyone. I call the meeting to order. My name is Douglas Kellner, Co-Chair and I'll ask the other commissioners to introduce themselves.

Jim Walsh: Jim Walsh

Gregory Peterson: Greg Peterson

Evelyn Aquila: Evelyn Aquila.

Douglas Kellner: And our staff?

Todd Valentine: Todd Valentine.

Kimberly Galvin: Kim Galvin

Paul Collins: Paul Collins

Tom Connolly: Tom Connolly

Dave Loomis: Dave Loomis

John Conklin: John Conklin

Joe Burns: Joe Burns

Bill McCann: Bill McCann

Liz Hogan: Liz Hogan

Bob Brehm: Bob Brehm

Bob Warren: Bob Warren, Election operations

Douglas Kellner: We have one guest today would you introduce yourself please

Brian McKenna: Brian McKenna

Douglas Kellner: Thank you Brian welcome. Alright first item on the agenda is the approval of the minutes of September 12, 2012. Is there a motion?

Jim Walsh: So moved

Greg Peterson: Second

Douglas Kellner: Those in favor say aye?

All: Aye.

Douglas Kellner: Opposed? The minutes are adopted.

Do the unit updates, Bob Brehm and Todd Valentine Executive Directors.

Bob Brehm: I think that one of the main issues we've been working on that's due today is our budget. You know the budget call letter came out in the middle of September and from our perspective they require a budget equal to the same budget we submitted last year. So in that regard there's not change. We are updating the memo that goes with it to reflect you know some of the substance differences between an odd year and an even year following a presidential. So the budget measured itself probably won't be that exciting a change for us other than we're working on our budget side letter and know a number of people from the units have looked at the information that really needs to be updated, mostly you know David Loomis from the IT department to make sure it reflects his perspective of where we stand with the end of life issues from a technology point of view. And also from the campaign finance from the outstanding issue as far as how to accomplish the requirements of the statute with a reduced staff and the numerous responsibilities of even the three strikes the legislation to get that accomplished with the existing staff as well as the technology. So that we will have. Our goal is to get the budget side letter out by the end of the week and the budget message itself by today. Other than that it's the routine kind of work that we've been doing other than you know our monthly conference call with the election commissioners. This month meeting the officers will be here Thursday for prep for the winter conference. They've selected the Albany Hotel which is right behind us which will make it a little easier. So they're coming to do that prep work on Thursday and to meet with us to start reviewing what we want, what we all want on the agenda. So if anybody has any agenda items now is the time to start raising them so we're ready for that meeting. And then we have the regular call with all the members scheduled for next week

Todd Valentine: Yeah the dates for that winter meeting are tentatively scheduled for January, Monday January 14 through the 17th. Again we're working on this week and then you know they have a small planning committee to work on the agenda and that obviously we'll have, you know we have presentations we like to make with regard to campaign finance, the election update, voting machines, the usual stuff that we will do in January so blocking that time out its in the budget and just point out one important thing that you may have noticed were absent, Anna has been out. She's been sick. She home and on the mend and we wish her well and hope that she gets back soon so. We a bit of a man down.

Evelyn Aquila: I'm sure an item for that conference might be the election that we're just having now because I think there are a lot of things at the election that will probably need to be discussed. I really think there'll be great numbers, I think the turnout will be very heavy and if the turnout is heavy they'll probably be long lines at different polls and things and there'll be complaints from voters which is natural and normal. But I think that it'd be worth it to review this election at the meeting.

Todd Valentine: Yeah it's a good time and we try to do that every 4 years, to take a time in early ...

Evelyn Aquila: But I think the new machines

Todd Valentine: to look backwards.

Evelyn Aquila: I think the new machines and so many other things that are changed. There'll be people coming out to vote, people come out to vote in a presidential election who haven't voted in a few years and at least in the cities, the large cities all across the state, I think the turnout will be heavy and people tend to vote at certain times of day before they go to work, after they come home from work. And I think we will hear a lot about it. And should take a good look at it.

Todd Valentine: Oh I agree I agree.

Douglas Kellner: Alright well thank you. Legal Kimberly Galvin.

Kimberly Galvin: Thank you Commissioner. There's really not much to add to our written report. It seems you know we've been busy I guess we could add opening mail registration forms with the rest of the entire building because we're doing that as well. But the issues with the Department of Justice seem to all be moving along, the over vote and the double vote litigation seems to be moving along as updated last time. We've been busy but I don't see any problems where they are worth mentioning at this time. Do you Paul.

Paul Collins: No. The only thing due that's still open we did not receive a decision from the appellate division on the Nassau County Page challenge re: the electronic voting issue. As you know commissioners we've been in trial court, they took an appeal, that appeal was argued 4th of September and we're awaiting a decision, probably sometime in November. Absolutely unrelated to the timing of the elections, just...

Douglas Kellner: Alright then we'll turn to Election Operations. Joe Burns.

Joe Burns: Todd earlier mentioned Anna's been out sick but we've been muddling through the best we can and it's certainly good to have her still available by phone and e-mail and we all hope that she'll be back very, very soon. You have our written report,

just a few things to underscore. We do we have selected an asset management system. There will be a resolution later in this meeting to pay for it. On the clear ballot project there will be a check on Wednesday in Schenectady County and in Saratoga on Thursday of this week to test the system and to which is really a check on the 3% audit that's already been conducted in North County. For the general election we are looking at doing that in Monroe and in Schenectady counties, one of each system one dominion county one EF&S County. I think that's about it. Again you have our written report.

