

Douglas Kellner: Good afternoon my name is Douglas Kellner, Co-chair of the Board of Elections. I ask our fellow Commissioners to introduce themselves.

Andrew Spano: Andy Spano

Jim Walsh: Jim Walsh.

Gregory Peterson: Gregory Peterson

Douglas Kellner: Would the Board of Elections staff introduce themselves please?

Bob Brehm: Bob Brehm

Kathleen O'Keefe: Kathleen O'Keefe

Brian Quail: Brian Quail

Tom Connolly: Tom Connolly

Risa Sugarman: Risa Sugarman

John Conklin: John Conklin

Bill McCann: Bill McCann

Kim Galvin: Kim Galvin

Todd Valentine: Todd Valentine

Bob Warren: Bob Warren, Elections Operations

Shaikh Aman: Shaikh Aman, IT

Maureen Cahill: Maureen Cahill, IT

Aimee Allaud: Aimee Allaud, League of Women's Voters

Douglas Kellner: Welcome. Alright, we start off as the Board of Canvassers that there are amended election results because of changes received from Orange and Schuyler Counties. Those in favor of approving the amended certifications say aye?

[Chorus of ayes]

Opposed? Do we need to sign it now?

Bob Brehm: Well at some point it's up to you. There's only one signature on the last page, each.

Douglas Kellner: Alright, so that concludes the work of the Board of Canvassers for today. We'll now start the work of the Commissioners with the State Board of Elections. First item is approval of the minutes of December 15th, 2014. I note that we have some minutes of the regular minute and the confidential minutes of the Executive Session.

Anthony Spano: So moved.

Douglas Kellner: All those in favor say aye.

[Chorus of ayes]

Opposed? Minutes are adopted.

Then we have the unit reports, we'll start with the Co-Executive Directors Robert Brehm and Todd Valentine.

Bob Brehm: Well I think just so the Commissioner know and those watching know, our Election Operations Unit are not missing today from the meeting because they're not here, they are here but they are starting the new Commissioner Training Workshops that are part of the Election Commissioners Association winter conference here in Albany. It starts later this afternoon, the conference and ends on Thursday, but on the arrival day and the going away day we have a couple of training sessions for whether they're new Commissioners, staff or refreshing training for those who want to come anyway for both the Voter Registration, or the Voting System Election Management Programming is in one part of the building, and new Commissioner workshops are in another part of the building. And both Anna and Joe are busy doing sessions as we speak.

A number of other items of interest, I think, one, we saw during December the appointment, after many, many years of it being empty of the three of the four Commissioners to the Federal Election Assistance Commission so that they're back up and running because they have a quorum, were waiting on the fourth person. But that will see a little bit of change any of the HAVA funds that are being administered by us, we have that formal process again where if there's a per unit price greater than \$5000 for something other than voting machines, we need their pre-approval before we can spend the HAVA dollars. Things like that will go back into the normal production once they have a chance to get up and running. Certainly a whole list of issues with the update to the VVSG and things that were pending for many, many months is still yet to hear what the new Commissioners will set as priorities but just one it's different. They're funded and they actually have people. So that is a big difference that we've seen just in December.

The agency, we continue to work staffing wise. We had a new employee begin in the Council's Office, Dawn Roach, I think I mentioned, would be starting, she did start since our last meeting and I know Risa brought a new, I think last investigator came in?

Risa Sugarman: Auditor.

Bob Brehm: Auditor started during that period of time.

Risa Sugarman: She starts Thursday.

Bob Brehm: Oh will start soon, so we are making progress in that regard.

We still are working on a number of projects for the Hearing Officer Process. I know we've had a number of conversations about getting that posted as temporary workers, etc. and coming up with the right number of people to bring on board what is the job description. There is an existing Civil Service list, or excuse me, description. There is no list.

Todd Valentine: I'm probably going to cover that.

Bob Brehm: Oops sorry, we'll get to it on our agenda. I'm sorry about that. I'll let you talk about that Todd. Other than that, I think it's just mostly the work to prepare for the conference and for today's Board Meeting.

Todd Valentine: Yeah, and the only just follow up with is the Federal EAC as appointing their Commissioners. We're scheduled to, at least as far as State Election Directors, there's a meeting next month in Washington we're planning on attending. They should be there for that, maybe their first public appearance so hopefully after they have settled in for a little while we can see some direction they're going in and go from there.

