

Peter Kosinski: State Board of Elections here on October 25th. I am Peter Kosinski. We have Commissioner Kellner, Commissioner Spano, Commissioner Peterson here at the meeting today.

We will start today's meeting with the minutes, and we have several minutes we have not approved over the last 2 months. We have minutes from August 8th, August 22nd, September 7th, September 12th, and October 3rd. Would anybody like to take them as a package or how...

Douglas Kellner: I move that we adopt all of them as a package and point out that we just got two revisions that were initially circulated.

Gregory Peterson: I second that.

Peter Kosinski: We have a motion to second. All in favor?

(Chorus of ayes; 4-0).

Risa Sugarman: Commissioner, could I just...

Peter Kosinski: I'm sorry, we had an issue?

Risa Sugarman: Well I indicated in my statement on August 8th that I asked that the public comments that were made in reference to the regulations on the independent, my regulations, the subpoenas I asked that they be made part of the public record, and I noticed that there were other attachments that were included as part of the record and those public comments were not included. So, I would ask that the public comments be made part of the record as I did on August 8th. I have another copy of them.

Bob Brehm: The public comments and reference were really the ones that under SAPA (State Administrative Procedure Act) are the ones that we did receive. They were foiled from our staff to go to Enforcement, so they already are part of the public record, but we considered informing them anyway. The minutes are generally the actions that the Board took, not necessarily, other than there is also a video of the meeting and the transcript of the meeting are already posted on the website.

Risa Sugarman: Commissioner Kellner on prior occasions has stated that he wanted documents that were offered during the course of the meetings to be attached to the minutes. I offered them during the course of the meeting...

Douglas Kellner: That's not accurate. I said that I wanted the resolutions that were adopted at the meeting or when there was a consensus discussion that those documents be attached but we've never attached the public comments before.

Risa Sugarman: Well I understand that, but I requested that be done during the course of my statement and I think that it's important that the public knows and sees that as part of the minutes of the meeting all of the public comments that were made and received. So, I asked during the

course of my statement that that be done and I'm asking that that be done again. In addition, my recollection that the resolution was passed 3-1 not 4-0 and the resolution that was included in the packet says, the minutes say 3-1 but the resolution says 4-0 at the bottom.

Peter Kosinski: Okay so which resolution is that? August 8th?

Douglas Kellner: August 8th...

Todd Valentine: Resolution 18 dash....

Peter Kosinski: Oh, I see the document, so the minutes are correct...

Risa Sugarman: The minutes are correct.

Peter Kosinski: ...is what you're saying but the document is incorrect?

Risa Sugarman: Yes.

Peter Kosinski: I gotcha. So, the document that the minutes reference should also accurately reflect that the vote was 3 to 1. So that should be amended and should reflect that its 3 to 1. I think as far as your request about the public documents, we'll take that under consideration. I agree with the Commissioner we've never included those before in minutes.

Risa Sugarman: I understand but...

Peter Kosinski: They're documents that people submit here, we get those here all the time we don't include those in minutes normally, we only include in the minutes documents that are approved as part of the meeting itself. So, we'll consider it, but I think for today's meeting we have approved the minutes. They are approved in the current form. If the Commissioners reconsider having amended minutes in the future, we can consider that, but I think for today's purposes...

Risa Sugarman: I don't think you voted yet because I interrupted you.

Peter Kosinski: I'm sorry, I think we voted. We had a motion, second, all in favor was aye, I believe we voted. So, I think they're approved as is and we will consider...

Douglas Kellner: ...with that one correction...

Peter Kosinski: ... with that one correction, on that document should reflect the 3 to 1 vote. Other than that, I think the minutes stand as submitted and we can consider adding documents at a later date if the Commissioners feel it's appropriate.

So, with that we would move on to unit updates and our first unit is the Executive Unit; Bob Brehm and Todd Valentine.

Todd Valentine: Ah, just a quick update as we go through the meeting it falls into three categories, I'll call them ballots, budgets and building. As far as ballots are concerned in the election, I think we finally have all the court decisions except for the 13th...

Bob Brehm: No, that's done. The motion to consider was denied. I heard from the county.

Todd Valentine: Okay so I'd like to think they're all done.

Bob Brehm: I think we've heard today from Jimmy McMillen came in, in the mail, I gave it to Counsel, I'm not sure if that means we're back open or not.

Todd Valentine: Okay.

Brian Quail: He's amended his complaint but there is no time table for anything to occur...

Todd Valentine: There's no preliminary relief being sought.

Brian Quail: So, for all intents and purposes...

Todd Valentine: For all intents and purposes we had a ballot which was, to be honest with you, we struggled this year with a lot of amendments coming in and a lot of court decisions, not only for us but other counties too.

And we continue with our security measures and our contingency planning. We're going to start to ramp up just any updates we get, more intelligence reports that we receive to indicate any significant threats. There are currently no significant threats, there are not threats pending against us so we have nothing to report that are actionable as referred to us but we will continue to monitor that and we'll start to ramp up our standard contingency plan so if the website goes down, we have a backup website and a backup way to get phone lines if it doesn't work and that sort of thing. And we'll review some of these with the county boards. We have regular calls with them monthly; the next one will be Friday.

We are preparing our budget submission and Bob can go into more details but basically it provides, we're going to seek additional funding over last year's budget to accommodate the changes we needed to redirect staff in order to come up with the "Digital ads" regulation and database that we had to put in place. There were no additional funds for that, so we had to redirect resources that we had on staff for that which those are the same staff working on the CAPAS and FIDAS update. So, that has now put that behind scheduled and Bill Cross can talk more of the details on that. So, we need to get additional people put back on, put in the permanent solution for, or the permanent system for the Digital Ads Database but also to get his back on track for the CAPAS and FIDAS update. In addition, we going to ask for what we thought was a second of three \$5 million appropriations that will help us with the mitigation or the fixes, so to speak, from the risk assessments that we're getting from the counties that have just started in the process of being done. We hope to have those done by February, but we will need resources or money to provide those fixes to the counties and we'll try, over the next course

of a few months put in place a mechanism where they can procure those fixes once we figure out what they are.

And the building continues to be an issue. We haven't seen any press lately on it but what I had prepared and I shared with Bob was at this point, we are being asked, we have space constraints going into next year because of the additional personnel for IT and for the Secure Election Center, we obtained temporary space on the first floor in addition to the temporary space that we had, but we understand that that temporary space will no longer be available at the end of next year. So, we need to accommodate about 20 to 25 people in the existing space right now which is doable with remodeling, but the initial estimates were \$1.5 million for the renovation of this floor to accommodate that; which seems a little expensive. In addition, it didn't address some of the pest control problems we've had or seen in the paper which continue to be a problem. They have put additional traps, but we still have to put our own resources into doing that. So, what I've prepared for is at least that something you should consider for sending a letter to the Commissioner directly. We've talked to Deputy Commissioners of course, we talked to other staff and relayed these problems, but at this point, it something to consider you know if they're going to ask us to spend that amount of money and there's no indication that it's coming from some other resource other than our own so that's, again, additional funds we put into the budget, with something to consider, is there another space available that would be more cost effective? Why spend the money on that when knowing the other problems it doesn't address? So, it's just something for you to consider. And then I'll turn it over to Bob.

Bob Brehm: Well certainly budget is a pressing issue. It's due to be submitted tomorrow. Our HR person, Tom Jarose, has been out with a back injury which is - you know it's never a good time to be out the week that the budget's due - it's a little more challenging. But we believe we will have a submission on time. It's similar to what we recommended before that it be fully funded, that the functions of the agency as we envision for staff and for the technology projects. There will be an increase over last year in order to accomplish that. And mostly, the increase is the final technology push. We didn't envision a chapter that would require 1) that the staff had to make something work this year on an interim basis. So that took resources away from...

Peter Kosinski: How many staff are you dedicating to this new obligation?

Bob Brehm: Well there are a number that were already onboard working on the implementation of CAPAS FIDAS and I believe at least 4 more but there are different kinds of categories they fit in. We already thought we needed to bring people in for some of the equipment-related efforts at the end that were targeted, but there are more program people that we brought in or are bringing in now because we have to write program for the Digital Ads in the CAPAS FIDAS. None of that was preplanned up until the budget came out April 1. So, it's a matter of doing a great job working with Counsel and staff how can we get something out this year? But certainly, the only way to make that happen is we had to use the people we had. They had the skill....

Peter Kosinski: But I'm asking how many of those current people did you have to dedicate to that one task?

Bob Brehm: Bill had the better number but both programming, permanent staff and...

Bill Cross: It was portions of several people based on the role were diverted.

Peter Kosinski: Is this an ongoing obligation do you think or is it an initial, you said ramping up and then it will level out or do you anticipate using several people going forward?

Bill Cross: So, the diversion for the Digital Ads was temporary. That took away from the mainstream project. We're trying to regain time there. The staffing that we're looking to add is to basically accelerate what was already in the project plan. Most of that is temporary but that will end at, at completion of the project we do have a list of enhancements that can go further and there's certain staff that will be required to support ongoing effort in supporting that application. That's primarily would be dedicated to state staff and we'll continue to try to staff.

Peter Kosinski: I'm just trying to get a sense though, three people? Four people? Ten people? Twenty people?

Bill Cross: For overall development effort.

Peter Kosinski: For this task, this new task that we were given, just a guess.

Bill Cross: Portions of at least six people.

Peter Kosinski: Okay go ahead.

Bob Brehm: So, we're certainly working on that. We are finishing our onboarding of vendors for the federal and state cyber security money. The plan that we presented to you included risk assessments. Grand Thornton is that vendor. They have completed 13 on-site visits as of yesterday, they were in Erie County. We are scheduling then through the election season which is a bit of a challenge and it is something we're spending some resources doing so we can be finished by February. There's been a lot of cooperation, a lot of good feedback. We heard from the counties they visited already so I think it's a very positive engagement so far. Hopefully as we get a little further along, we can have some other reports to share with you as they finish them. We only saw one draft of the first county they visited, Schoharie County but as that comes forward...

Peter Kosinski: Are they going to visit all 62?

Bob Brehm: They're going to visit every county as part of the risk assessment. The bigger lift that we have seen is more of a technology IT department because it's a governance and a technology. The technology is mostly, with regard to the IT department, the how mature is the security around the computer network? But they're also validating the governance requirements at the board of elections. We had given all of our statutory and regulatory and our procedures to make sure that when they do on-site visits, they are also checking how well they're complying with that. So those will also be analyzed in the report. In addition to that vendor, we have hired Dynetech. We partnered with FireEye for intrusion detection services. We've been working diligently with many people in the agency to try to get that paperwork ready to go to the county

boards of elections. I think the most important part there is the agreement between the vendor and the county. It's an intrusion detection device so you're going to put it somewhere in an area that at least covers the election infrastructure, might include more than that if you're in a small county and you're getting everything. But the vendor is going to get information and report that information to the county. So, there's an agreement between the vendor and the county how they're going to treat that information and what are the protocols involved with that? We've been reviewing that both at the Counsel level and the IT level to make sure that it is what we think it should be. I think we're pretty close to releasing that to the counties, so we hope to have a kickoff probably before Election Day. It is mostly a product that the county IT department would have the responsibility to work with the vendor to identify and size the device. So, we're making progress in that regard.

The third vendor that we have secured for Managed Security Services Sedara, it's a New York Company out of Buffalo, I believe it's Buffalo, was the successful bidder. We've had two initial meetings with them to get their information ready for kickoff and that is a service for counties that really don't have any existing way of monitoring the information that the logs are being developed from the intrusion detection devices and for other services. What are the actionable items? What do they mean? What should the county do, based on the information that's being fed to me? So out of all those three products that one is more optional for the counties. But what we've heard from many of the places we've been to already is they think that's going to be vital for them. I think an important point that we've heard from Grant Thornton for the risk assessment and the feedback from the counties they've been to, is both County IT and Boards of Elections have been very favorable to having help to get this project done and give them real advice as to what they could do better immediately to make improvements to the system. So, it's really been a partnership. It's been one that the word of mouth from one county to the other is really helping because they find it valuable. So, in May when we gave you the plan you gave us preliminary ability to spend some of that money, we will have an update for you at the December meeting. Now that we have vendors in place, we'll start to get purchase orders. We just need you to authorize us to expand that.

Douglas Kellner: Where do we actually stand in terms of how much of the HAVA money has been committed and how much is still available for future allocations?