Douglas Kellner: Ballot usability

Joe Burns: We're receiving the ballot and Phil Jorczak is actually collecting those and doing an analysis of which counties are using squares versus which counties are using oval. We're just now getting the general election ballots and I believe at this point we do have every primary ballot sample.

Douglas Kellner: And I know in New York City there were a lot of complaints about them using too small a font size with lots of white space left on the ballot. Have any comments or suggestions gone down to them to follow up on that?

Joe Burns: I know personally I have not had any communication with them on that although I want to say a news report within the last couple of week's maybe that said that. But I would hope that somebody there would be in touch with us on that if...

Douglas Kellner: Well I suggest that maybe you need to be proactive about that as they do it now and I mean I don't see any reason why the New York City ballot should be even smaller font size than other counties using the ES&F system.

Joe Burns: Okay that's something we can certainly take a look at.

Evelyn Aquila: Joe could I ask you something and I don't know if I'm out of line by even bringing it up at this time, maybe it's a better thing to talk about after the election but I've been worried about you know the amount, I want every New Yorker to turn out and vote who's eligible, don't get me wrong, but I'm concerned about people being turned away just because they walk into the polls and see long lines and say "the heck with it" and I'm seeing all these people across the United States who have several days to vote and I know it costs more money and there's all sorts of things tied up in it, but I keep wondering if we had two days to vote in New York State would it make it easier and I don't know if it's something the other commissioners would agree with me that's worth investigating. I mean when this started out that we had one day to vote in New York State I don't know what the population was, but it certainly wasn't what the population of New York State is today. And I think in the cities particularly. Maybe there are areas that only need one day. But I think there are areas in this city that could probably use 5 days to vote but I'd be happy if we could have two and I don't know if that's legal. I mean I see other states have a week to vote. They've already voted half the states up

there, they put the map up and say they're voting you know and I know we're in Northeast State and we're not supposed, you know we're a little uppity about who we are and we don't do those kind of things but when you have the time and if the others all agree, I think it would be something worth investigating even if we only did it once every 4 years when we have presidential election. But I don't want people to walk into the polling places and walk out. And just 2 Sundays ago coming out of a mass one of my older neighbors spoke to me and she said you know somebody had a button on for somebody and she said, one of the congressman "I wouldn't vote for him.." so I said well I'm glad. I don't know who I'm voting for yet I'm still thinking it over. That's best to say you don't want to say who you're voting for unless you're really keyed up about it. And or it's worth talking to the person you're talking to about it. But anyway I said to her "oh well good." Because I knew she said one time she wasn't voting anymore for president. And I said well that means you're coming down to vote this time, she said "No, never. Just like a lot of my friends, we would not walk into those places where there are 500 people and got to stand around not even a chair to sit on for 2 hours." So there are people out there not exaggerated Mrs. Sims said it but there are people out there who feel that if the polls are going to be like that so be it, they are likely not going. So I think we have a duty to take a look. Our population has increased. When we started voting on the second Sunday, the second Tuesday after the second Monday what was it, right after the civil war we went to that exact date. So I think it's worth taking a look at and if my fellow commissioners might agree with me just to do an exploratory on it.

Jim Walsh: I would assume that would need legislative approval on it wouldn't you?

Evelyn Aquila: Well if we had something to give them. See we examine this and we looked it and give it to the legislature, I don't think we just go empty handed to them.

Todd Valentine: Well we can, you don't have to reinvent the wheel to know there are studies that have come and gone we can look at those. A review of the recent research with regards to the impact of early voting what you're describing and that versus voting by mail, versus the voting sector concept which is that, we've really tried, it's something we've done within the bounds of the law that we have now is to try to encourage boards to try to have poll centers that can cover a number of districts because this makes an economy of scale that they can take advantage of under the current law. Currently we could review the research literature that's out there.

Evelyn Aquila: I mean nobody in this state, even if they have looked at all different ways to vote, I don't think anyone looked at the idea of having a second, 2 days. As I see some states they've got it already you know and I don't know how long they take it. And I know it's a new expense, it means inspectors for 2 days instead of one day. Everything is an expense but I just thought to at least for us to talk about and if the other commissioners disagree with me well then it's a dead issue. But I think it's worth stating to examine because I'm afraid we're losing people who would ordinarily vote and who won't vote because they're afraid, especially like I said in the cities and I don't just say

New York City, I say there's a lot of cities in this state that might see the same problem and I just put it out there right now just for us to think about maybe. I'm not even calling a vote on it; I'm just saying you know it might be something worth thinking about.

Jim Walsh: I think it's a far more cry correction than anybody may believe particularly around these presidential elections because frequently how come some are voting out there already and we haven't even started to get ready for it yet you know physically yet. It's a good question.

Douglas Kellner: Anything else for election operation? Then we'll call on John Conklin for NVRA public information.

John Conklin: Thank you commissioner. We've been very busy. Kim touched on voter registration forms. We've had a lot in process. It's been necessary for us to reach out to other units in the building to help us process the forms that we have to send back to the local boards. So I would like to thank all the other units in the building who have helped the staff to do that. In particular, the public information office doesn't have a secretary currently so some of the duties for answering the phone have been spread around so I want to thank Donna Mullahey and Maryellen Reda and Robin Guilbault for helping out with that they've been instrumental in helping us answer a lot of calls from the general public. Other than that, we have a comprehensive report that we've submitted to you. If there's any questions on that or if Tom wants to add anything.