Bob Brehm: We've asked them, we've submitted the travel request of the Deputy Secretary since it's out of state travel has to be pre-approved. So we're still waiting for that answer.

Douglas Kellner: Good. I certainly endorse you attending the conference. I think it's very important to stay informed as to what's happening at the federal level and in other states and we really benefit by sharing that information. So if we need, if that helps with the Executive let me know and I'll pass it on to them.

Alright, next is a report from our Council's Kim Galvin and Kathleen O'Keefe.

Kathleen O'Keefe: Okay, we as Bob mentioned have a new secretary. We're very happy that she's come aboard. We've been preparing for the conference. We have a

brief presentation on the Compliance Unit for the commissioners, tell them how that works. We've also been updating the Election Law Update to try to share that at the conference; we're hoping to do that.

We have ongoing discussions regarding the processes that we're trying to put in place with respect to compliance and enforcement. There's all kinds of places where we sort of meet each other at different aspects as people are doing their filing, or not doing their filing. We've got an ongoing discussion regarding that in hope to prepare some kind of form. We've actually been sharing that internally among the staff where we might be able to give Risa sort of a status update of where various filings may be in the Compliance Unit to make things a little clearer on both sides.

We have had discussions as well regarding the Hearing Officer issue, the Voter Registration Form, all the various different legal issues that come up.

Essentially what's been happening with Compliance is that we have these winding down seminars that are planned. We're going to do one in January, one in February. January 22nd from 10 to 12 is the first one a Winding Down the Campaign webinar. We wanted to make sure we get the word out about that. If somebody's run for office and they were not successful and they want to close their committee, this would be a good webinar to take to view and you'll find out how to do that. In 2014, Compliance came close to 10,000 reviews. So it's a very, very significant amount of work that was done in the six months between July and the end of the year. We are waiting, at this point, on the consumer price index from the US Department of Labor in order to do our usual CPI adjustment which is required every 4 years. It appears that those numbers are coming out later and later, but we are limited to using that so we're waiting for those numbers.

The January periodic report is due on Thursday, January 15th and all committees are required to file this report so we will be going into our new periodical report with all the additional work that comes with that and we will be at the winter conference with the hope of being able to answer whatever particular questions people may have that flow from the update as well as from the compliance presentation. Anything else Kim?

Kim Galvin: Just, there's going to be another Campaign Finance CLE Kathleen will be presenting with Bill and a few of our trainers, that's on Thursday for anyone that's interested.

Kathleen O'Keefe: And that is credit for CPAs I think too. So, its lawyers as well as accountants can get credit for that.

Douglas Kellner: I'm very disappointed that there's no report on our legislative proposals. Has there been no discussion on these items? What has to happen to move any of this stuff or, is it just that everybody's against everything that we've talked about?

Kathleen O’Keefe: No, we’ve been busy. I don’t think that’s what it is. We’ve been busy with a lot of things that seem to take precedence, not to say that that is extremely important. Internally, we’ve had some discussions. We need to obviously sit down the whole staff and...

Douglas Kellner: Well there are a couple of things where I thought at least in general a bipartisan agreement. For example, that we eliminate all local campaign finance filings from the counties and that the state take over that responsibility. We’ve talked about that 2 or 3 times, we were going to draft something and have that in the legislative proposal. And then I know that there are drafts about cleaning up the audit process in order to change the 3% formulas and to allow some computer assistance in the manual audit process.

Bob Brehm: Anna had shared the draft a while ago and the report was completed.

Douglas Kellner: And then there’s a draft on electronic poll books, and there’s a draft on unifying the canvass procedures statewide to take out the New York City exceptions. And I raised this in November and we said we would have it for the December meeting. It didn’t happen in the December meeting. It hasn’t happened in the January meeting so do we need to put this as a special agenda item for the February meeting in order to discuss it or is it that, to me these are valuable things where we ought to be providing input to legislature.

Bob Brehm: It’s not an issue that, I mean on some we’ve talked in a while there may be differences of opinion but on many its mostly been juggling some of the other issues to get ready for this meeting and some of the other work on regulations that are part of today’s conversation. So I really think it just didn’t, we haven’t had the opportunity. I think we’ll certainly find time to deal with it in the very near future when the conference is over.