Bob Brehm: The Federal Help America Vote Act money 2018 we have just under \$5 million that we have not encumbered in our plan, all the rest are anticipated for the contracts we've signed or for the support of like NYSTEC and these HBITS people that are helping to staff some of the projects from a security perspective and from a staff that we asked you to approve for the Secure Election Center. So that's just under \$5 million of the federal money and that's an estimate based on the vendor, and there's about \$2.5 million of this year's state money that hasn't been allocated under the plan. That's why it's important to have another \$5 million because 5 plus the other 7 and a half, we think that will really help next year for the mitigation program; how to fix the list of items.

Douglas Kellner: So, you do have a list of potential projects that will use up all of those funds?

Bob Brehm: Yes.

Douglas Keller: Or exhaust those funds.

Bob Brehm: Yes, and right now they're at the, when we did the procurement it was the estimate of the vendor based on what we thought the need would be. We'll know more about that as we get closer to February and the orders start coming in. But we still need you to expand our, we already spent about \$200,000 actually and in the Authority was \$1.25 million but by December we'll be well on our way to hit that \$1.25 million authority that you gave us. So, it'll probably be closer to \$12 million if not \$14 million by December. So, budget takes a long time. We have dealt with a number of new staff members both for Secure Election Center and for other areas in the agency. I think we mentioned that Maureen Cahill was retiring after, I think she worked for two or three years during the 80s and was here since 1992. She was our Senior Program person in the IT department. She was very vital to the work of the agency, we're definitely going to miss her and we're working hard to fill those positions with the state, those are competitive. We've also, Tom Wood, is sitting here, he used to be a NYSTEC employee but as of last Thursday, he has moved to directly work with us as part of our Secure Election Center. But there are a number of people in the agency that that has happened. One other one that has happened since then who will really be a hard, whose been very helpful to the agency, Dennis Gerard who runs mostly the soup-to-nuts for the computer system. He has a better title than that, but he is taking a promotion opportunity in the courts. It's their gain, it's really going to be our loss and Bill - the few minutes of the day he had not to worry about something - is now seriously worried about how to fill that position. So, keeping jobs filled, as you know, is never an easy task and everybody is working hard to make sure that we at least fill those positions. Other than that, I don't think we have too many other issues unless you have questions.

Douglas Kellner: I'm interested in learning what's happened with respect to giving out in-person absentee ballots in Suffolk County.

Bob Brehm: Yeah, there were some press reports. We did hear from some of the voters. Like yesterday I received an email, and I know I heard Brendan tell he did too, that they were able to work out their differences in Suffolk County. The commissioners agreed to bring on some temporary workers that would allow them to do in-person from now until Election Day. So full-time temporary people just so they handle the walk-ins. So, I confirmed that with Commissioner Katz yesterday and she confirmed they were actually supplying people yesterday and the temp workers will be there today. So, they were able to work through their differences on how best to keep up with that and luckily voters who need one can walk in and get one now.

Douglas Kellner: That's good. And some people have been raising questions about the New York City Mayor's Office providing interpreters for languages that are not already covered by statute, is there anything that you're doing on that?

Bob Brehm: Well I saw that came in yesterday from Common Cause and shared a copy of that with Todd just this morning because it was late yesterday, I got it. I did have a chance to reach out to Executive Director Ryan, he was in his car going to a funeral, so we were only brief, but he had expressed to me that the City Board of Elections had been meeting with representatives of the Mayor's Office since May. A number of in-person meetings and follow to try and get

information on where and under what conditions people would be presenting themselves to offer translation services. And he had said the questions that the City Board has asked haven't been answered yet other than he informed me that in about 106 sites between Brooklyn, Queens and Staten Island, where they want to send the interpreters, the Mayor's Office of Immigration services...

Douglas Kellner: Immigrant Affairs...

Bob Brehm: Immigrant Affairs was planning on sending people to work. And that the City has developed a form and instructions if a person comes in as a translator with a voter and most important thing is to get the assistive oath that you have to administer to persons who are providing that service other than the Board of Elections, is to make sure that they had one. They put it together last year when it was a pilot program in the general election, but they were trying to figure out where the City Mayor's Office was going to deploy these services so that they could train the people at the site. So, one of the questions is where do we put the people? And we don't know where they're going to be.

Douglas Kellner: Well it seems like the major thing that we can do is to emphasize to the Mayor's Office that they need to communicate and work with the City Board of Elections if they're not, in order to avoid embarrassment on the implementation of the program.

Todd Valentine: That's an issue we raise with any outside groups that want to come in; the media, disability rights advocates, because the statute only limits who can be in a poll site to phone workers, voters, law enforcement, poll watchers, school groups, children of parents. After that you need permission from the Board of Elections to get into the poll site. So, what we have advised previously, and this is in a similar category, they need to work with the Board of Elections in order to get authority to go into the poll site. Because you can't just walk into the poll site. So that continues to be an issue. Yes, they should be working together...

Douglas Kellner: We really need to emphasize that with the Mayor's people.

Peter Kosinski: Yeah, I agree, I think we should. I mean the Board of Elections has to control the poll sites, otherwise chaos. I don't know how we get that across, but I agree that's an important concept.

Douglas Kellner: You know, providing the interpreters is a good positive thing and could help the voters but it needs to be done right.

Peter Kosinski: It should be done through the Board. I agree.

Bob Brehm: And I think from the brief conversation that I had with Director Ryan today, certainly there have been many attempts to complete that communication between the two, but as far as I understand today it has not yet been completed. So, hopefully the time left we can be more productive.

Peter Kosinski: Okay. I just want to go back briefly to the office situation. So, are you suggesting that we're asking if the agency can move our offices from here? I'm hearing two different issues I think; one, is that you believe the office space isn't big enough for current staff...

Todd Valentine: It's not big enough.

Peter Kosinski: ...and then secondly, we have some ongoing problems with maintenance of the building, with infestations of the building from vermin. We seem to have issues, so what's the direction that the staff is looking to go here?

Todd Valentine: I think we need to see all the options that are available on the table and if remediation works that's fine, but remediation has to remediate all of the problems that we've encountered not just moving new furniture and new carpets which is also a problem, so any solution has to accommodate, it has to fix the problems we have not just jam more people in the same space. So, if moving is an option then we need to know what that is, and we need to know what it is soon because our window to make any of those changes is only through, really only through next year. After that we don't, even when we moved here it was very difficult to do that during an even year. And we only did that under duress and we never got the accommodations that we wanted at that time or very little of what we wanted. So, I think we're open at least to having, because OGS controls your space so they're asking, well what are the options here? And we understand we can start to go down both paths if need be and we have to some extent, but I think they should at least put that on the table, is that an option.

Andy Spano: The restructuring of the present space that's already on the table, no?

Todd Valentine: Well, in order to get that accomplished in the timeframe we're at least willing to look at that because in order to get those additional people on here we have to start looking at what space do you have? What options are there? They've recently renovated other floors due to flooding problems on the floors which impacted us to some extent as well.

Kim Galvin: It's really awful.

Andy Spano: I know we're not here all the time.

Kim Galvin: I mean the mice are everywhere all day. The talk of bed bugs, urinals leaking on people's desks from other floors, it's disgusting.

Bob Brehm: That's one of the ones they redid too. The one above us and below us and I mean we asked for help February 3rd I think was our initial meeting to get the temporary space that we now acquired downstairs that was completed September 15th. So, it takes a while for this process to work. When we accepted that space down on the first floor for those 24 people, the information from OGS was it's temporary and that we needed to plan that move. It's not an easy time on September 15th till Election Day to take people away from managing the election to try and figure out a floor plan. So, Todd and I wanted to make sure that, how do you pay for this? We've been asking that question since we moved here. How do you pay for doing this part of it?

So OGS contacts were paying our bills and the Division of Budget, we had a meeting and we said, "How do we pay for this? There's no reason why we should take staff away from running the election and plan and if we have no way of paying for it." It's just foolish. And the Division of Budget at least said, "Well we understand that you need to do it and we're willing, if you put a reasonable plan together to sit down and agree we have to pay for it." I don't know what that means but at least it was the first time it makes sense to plan.

Andrew Spano: And you take your staff to sit down....

Bob Brehm: And that was just last week so now we're going to sit down in probably not the next 11 days but soon and try and figure out how do you make this work and what are the alternatives to this working?

Andy Spano: Do you do that internally with the staff you have, or you consult somebody who is a space planner or what?

Bob Brehm: OGS has an office of space planning. There is a person, number of people in there they assist us in drawing up the plans and she's already met with our staff, provided a number of floor plans that, you know they just renovated 3 floors in the building that we could look at and maybe get some ideas. But the cost is expensive \$1 million to \$1.5 million and most like \$1.5 based on what they recommended. It seems high to me but...

Andy Spano: Does that money come out of your budget or does it come from somewhere else?

Bob Brehm: There is no capital fund that it comes from so you'd have to convince Budget to put it somewhere. I don't care if it's OGS budget or our budget as long as it covers the expense. So, we're going to put it in our budget cause it's what they told us, and we'll see what happens by the time we get to April 1st and we will be much farther along in space planning by then and I don't know who would pay to move us anyway.

Kim Galvin: In addition to, and I'm just saying this for the staff, people that have come to us, it's not just inside the building. People have been accosted going out of parking garages. People have been, there's people urinating out in front of the building. It's an outside issue as well as an inside issue that has a lot of the staff very afraid and demoralized.

Andy Spano: So, they would like to be somewhere else is that what you're telling me?

Kim Galvin: Yeah.

Bob Brehm: Well we only moved a block from the last place, so I don't know what the options are.

Peter Kosinski: Well let us know what your direction is then as to how you want to address this so. Alright next is the Counsel's office Kim Galvin and Brian Quail.

Kim Galvin: We have been, since our last full meeting we've been very busy. I know there's been some interim meetings to go over specs and ballot access decisions so obviously we were working on all of those things throughout the process. In addition, there's the 10 or so other non-ballot access cases that much of staff is dealing with the Attorney General's Office on their end and handling some ourselves separately. Of note on those cases, the Eason case, the website accessibility case, that one is almost completely resolved. I know there's been numerous meetings. There is no an Accessibility Coordinator, is that your title now John?

John Conklin: I believe it is.

Kim Galvin: And staff meetings to try to implement the provisions of that agreement and there is a conference scheduled for November 2nd, Friday in the Southern District on the Common Cause lawsuit which is the case that involves the inactive voters of being in the poll book or not. Later on the agenda we have obviously some...

Douglas Kellner: Well Kim and you mentioned Common Cause, but I think there was a very significant court ruling a couple of weeks ago where the judge essentially said that our statute complies, and the only real issue is whether the way that boards of elections are implementing the law have the effect of depriving inactive voters.

Kim Galvin: Right which seems to be the only relief will be a somewhat remedial order against the boards or something of that sort.

Douglas Kellner: That's right and I think the key there will be for the plaintiffs to identify actual cases where people have not been able to fully exercise their right to vote. I'm kind of skeptical because I think they would have already identified them if they were out there.

Kim Galvin: I know that the co-executive directors and many of the staff have been reaffirming with the county boards the training that their poll workers need and that sort of circumstance.

Douglas Kellner: Certainly, if the plaintiffs in that case do identify the problems, that's a healthy thing because then we can address them. Alright I'm sorry but I just did want to comment that the court did rule that dismissed the challenges to the constitutionality of the statute.

Kim Galvin: Later in the agenda we have two other major issues that have occupied a lot of, well I wouldn't say a lot, one has of our time which is the final adoption of the Independent Expenditure regulations. Since the emergency adoption in August, many of us have continued to meet with advocacy groups on behalf of the various organizations making sure everything's in line. We can go over that in more detail when it comes up on the agenda if you'd like and then the Child Care Opinion, we've had some discussions on.

With regard to Compliance, we had a failure-to-file referral done to the Division of Enforcement on 9/26, 2,500 committees for the July Periodic. And Compliance has hit a milestone that they'll be happy to hear me mention of 100,000 reviews since the inception of the unit. They had a cake, it was nice. So, they're doing their work and they're doing it well. With regard to the Independent Expenditures, Brian's PIDAs Political Internet Digital Ads the new database went

up on 9/9, the public can now search the registration documents for the Independent Expenditure Committees as well as view the communications that have been filed. In anticipation of that going live the unit sent out letters to all of the registered I-E committees explaining the new regulations, what they had to do and as new I-E's register, they're advised of the same rules and regulations that go.

The new trainers, as you remember the two senior long-time people that retired, so we have two new people doing the training. They're ramping up, they're getting ready to do a webinar in December on "Winding Down on the Campaign" and I know they have some local in-person seminars scheduled for early January to assist the local counties and get their feet wet on that process.

And obviously the county boards and the county calls and people call and, "Am I registered to vote?" calls that we all answer. Do you have anything else Brian?