Tom Connolly: Well the only other thing I want to touch upon is that is lastly we've been working with a lot of the MOVE Act and we're getting a lot of phone calls from mainly the military and special federal voters overseas, also included with all the counties to make sure that the state local ballot that was certified was uploaded in the ballot system so that the military voters would have access to that as well. So a lot of right now we're dealing with some of the voters who are currently on our register and have requested a ballot, I'm helping them navigate the system or new voters who are looking to request their ballot for the first time.

Douglas Kellner: Great. Liz Hogan for campaign finance.

Liz Hogan: Thanks commissioner. Basically the report that we submitted for the month speaks for itself. There's a couple of issues I will just touch on and one is over the past few meetings I had updated you in the packet relative to a change in processing of our certified letters relative to nonfiling and I'm really happy to say that Dave Loomis worked really hard with us and has through his really through his efforts to reach out plan to select a vendor and submit the documentation justification to the Division of The Budget. So we're hopeful that that will move along. And that is really going to help us a great deal relative to the efficacy of getting those letters out which I think on average we send about 5000 of those certified letters out. We're the largest state agency user of certified mail so we do send a lot of those and I think once we get that software clear and

the machine in place it's really going to help us relative to like I said our efficacy and our really the best use of manpower. Because we have to do a lot of that manually. You know a lot of it is stuffing of envelopes and all that so we're very happy about that.

The other thing I would point out is that we're in the process of very busy time relative to campaign finance filings. The in addition to the January and July periodic which are a given, in this year we have six election reports that may be due by a particular candidate and this year you know we had a lot of primaries, a number of factors came together which created a lot of open seats and there were a lot of candidates running in primaries and you know that of course was triggering the requirement that they file primary reports and then general election reports and we're in the middle right now of I think we have 4 law suits going on right now and we have 2 more that will be upcoming in the next 2 months. So we have been extremely busy and even year, September and October of an even year are extremely busy for us because of the petition process and because of the need on the FIDAS side which is campaign finance side of our agency software to incorporate all the information that is on the candidate side so that our system can recognize who's running and who owes us specific types of reports. We've very busy with that right now and I bring up the filings, mostly because I want to issue a cautionary warning and plea for assistance from county commissioners who listen to our meetings because the legislature last year in their I forget what the bill was called, but it was the big the big bill that they did relative to ethics. There was a new mandate on the state board and that was to when a person responsible for filing fails to file 3 election or 3 financial disclosure reports in their election cycle, it triggers the potential for them to be sued for an additional and on an additional basis. Now normally right now we sue people for not filing, we sue them for each individual filing that they don't make. But the cumulative of what Bob called I think when he gave his report was 3 strikes penalty and the very, has a lot of impact on people. You know many times treasurers are just folks and the penalty for non-filing was raised from \$500 to \$1000 maximum which we have incorporated into our lawsuit and with the potential to be sued now for failing to file 3 financial disclosure reports, which can add up very quickly when you have to file a primary report and you don't. Now you've got the potential of the initial fee that you missed as a basis, and that's \$1000 each, you've got \$3000 in fines and now the 3 strikes leaves you vulnerable to a fine of up to \$10,000. So the just folk's treasurers are now on the hook for potentially \$13,000 in fines and that's a lot of money for most people. So you know Bill and I have really spent as much time as we can up till now imploring people that the understand that this is coming and its going to have a big impact on people. And when we go to the conference in January you know again we will, when we do our presentation we'll talk about it but I mean this has a significant potential of impact. And so I raise it specifically because we always reach out to the county commissioners for assistance when people don't file and it's become even more imperative that they understand the potential impact that this might have on the people who work and run for office in whatever in their county. And so I bring it to your attention just because I think it needs to be highlighted. And that's basically what we've

got going on; you know plus all of the other things that we do all the time in terms of the phones and everything. But do you have anything you want to add Bill?

Bill McCann: No just waiting on some court decisions and we have a couple of those matters pending. Which obviously depending on what comes out of those will then have impacts on future actions of the board but those are up in the air at the moment.

Douglas Kellner: So you have cases in federal court, you don't have any significant things pending in state court?

Bill McCann: No no other than our non-filers.

Douglas Kellner: Right okay. Alright. Anything else on campaign finance? Then we'll ask Dave Loomis to give his report.

Dave Loomis: Thank you commissioner. I don't have anything to add to my report I submitted.

Douglas Kellner: That's always good news. When the computers are working nobody complains.

Dave Loomis: I don't know if I said that.

Douglas Kellner: Alright that's great. Alright. We have no old business on the agenda. The first item of new business is determination regarding subdivisions and substitutions. Kim is that do you have the report?

Kimberly Galvin: No I don't.

Douglas Kellner: Who has the report?

Todd Valentine: Well the substitution was filed with regards to the 10th judicial district on the working families party line and prior there had been an original nominee. I have got to take a step back just to give a complete story. There was a nomination was filed in the 10th judicial district for supreme court again by the working families party what date difference, one more that doesn't matter. Subsequent to that or something like that, subsequent to that filing a court action was commenced challenging the qualifications of the candidate, the original underlying candidate. His last name is Davis, Gary Davis and the court rendered a determination with regards to the qualification of that candidate the substitution was so a vacancy was...