Douglas Kellner: I’d say that it should be, there should be a review of these items that I’ve mentioned for the February meeting so that the Commissioners can talk about them, unless you’re just saying, “No, we’re against looking at it”.

Is there anything else on legal? Now the next part would be Election Operations and you’ve explained that Anna and Joe are not able to be here now because of the new Commissioner responsibilities. The one item that was pending for Election Operations is the report to the legislature on lever voting machines. What’s the status of that?

Bob Brehm: I know Anna and Todd had been sharing, and I believe Todd gave some comments and Anna gave some comments back. I lost track of what day last week, so they are continuing to work on it. I don’t know that we have a final version yet but we certainly had 3 versions going back and forth to get comments within the last 10 days.

Douglas Kellner: The report is due...

Bob Brehm: The end of the month.

Douglas Kellner: the end of the month, so what's the plan in terms of getting it out? Is it that Todd and Bob are going to agree and if they don't we just have to release each sides version.

Gregory Peterson: Those are important issues so I think we really have to have this thing done by the end of the month no matter what. Obviously, I would like to see it and I'm sure the rest of the Commissioners would also like to see what you're going to finally propose so that we're in agreement. And I mean this is a very important issue for a lot of the local governments throughout the state and it has to get done by then.

Douglas Kellner: Should we review what the issues are that there's disagreement on?

Bob Brehm: It's going to be hard without Anna.

Douglas Kellner: Are you suggesting that we need to meet before the end of the month?

Todd Valentine: No, what I think we can do is as you're suggesting is circulate a draft to you and then based upon that informal sign-off on the Commissioners than Bob and I can promulgate the final report. The statute doesn't envision that the Board vote on that but obviously we wouldn't put it out without your consent and then you can, so that is the plan.

Kim Galvin: I think the primary disagreement is that some people don't feel that the 200 pages of comments or whatever we're at could be incorporated into the drafts. So we're working on coming to the consensus thing.

Douglas Kellner: Okay. I mean I'm not against meeting earlier if we need to but I do think we should get the report out.

Okay great. Alright next is Public Information, John Conklin.

John Conklin: Thank you Commissioner. We've been making preparations for the conference as every unit is. Tom and I have been participating in the NYSVoter Refresh meetings and the CAPAS FIDAS Project meetings as well. We've been part of the discussion about the Voter Registration form and the draft that's been working. The Public Information part of the unit has been fairly quiet during the holiday season. That usually is what happens. We filed the year-end report with HHS and we had 38 foils in November and 50 foils in December. Do you have anything you want to add Tom?

Tom Connolly: We're just working with just a few number of counties to make sure they get all their voter history in for the general election from November. There is still some outstanding voters that we know we need to get a history and we usually give, per our requirements, 60 days from the election date for the counties to get that part of the process done. So at this point we're just kind of following up with them on a daily basis if they still need to try to get some. Because we do get a lot of requests for the voter data and people often at this point will ask if it's updated with all the voter history information from the most recent election.

As far as I know we mentioned the branding at the last meeting. We have been slowly trying to implement that where we can. We did finally get some of the files that we needed from the state and we will continue to do that as we produce new documents. We have done that for the conference presentations.

The only thing, we've been working with Election Ops with regard to data for the EAC the annual survey and then the last thing that I have is in a follow up to Commissioner Kellner's question about some of the interstate exchanges from last month, we did receive information since then on the Crosscheck. I did ask Brad Bryan from Kansas about information for setting that up. We did circulate that information. We did look into what would be required and what our IT group would have to be able to do in order to participate. At this point, we'd be looking to see whether or not the Commissioners are interested in participating. The first step of participation in that Crosscheck comes this month. They do it every January where they pull the file. Basically of the two exchanges, it would take our voter data, it would match it against all the other participating states, look for a match with first name, last name and date of birth. There are other fields that are collected including last four of social and also whether or not that person voted in the most recent election. They would then take that information, kind of match it with the other state's data and provide us with a file towards the end of January, beginning of February with the results of that process. And then unlike say ERIC where there are certain things which have to be taken, certain actions which have to be taken there is no such actions for the Crosscheck. The Crosscheck, in order to participate you really just need to pull the data, give it to them, they'll do all the processing, then they'll give it back to us. What we do from there is kind of up to us and being that we've never participated in the program before, we've had some discussions internally and we're thinking about possibly piloting it with a few counties just to see what the quality of the data that we get back is. Because it is much more of a basic match and then determine whether or not continue participation in the program as merited. We'll be looking for...