Brian Quail: No, that's pretty thorough, unless there are any questions.

Peter Kosinski: Any questions? Okay, thank you. We'll move on to Election Operations.
Tom Connolly.

Tom Connolly: Since our last full meeting we've been busy with a number of different things. First and foremost was the state primary so obviously we're working with the different county boards to help them in their preparations for the primary election. We did certify the results for the September 13th primary. Shortly thereafter we certified the list of the roll call in the list of delegates and the alternate delegates for judicial conventions and provided that to the conveners so that those conventions could be held. And out of those conventions came a number of nominations for Supreme Court which we then processed. There were 92 candidates nominated, there were 5 objections and 4 specific objections filed to those nominations. Which then led us obviously to the general election ballot which we did certify and as was mentioned previously, was amended a number of times because of a number of different changes, some of them resulting from the nominations to the Supreme Court. We did create sample ballots for all the different systems that we provided to the county boards including explaining to them some grids on how to lay out the judicial offices. We also assisted them with additional any kind of additional ballot layout or design/usability issues that they may have had as I mentioned we did do a number of amendments. Unfortunately, due to the accident that happened over the Columbus Day weekend in Schoharie, the Montgomery County Board lost its Deputy Commissioner so that Board was really hit hard by that on a number of different levels; one of which obviously being that the Deputy Commissioner was responsible for a lot of pre-election work including building the ballots and other tasks. So, we did send out, we offered on a number of occasions any kind of assistance we could provide, and I know some other local county boards also did. So, we did have Bob Warren and Charles Smith from our unit go out there this week to kind of make sure they had everything under control, that they were doing all the necessary tasks and to provide any assistance that we could do to them.

We do continue to work with IT and the county boards in preparations for Election Night reporting, reaching out to them to make sure they're all set to provide us those data files on

Election Night and making sure that they are what we expect them to be. We also, from an accessibility standpoint the Self Advocacy Association of New York State had a conference in Albany, and we provided machines of both types the Dominion and the ES&S so there are going to be demonstrations for their voters. Brendan and I also had a meeting with the Disability Rights of New York where we discussed a number of different options; the Ice machine which is by Dominion which is up for the resolution on the agenda today, also their poll site surveys that they do that they have done and were planning to do on Election Day and also any input if anybody wanted to, we'd give them a copy of our poll worker training and some of the other work that we had done back in I believe 2012 where we had put together a nontechnical guide for the accessibility of poll sites just to see if they had anything that they thought might be important to be added or has changed since then, which we thought was a good meeting.

There were also 11 asset audits that were completed in October. On the voter machine front, obviously Dominion ICE machine, we completed the certification testing and there's a resolution to certify that system, that upgrade. On the agenda, ClearBallot came on-site to set up some of their hardware and software for an upgrade that they have submitted. ES&S has been in contact with us regarding their ExpressVote machine and as we were also exploring the possibility of a request from the Village of Portchester for using of an ES&S machine which has not yet been certified. But there was only a preliminary call on that so far.

From a Cybersecurity standpoint, Bill and I did attend a NYSLGITDA conference which is basically the local government IT directors association for the State out in Binghamton and we gave a presentation on the different, sorry mark it off your list...

Bill Cross: I don't have a report left at this point.

Tom Connolly: We gave a presentation on the Board's efforts from a Cybersecurity standpoint and things that we were doing that have already been somewhat discussed by the co-Executive Directors. We participated in all the plans and calls on those tasks. We have hired three, we have three positions in the Secure Election Center that are housed under the Election Operations Unit. We have now hired three people and they've all started; Tom Wood who was mentioned before is one of them and we also have Jason Wright and Keith Posson. So, we're happy to have them on board and they hit the ground running, and we plan on putting them to a lot of work.

Douglas Kellner: And what do they do?

Tom Connolly: So, for the most part Tom is kind of heading up the two Election Security Specialists and overall what we're looking at is not just the machines but also the procedures. We're looking to kind of enhance the procedures that we have on file now with any other cyber components that might be missing. We're planning on going out and doing board visits after the risk assessments so that we have a better idea of what we should be going out and looking for from a security standpoint, from a cybersecurity standpoint, helping them with their contingency plans to make sure they're up to snuff and kept current, and also providing recommendations for some of the best practices or developing some guidance that we can then send out to the different county boards.

I'm happy to announce that all county boards in the State of New York are now signed up for the Election Infrastructure ISAC which is housed over the river, basically the ISAC that was created as a result of the designation of elections as critical infrastructure back in January of 2017, it's been a very useful resource for us here at the state level but also at the county level.

Peter Kosinski: What is ISAC.

Tom Connolly: Oh, Information Sharing Analysis Center.

Peter Kosinski: And that's a state-run center?

Tom Connolly: No, it's from a nonprofit, the Center for Internet Security and they originally ran the Multistate Information Sharing Analysis Center which New York State was a part of as were all the states. The Election Infrastructure ISAC came out of the Government Coordinating Council which was created as a result of the designation of Elections as "critical infrastructure". We decided that... the GCC decided that they wanted an ISAC for the elections.

Peter Kosinski: Tom what is GCC?

Tom Connolly: I had mentioned the longer version before so when you have a critical infrastructure, there are generally two bodies that kind of coordinate and also kind of field intelligence and action items; there's the Government Coordinating Council, so in the case of elections it made up of state and local election officials as well as a number of federal officials in DHS and EAC and other agencies. The SCC or the Sector Coordinating Council has to do more with the vendors that are a part of that space, so they can share information securely with one another and then the GCC and the SCC can also coordinate together. So, the Government Coordinating Council had decided back in February of this year, it seems a long time ago, but it was actually still this year that they would design the Election Infrastructure ISAC as the one for the election subsector of "critical infrastructure". Like I said they are housed across the river in East Greenbush. We are the 6th state in the entire country to have all of the jurisdictions to become members. So, we're happy about that.

Peter Kosinski: Become a member what does that mean?

Tom Connolly: So basically, in order for a county to become a member there has to be both the technical contact and an elections contact. The way that the Information Sharing Analysis Center generally work is that information is shared amongst all members. So, any information coming in gets analyzed by the ISAC itself and then distills that information into any actionable intelligence or intelligence that I think is important enough just to share to make people aware of and it sends that information out. Now the difference between the Multistate Information Sharing Analysis Center and the Election Infrastructure one is that the multistate is far more technical and so those emails and those alerts and that guidance is really meant for IT directors. Whereas the Election Infrastructure ISAC we've been working with them to really try to distill that information down into something that's more digestible for election and policy people. So, they were also the origin of the handbook that I participated on for Security of Election

Infrastructure which is also the basis for our risk assessments that we've been doing with the different counties. So, I was just happy to see we finally got the last county onboard last week.

Bob Brehm: I think you had mentioned paying the bill through the Federal Department of Homeland Security has been paying for the MS-ISAC and the EI-ISAC so it's still one of the, if there are other services that the State of New York is the benefit of from the funding at the federal level through the Homeland Security Department, the New York liaison is the northeast so John Durkin is going to be here this afternoon to meet with us to go over pre-election preparedness but certainly our partners at the federal Homeland Security have been very helpful to New York State and we are utilizing whatever services, and so far they've been free, we like that and they've been helpful.

Tom Connolly: And with that I think we've been kind of doing our normal run of the mill stuff and obviously preparing for the general election in less than two weeks.

Peter Kosinski: Thank you. Any questions? Okay thank you. We'll move on then to NVRA PIO John Conklin and Cheryl Couser.

John Conklin: Thank you Commissioner. The Public Information Office has been very busy since our last meeting. Some of the hot topics have been obviously the September primary, campaign finance disclosure reports that have been filed since August. The Governor's order on granting conditional voting pardons continues to be a hot topic. Cybersecurity articles and questions about preparations for the general election, and then most recently as mentioned by Commissioner Kellner, I'm sorry you didn't mention this, the Mayor's Office on the Democracy NYC mailing. So, we did a press release in response to that. We also had a press release done on some possible voter registration scams that were occurring upstate in the southern tier where people were receiving text and phone calls asking them for personal information to register them to vote. So, we did a press release warning people about that. We also did two press releases reminding people on the voter registration deadline for the primary and the general election. The unit participated in the monthly ECA calls in August and September. We participated in all the cybersecurity plan meetings. We've processed 116 FOILS in August and 111 in September. As Kim mentioned, we've been participating in meetings on the Eason lawsuit with Counsel's Office, IT and the responsibilities of the accessibility coordinator. So, we've basically sorted out our responsibilities between this year and next year and largely we completed or substantially completed all the tasks that we have to have done by the end of this year so we're starting to look for next year there's a couple of things that are still outstanding, but they'll be done after the election.

As we have a new employee in the Public Information Unit, Cortney Padlo she's part of our allotment from the Secure Election Center. We have one more position to fill and we've done interviews, but we haven't made a decision yet on who that person's going to be. We also met this week with two long-term international observers from the Organization for Security and Cooperation in Europe. This is an organization that comes to observe US elections every 2 years. They're invited at behest of the State Department as an organization the United States and Canada participates with and I think it's almost all the countries in Western Europe that are part of it. So, we have two long-term observers. There is also going to be in addition to

that 28 short-term observers that are coming to come to New York City. That group is largely made up of elected officials from various European parliaments. So, we've had conversations with the New York City Board about that. This has happened before so they're familiar with the process. They'll issue credentials for them to be poll watchers on Election Day.

With regard to the website, we're updating the candidate websites page to remove the people who were losers in the primary. Sheryl went through all the candidates and I just have yet to approve that list but that should probably happen this week. As Tom said, we're participating in the Election Night reporting stuff. Working on the Zero files.

We have posted a list of nominations received, we're going all the way back to August, so we did post a list of nominations received for the September 13th, primary. We have posted and are continuously updating two certified lists of federal and state candidates for the general election. We put up the webcast and the transcript for the August 8th meeting. We have transcripts up for the August 22nd and September 7th meetings. We're working on the transcripts for the other two that are not up, yet which is September 12th and October 3rd.

We've also posted finals for independent candidate for Congress and for state offices and we posted the proclamation and the political calendar for the special election in the 25th congressional district in Monroe County.

With regard to NVRA, we've had 8 board visits since the last meeting; Chautauqua, Cattaraugus, Allegheny, Steuben, Schuyler, Tompkins, Oswego and Jefferson and all those candidates were found to be substantially in compliance with their NVRA responsibilities. The unit would like you to know that they traveled 2,450 miles to do those 8 board reviews. We've also had three separate training sessions in New York City. We've had about 150 people attend those three sessions in total. So, I think that's everything I have. Do you have anything you want to add Cheryl?

Cheryl Couser: No.

Peter Kosinski: Can you just talk a little bit more about that scam involved in upstate? What was going on there?

John Conklin: It seemed to be predominately in the southern tier around the Elmira, in the area between Elmira and Rochester people were getting text messages and phone calls saying they weren't registered to vote and they could help them register to vote if they would give them their personal information, they would register them over the phone or online which you can't do in New York State unless you have a DMV license but it doesn't operate that way. People don't call and ask you for your personal information. So, we put out a press release to warn people. It did get picked up in most of the regional newspapers and the television stations warning people about it.

Peter Kosinski: Is that ongoing; is there more information on it?

John Conklin: When we did it, we heard from just about every commissioner in those areas saying, “Yep we got calls on that from people in our district.” I haven’t heard any update since then, so I think the warning pretty much tamped it down.

Peter Kosinski: Do you have any idea of what was going on there?

John Conklin: We did refer it to the Cyber Incident Response Team, and they are still I believe investigating it. I don’t believe it’s been closed yet.

Peter Kosinski: Thank you. Any other questions? No, thank you and then we’ll move on to ITU William Cross.

Bill Cross: Good afternoon commissioners much of my report has already been touched on in one way or another by everyone else.

John Conklin: You should do what they do in the British Parliament just say, “I refer you to all the answers my colleagues have given before.”

Bill Cross: Any questions (all laughing).

Douglas Kellner: I’m interested in hearing what the current schedule is now for the implementation of the Campaign Finance Disclosure updates which are now like 4 years behind schedule.