Douglas Kellner: The candidate was running for the senate, the 60th senate district and did not file a declination of its senate candidacy so therefore he became ineligible to run for Supreme Court justice?

Todd Valentine: Right and wasn't filed a declamation

Greg Peterson: Technically he would have been running for two offices?

Evelyn Aquila: Correct, you're not allowed to do that.

Douglas Kellner: So I think we all agree that he was not qualified to run for Supreme Court judge because he was on the ballot for the senate. Alright so working families party filed a substitution and objections have been filed to that substitution.

Todd Valentine: And then objections were filed.

Douglas Kellner: Commissioner Aquila and I have prepared written opinion and so I'll make the motion to speed things along to overrule the objections and find the candidate qualified.

Kim Galvin: So the court ruled he wasn't qualified.

Douglas Kellner: The substituted candidate. The objection is to the substitution. Right? That's the objection we have before us, the substitution.

Todd Valentine: Well but actually before that the court still hadn't ruled on the validity of the substitution itself.

Douglas Kellner: Right. There's already a court order right?

Evelyn Aquila: Yeah

Douglas Kellner: I'm sorry.

Todd Valentine: We haven't, there's 2 documents before the board that the staff have not agreed on or have risen to this level. The first is the actual substitution itself and based upon the court's determination in combination with Election Law 6122 which says that you cannot be nominated to an office to which you cannot hold, thereby rendering the underlying original nomination of Mr. Davis invalid

Douglas Kellner: But that's not what 6122 says. Alright I'll let you finish your thing. Just make your presentation.

Todd Valentine: Therefore the substitution of the underlying nomination was invalid and therefore there is no substitution to be had to. So the substitution itself is not valid.

Douglas Kellner: Todd do you recognize that that many many parties nominate candidates for judicial office who are already on the ballot elsewhere right?

Todd Valentine: And they often decline.

Douglas Kellner: They decline. So the nomination is valid until they fail to decline the other office or if they do decline the other office, then the nomination remains good

Evelyn Aquila: And it becomes valid.

Todd Valentine: But no instances where the declamation fails to happen, the party took the chance by nominating an unqualified candidate rendering the original nomination null and void.

Douglas Kellner: Except there's no president for that and there is a president to the contrary. Okay but that's your position. So you want to, do you want to call for a vote on that issue?

Todd Valentine: Yeah I think we need to go in the water with the substitute first

Douglas Kellner: So go ahead what's the motion that you want to put before us?

Todd Valentine: Well it's before the board whether or not the

Bob Brehm: substitution is

Todd Valentine: substitution is valid.

Douglas Kellner: Alright so the

Todd Valentine: before the board is whether or not...

Bob Brehm: substitute Richard Ambros for Gregory Davis is valid for the 10th working family is that it?

Kimberly Galvin: It's whether or not the underlying disqualification of the candidate renders the original nomination null and void to which there can be no substitution.

Douglas Kellner: That is the issue?

Kimberly Galvin: That is the issue

Douglas Kellner: Alright. So it doesn't matter how we make the motion because we know how it's going to come out.

Greg Peterson: Our position is that the original the original nomination is void ab initio and we start from there, anything that comes after that has to fail.

Douglas Kellner: Alright so why don't you I'll take that as your motion and we'll call for a vote on the motion those in favor of Commissioner Peterson's motion say aye.

All: Aye

Douglas Kellner: Okay so Commissioner Peterson and Walsh say aye, Kellner and Commissioner Aquila then countered. So it's 2 to 2.

And then the next issue is on the objection?

Todd Valentine: Well that would be the next document I mean

Douglas Kellner: Alright. And so the same issue on the objection we move to overrule the objection and find that the candidate is that the substituted candidate should appear on the ballot.

Greg Peterson: No this is right now before the court and I think its tomorrow, is that correct? It's before the court and as far as we're concerned if the court decides that they're going to go to that issue I would say per our usual MO let the staff handle it.

Douglas Kellner: We've been back to the occasion of objections before.

Greg Peterson: Yeah and normally

Evelyn Aquila: I think the court likes our opinions.

Greg Peterson: Yeah but I think again if it gets to that point then as far as I'm concerned, let the court decide.

Douglas Kellner: Well I agree that the court will decide but we have facts and we should just rule on this facts which is the same as what we've just voted on which is we're going to split right because we think the specs are invalid and you would take the position

Greg Peterson: No I would take the position that I can't really go to that point because

Douglas Kellner: you have to rule whether or not...

Greg Peterson: Yeah it's like saying "You know I want to foreclose on this mortgage here, wait a second the mortgage was never put against this house." Well then you can't

foreclose. So I'm at a point where if that, if its void from the beginning I can't really vote to say yes or no on the objection. I'm not going to take a stand on that.

Evelyn Aquila: I don't know if we really know it was void from the beginning.

Douglas Kellner: I understand your issues so we should just vote and we'll split.

Evelyn Aquila: Okay

Douglas Kellner: So the motion my motion is to overrule the objection and find that the substituted candidate should appear on the ballot. Is there a second?

Evelyn Aquila: Second.

Douglas Kellner: Those in favor say aye.