Douglas Kellner: It sounds productive. Is there agreement on this among the staff?

Bob Brehm: I know we talked briefly last week. The concern I think if we do anything a pilot is justified. I used the example, because the first year as a county election commissioner when they started NCOA, one of the programs included Nixie, National Change of Address through the US Postal Service is NCOA. But Nixie was a subset

within it and we did it but we learned that in any list maintenance, there's always a few but it was probably less than 20% valuable, so 80% of work, you know a lot of work to find 20%. So when we talked last week, I think a pilot if a couple of counties want to participate would be needed to see, is it valuable material before we generally tell all the counties it's a good idea or not. But, you have to get the data to test the data to see is there any value to using it.

Douglas Kellner: So, can we as Commissioners agree to authorize them to go ahead with a pilot? Okay so the Commissioners are by consensus are agreeing that you should proceed.

Todd Valentine: Thank you.

Douglas Kellner: Alright, is there anything else from Public Information? So next is Information Technology.

Bob Brehm: We still have our three major projects and during, I've lost track of the days now, the end of December, we had had a series of meetings throughout the fall and we were trying to come up with what are our list of requirements? We're busy trying to do Refresh NYSVoter and also come up with a new platform for the Candidate Management and the Campaign Finance, but the third item which is a major one is also all the rest of the Board of Election data is in a state data center that is all being moved to the building which is this SUNY nanotech building. So it's very difficult for us to design and plan to move into something since its being designed while we're trying to plan. So our staff met and came up with all of the list of requirements that they think they need answers to, and software and hardware that they think we'll need to run it and we've shared that information now with our general government cluster team, and they have shared it with the State Office of Information Technology Services. Our staff continues to try and attend the weekly design meetings, but its kind of the foundation answers that we're going to need to know, we need the answers to in order to design the system and we're at a point where we're now waiting on a meeting with the Information Technology staff to answer our questions. And we're hopeful, but they'll tell us yes it'll work, or at least give us a recommended work, you know, if we want to do it this way it can still be done but it will be done this way. So we can at least analyze it and see if it will work for us. So it was a lot of work and it was what the groups needed. There's a lot of up in the air since its all going into a brand new platform into a brand new building that we're learning is all being done and what we're looking for is we need answers in order to know if that's our solution. Because you can't, NYSVoter has to be done by the end of this year for the contract. We are fine if the assumptions we have are answered to us, "Yes this is what we can count on". It's going to be harder for Candidate Management and Campaign Finance since it's a lot older and we have to design whole new concepts around it. So we really need the answers to the questions we've given them. It was a lot of work. It's a major project for them. We still, in addition to the technology requirements, we are still working with, Todd and I and HR to get the specifications out

for the replacement of Dave Loomis from a project management point of view. We're working on, Dave's helping us to make sure that we have that information worded correctly for what we're looking for and also what we consider to be the deputy in that position, Dan Valvo has told us of his intent to retire at the end of February. So we are, it's a civil service position so we're looking for that list for that position and we've begun to canvass the names on that list to see if anybody's interested in replacing him. Hopefully, if there will be any overlap that would be our preference, if we can do a shadow position so at least there'd be someone here during that period of time. We used that same technique when Colleen just retired from HR and it helps if there's a couple of weeks where somebody can at last shadow the person they replace. So we're working towards that for that unit also. I don't know if there's anything else...

Todd Valentine: Well related to the two major projects were NYSVoter and the Candidate and Financial Management, we'll plan to do an update to the county boards this week at the meetings. While most of it doesn't impact them, there are potential impacts for them in some of the processes they have to change but we just need to keep them apprised of that as an opportunity for that.

Douglas Kellner: Alright, any questions? Last but not least Enforcement, Risa Sugarman.