Bill Cross: So, our initial our projected date was April 2019. We have not because we have not fully, we have not fully re-staffed that effort or added additional HBITS we’re trying to. We haven’t adjusted that. We know we are behind, that we’re beyond that date at this point but we have not calculated what the new date will be. I don’t think it’s significant. As I mentioned in our last report is when we are able to onboard the HBITS staff and fill the outstanding program we’ll have a better sense of what that will be. I don’t have a guess at this point. I don’t think it’s a significant delay from that original April date but we did definitely take an impact due to the Paid Digital Ads in two ways; one is diversion of staff to put up the stop gap measure, and the second is now to work in the full implementation into that into the main project because right now what we implemented was definitely stop gap. It was the basics of meeting the legislation as required and the timeframe required. The full functionality of that requirement including which we typically expect from a database application such as searching and work load flow for independent committees to submit their own digital ads without going through a manual effort, that needs to be incorporated into the main project and don’t have full details of what that effort looks like at this point. So, in two ways we need to adjust that schedule. I will provide an estimate date as soon as I can have something accurately to base it on.

Peter Kosinski: Bill, in addition to that we had to look at a prototype of what you were working on, I don’t know a year ago to guide...I don’t remember the exact time. I’m wondering if you have anything new to show the Commissioners about how this new system will look? I’m primarily interested in how it will look to the public and what the search process will be for the public. I don’t know if you have anything along that.

Bill Cross: We can certainly arrange an updated demo. Much of what we showed previously in terms of user interface and search ability and things like that has remained the same. Much of the work that has occurred since then has been more, that's the face of the application much of what we've been working on is business logic behind the scenes of the application not so much the front effort. Since that time, particularly with the filing and a lot of the internal functions that the public wouldn't see such as the generation of the political calendar and a lot of the EFS processing and reports, but certainly if we have anything updated, I can arrange an updated demo. It might be fairly repetitious of what you've already seen.

Peter Kosinski: Well I think we had some suggestions for alterations at that time.

Bill Cross: Right you did.

Peter Kosinski: I'm sure you did so I'm just looking to see kind of what it looks like now whenever you get a chance. I mean I know you're busy and I don't want to interrupt things, but I think at some point I would like to see it before it goes to final, so we get a chance to have some input.

Bill Cross: Absolutely. We will actually be engaging, we're currently working what our outreach now is to our predefined beta test team to ramp up which will represent counties and treasurers and such and when we get closer to actually a functional end to end piece, we'll have them test it. In terms of staffing which has been a challenge since day 1 at least my day 1 here, it's like usual seems one step forward two steps back. We were able to add one of the developers I've been trying to fill for some time. He's joined the team and is working out well. But as reported, we lost two other key staff; one due to retirement one to transfer to a different agency. They represent a huge hit to us. We are again still trying to augment both those loses and regain the time for PIDA with some additional contracting staff. Those orders are currently out, we're interviewing for those.

For NYSVoter Project, the key installation of all the new hardware, software, storage, networking, the whole infrastructure has been completed. The NYSVoter System has all been virtualized. Basically, to summarize it, the old system required a physical server for every different component of this system. We are now able to virtualize that and compact it and utilize much fewer servers, much less infrastructure that IT maintains. We do continue to work with a vendor to finish the implementation of the Disaster Recovery Procedures and final testing for that portion of the project. We're also continuing on the development of the in-house Move application and one of the things that was also mentioned, we're starting a project to address the requirements of the accessibility settlement. From an IT perspective, there was basically two deadlines that we had to meet in terms of compliance of website content; one for this December one for next. We're in very good shape for the requirements of this December. For next December, we are currently, there's two major pieces for us is we need to rewrite or modify both the voter look up and the election reporting pages to be compliant-accessible, compliant with accessibility guidelines. We're currently looking at what that is going to take to do in terms of effort and requirements. We have incorporated in the budget request HBITS contracting staff to assist in that effort. We're also enumerating all current PDF files that are on our website. A lot

of those are not compliant. Many have been brought into compliance, but others still need to be done. We're currently enumerating those and expect to contract out for remediation of those documents to meet the December deadline.

In terms of security, again, I think much of this has been mentioned by others. We continue to work with County Boards and other partners planning the upcoming election and contingency planning. Specifically, we've been collecting from, one of the things we encountered during the primary was two of the counties had issues with their Internet providers going down and losing service in the evening during reporting time. Both counties had difficulties getting those Internet providers to dispatch anyone or address those issues. So, one of the things we're working with, with State Homeland Security and then through Public Service Commission is to collect Internet providers used by each of the county boards so we can develop a master list of emergency contacts, so we can get priority if needed on election night from any of those service providers.

IT as well as most other areas of BOE continue to work on implementation and staffing of the Secure Election Center. I think we've gone through all the efforts that that center is going with risk assessment, intrusion detection and managed security services. Key point for us is we have identified, we've interviewed several people as Chief Security Information Security Officer to oversee those center's efforts for cyber security for end to end elections infrastructure and we have made an offer and he has accepted. We are going through steps now to finalize our appointment.

We've also began discussions with the Center for Technology and Government, CTG on some longer-term efforts for cybersecurity including analysis of NYSVoter data looking for abnormalities as it comes in from county boards either to establish baselines for what normal NYSVoter traffic would look like and then be able to look for and identify abnormalities in terms of increased volume or changes in key data elements and things like that that would be indicative of some kind of issue in the county. As it is right now, our view into the counties really stops at our VPN or our physical connection to them. This would give us some insight into possible abnormalities and if something occurred at voter registration in the counties. We're working with them to examine some of the options in that regard. Not unlike with credit card companies use particular customers when they see things out of the ordinary on a per customer basis and be able to identify those.

We also participated in the Secure Elections with the NYSLGITA conference, the State IT Directors, Tom mentioned basically is an update of our efforts with the county boards and risk assessments and what we're working on, what's coming.

In terms of website analytics, traffic to the website, including voter look-up, approximately doubled during the month of September related to the primary. I don't yet have figures for October. I know the main website is settled back down to normal but I'm expecting increased traffic for voter look-up and we'll import that next time and post-election as well.

Peter Kosinski: When you say voter look-up you mean voters looking up their registration status?

Bill Cross: Correct yes and poll site information.

Peter Kosinski: And poll site information. So, this isn't people looking at Campaign Finance, you're talking about specifically voters looking at their...

Bill Cross: We break it down into three; one is the main website which includes most of the Campaign Finance and general information; voter look-up; and then usually right around the election when we report stats, Election Night reporting site. That's only brought up during that time. So overall traffic to our main website as well as voter look-up did double during September. They generally go through the main website to get to the voter look-up, that traffic and yeah.

John Conklin: I would expect you would see a spike leading up to the October 12th voter registration deadline and maybe again after the letter went out in New York City.

Peter Kosinski: And generally, as the election approaches, we should see an increase as well.

John Conklin: Right, then we see people looking for poll site information.

Bill Cross: Correct. And we actually monitor traffic, real-time traffic to all the sites on election night and it's very interesting to watch. It will ramp up voter look-up and then it right up until midday or late day and almost completely drops off and then the ENR ramps up and it's very interesting to watch the traffic.

Bob Brehm: Well it's very busy from Sunday through actually close of polls on Election Day. So, we can follow if your using a cell phone or tablet or...

Bill Cross: Desktop...

Bob Brehm: ...just to see what kind of people using the system. We do monitor it to see how it's working and if there are any issues. We have a number of people look at the sites early in the morning, throughout the day to make sure that nobody's hacked in and has put misinformation on our site and then of course, we have a number of electronic and manual redundant emergency procedures if something should happen to our site. Other than saying that we don't like to go into details in public about what those are. So that somebody doesn't go and hack those too. But we ramp that up usually around when the, you know, twice a day making sure that all of our state and federal security people and us, we make sure that we follow, what are we hearing? What are we seeing? Is there anything else that needs to be done and that will start next Thursday?

Peter Kosinski: Okay anything else? Okay, thank you. And our last unit is Enforcement, Risa Sugarman.

Risa Sugarman: Good afternoon Commissioners I was just, as I have done in previous meetings, I'm going to ask you if you have questions for me.

Peter Kosinski: Anything new in your unit?

Risa Sugarman: Well we are working on our investigations and we receive emails and phone calls about people inquiring on who has filed or who has not filed their Campaign Finance and we respond to those questions. Contact those committees if they have not filed and suggest to them that they do. Most of the time they come into compliance.

Peter Kosinski: Any other questions?

Risa Sugarman: I just would, we have made a request through Bob and Todd for an IT Mass Automated Email, Mass Automated Email to start looking towards the filing of or the contact of the committees that are nonfilers. One of the things that we did when we met with IT in terms of what I now know is a business rule, I learned that since I've been here, to have the computer system in the new system be responsive to our request for sending out contact with committees to generate reports. We asked for the ability to send out mass automated, from IT for mass automated messages which would include people who have not filed their reports. We don't have that ability in this system at this time. So, looking at the regulations that were passed and the requests that a 14-108(5) letter be sent out, which used to be referred to as the 5-day letter, we've asked that IT create an automated email to those committees and candidates and treasurers who have email addresses indicating to them that they have failed to file their campaign reports and what should be done in response to that failure. Those letters on the Periodics would be sent per our request, I believe it's 20 days, let me just make sure, I think it's 20 days after the report is due and the election cycle reports would be sent one day after the report is due. And if there are no emails in the record of the Board that we be given a list of those committees, candidates and treasurers that don't have emails so that we can send letters out. And this way, we could try first to notify those committees that have not filed their Campaign Finance Disclosure reports. I mentioned, Kim mentioned 2,500 reports committees did not file. That number includes the breakdown of approximately 1,500 "C" filers, local filers, no, 2,000, let me just look, 1,935 are "C" filers and 565 are "A" filers. So, the majority of the filers are local filers, town council, highway supervisors, county executives, committees like that, I know that you know that.

When I looked at the numbers today, I just took a quick look at 6 of those committees both "A" filers and "C" filers and all of those committees that I found; one committee filed all of their, the candidate filed all of their election cycle files, lost the primary and stopped filing. One candidate has been filing since they registered in 2007, I believe, has been trying to terminate since 2016 and the reason that the termination was denied was because there was no loan document filed for a loan some 15 or 20 years ago. All the reports have been updated, all of the forgiveness of the loans have been submitted, but the loan document itself which is about 20 years old has not been filed, so the termination was denied. So instead of filing a no activity report for several years, the treasurer stopped filing. Several other candidates either did not get on the ballot and stopped filing. Or, again, lost the election, filed what would be termed a final report because the zero balance of their final report and then stopped filing. And the reason that I bring this up is because when you file under 3-104(5) and the hearing officer it would be required to create a hearing officer report that said, 1) there was a substantial reason to believe that there was a violation of law. That whether or not the case should be settled extra judicially, whether or not a special proceeding should be filed. Those are three requirements. And in order to avoid dismissal, that the violation was not de minimis, whether or not the committee had attempted to

come into compliance, and whether or not there were prior violations of this particular committee, candidate or treasurer. So when you're looking at, and this is just 6 out of many, many committees, but my sense is that a majority of those committees, especially those that are newly registered, or the ones that are old and have several judgments, when you file a hearing officer you would have to establish that all of those things and then to avoid dismissal, prove that the violation was not de minimis and if there's one missed filing for a candidate who ran, closed their committee, got a zero balance, filed all their reports until they got a zero balance and then just did not file again, or just registered and didn't get enough signatures to get on the ballot and then stop filing, the allegation that this violation was not de minimis would not be possible.

Now the next requirement and what makes it even more difficult is that after going through a hearing officer, the hearing officer does not have the ability to impose penalties so that the Supreme Court petition must be filed again. So, when we look at all of these cases, what we do is try to determine whether or not there is the ability to go forward on these matters where you have committees in the situations like I've described. And what we're going to try to do is to present to you the guidelines that I've just described and how many of those committees fall within those guidelines to show you that a number of 2,500 nonfilers is not a number that translates into 2,500 cases or 2,500 hearing officer cases that should be brought.

Peter Kosinski: So, you're going to do that analysis?

Risa Sugarman: Well that's the analysis that we do and perhaps I have been, not perhaps, I have done that analysis. What we try to do is to bring those committees into compliance that are in these situations. It's hard because we don't have the ability to you know sit here...

Douglas Kellner: I'm listening to this as you filibuster away, the unit before your unit was set up had only a tiny fraction of the budget, essentially it was 4 people working part-time to accomplish this and they processed many hundreds and sometimes a thousand, over a thousand of these committee nonfilings. And, all you need to do is tell us what the standards are and report back on a list that can be a short phrase, reporting back to the Compliance Unit and saying, "I'm not prosecuting this committee because an old loan was not filed 15 years ago." One sentence and just report it back. Apparently, you are now taking the position that if a candidate loses the primary, you're not going to take enforcement action against them. If that's the standard...

Risa Sugarman: Commissioner Kellner, I did not say that.

Douglas Kellner: I certainly got that impression.