Douglas Kellner: Kellner and Aquila, those opposed say nay

Greg Peterson: Nay based upon it being void from the beginning and therefore we don't feel we can vote on, in favor of that in this juncture.

Evelyn Aquila: It's right on both sides of this

Douglas Kellner: Okay. Commissioner Walsh?

Jim Walsh: for the exact same reason as Commission Peterson.

Douglas Kellner: Okay so its 2 to 2. Same vote and Commissioner Aquila and I submit the written opinion to be forwarded of any of the written material.

Evelyn Aquila: The writing was excellent when I read it.

Douglas Kellner: Well I didn't write it either we'll thank Paul Collins for the ghost writing.

Evelyn Aquila: Paul it's excellent

Paul Collins: Thank you Commissioner Aquila.

Douglas Kellner: But it was done at our request.

Evelyn Aquila: Yes I was done at our request.

Kimberly Galvin: The court asked that everything be sent to them by progress.

Douglas Kellner: Okay so I'll leave it to you and Paul Kim to forward them but that's why we wanted to publicly acknowledge that we did write out our views on all this.

Okay. So the next item on the agenda is the resolution to authorize HAVA expenditures for the cost associated with the purchase, maintenance and related services for an asset management system to track and inventory voting systems and equipment. And Joe how much is the resolution for?

Joe Burns: Just over 1.9 million dollars.

Evelyn Aquila: Say that again

Joe Burns: Actually just over 1.9 million dollars

Jim Walsh: In other words just under 2 million.

Evelyn Aquila: I knew what you meant but I wanted to hear the amount

Douglas Kellner: Alright. And this is coming out of the HAVA funds

Bob Brehm: That's right so that's why it requires the vote.

Douglas Kellner: Okay those in favor? Is there any discussion? Those in favor say aye

All: Aye

Douglas Kellner: Opposed? So that adopts. It's adopted.

Alright next is the discussion regarding Bengali required enhancement to the EF&S voting system.

Kimberly Galvin: I don't know how lucky I got involved in this but if I could just back up and explain. We were on a call with the county commissioners and we were discussing the over vote, double vote, mitigation measures that we have to take place because we missed the deadline and we were using as an example of things that we know the upcoming Bengali language and New York City expressed "Well we have to have it or we're in trouble by June" and if you all recall the statement of work didn't require it to get to us until March of next year so I offered to sit with New York City with a vendor and try to work on a schedule that might be workable or all of us and we've had multiple conversations and ES&S has backed up their timeline which I think has been provided to you. we made them fill out for us, Bob Warren and I a Bengali only in the draft that we haven't certified yet or a Bengali plus the other changes which are customer fixes and a lot of the minor if you will issues. They provided the timeline to us, it appears that the

Bengali with the other fixes will get us the software in time you know unforeseen catastrophic events with the testing which ordinarily ES&S does not have in time so if the New York City elections is pushed up till June, they would have the new Bengali software in time for that. Now I've been talking with New York City, they're on all the calls. We haven't gotten a confirmation explicit from them yet that they would also prefer to go with Bengali plus the other changes versus straight Bengali but I just thought that I would raise it for you so that we're making a record in the event that something happens that we're being deliberate and diligent in our effort to get this out in time. And how does affect us because we are the ones that ultimately certify the software changes, we will be named in any of the upcoming.

Douglas Kellner: Now the additional changes are these in addition to the changes that are with the certification pending?

Kimberly Galvin: They are. And what we did is on the call we've had ES&S provide to us a specific list of those changes and we went over each of those changes individually with their software engineers if you will, and then Bob Warren and John Nordist were able to make a determination as to whether or not that would impose a greater timing restriction on us and I think that we became confident that the changes were good changes and as we explained, they're already done. It doesn't require, if we took all of the people that are working on the other changes, it's not like they can do the Bengali only but the Bengali with the long pole which they referred to as such. We went over each change individually and they had certified to us that these are the only changes in the software so we're better able to develop our test cases and get in line for the testing when is ready.

Douglas Kellner: What are the other changes?

Kimberly Galvin: There is a list of I think 41 other changes.

Todd Valentine: Where is that list?

Kimberly Galvin: Oh it was in the document that I gave. I'm sorry

Todd Valentine: Yeah you had them e-mail them

Kimberly Galvin: I provided it in e-mail but it didn't make it...

Todd Valentine: Copies didn't get made.

Kimberly Galvin: Sorry about that

Evelyn Aquila: While they're looking at that I just wanted to say this may, the Bengali language now being included in New York City reminded me of my father-in-law who

came from his name is Dominic Aquila and he came from Aquilla, Italy and one of the proudest things he felt in his life was that he became an American citizen and could vote. He never missed his vote and to do that he had to learn English. And he went at 16 years old and studied English so he could vote. And he told us about it every single election day. I have friends who don't vote but I love America so much I vote because I learned English. I guess they had to in those days. I guess that was the rule.

Douglas Kellner: It was a good one.

Evelyn Aquila: And he was so proud. He said he gave up every night for years he went to night school so he could speak English but the reason was to vote because he was tailor and he worked with all other Italians so he could you know it didn't matter where he worked but to vote he had to make sure he knew English. And he didn't want to speak it like he just got off the boat. We're not allowed to say those things today but

Greg Peterson: Let's bring back those days.

Evelyn Aquila: Bengal that's a tough language.