Risa Sugarman: Thank you Commissioner. I will also be participating in the conference this week. I'll be participating in a panel discussion tomorrow and I'm not sure that I'll perhaps give all the information during the panel discussion, but I'm also slated to give information during an Enforcement part of the Board of Elections Information. I have a power point that I developed for that purpose. Hopefully it will be good information for the county commissioners about their role with the state enforcement with my division. We sent out the first batch of letters. The cases or the matters that went from the Compliance Unit, the list that came to my division, we sent out those letters. I think they went on Monday. We've been getting calls every day from people who have received those letters both because they want to come into compliance or they're having trouble with the IT part of the compliance. So we've been fielding those calls or referring those calls to IT.

We did a test run, the letters were about 500 in number and we only sent them to the treasurers not to the candidates because we wanted to see how many calls we were getting. So that was our first test drive. So we've been getting calls every day and we've been answering them. And we're trying to see how many we can answer and develop a knowledge of what those calls are going to be and then work with compliance to see what kind of training my people need to answer those calls. So that's a work in progress.

We also have been testing out case management programs cause I'm sure all of you recall the report that indicated that it was necessary for the Enforcement Division to have a case

management, so we've been working on that. And we've been looking at a particular program for us to develop for our case management.

And I guess we'll talk during new business about the update of the hearing officers.

Douglas Kellner: I'm still very concerned that we're still way behind schedule in terms of proceedings against the non-filers. So we now have, my understanding is that you've just sent the letter out of the July 15th non-filers but no letters have gone out for any of the three primary filings or the three general election filings.

Risa Sugarman: That's correct.

Douglas Kellner: So we're now 7 cycles behind. And January was the time when we would usually have, we'd be preparing a filing for the November for the general non-filers. And the fact that the letters haven't even gone out yet really troubles me. And I just urge you to try to get on top of that.

Can you tell us what's happening with respect to collection of the outstanding judgments and whether that project has been dropped or whether you're doing anything now to pursue people who have not complied or paid with the judgments?

Risa Sugarman: We are looking at those numbers and I'm looking into a process that I'd rather not discuss yet. It's something that I'm looking into and hopefully we'll be able to discuss with the Board at our next meeting.

Douglas Kellner: Okay we'll put that on the list then. It took me 6 years, 7 years to get the old Enforcement Unit to start doing active judgment collections. So I can wait another month.

Risa Sugarman: I'm hoping to discuss it with you next month.

Douglas Kellner: Alright, great. Anything else for enforcement now?

Alright then we'll turn to the new business agenda. The first item is the Voter Registration application to add the 2015 political parties. And we also did a little bit improvement on the usability of the form with respect to the enrollments. Are there any comments on that? I don't know if its in the packet. I didn't see it in the packet.

Bob Brehm: The form is not in the packet per se but we've been sharing some words back and forth and there's two issues; the updating the parties based on what happened in the last Governor's election and when will we know the names of allthose parties. We've also been looking trying to improve, as we talked about it at last months' meeting, briefly the instruction under the political party section to be clearer so I know we've shared those

back over to Todd last week and I think we're waiting on a name change too from the form itself.

Todd Valentine: Well there's two issues; one is and if we've just simply changing the name that would be fairly straightforward although there's a slight twist because we had information that hadn't been filed yet that one of the groups is intending to change it's name although hasn't filed. So I don't know if we can say anything. We understand it's coming, we just haven't seen it yet. The second thing is related to the change to the language and I shared this with Bob. You know the form of the language on the registration form comes from two different things; one is the statute itself so the language has to come forth to the requirements of the statute which that is, always depending on how you read it, so the draft is being circulated to try and get people's impact on that. The second thing was that that form was, has been subject to litigation and court decisions in the past and there were two that directly set the form of the form. And the question is whether or not these changes that are proposed comport with the requirement under the mandate of the court that we're...

Douglas Kellner: You're talking about Judge Gleason's order?

Todd Valentine: Both that one and the one from Judge Raycoff with the Independence Party. And there were some slight changes to the language towards the end of last week. So even slight changes can have a big difference and you want to make sure that we're not in contempt of the court order. So that's why the draft is not in the packet, because at this point we're still seeking some input. From our Commissioners, if you don't think it would hurt to talk to some of the veteran county commissioners for their views as well as other interested parties when we get to that point.