Risa Sugarman: Don't put words in my mouth. I've been trying to sit here and trying very calmly you sit and look at me...

Douglas Kellner: Because you're not doing your job, Risa. I'm going to tell you straight out. You are not doing the job that was set up for you. And I've been here for 12 years, your predecessors before your office was set up, I gave them a hard time, but they did substantially

more in terms of the routine enforcement than your office does even though your office has 6 times the budget.

Risa Sugarman: And the process that was in place sir, before 3-104 was passed, was light years different. There was no requirement that a fact-specific, and that's what I, whether or not you choose to listen to me...

Douglas Kellner: Take the list and mark it up...

Risa Sugarman: Excuse me. Can I finish?

Douglas Kellner: You just went for 15 minutes and all I'm asking you to do is take the list that Compliance gives you and mark it up and say here's what I've done with each of your things. It only has to be a sentence. But just mark it up so that Compliance knows what you're interested in, so we know what you're interested in, and so most significantly the public knows what the process is.

Risa Sugarman: Can I finish? I mean I am trying to, and I have been over the past 4 years explain that pushing a button and filing a petition is not what happens now. I don't know how better to explain it. I am not going to give you a list. I am going to try to fulfill my obligations under the statute. I just tried to explain to you, but I guess I don't know whether it's the decibel of my voice, you can't do things the way you used to do things. I don't know what the problem is that you don't understand that.

Douglas Kellner: I do understand that.

Risa Sugarman: No, you obviously don't.

Douglas Kellner: Right now there is no uniform and transparent process because you will not communicate with us what those standards are. You have not indicated why you won't proceed with the, even you yourself admit that you claim maybe half of the list of referrals that you get to are not cases worthy of prosecution. Okay, I get it and I probably agree with it...

Risa Sugarman: I don't know what you're talking about. I don't understand, are you talking about the deficiency referrals, are you talking about failing-to-file referrals?

Douglas Kellner: Right now we're talking about failure-to-file because I understand with deficiency that with one exception out of the thousands of deficiency referrals that you have been given, you have not brought a single deficiency case. But, with nonfilers you're brought 20. I think we're up to 4 this year, 4 out of how many nonfilers have been referred to Risa's Unit this year? Is it 2,000?

Brian Quail: 2,500.

Douglas Kellner: Yeah, and 4 with no explanation of how these 4 were chosen and why all the other people who have similar profiles of nonfiling have not been prosecuted.

Risa Sugarman: If you're talking about the hearing officer cases, the hearing officer cases are not limited to nonfilers. So that, so that... I don't know how you make that reference. But it's more important to me to get people into compliance, if I can, and it seems, when I read the law, that in order to avoid a dismissal, because a hearing officer finds that we can't allege that the committee did not try in good faith to come into compliance, that that's part of the process I have to go through to bring a hearing officer case.

Peter Kosinski: So are you saying Risa that for 2018 where you received, I guess 2,500 committees were referred to you from the July report and I'm going to presume that probably another 2,500 were referred to you from the January report...

Risa Sugarman: Well, I don't know that it's another you can't say it's another, it might be the same committees. Well that...

Peter Kosinski: Well it's still a separate referral because it's a separate filing...

Risa Sugarman: But there might...

Peter Kosinski: Hold on, let's just take this example, those are only 2 of the filings that were required this year, there were other filing required but let's just take those two. Let's assume, for a minute, that the number is somewhere in the neighborhood of 5,000 referrals for those two filings because based on the last one, I think that's a fair assumption. You're saying that out of that, you analyzed those and concluded that only 2 or 3 were worthy of...

Risa Sugarman: No, that's not what I'm saying.

Peter Kosinski: Okay, so what are you saying?

Risa Sugarman: I'm trying to explain to you the process that I go through.

Peter Kosinski: Right and I'm trying to understand it. So, you're telling me you've gone through this process of analyzing these failures-to-file and concluded that there's only 2 or 3 of those thousands that deserve the attention of a hearing officer, the other 4,998 are so de minimis that they don't even deserve a hearing officer.

Risa Sugarman: That's not what I'm saying.

Peter Kosinski: So, what are you saying? I guess that's what...

Douglas Kellner: And you're not telling us why. In other words, all you have to do is take the list and tell us and if you want it to be confidential, I'll swallow hard and say, if that's what it takes to get you to tell us what's going on to keep it confidential fine. But we'll see, but the point is, is that you're not giving any feedback that shows anybody that there's an analysis going on.

Peter Kosinski: And by the way I'm not sure that would be confidential Commissioner. I mean these lists are public, these public hearings are public.

Douglas Kellner: And it should be public. The public has the right to know why this committee...

Peter Kosinski: I agree, I agree.

Risa Sugarman: Did I say it was confidential?

Peter Kosinski: No, no, he just raised it and I wanted to respond that it should be public.

Douglas Kellner: All I know is that you refuse to communicate that information to us. And the Compliance Unit could do a better job if they knew what the standards were. But...

Risa Sugarman: I still don't understand what the Compliance Unit, are you telling me that they would take those names off of a nonfiler list? I don't understand that.

Douglas Kellner: Yes.

Brian Quail: That's true. For example, you have given us information half a dozen or so times and said, this particular committee should be terminated, notwithstanding. And we have done that and if you identified...

Risa Sugarman: Notwithstanding....

Brian Quail: If you don't like my word, I'm sorry, but this committee should be terminated because of whatever the reason. And we have done that. We have not on any occasion that you've asked or suggested that a committee be terminated, not actually done so and almost in real time. And so, if you identified that we have a committee that's on the list and the only reason it's there is because it has a 15-year-old letter of indebtedness that hasn't been returned, actually identified that committee to us, you would be surprised what we would be able to do.

Kim Galvin: Similar to what we would do with the deficiencies. We met, you said, we don't think this range is good, we adjusted our range. We don't think these things should be referred over, we adjusted the fact pattern. We take your input and we adjust accordingly to the best that we get.

Brian Quail: Commissioner Kellner's suggestion that an annotated list come back to us would be an incredibly useful tool.

Peter Kosinski: So that's our response. I think we are frustrated that we feel that there is no idea on this side as to what your standards are to make a determination...

Risa Sugarman: My standards are what the law is Commissioner.

Douglas Kellner: No, they're not. They're not.

Risa Sugarman: Yes, they are. Yes, they are.

Douglas Kellner: I could take 20 cases randomly pull them off the list and I'll show you that you have not followed up on some of those cases. And the problem is that it's arbitrary and capricious as to who actually gets prosecuted now. Nobody knows. And if it's not arbitrary, well I mean I could take out of the 20 hearing officer cases you've brought, there is an incredibly disproportionate number of minorities who were the respondents in those cases okay. I'm not suggesting that's why...

Risa Sugarman: Then why did you bring it up sir?

Douglas Kellner: I brought it up because you will not disclose the criteria on how these people were selected.

Risa Sugarman: Shame on you. Shame on you for even bringing that up.

Douglas Kellner: Oh no, it's shame on you for the fact of not realizing that you're almost 4 times as likely to be prosecuted in a hearing officer case if you're black or Hispanic. And look at the data, but Risa, you won't disclose what the standards are. I'm not saying that you went after them because they're black or Hispanic I'm saying if you look at the 20 cases you've brought, it's highly disproportionate but you won't tell us what the standards are. Why this nonfiler got prosecuted but that other nonfiler who appears to the public to be similarly situated has not been prosecuted. I mean that's the problem. There's no transparency. There's no appearance of uniformity, and certainly from our point of view, the number of cases who get prosecuted, and now I hear you suggesting that unless you get, suggesting that you need an automated process for sending out the notices that on a fraction of the budget had been sent out manually before your office was created. And I'm not saying that they shouldn't do it if it's a process that's feasible to be done. But it's not an excuse for not getting the notices out.

Bob Brehm: Just on the request, I mean Risa just gave is to us I think last, I'll pick the date, may be last Tuesday so we certainly got it and we're looking at it. I believe it was a week ago I might be off by a day.

Risa Sugarman: It was the day you sent the nonfilers.

Bob Brehm: Right, but it was like within a week or so ago.

Risa Sugarman: It was the day you sent the nonfiler list.

Todd Valentine: It's within the last week.

Bob Brehm: So, certainly that came to us, but I also think you've heard over a number of months...

Kim Galvin: 9/26.

Risa Sugarman: The day you send the nonfilers.

Bob Brehm: ... Mr. Cross' description of the technology projects he's already working on and if a technology project goes in cue what it takes to complete one.

Douglas Kellner: And in the meantime, it should go out manually.

Risa Sugarman: And if the list was accurate maybe I would.

Douglas Kellner: Tell us where the list is inaccurate.

Risa Sugarman: I don't know where the list, for example if a county committee, a "C" filer files a CF-20 locally, I don't know that, and I can't get that information, an "In lieu of", I can't get that information from the State Board. But you're asking me to send a litigation letter to those committees. I don't think that's appropriate. You might practice law that way, I don't.

Douglas Kellner: If that's the case, tell us, tell us, if that's the case of those...

Risa Sugarman: I don't know those committees, I don't know the 1,500 and 1,935 "C" filers how many of those filed in their counties an "in lieu of". I don't know, you don't know, but you want me to...

Douglas Kellner: Is that a correct defense for prosecution? This is the first time I'm hearing this.

Bob Brehm: Well not considering that her jurisdiction includes the counties, she could ask the counties. I mean we only met this week at 11:00 on...

Douglas Kellner: We could also ask...

Kim Galvin: We'll I'll tell you what we can do. We'll take the last list and we'll annotate it and we'll see just what the list looks like.

Andy Spano: That would be helpful.

Kim Galvin: We'll do, and we'll show her

Andy Spano: That would be helpful.

Kim Galvin:Risa where her stats really are and how many...

Peter Kosinski: I'm sorry Kim, annotate it in what way?

Kim Galvin: Just like Commissioner Kellner is asking her to do and has asked people to do and,

Peter Kosinski: The status of that specific committee?

Kim Galvin: ...we'll take our staff that's done 100,000 reviews and we'll put them on it, and we'll have them annotate it and we'll see, maybe, and Brian is now looking at me, and they're all freaking out...

Brian Quail: No, no, it's not the work, but the issue is annotated to what standard? And the point is that annotation serves the same...

Kim Galvin: Losing a primary is not something we're going to take people off the list for.

Douglas Kellner: Yeah, I'm astounded that Ms. Sugarman thinks that that's a reason not to proceed. Well actually I'm not astounded but that's my problem is that we have an enforcement counsel who's basically saying, I'm not going to issue parking tickets, I'm not going to do anything if...

Kim Galvin: And really the 5-day letter clears a lot of those things up if they're sent out, the people call and say, "No I filed a CF20." "No, I forgot about that."

Douglas Kellner: And the 5-day letter always went out...

Andy Spano: I think from what I hear if it doesn't overtax the staff...

Kim Galvin: It doesn't even matter, we'll just do it.

Andy Spano: Annotate it anyway you want based on what you think and let's just take a look at it.

Kim Galvin: We'll take a look at it.

Andy Spano: I'm listening back and forth. This has been going on for 3 years now.

Kim Galvin: I hear you, I agree.

Andy Spano: I don't want to hear it.

Kim Galvin: I'm with you.

Peter Kosinski: So, you're going to take the last 2,500 names from the July filing?

Kim Galvin: Incredibly she picked 6 and they were all faulty. So, we'll see what the other...

Douglas Kellner: No, they weren't all faulty. She's telling me now that she does not regard that losing a primary is a reason for nonfiling.

Risa Sugarman: What I'm telling you or what I tried to tell you is what the legal requirements will be on a hearing officer case.

Douglas Kellner: I get it.

Risa Sugarman: And then going to Supreme Court, that's what I'm trying to tell you.

Douglas Kellner: I get it and just annotate back and say, in this case I don't think I can meet the standard because of blank. That's all, it's not hard. You took the time to look at the file, you should at least make a note of what your decision was and why and tell us. And that's all. I've been asking for that from the beginning.

Risa Sugarman: You know strict liability doesn't mean that you don't need evidence, and it doesn't mean you have to disprove a de minimis statute...

Kim Galvin: I know what it is I was a prosecutor too.

Risa Sugarman: Well then, that statement has no value in this discussion.

Douglas Kellner: Just give us a sentence, tell us what you found. If you looked at 6 of them tell us what you found on those 6 and why.

Andy Spano: Why don't we just try this and see if it opens up another avenue, I mean we can't just go back and forth like this.

Kim Galvin: Maybe we'll find a way where we can make our list better.

Douglas Kellner: Well I want you to do that.

Kim Galvin: That's right. Maybe it will be a productive exercise.