Douglas Kellner: I'd sitting here debating whether I should do my little speech again about New York City and their language requirements but I guess I will.

Evelyn Aquila: I sorry I took you off track.

Douglas Kellner: No you've given me the excuse to do it which is that again I reiterate that I think New York City is approaching their multiple language ballots in a less than optimal fashion. That first of all they should not insist on having all 5 languages on the same ballot. That where there are multiple languages than they should print separate ballots and rotate them as do many other jurisdictions in the country where they have multiple languages in addition to English. And secondly, I'll express my disappointment that in this election New York City really found excuses not to put Bengali on the ballots to be voted on in Election Day even in November. And that in my view it would have been feasible to put together a system where Bengali characters could have been imported into the ballots that are actually printed even though the Bengali characters couldn't appear on the voting machines and I'm disappointed that New York City did not take that route because it effectively delays the implementation of the Bengali language requirement to New York City.

Greg Peterson: What's the threshold number in order to get a language on a ballot?

Todd Valentine: It's 5% of the population for under, for Bengali there is another standard a separate thing, but for this purpose its 5% that don't have English as a proficient language within specific languages that are covered.

Douglas Kellner: Asian, it's Spanish plus Asian-American I mean Asian specific languages and Native American.

Todd Valentine: Right and in order to determine Bengali because its not specifically covered what New York City was required to do is they did a community survey project basically and in determination of the I think there were 18 possible Asian Indian languages that could have been chosen, they narrowed it down to Bengali based upon the community choice. So that's why Italian is not a specifically covered language.

Douglas Kellner: The European languages other than Spanish are not covered.

We had one additional guest, would you introduce yourself.

Greg Carlin: I'm Greg Carlin with the Times Union.

Douglas Kellner: Thank you

Greg Carlin: It's been a while since I've been here.

Doug Kellner: You're quite welcome Mr. Carlin.

The last issue I wanted to add to the agenda is discussion of the voter registration issues going on in Dutchess County that I'm very disappointed to learn that we, that Dutchess County is holding up the registration for a number of student voters who reside on campuses in Dutchess County. And my understanding of the issue is that they have registrations that have all of the information that is necessary to identify the voter's residence and that one of the commissioners is holding up these registrations claiming that they must have the name of the dormitory even though the dormitory name is not an essential part of the address as far as mailing purposes and does not affect identification of the residence of the voter for the purpose of assigning them to election districts. So I'm proposing that the state board send a letter to the Dutchess Commissioners advising them that where there is sufficient information to identify the residence of the voter that they are required to process that registration without asking for additional information.

Evelyn Aquila: This is a way to put college kids away from voting I really think so. And I know in a lot of places they want the college kids to think they are no really residents. But I think this is a, college kids have been voting by filling out the forms, the ages and now all of a sudden they want the dorm, the dorm room and the dorm building and the number of this and that in their room. I think it's outrageous. Of all the things I spoke on today this is the one I feel the most. I have five grandchildren and college kids and two of them graduated but three more one right down the road here at Skidmore and I really don't think we should allow this to happen. It's not right and they're sometimes the ones who are more interested. I mean coming up in the car I got an earful from my grandson who gave me a lift up here just talking about both candidates for president. He

knew more than any adult I've spoken to about it and yet we say they can't vote. If they didn't put in the number of their dorm room. It is not right and I think if I would use the language of my grandson today when I was telling him about it, a dirty rotten trick and isn't right. And I don't have any sympathy.

Todd Valentine: I think the factual distinction there is that the board of elections itself has had a longstanding policy that adopted in a bipartisan faction in 2003 which included the current democratic commissioner which specifically requires that a school address is incomplete if it doesn't have both the room number and the dorm name or the residence address. That's specifically in the policy that the board has adopted.

Douglas Kellner: Do you have a copy of that policy?

Todd Valentine: I do as a matter of fact.

Kimberly Galvin: This has been explicable to all of the colleges all 5 of them.

Evelyn Aquila: Not one of them do it

Todd Valentine: Well this is the process they adopted and the issue that we have is that the

Douglas Kellner: We could overrule this policy because first of all the forms the form that the students are given to register don't have a place for that so they wouldn't know when they send it in and with the exception of Vassar which doesn't have street addresses and where the dorm name is required in order to assign them to the proper election district, it's surplus information that's not required. So for Marist College and for the Culinary Institute there's no reason to require the dorm name as part of the registration. And it has the effect of creating an unnecessary barrier to registration for those students where the dorm name is not required.

Evelyn Aquila: My granddaughter Julian graduated from Marist. And I asked her about that. She said you know we never had to put the dorm room when I went to college.

Douglas Kellner: And there are already hundreds of students already registered from Marist and from the Culinary Institute that don't have dorm names on their registration forms.

Evelyn Aquila: And she voted from the time she went to college.

Todd Valentine: I'm not aware of that. I don't know if that's true but

Evelyn Aquila: It is true; my granddaughter went to Marist she graduated there a year ago.

Douglas Kellner: Well the question is should we be upholding a policy that the Dutchess that the Dutchess County Commissioners have put in that's contrary to state law?

Todd Valentine: Well I that's where I think we're making a distinction here is that I don't know that it's contrary to state law because the factual determination with regards to completeness lies under the constitution in the state statute with the county board of elections not with the state board of elections. It has to be decided on a local matter.