Douglas Kellner: Well I'm happy to circulate it. Obviously, I think that the language of the old form was not in the most usable form and had the effect of psychologically steering people towards the Independence Party even though that wasn't the intention of it. So I do think that this language is clearer and fairer. I think it's consistent with the court orders. But if you're saying you need another month to look at it, I guess it makes sense because if the party is going to change the name, we don't want to spend a lot of money printing the form.

Andrew Spano: You know my experience of that, I'm must concerned that people know they're picking a political party. That's it. Rather than leaving a blank. And my experience has been that it's so confusing that people should have wording that at least gives them the opportunity to make the choice intelligently. And with this new party, if it changes its name to Reform, we'll have a similar kind of situation.

Todd Valentine: Well the names for the parties are again going back to the statute are specified as there's no limitations, they can choose so...

Andrew Spano: Oh I understand that. I just think people should understand they're voting for, they're selecting a party.

Todd Valentine: Yeah, I understand that I also the problem with the statute is that it bans certain terms but then as long as you fall within the limits, I don't know that there's any limitation on that that we would be able to...

Andrew Spano: I'm not arguing that Todd.

Kim Galvin: Yeah, the people in my family that registered under the Independence Party though that they were registering independently.

Andrew Spano: A guy in charge of my detail I said to him one day, I said, "What do you ride today"? He said, "Oh I'm an independent". I said, "How about your wife"? He said, "Oh she's not registered in a party".

Kim Galvin: I agree.

Kathleen O'Keefe: With respect to Judge Gleason's order, I don't think there's any question that this proposed form meets that standard but I have not seen the other case that you've mentioned.

Todd Valentine: I sent it to Bob but I can make sure that I send it to you.

Kathleen O'Keefe: Okay that would be helpful.

Douglas Kellner: Alright so we'll put this off until our next meeting?

Bob Brehm: I think what would be helpful in the interim is we've said to people, at the last meeting we came up with is on the other line persons wishing to register, whenever we change the form there's a certain period of time where there's an old form out there, people need to, you know, how to use the old form. But if people wanted to register in the two new parties that were created at the last election, certainly could write them in, in the other category in the interim and county boards would process those until we come up with the final in that party and it's just like the last time, if a name changes, they usually treat everybody who is in that other worded one to move them all into the newly worded one.

Douglas Kellner: And we'll circulate the drafts to the county commissioners? That's what you said?

Todd Valentine: Yes.

Douglas Kellner: So at least they can see what we're looking at. Okay. Next is Hearing Officer Process. I guess we need proposed regulations for that right?

Bob Brehm: Well there's a number of things that's why we listed also process. The regs are one. I think generally we're at the point to have conversations in order to classify the title and create how many of these positions we want. Clearly it's a new program for all of us. And in our conversations, Todd and I and Risa, we're looking to do these individuals serving as Hearing Officers for the several enforcement cases to be per-diem employees for now. We're looking for a number up to 10 people so that we can, without knowing if you need them, I just can't imagine somebody sitting around waiting for us to call them on the phone and if we don't use them for a couple of months, they may decide they're not going to pay their bills counting on us and the just might be available when we need to call them for whatever reason. So, we need a number of them just to be sure that we can function when we need to function. So I think that from that administrative kind of work we've had those conversation ongoing to get those classified. We've confirmed the job description and the preferred requirement that an individual have so that, I think our hardest part is we're going to get the résumés, interview the people and fine out can they do this work or not?

Douglas Kellner: Is there anything the Commissioners have to do? We need regulations right?

Bob Brehm: We have drafted that and we just shared that with Todd and Risa within the last week to 10 days so certainly we need to get the feedback within the building. The draft is touching on some items. You know we're looking at some other state agencies that have Hearing Officers so hopefully by your next meeting we should be able to have comments back from people at least to give you to start the regulation process.

Todd Valentine: Yeah to answer your question the Board will have to do two basic things; one is to adopt the regulations that staff requires that Hearing Officers operate under and the second thing is also to actually have to appoint the pool of Hearing Officers. So that's what we're working on. So we have to approach it from two fronts, one is the regulatory front and then the hiring front, putting the mechanism in place for those.

Douglas Kellner: I saw a draft circulated about 2 weeks ago. Why isn't it on the agenda today?

Todd Valentine: On the regulation?

Douglas Kellner: Yeah.