Bob Brehm: We've tried that for four years and it's always been a one-way street except in very limited areas.

Kim Galvin: I am the bridge here, I will...

Bob Brehm: So, as long as those and it has been helpful when you sat down with Risa or her staff...

Kim Galvin: Look at Quail....

Bob Brehm: ... where she has identified these are clearly de minimis, so we stopped sending a report. So, anything that can help in that regard, we don't want to send her things that she's identified as de minimis which I think under the statute it is her authority to do...

Kim Galvin: I can't imagine over four years there's been more than 20.

Bob Brehm: ... and we'll stop sending them to her. So instead of arguing over 2,500 we'll argue over 632, whatever it is we'll focus on what we really need to focus on.

Kim Galvin: Okay.

Douglas Kellner: And the 5-day letter make it clear on how it's going to get out.

Kim Galvin: We have the numbers.

Douglas Kellner: That it's not dependent on waiting for a computer file.

Kim Galvin: No, we have the numbers of how the number of failures-to-file decreased markedly 50 to 60% once the 5-day letters go out. We'll bring all that to the next meeting, I guess.

Bob Brehm: They've sent out 5-day letters without a computer system. And they've sent out emails without a computer system. So, I'll work around what could happen in the meantime.

Andy Spano: I think we could just add something else to the mix that we could take a look at and maybe get a different perspective. I'm confused.

Kim Galvin: Okay. I'm sorry Brian. Okay.

Peter Kosinski: I think that would be helpful. Do we have anything else on this? Okay. Then that completes the unit updates and we will move on now to Old Business. There are two items under Old Business; and the first item is an opinion regarding childcare. And I know this came up a couple of meetings ago as a proposal to revisit the issue of using campaign money for childcare which I think was visited in 1990 and an opinion was issued which allowed the use of campaign money under rather narrow circumstances where basically both parents were out of the house based on a campaign event but since that time, there has been I know an FEC opinion which was issued earlier this year which allowed for a congressional candidate to use campaign money at the federal level for childcare purposes under a specific set of circumstances and there have been I know, some requests here apparently for a similar type of opinion to be issued. We don't have a specific request which I know has caused some problems here trying to get an opinion out because normally we respond to a specific set of facts. In this case, we don't have that. What we have is just a general issue of whether or not campaign money should be eligible to be used for childcare purposes and under what circumstances. So, there is an opinion here that's been drafted by the staff, it's before us. This one, I'm not going to read it but this one I think goes to the specific question, in fact the specific question asked, "Is may a candidate for public office or party position use campaign funds to pay for childcare services?" There is a general discussion about that and what the state of the law is, and the conclusion reached is that it can be used if the expenses are a direct result of the guardian's participation in a campaign activity. I think this is similar frankly to the opinion we put out in 1990. I think it goes along the same lines. I think it's somewhat more expansive because it doesn't limit it to the situation where both parents have to be at a campaign event, but there would have to be a direct

relationship between the need for childcare services and the campaign itself. So that's my summary of what's here, if you want to talk about anything...

Andy Spano: I don't think it's unreasonable.

Peter Kosinski: If you have anything specific you want to speak to? I don't know if anybody else...

Douglas Kellner: I move the adoption of today's draft which is a slight revision from the draft that's been posted on our website. We have gotten many favorable comments to the draft that was posted on the website, but I think this version moves the ball forward and would be helpful to the public and is certainly consistent with what was posted and received public comment. So, I'll make that motion.

Gregory Peterson: I'll second that and I'd like to just add that for those who are running for office, who have campaign committees, as someone who has run 12 times in my lifetime, it's very important I think that the very last paragraph, "any person requiring guidance on whether an expenditure is a personal use given circumstances may request an opinion pursuant to Election Law 14-130." That's very important. And I think anybody running for office, especially in an instance where full disclosure is very, very important, don't rely necessarily on your treasurer to tell you this is something we really have to look at as an elected official or going to be an elected official, hey we need an opinion, let's clear it with the Board of Elections first so we have a written opinion understanding exactly what the circumstances are because they do change with variations and they should understand that these are the rules of the game, this is what I'm going to play by and it's a lot safer that way than taking a guess.

Peter Kosinski: Are there any other comments? There's been a motion on the floor to adopt and seconded. All in favor?

(Chorus of ayes; 4-0) opposed? So, it is adopted in that form and that also I might add rescinded, I believe, opinion from 1990...

Bob Brehm: 1990-2.

Douglas Kellner: Because it removed the limitations.

Peter Kosinski: So, it supplants that, in essence, so that should be put up as a new opinion on that topic. Alright, our second issue of Old Business is the adoption of the Independent Expenditure Rule that we put out earlier this year pursuant to the new statute and it's an amendment to Part 6200 of our Rules and Regulations. There was a slight change to the one that was put out a couple of months ago?

Kim Galvin: There was a slight change and all the changes are on page 7 regarding applicability of list of magazines. Nick called up the regulators of these regulations and it doesn't require it to go out for comment it wasn't a change substantial enough to require additional comment period and as you can see, Nick did a wonderful job in explaining all the comments that we received

and answering them. And right up till last week we were still talking to the groups and I think we...

Peter Kosinski: So, what was the change?

Kim Galvin: Just it now exempts magazines.

Peter Kosinski: It added magazines to the exempt.

Kim Galvin: Right. And right up to last week we were still talking to people. I think it came out pretty well. Nick did most of the work so.

Peter Kosinski: And magazines are referred to as periodicals?

Brendan: Right, and it links it to a specific tax statute, so people know...

Peter Kosinski: ...what exactly we're talking about. Okay. So, this would be final adoption now for rules and regs right that were put out earlier as emergency.

Kim Galvin: It would be.

Andy Spano: I move we adopt.

Peter Kosinski: We have a motion, is there a second?

Gregory Peterson: Second.

Peter Kosinski: Seconded. Any discussion? All in favor?

(Chorus of ayes; 4-0) opposed? So those are adopted as well. Okay so that concludes Old Business for today unless there's any other Old Business to come before the Board. Not seeing any, we will move onto New Business.

We have actually three issues under New Business; the first one is the Dominion voting system. This is a, maybe someone of the staff will explain it but this is a new voting system that's been submitted for testing here at the State Board. This is now here for final approval and I know it's gone through all the necessary systems checks to make sure it works properly. I understand it's met all those and that this is now a new a proposal to approve this for sale in New York State. So, is there any discussion about this? Does someone at the staff level want to talk about this more, Brendan or Tom?

Tom Connolly: The only thing I would just state is it's actually not a new system itself, it's an upgrade to the existing system. It was a hardware and firmware change to the kind of base software which was the election management system is unchanged. So, this is newer hardware, we did go through all the different testing that we're required to do to make sure that it meets all of the requirements at the federal and state level. We've included copies of the various reports

that were a result of that testing. Along with the resolution, there's actually two resolutions; one is a resolution certifying the upgrade to the system and one is a directive on the use of that system for counties. The need for that second resolution largely has to do with the fact that the configuration of the hardware as was submitted to us for certification only allows the machine to act as either an optical scanner or a ballot marking device at one time and not concurrently. So, therefore as opposed to the systems that we have in the poll sites now where someone can use a ballot marking device while scanning is going on at the same time, since this current configuration doesn't allow that, the directive takes that into consideration and changes some of the numbers as far as how many machines would have to be deployed based on how many voters are at a polling place.

Brendan did you have anything to add?

Brendan: No that's it.

Douglas Kellner: Tom, as part of our certification process, we require two outside authorities to work with your staff in making those reviews and would you explain the roles of each of them in this particular.

Tom Connolly: Sure, SysTest Labs otherwise known as SLI does a number of different reviews for us. In this situation they did a security review, a review of the Technical Data Package or the TDP and also and a source code review of the system. We also used NYSTEC the New York State Technology Enterprise Corporation as a kind of second set of eyes. They looked at the security review that SLI did and they also looked at the functional testing that the State Board staff did.

Douglas Kellner: Now in the NYSTEC report in part 5 of the report on their findings and observations, they reviewed the issue of the ports that are contained on the machine and would you explain the function of the USB ports that are on the ICE machine which is also the case for the Dominion ImageCast that its upgrading and also comparable to ES&S DS200.

Tom Connolly: There are a number of ports that are part of any of these voting systems that we use, and the ImageCast evolution is no different. There are called an RG45 or otherwise what might be known as an Ethernet port that you might normally see for connecting computer cables to and there is also a USB port which is used for secondary monitor which is not part of the configuration that we're certifying but as part of our functional testing of the machine, we made sure that neither one of these ports could be used for any sort of networking or connections, since that's forbidden by our regulations. We did a number of different tests in the statute which were more of negative tests because we plugged different things into it to make sure that it doesn't get recognized or no link light comes on. Those tests were included in our testing and they did all pass. There is no mode of hardware within the machine itself and there is no ability to enable that from within the system on the machine.

Douglas Kellner: So, based on the NYSTEC study we can conclude that these machines do lack any capability for wireless or internet communication.

Tom Connolly: Correct, and for the most part their recommendations as to placing tamper evident seals on some of those ports and there is also a smart card reader in the front which isn't used in our configuration is largely cosmetic.

Douglas Kellner: And so, the recommendations that are made in Part 5 of the NYSTEC report would you explain how they will actually be implemented? Well first can you confirm that the State Board adopts those recommendations and that the counties will have to comply with them?

Tom Connolly: Right, so we drafted a procedure for seal placement on the Dominion ICE machine which includes the recommendations from the NYSTEC report. So the ports on the side of the unit as well as the smartcard reader in the front of the union is part of our acceptance testing if the county opts to buy this machine, state board staff will be on-site when it gets received and we would obviously review with them the seal placement procedure that we've written up and then we also hope to, generally speaking, have this reviewed with county boards as we go out more and more for visits.

Douglas Kellner: How do we know that the software that's actually installed in any particular machine is only the certified software?

Tom Connolly: Well it's required but also, we are the only source of that software for the counties and so we have to have an escrowed copy of the software that's been certified and that's the only part that's allowed to and we also do hash checks upon the installation of that software.

Douglas Kellner: So, if somebody got a hold of an uncertified version of the software and somehow or other was able to get it in the machine, I'm talking about an insider really, the hash check codes would alert the fact that uncertified software was being used is that correct?

Tom Connolly: Correct.

Douglas Kellner: Okay. Now in the NYSTEC report they provided for a protocol it says that if there is a breach of a seal to any of these ports, that it should be reported on the incident log. Would you explain that procedure and how the state board monitors county compliance with the procedure?

Tom Connolly: So, the security incident response procedure is a document that we had created and it's in use for the current systems as well. It would be unchanged if we were to certify the Dominion ICE system. It has to do with what does a county board do in case of a seal is broken or there's some sort of tampering that's evident? There's a number of different requirements that are put on the county board as far as designating people that have an election system security officer, it's supposed to be a bipartisan team. They're supposed to obviously read and be aware of all the things that are required. They're supposed to fill out a form when something happens it has a number of different details in it as far as the mode or what kind of stage of the process, we're in whether it's pre-election or Election Day or post-election. They're supposed to generate, for ports they're supposed to provide copies of that to the State Board. They're supposed to alert us to the incident and also how it was mitigated on their end. As far as how we would be checking in on those things going forward, I think as I was saying before, in addition to

not just the seal placement and as kind of part of our increased focus on security, not just cyber security, as part of our board visits, I think Brendan and I have discussed kind of beefing up some of the things that we do to make sure that's not just a matter of, yeah they're aware of the security incident response form but asking them questions like, who are your two SOs and can you show us any documentation that you've done? So, we're visiting boards on a frequent basis and ensuring that they're not just in possession of the procedure but actually utilizing it.

Douglas Kellner: And then finally turning to the resolution on the number of machines required in order to comply with 6210.19, which is essentially designed to enforce the Board's policy that voters should not have to wait an excessive amount of time at the poll site and cast their vote. So, would you briefly explain how it is that you determined that there should be the numbers that are set forth in the proposed resolution?

Tom Connolly: Sure, so obviously 6210.19(b) says that for every optical scanner either deploy 1 for every 4,000 voters. If you take that into our 15-hour election day it works out to about 13 ½ seconds for each voter. Based on the usability study that Dominion did it took about 491 seconds I believe for a person who was utilizing the device as a ballot marking device. So basically, we asked NYSTEC to look at all the data that we had and including data that we have collected from county boards as far as how many individuals have utilized the ballot marking devices in their county and we took the highest number from I believe 2016 which was Monroe County which had 34 individuals using that and basically we took the 34 individuals and multiplied it by the 491 seconds, came up with an amount of time and said, well how many voters just using the scanner would that kind of displace? And so, after taking that number, subtracting it from the 4000 and then rounding down to the nearest hundred just to be safe, we ended up with 2,700 voters.