Douglas Kellner: We have supervisory power over this and we're

Todd Valentine: Based on the facts that they've described to me and many other institutions with their college and I'll give you an example, right in Albany County where the college has an address of 1400 Washington Avenue, except without the dorm designation it is split between the City of Albany and the Town of Guilderland. So without that information it's critical.

Douglas Kellner: And that's okay for Vassar but that's not the case at Marist, it's not the case at the Culinary Institute and so we don't require it. We required it...

Greg Peterson: We're talking about these specifically

Douglas Kellner: Marist and we'll I'm talking about Commissioner Knapp's request to the commissioners that was sent to us on Friday where she asks that we get involved in this.

Evelyn Aquila: You have to get kids to vote.

Douglas Kellner: And the issue is where it's not necessary. So for example if you live on Liberty Island and you register to vote and the caretaker is registered to vote from Liberty Island, he doesn't give a street address

Kimberly Galvin: With all due respect make sure that those things are true before we just issue a letter or direction?

Douglas Kellner: Then let's say if they are true that they should register them?

Todd Valentine: The determination is we cannot tell a county board to register or not register

Douglas Kellner: Yes we can. Look at the 3202 of the... If, if the dormitory is not necessary for the identification of the resident in order to assign them to the election district, then we should register them.

Todd Valentine: But it's the constitution that determine the county board is the register of voters not the State board of elections. We're merely the holder of the lid not the ultimate arbitrar of who is a registered voter and who isn't a registered voter. That is specifically reserved for the county board of elections and not to us. That is why

Evelyn Aquila: Why do you want to hold these kids up for goodness sakes.

Todd Valentine: That is why the state board is not allowed to make cancellations for deceased voters. We can't make

Douglas Kellner: But we should advise them as to what the law is and what the proper procedure is. And I'm suggesting here that where it is apparent that the Commissioner is improperly holding up the registrations, we should advise him what the rules are. And read it, read it out for everybody.

Paul Collins: The election law 3102 with respect to the State Board of Elections general powers and duties indicates number 2 visit county boards of elections, examine their procedures and records and direct that any such procedures be modified in any manner consistent with the provision of this chapter. I think that's a supervisory position you're talking about.

Douglas Kellner: That's exactly what I'm saying. And that if

Kimberly Galvin: Well let's go visit them

Douglas Kellner: Pardon?

Kimberly Galvin: We should go, I mean I think that it's just problematic when there's a longstanding policy to have someone complain to us and let us be the local board election police.

Douglas Kellner: No but that is our job. We're supposed to be reviewing the procedures of local boards to make sure that they are

Kimberly Galvin: Clearly when, some commissioner didn't know there'd been a written policy in place in 2003, we don't know what the registration of the other counties look like, we don't know if the county is split into election districts. Certainly there's a lot more information than us that needs to be decided before we formulate some sort of directive.

Douglas Kellner: So will you do that this afternoon and work on it and then give them a directive based on it? All I'm saying here is that we have that based on the facts as I understand it that with the exception of Vassar in Dutchess County there is no need for

the dormitory name in order to identify the residence of the voter sufficient to assigning the voter for communicating with the voter and for assigning them to their election district.

Kimberly Galvin: Just so our commissioners are clear I think the request by the republican commissioner was to simply send the registrants a request for more information not to wholly outwardly deny their registration.

Douglas Kellner: Yeah but that had the same effect especially done after the...

Jim Walsh: I want to ask you what difficulty is there being presented to the voter here? Can they just make an easy change or

Kimberly Galvin: They could make an easy change.

Paul Collins: But would it be timely that's the issue.

Kimberly Galvin: Well

Bob Brehm: If they haven't processed the application its in a holding pattern so sending out a communication saying I mean the statute is it's either complete or incomplete so it's either accepted or its rejected. And it provides a mechanism for further inquiry but the further inquiry would require the commissioners to agree not to register them as opposed to not registering them until the inquiry is completed. So difficult because I think as Todd said one commissioner feels that there's sufficient information and a complete application and I think the other commissioner perhaps taking the position as an incomplete application because it doesn't have the dorm name or the room number as opposed to

Todd Valentine: Well we don't know the facts.

Evelyn Aquila: I mean no person is rejected on their first opportunity to vote which they believe is their first option for an insignificant reason. There might be years before they decide they'll go back and vote again and they'll have a very bad feeling and opinion of what happened to them. And I don't think that's what want to do. I'd rather encourage people to vote. I'm sorry, I'm sorry.

Paul Collins: Can we narrow the issue and that is to say that to the extent that a college is in one election district using the address of the college is sufficient for registration purposes to the extent the college is in more than one election district, it is perfectly proper to require a more specific address. Can we agree on that and then you have a basis for moving forward.

Todd Valentine: No no

Paul Collins: No okay.

Jim Walsh: Let me ask a question and Paul on your

Todd Valentine: Well it's a question of it's not it's a question of a local determination as to the sufficiency of the address. And it's not just for

Greg Peterson: If a local determination is not based on a proper procedure then there is a problem.

Todd Valentine: Well it's now and also in the future too.

Douglas Kellner: When Commissioner Knapp wrote this...

Greg Peterson: I don't think we need to be in the position of overriding each and every county board they've been given the authority to register people. However given a situation like this, you know like wait a second, you know if it's all one ED what the hell are we talking about?