Todd Valentine: Cause we hadn't finished going through it. Only got it, I didn't get it 2 weeks ago so, it would have been closer to Bob's 7 to 10 days so we're still working

through that because they were not simply adopted from one preexisting agency, they're a cross reference of a couple of different agencies as well as SAPA requirements, as well as redundancy from the statutes. So we need some time to get through them.

Douglas Kellner: So we'll have them on the agenda for the next meeting? If we need 2 drafts, we'll put 2 drafts on the agenda just so we can get them posted and get the thing moving.

Kathleen O'Keefe: For comments? You know we could do that just for informal comments

Bob Brehm: Informal comments, we could put as many for the rule making I think I'm not sure we'd have 2 versions out there.

Douglas Kellner: Well I guess what I'm trying to say is lets set as a target to get this done, get this on the agenda for the next meeting and if we can't agree, at least let's publicly air what the areas of disagreement are so we can start to get feedback and try to get this done. Risa do you have anything to add about the process for getting the Hearing Officers in place?

Risa Sugarman: We've been in the discussions. We've got the, I think I got the draft the same time that Todd did. The lawyers in my unit are looking at them as well as I am looking at them. And we're also looking at the regulations that are in existence now for HAVA because we really should look at everything at the same time since all of those things are coming into Enforcement as well. So I think that if we're going to look at things, that we should look at the...

Bill McCann: The way the statute is written Commissioner, the HAVA Administrative Complaint Procedures left to the agency when we, prior to the new Enforcement Unit, rewrote them to go into Enforcement. But I don't think any institution determination they would be made in Enforcement. There's a certain operational aspect to them. So there's been no internal discussion amongst staff as to that. But certainly as it stands now the regulations are written that it would go to the Enforcement Unit that was indicated prior to the change in statute. But as it stands now, there's been no internal discussion on that. So that's something that would have to be looked at.

Douglas Kellner: Well I think that's worth looking at.

Risa Sugarman: Since the HAVA complaints are coming to me, maybe that decision should be made. I mean, I don't have any desire one way or the other.

Douglas Kellner: There's probably one formal HAVA complaint in the history of the...

Risa Sugarman: They may not fit within the statute but they're described as HAVA complaints so they've come into my unit. I have no desire one way or the other to get them. If you want to keep them in the...

Douglas Kellner: Informal HAVA complaints I thought were referred to operations.

Kim Galvin: Or the counties.

Bill McCann: I can tell you historically speaking, we, like you mentioned we had 2 or related the New York City HAVA complaints and I frankly don't recall any technically filed informal HAVA complaints. We would receive complaints that had operational aspects but people were either complaining about some thing that had to do with Election Operations. The HAVA complaints themselves though, there are a lot of complaints that come into the Board that have to do with Boards of Elections, etc. that aren't necessarily HAVA complaints. Because HAVA complaints under the statute are geared specifically to Title 3 of HAVA which does have a litany of things that fall under it, but its certainly not all encompassing to every aspect of Election Operations which I also think had something to do with the limits of the types of complaints we got again. So Title 3 is very specific to that.

Douglas Kellner: Well the one preceding that we had was on Voter Registration.

Bill McCann: Right certainly, certainly. But again, it has not been an activist area for most complaints. But again, the issue that Risa raises, certainly I think the Board has to look at that and figure that out because she's correct, the regulations as written now call for those complaints to go to Enforcement, you know Enforcement Council as it was reflected there, but certainly that's just a regulation.

Douglas Kellner: And we do spend...

Bill McCann: Well to that end Commissioner we spend...

Douglas Kellner: We spend like \$15,000 a year to keep...

Bill McCann: No, no but to your issue, no the voucher, the way its been done historically its \$10,000 for Admin and then there's the potential additional \$5,000 for training and then an addition pot of money for the arbitrations if it were to ever get to that point. But I know that Commissioner Kellner has raised the issue of what that process is and so we just received the invoice for that but we have not processed it because I know that you specifically asked that staff look at that. No, I know that but I'm just saying that...

Douglas Kellner: and that's why Risa's comment is productive. Can the two be integrated in such a way that we don't have to keep paying the \$15,000 to keep the stand-by HAVA arbitrators when we're now going to have a set of Hearing Officers?

Bill McCann: I don't want to give you an off-the-cuff answer. I haven't looked at it from that perspective so.