Douglas Kellner: And so, the goal here is to make sure that if there is significant usage of the device as a ballot marking device, it's not going to prevent other voters in the poll site from submitting their ballots to a scanner.

Tom Connolly: Right.

Douglas Kellner: Alright. So, on that basis; I appreciate the answers to all those questions. I move the adoption of both resolutions both certifying the machine and setting forth the directive on the number of machines required.

Peter Kosinski: Before I entertain a motion, I have a question I want to raise. So, I'm going to go back to this number that you were just talking about Commissioner Kellner, and I'm reading the resolution as presented. So, there's two resolutions as mentioned, and one would adopt the ICE machine as a certified machine and the second is this directive I guess we're calling it about usage. So, as you explained you looked at the number of voters attached to a current Dominion machine which was 4,000 based on this analysis you identified. And then went through I guess this process with Monroe County and came up with this 2,700 number so I guess that's based on how long it takes a disabled voter to use this ICE machine and subtract that from the 4,000 and came up with 2,700. Now the resolution has two "therefore", has two "resolves" and one is that, that you cannot assign an ICE machine to serve more than 2,700 registered voters which you

explained. And then the second “resolve” says that if a single ICE machine is assigned to a poll number of 2,700 or less then there must be two scanners. So, I’m trying to understand the concept there. My understanding is you’ve accommodated this process where this ICE machine services both disabled and nondisabled people simultaneously and I understand that is the problem, its different from the current situation where the BMD is separate from the scanner. So now you’ve got the BMD and the scanner basically together and so you had to reduce the number of voters attached to it because of the usage of it by the disabled community and that will then prohibit others from scanning during that time period, so you reduce the number, fair enough. But then in (b) you say if you’re total number assigned is 2,700 or less, you still have to put a whole other scanner in that poll site.

Douglas Kellner: Only if more than 2...

Peter Kosinski: 2 voters, 2 disabled voters have used that machine in the past.

Douglas Kellner: Think about the problem, if so the average time for someone to use a BMD is 8 minutes and 41 seconds?

Tom Connolly: Well 491 seconds I’m not entirely sure how that works into...

Douglas Kellner: Yeah, more than 8 minutes. And that’s the average. So that means that sometimes it’s going to be more than average. Now this is the only machine in the poll site.

Peter Kosinski: I got it.

Douglas Kellner: Alright so you’re a voter now who’s marked his ballot and wants to scan it. You have to wait until that BMD user is finished which is certainly something very few people have to wait to insert their ballot in a scanner now so that they’re accustomed to just being able to fill it out, stick it in. Suppose it’s not 8 minutes but suppose its 15 minutes, now you’ve got to wait 15 minutes behind that. Now we’re saying that’s tolerable twice a day. But if it’s more than two then there comes a point where you’ve got to have another BMD as a way of not backing up the non-BMD users who will have to wait behind a BMD.

Peter Kosinski: I mean it just seems to me that we’ve accommodated the fact that they’re going to be simultaneously used by reducing the number to 2,700, we’re now accommodating it a second time. I mean it just begs the question to me why are we reducing the number assigned to the ICE machine if we’re going to require a second machine there anyway?

Douglas Kellner: Oh No, then the first part applies, and the number is 3,900.

Peter Kosinski: But I’m saying why are we reducing the number assigned to the ICE machine if in essence there is ever a disabled person who has to use it in that poll site, you’re going to have to have a separate scanner in that poll site anyways so what was the purpose of reducing the number assigned to the ICE machine if we’re going to require all of our counties to have a second scanner at the poll site anyways? Aren’t we double counting the usage of these machines when we reduce the number once and still require you to add another scanner to that poll site?

Douglas Kellner: But we're not...

Tom Connolly: Brian is chomping at the bit for me to defer to him so.

Peter Kosinski: Oh, go ahead whoever can answer.

Brian Quail: The issue is that when you look back at the use history of these machines it is often the case that there would be no users, occasionally one user and in a very small number of instances where at the same election night you'd have 2. And one of the issues in addition to the one that Commissioner Kellner identified that it deals with in terms of the acceptability of that kind of a delay between 9 and 15 minutes, as an episode that (b) takes into account is the issue of, in the first analysis you're looking at the entire voting day and you're looking at the impact over that entire range. What (b) also considers is the non-time proportional problem that could occur. For example, if you have two BMD users come in back to back, and in which case you end up literally because a single BMD user takes up so much time in comparison, that you could literally, even at average you could have an 18 minute back up if two people came in at once. So, my favorite philosopher is Ralph Waldo Emerson, maybe perhaps he's not a philosopher but he said, "The past instructs and the future invites." So, what we did is we just said, look if you have a history of use that is 2 or more then we'll take into account the potential problem that could occur with the non-time proportional application. There is also a possibility, of course, that the past does not instruct, that we could have an instance where in a poll site that could only have one machine that never had a history of 2 voters coming that that could actually occur. But this is trying to make the solution fit the potential problem as best as possible and hopefully ultimately when the machine comes back for another round of certifications it will have resolved the issue.

Peter Kosinski: Let me ask you this, what was the purpose of reducing the number to 2,700?

Brian Quail: The 2,700 takes into account over the course of the entire 15-hour day the impact on that, that someone coming into to the poll site would cause a voting on the machine.

Peter Kosinski: You mean a disabled person?

Brian Quail: Any person using the BMD.

Peter Kosinski: Okay anybody, okay so we've accommodated then the use of the BMD on the ICE machine by reducing the number to 2,700.

Brian Quail: It's a 15-hour capacity, yes.

Peter Kosinski: Right, but you've accommodated for that by saying we're going to assign 1,300 fewer voters to that machine because we recognize there may come a time where someone wants to use the BMD portion of it and that will then tie the machine up for a longer period of time than a nondisabled voter and so we have to reduce the number of voters assigned to that

machine. Fair enough. But then you go on to say yea but if have a BMD user you have to have another scanner there anyways. I'm having trouble...

Douglas Kellner: It doesn't say that.

Peter Kosinski: Yeah it does, on the second page.

Andy Spano: It doesn't say that, you're accurate on the first one as far as I read it and on the second one only applies to those polling places where there were 2 in the past.

Peter Kosinski: I got it.

Douglas Kellner: And only one machine. The marginal for a second machine is 3,900.

Peter Kosinski: I got it, it just seems logic to me says you've already accommodated for this by reducing the number to 2,700 now you're accommodating it again by adding another machine. You're accommodating it twice.

Douglas Kellner: No, but the second part is to take up the problem where you can't really accommodate for it because this poll site has an unusual number of BMD voters.

Peter Kosinski: Two.

Douglas Kellner: Well upstate that's actually the case. There are very few election districts where there have been more than two BMD voters.

Peter Kosinski: I know. I know, but if you do the analysis...

Douglas Kellner: But we need to protect for that.

Peter Kosinski: Fair enough, but if you do the analysis of how these numbers were created in the first place, it was done the 4,000 as I understand it was done based on a continuum of people coming in and spending 13 seconds at the machine scanning their ballot. And that's how we came up with 4,000 to begin with right?

Douglas Kellner: That's way over simplified. First of all, there are 4,000 voters assigned to the poll site, it's rare when there's 100% voter turnout. So, it also factors in the fact that the voter turnout, I think the original numbers were done at 65% which is even still high for voter turnout. And the mean time. But of course, voters don't come in every 13 seconds, so you also have to factor in heavy usage times. But as I'm sure you know, it doesn't take 13 seconds to scan a ballot. It's shorter than that. This number (a)...

Peter Kosinski: Which number are you pointing to?

Douglas Kellner: For this particular machine, I can't believe I'm the guy defending this because they had to talk me into this... because my initial starting point was if you're going to use it as a BMD you needed two machines, you couldn't use just one for both purposes because and (b)

was the compromise to do that. But the theory with (a) is that its 3,900 is the ordinary usage for the machine if it's not going to be used as a BMD. But one machine in the poll site is required to be used as a BMD in order to meet HAVA requirements and NYSTEC came up with that formula so that for the first machine at a poll site the threshold number is 2,700 and then its 3,900 for each additional machine. And that's because one of those machines is at least theoretically set aside for BMD usage which will reduce...

Peter Kosinski: So, I could have a situation where I have a poll site with 500 voters, 2 used the BMD at the last election and now I have to have two machines?

Brian Quail: Yes. And What I would pose to you...

Peter Kosinski: And the rationale for that is?

Brian Quail: Is this, is that the minute those two people came in if they came in together even though you only have 200 voters there, you've just created on average an 18-minute line. If it's not...

Peter Kosinski: On average.

Brian Quail: Right if it's not average perhaps that line could be a 40-minute line automatically just because of the history of how it's used. So, it's that nonlinear, not linear, that nonproportional time use issue is that you have an instant line even if you only have 2 people. So, the person who's third in line even though there are only 200 people in the poll site could be waiting 40 minutes.

Douglas Kellner: And as far as I'm concerned, the alternative is to require a second machine.

Peter Kosinski: In all circumstances?

Douglas Kellner: Yeah, and that (b) is the compromise to say, okay in a small poll site where there's no historic usage of the BMD then we'll waive the requirement.

Kim Galvin: And realistically not that many poll sites I would imagine have one now and these are new going into their fleet, so they already have a full fleet, so it wouldn't be that big of a burden on the county boards to have two.

Peter Kosinski: Why are they buying these machines? Why are county boards buying these machines?

Kim Galvin: They want...I have no idea. They want new machines.

Peter Kosinski: Are they replacing what they've got though is that the theory?

Douglas Kellner: The existing Image Cast is at end of life cycle.

Peter Kosinski: So, in essence you can't replace with this one is the real answer here. You can't replace one on one. What you're going to have to do if you're a county board is, you're going to have to buy the ICE machine as your BMD and buy a separate or either keep or buy a separate scanner to serve as your poll site. That's in essence the practical effectiveness.

Douglas Kellner: Yes. Initially what will happen though is that boards will keep their Image Casts that they're serving now for use in their small election districts where they would otherwise have to have a second machine. But, 10 years down the road when there won't be any Image Casts in use or very few Image Casts still in use, you'll see (b) start to kick in.

Kim Galvin: And (b) will probably have been....

Brian Quail: Gone by then.

Kim Galvin: ... upgraded or fixed so that this issue doesn't exist. Right.

Douglas Kellner: Well we'll see. We could revisit it if we have the experience to do it.

Tom Connolly: And generally speaking this issue itself should somewhat at least this configuration of the machine would be somewhat of a short time issue because it's only because this current configuration is up for consideration cannot function as a BMD and a scanner at the same time, and it's our understanding that Dominion's intent is to submit a machine that does do both things concurrently within the next year or so.

Peter Kosinski: Well that's fine and if that happens I guess that would resolve all these issues but I just, I have to tell you I mean based on our discussion, I still don't understand this argument you're making because I do think that we've accommodated for people twice, which I'm not saying I have a problem with because we should accommodate people, but I think the way this is presented is illogical. You've done a double counting. I don't understand exactly why but you have. I don't want to make people wait either and if this helps people not wait, but I do think you're imposing a restriction on this that doesn't appear to me to be necessary. You've already done it with the 2,700. You're doing it again, I mean my feeling is you're basically saying to counties, you just have to buy two machines. That's the answer. So, buy two machines if you want to, have a good day. But this is not really servicing both communities anymore. This is now a BMD machine in essence, and you have to have a separate scanner for people who don't want to use the BMD. Well I guess that's the choice the counties are going to have to make. I'm not sure what this directive does exactly because I don't think we've ever put a directive out before with a certification but if that's what it will take to get it through, I'm in favor of putting it through because I think the machine has been out there for a long time. I think it's been hanging for some time to get it certified. I think it should be certified because I think it's met all our requirements. But I do think imposing this additional mandate or directive on the counties without what I consider to be a logical explanation or a logical reason, doesn't make much sense. But I don't want to hold this up for that if the counties are willing to buy what you suggest they should buy, that's up to them I understand. It's a county decision ultimately to buy voting machines. So, I'm sure they're going to accommodate their voters. I think that's what counties do. I'm sure they're going to take whatever steps they have to take in order to make sure their

voters are accommodated in their poll sites. So, I am willing to go along with this, but I will say I just don't understand the rationale here for this double counting. But we've entertained a motion to adopt and I would entertain a second and I appreciate your...

Gregory Peterson: I second.

Peter Kosinski: Is there any other discussion? Then all in favor?