Douglas Kellner: Todd specifically Commissioner Knapp, wait Commissioner Knapp's request to us says "All these voter registrations in question are wholly within one election district. So the board can determine their election district and where they should vote. We also have adequate mailing addresses to mail the acknowledgement cards to these voters". So given those two facts, we should tell them that based on those 2 facts if those 2 facts are true, that they should process the registrations as complete. So that's my motion is that we send that letter.

Evelyn Aquila: I second it

Douglas Kellner: And that all it would have to say is if those two facts are true, that if the voter registrations in question are wholly within one election district and the board can determine their election district, and it has sufficient address for communicating with the voter, that the registrations should be deemed substantially complete and processed.

Greg Peterson: It should probably be an advisory letter rather than what we're telling them...

Evelyn Aquila: Yeah an advisory letter.

Douglas Kellner: I agree with that commissioner.

Greg Peterson: Yeah we feel that you know this...

Evelyn Aquila: Let's call a vote.

Jim Walsh: Just one question. Does the voter does the form reflect the form the person is looking to vote, does that request this information?

Todd Valentine: I don't know I don't know what's on the forms.

Douglas Kellner: Well we know what our standard form is and our standard form does not have a space for dormitory. It just calls for a street address.

Todd Valentine: We know what our form says but many counties distribute their own version of the form so we don't know what they've asked for. So we can advise if that if the form is complete we can register the person, but the completeness is a determination that needs to be made

Kimberly Galvin: Substantial compliance standard.

Paul Collins: Commissioner Kellner, I understand what Mr. Valentine is saying but our form doesn't require it and to the extent that a county requires more information than ours apparently superfluous information it's in derogation of a citizen's right to vote. And we can't allow that.

Greg Peterson: No no you back off. That's not the case at all because if you have one dormitory that crosses 14 different

Paul Collins: Absolutely

Greg Peterson: You should have something down there

Paul Collins: and that's right

Greg Peterson: And that goes beyond what we have here it goes beyond ours so they certainly have the authority to say wait a second, we want to know this, this and this so they divide it up appropriately.

Paul Collins: Absolutely.

Evelyn Aquila: In the past did they register the youngsters who came from the college?

Greg Peterson: In my years they're doing it this way so

Evelyn Aquila: I bet they've been doing it as they're registering them and all of a sudden their not.

Greg Peterson: However however that being the case you know again what it boils down to is one specific question in one specific county in one specific ED so what does that say? It says they all reside here so what the hell are we talking about?

Douglas Kellner: It's actually 2 it's Marist

Greg Peterson: Yeah but I mean 2 separate but still so there

Douglas Kellner: So we'll let you frame the

Greg Peterson: No what you said is appropriate

Douglas Kellner: So we send them an advisory letter that if the, if the registration is from a student where the address is all within a single election district and the address is sufficient for communicating with the voter, that should be deemed substantially complete and the registration should be processed.

Evelyn Aquila: Right

Greg Peterson: Right

Douglas Kellner: Alright so those who favor say aye.

All: Aye

Jim Walsh: I have a question. If in my opinion if the original application requested this information and it was intentionally not put on there by the proposed voter then I would send it back and I've have that vote come in and fill it out because we asked you for this information, you choose not to give it and it's a requirement for you to come like everyone else in this voting district to please abide by the rules. Now if it weren't asked then that's a different story then I don't know why we go back and ask for something that wasn't asked for in the first place. Secondly, my feeling is well I'll probably vote for this I just want to give my 2 cents. My other position is that I have 2 more points, one is if this is something they've done for 9 years now all of a sudden we're going to change it, and my third point is that I really don't like the state government or the federal government stepping in when sometimes things have been running quite smoothly and dictating to local government or to the county city governments what they have to do. I think we have more problems in our government and society by a state and federal government mandating things to local government and making life more difficult rather than easier. But with all that said I will support your resolution.

Evelyn Aquila: Well I've got to tell you I asked my granddaughter Jillian and she said I always voted cause with me in the family you know....

Greg Peterson: Let me ask you a question Commissioner where does she live?

Evelyn Aquila: Well she lives in New Jersey but was in Marist College for 4 years.

Greg Peterson: It's a curiosity question

Douglas Kellner: Did she vote at Marist?

Evelyn Aquila: Yes she voted at Marist because they were

Greg Peterson: She rather vote there than in New Jersey

Evelyn Aquila: Yes she did. She's rather vote with her friends because they all wanted to be on the bandwagon. Not that she would have got active or anything but she wanted to...

Douglas Kellner: Are you ready to vote? No we should have offered entitled to be heard. Those in favor say aye.

Aye: Opposed? Alright carried. Alright now I think we've already set the date for our December meeting, December 10th.

Paul Collins: I think we have 2 campaign planning

Douglas Kellner: I know we're going to go in Executive Session though right? So motion to go into Executive Session for

Bob Brehm: Do you want to deal with these 2 so that we don't have to take a vote when we come out of executive session?

Todd Valentine: If there's no issues

Liz Hogan: One for a vote the other is an update.

Douglas Kellner: I don't mind voting on them now. Alright those in favor of the 2 staff reports say aye.

All: Aye

Douglas Kellner: Opposed? And then motion to go into executive session to discuss enforcement issues.

Jim Walsh: So moved.

Evelyn Aquila: Aye