Douglas Kellner: It's only \$15,000 so I don't want to spend \$15,000 in the room today talking about it.

Bob Brehm: Well it's the potential to spend \$15,000 should we need it. We've never needed to spend all of it. So I agree there's a sum and the rest is the money that stays in the authorization should we actually get a complaint and have to do something, we have that money to do something.

Risa Sugarman: And I hate to bring up another, there is also the Fair Campaign Code Regulations which would...

Douglas Kellner: But that is Enforcement.

Risa Sugarman: So we are looking at those regulations as well to see if they should all be under one since they all talk about those regulations.

Douglas Kellner: Well I think it's productive and as I say I'm not, as I say there's only been one or maybe there were 2 complaints that were consolidated into this New York City and the issue there was New York City was not compliant with the Voter Registration Database requirements.

Kim Galvin: Six years ago.

Douglas Kellner: Right, six years ago. They are now in full compliance but that's the only formal HAVA proceeding that's happened. And the kinds of issues, as Bill said are really operational issues as opposed to Campaign Finance or criminal.

Risa Sugarman: I would be happy to have it in other places but if it belongs with me, I will be happy to take it.

Douglas Kellner: But it's a procedure thing mostly so its worth looking at. Maybe it makes sense for your unit to...

Bill McCann: I think there needs to be a dialogue between Risa's folks and us to talk about that because from a logical standpoint, also certainly institutionally with the Fair Campaign Code there are quirks to that that certainly has not been looked at for a very long time and certainly we'd like to have some input on that so...

Douglas Kellner: There's a way of rewriting it so that it passes constitutional muster and we can let people know you know how far we will go and how far we won't go based on our interpretation of the state and federal case law. I mean that's the real issue with the Fair Campaign Code right? Is that it's essentially unenforceable.

Bill McCann: Well there are certain aspects that were subject to challenge but there's also, some people have argued that its kind of vague, that the standards aren't really defined. So we're dealing with political espionage for instance or certain things like that, some people think things all fair in love and war and other people say, "Oh that's atrocious and how can you let that happen to me"? I'm speaking very broadly but those are the kinds of things that you will see in those matters. So,

Douglas Kellner: Oh I think that would be great yeah. Alright, is there anything else? We should discuss a date for our next meeting and then we can go into Executive Session. Are there any proposals? Or you want to just circulate dates among the Commissioners and we'll get back?

Bob Brehm: A month from now would be the last week of February. We have the conference, if its approved the 11th through the 13th so that would be bad. And it's kind of hard to do the meeting right early next week if we're not here to get I ready.

Douglas Kellner: Is there a day of the week you prefer?

Gregory Peterson: The last week in February I will not be here. I've got the week before that or the week after that is fine.

Bob Brehm: We could do the end of the week of February like 19th, 20th maybe or the first week of March.

Andrew Spano: I can't do that week either.

Bob Brehm: 16th the holiday.

Kim Galvin: How about the first week in March?

Bob Brehm: There are no holidays in March.

Jim Walsh: St. Patrick's Day.

Kim Galvin: It's a holiday for most of the room.

Bob Brehm: On the state list sorry. So do we want to look at the first week in March?

Andrew Spano: The third week in February.

Bob Brehm: The third week in February?

Douglas Kellner: That sounds good to me.

Bob Brehm: I mean we could do it the 19th or the 20th of February if that would work.

Kim Galvin: I thought that's when you are gone.

Bob Brehm: He said the last week in February I thought you said the week before.

Gregory Peterson: I said the last week in February is out.

All talking

Douglas Kellner: How about the 20th?

Bob Brehm: Friday the 20th?

Douglas Kellner: Or Thursday

Jim Walsh: Won't you be leaving?

Todd Valentine: No I'll be here. Thursday of the week before.

Bob Brehm: Monday the 16th is a holiday, its always that week. It's the Presidents holiday.

Douglas Kellner: Okay Thursday the 19th?

Gregory Peterson: Thursday the 19th is fine.

Bob Brehm: Thursday the 19th.

Douglas Kellner: So the motion is to go into Executive Session to discuss enforcement cases? So moved.

All those in favor say aye?

[Chorus of ayes]

Opposed? Alright. We are in Executive Session.