(Chorus of ayes; 4-0) opposed? So, it is adopted in its current form. So that resolves that.

John Conklin: I think we need two separate votes.

Brian Quail: No, you need two votes because...

Andy Spano: No, the motion was for the both of them.

Peter Kosinski: I think we were just doing the whole thing, John.

Gregory Peterson: Both were adopted.

Kim Galvin: 4 - zero on both, John.

Peter Kosinski: So, we'll move onto the resolution on the IT system maintenance.

Bob Brehm: This is a traditional resolution. We brought it to you in the past because we're spending federal dollars, it requires a vote of the Commissioners if the cost exceeds \$5,000. So, this is routine maintenance for systems that we have.

Douglas Kellner: I move the adoption of the resolution.

Peter Kosinski: Is there a second?

Gregory Peterson: Second.

Peter Kosinski: All in favor?

(Chorus of ayes; 4-0) opposed? That is also adopted. Now we'll go onto what the last item of New Business is apparently, this is a discussion I guess of the Democracy New York City letters that I've read about in the papers that was somewhat controversial down in New York City. I know that the Board was pursuing some information regarding how this came about and why there were mistakes made and how this all happened, and I didn't know if you wanted to update us on what the status of that is?

Todd Valentine: Well we're still pursuing information. Part of it was we received what seems to be the list that was sent out claiming it was based upon the inactive list, but we are unable at this point even with our analysis because they only gave us limited information, the first name, last

name and address is to figure out how this list was selected. Because, no matter what we come up with, it's still less than what is over the last 4 years has been the inactive list in New York City. So, it still raised the question of how these voters were selected and what was their criteria.

Andy Spano: What were the numbers Todd?

Todd Valentine: The current inactive list is at a low around 450,000 it fluctuates depending upon the year from 450,000 to 500,000 over the last 4 years. This list was less than that, 390, a little less than 400,000 so there's a gap there plus it identified certain fields that were supposedly contained in the list which we didn't get in the list that was provided to us.

Andy Spano: So, we can't determine.

Todd Valentine: So, we can't determine that. We can try to do some looking up but if we just match on name, first name, last name, because there's a lot of common surnames that ends up matching like several thousand voters. So, we whittle it down to, you can have the exact number...

John Conklin: Millions.

Todd Valentine: If we whittle it down to the partial address that can narrow it down but still not accurate. But we can't try to even do an analysis based upon that.

Andy Spano: So, you're saying you got this information and now you've requested more information based on what you just said?

Todd Valentine: We have.

Andy Spano: When was that?

Todd Valentine: That was 2 days ago 3 days ago.

Andy Spano: And you haven't heard anything back?

Todd Valentine: Not since then, that's correct. The 22nd was the second letter we sent out. Was that Monday?

Bob Brehm: ...why we started in the first place where a number of voters had contacted both the State board and when we reached out to the City board the City board because they were receiving information, but their record was not active voter. So, when the voters had contacted us had checked their record on the electronic look-up it did show them as active voters. So, they couldn't quite figure out is this a scam, is it real? It's a letter that wasn't signed. Is it really appropriate? So just as John had mentioned when we saw people contacting us because they were getting what they thought were scams in Central New York, we reached out and tried to find out the source of the information. One of the hard parts is yes, the city Democracy Now and the chief Democracy Officer for the City of New York has been talking to us and we sent that

office the letter asking for more information. We followed up after we received a response to say it's incomplete. But what is, we can't tell the vintage, how old is the data that they used to tell people? One of the items is we've talked about in the past when we had this situation in Brooklyn, we matched the city file every weekend and we had a report that we continue to look at, the City looks at to make sure we are not having a repeat of anything like that. And right now, we have about 561,000 inactive voters and as Todd said, when you look back over history, we've been nowhere near this number. So, 1) how old is this data so that you're reaching out to voters and claiming to give them information? It's outdated at best. We asked for the data files, so we could try to figure out how old is it? We could not, anything we've been able to look at has been inconclusive because of the very narrow fields that they've provided us. So, we've asked them for more information. We're going to continue to pursue it just, so we can best understand it. What we did in response publicly is I think the best way to provide information to voters in 11 days before election was forget this information. Go to either the State Board of Election look-up or the City Board of Election look-up and look yourself up. And if that information is current and accurate with what you know as your residence address, then you should go to that polling place on Election Day and vote. It will tell if you're active or not. But that's the place to go to vote. If that information is wrong, the city looks up site, City Board of Election Look up will tell them the correct polling site for their residence address. They should then go to that site based on their current residence address, that's where they'll need to vote an affidavit ballot. Other than that, we haven't figured out any other way of providing clarity or less confusion to the voters. And that's been a similar message that we've discussed with the Executive Team at the New York City Board of Election, was their communication.

Andy Spano: Why would someone not send you the information that you asked for? What would be the reason for not sending the information?

Bob Brehm: I don't know.

Kim Galvin: Maybe they only sent the letter to a subset of people on the list.

Andy Spano: Well I'm just asking the questions.

Kim Galvin: That's why they wouldn't want to send you the data.

Bob Brehm: But one is the data, we thought the data would help us because we could at least look for the data and then see of that list of voters how old is the list that what we wanted the data for.

John Conklin: Well one of the other elements is what is the source of this data because that is unknown right now.

Andy Spano: Yeah, but here's a missive here, you want to send out what postcards?

Bob Brehm: Yeah, that was today's communication.

Andy Spano: To fix the problem. How do you do that if you don't know what the problem was?

Kim Galvin: Or you don't have the right list?

Douglas Kellner: That's fair.

John Conklin: But those who have commented on this have said the source of this is either the State or the City Board. And both us and the New York City Board have gone back through their FOIL requests over the last, we did 2 years. We couldn't find anybody that we could identify as either being associated with Civis Analytics which is the vendor that's claimed to produce the list to request our list. And there are certain things in the fields that we know that they had to use that we wouldn't give out, so we're fairly confident it didn't come from us. So did it pass-through third-party hands to get to Civis Analytics and who are they and what are those sources? We don't know the answers to that and we haven't been given the answers to that yet. So, I don't know if that's a reason why someone might withhold information.

Andy Spano: All they did was mess up an entire election.

Peter Kosinski: Well it's very troubling.

Bob Brehm: Well our initial communication was we didn't understand the source of the list we strongly encouraged that they rely on current information. This Monday the State Board received a FOIL from the Democracy New York City Office. We responded on Tuesday to provide them with current information.

Peter Kosinski: Do you know who Civis Analytics is?

Bob Brehm: It's like a vendor like Aristotle and any of the other kinds of vendors who do this kind of candidates order list, election related lists.

John Conklin: Based in Chicago. The people who founded it seemed to be associated with 2012 Obama campaign.

Peter Kosinski: I wonder why they used them. So, they didn't respond to your request of October 22nd?

John Conklin: Not yet. They said they're working on it in the email that Commissioner Spano read.

Gregory Peterson: In December.

Peter Kosinski: I read there were 30,000 active voters that got this letter as well is that true?

Bob Brehm: I saw that report.

Peter Kosinski: We don't know that to be true though.

John Conklin: Based on the information we have we have not been able to verify that number yet.

Andy Spano: Except that when are these postcards supposed to go to active voters?

Peter Kosinski: Is that what it says on the title?

Bob Brehm: We only know from the people who contacted us that they received this letter.

Peter Kosinski: So, you don't know where the 30,000 number came from?

Bob Brehm: No.

Douglas Kellner: But it's probably you said that New York City Democracy Project FOILED our list earlier in the week.

John Conklin: This week, yes, yes.

Douglas Kellner: So, they're probably taken our current list and matched it against the list they used to send out and now have a definitive list of their errors?

John Conklin: Well they might now but the 30,000 number was quoted before we gave them the FOIL. That was from the Mayor's spokesperson before the FOIL.

Douglas Kellner: But they are certainly able to determine now to whom they erroneously mailed the letter. And that would be the basis for sending the follow up correction letter to those people.

Peter Kosinski: To confuse them even further. Well, that's too bad.

Douglas Kellner: It's certainly unfortunate that the Mayor's Office and the New York City Board of Elections don't get along well.

Peter Kosinski: Apparently it is. Apparently, it's causing some confusion down in New York City which is the last thing they need. That's very unfortunate. The Mayor seems to not respect his own city agency.

John Conklin: They paid a lot of money for it.

Kim Galvin: Public money.

Andy Spano: I'm sure they did.

Kim Galvin: Two hundred thousand.

Peter Kosinski: So, we're expecting a response to this letter that you sent.

Gregory Peterson: Hoping for a response, not expecting.

Todd Valentine: We can respond. If they don't respond, there are remedies.

(Everyone talking)

Bob Brehm: Well we're not the only one, also I mean we have our responsibility I know we've heard from members of the City Council that asked for information the City appropriate committee, but they claimed they were going to hold hearings. And Mr. Stringer has also demanded information, but I think the City Council will probably have hearings after the election...

Kim Galvin: Or not.

Bob Brehm: ...or not. Well I think they said they were having them. I think we can count on that in their communication. But I just don't think they scheduled it yet. Because what are you going to do with this just before Election Day from a hearing point of view? But how do you find out where the problems were, so they don't get repeated. I understand the City Council's planning that I believe but...we want our own resolution to this. They claimed publicly the information came from us, we are going to track that down. How they use the information, how they may or may not have understood it but certainly just like any other group that uses those types of amalgamated lists that aren't current, it's not the best way to communicate with voters, real live leading up to an election and whether or not some other group is going to coming next time we want to make sure that people understand. John turns those FOIL around through our PIO office and the staff really quickly. We want people to rely on current valid information.

Peter Kosinski: And it's so available. I mean it isn't like they couldn't, I find it curious that you would use a Chicago based vendor to get information that's readily available from a New York State agency or a New York City Agency. So, you can get up to date accurate information from a city and/or state agency and yet you choose to use a third-party vendor out of state that in my view has no reliability, no track record in this state that you could rely on. This is a government agency doing this, spending public money. I mean it's incredible to me that that's the way you would proceed as a city agency. I don't think we'd ever think about pursuing information that's available from a state agency from a third-party vendor. It just makes no sense to me at all and I think running this down is very important and I think we should get answers to these questions.

Andy Spano: I don't think we should jump to any conclusions, but we should get the answers.

John Conklin: And there's already a city agency tasked with the responsibility of promoting voter participation and they tend to be pretty responsible in referring voters back to authoritative sources like the New York City Board and us.

Peter Kosinski: You're talking the Campaign Finance Board.

John Conklin: Yes. Yes, so this appears to be some sort of duplicative effort here as well when why am I paying two state agencies or two city agencies to do the same thing?

Peter Kosinski: And do it poorly no less.

Bob Brehm: I mean, when we immediately reached out to Campaign Finance Board to rule them in or out and they made it very clear really quickly to us it wasn't them.

On the most important thing when is our next meeting?

Peter Kosinski: Before we adjourn, we need to set a new meeting. Is there any other business to come before the...

Andy Spano: What do we do if we don't hear back from them?

Peter Kosinski: Well I don't know that's a good question, but we should pursue it in whatever way we can. I'm not sure what our options are in pursuing this agency.

Bob Brehm: Well I think their preliminary response is they're working in getting us the data.

Peter Kosinski: I mean they did respond to the first letter, so I have some hope they'll be responsive. They didn't ignore us the first time.

John Conklin: We have subpoena power.

Peter Kosinski: There you go.

Andy Spano: Well I don't think we should put that on the table right now.

Doug Kellner: We already did in our letter.

Peter Kosinski: Yes, it's in the letter. I don't think you can make idle threats. Hopefully, it won't be needed. hopefully we'll get cooperation.

Bob Brehm: Based on the statute we need to meet not later than December 15th in order to certify the results. That's a Saturday so that would mean Friday the 14th would be the latest.

Andy Spano: 14th of what?

Bob Brehm: December to certify the election results. The US House of Representatives had requested that we could give them the results by the 14th so if we meet that day, we could we won't meet the live-in person mailroom because we know how hard it is to get mail to the post office. So, if we could meet on that Friday.

Peter Kosinski: Can we meet earlier than that or is that pretty much it?

Todd Valentine: Not much earlier because we need that time for the counties to get us the results.

(Everyone talking)

Andy Spano: It says on your calendar snow. That's only in Long Island.

Peter Kosinski: We're going to set it for December 14th at noon right here. So that will be our next meeting. Is there anything else or I'll entertain a motion to adjourn?

Douglas Kellner: So, moved.

Peter Kosinski: All in favor?

(Chorus of ayes; 4-0) opposed? And we are done. Thank you.