

Douglas Kellner: Good afternoon everyone. I am Doug Kellner, Co-Chair, and I'm calling the meeting to order. I'll introduce our Commissioners; to my left is Peter Kosinski and Greg Peterson, and to my right is Commissioner Andy Spano.

First item on the agenda is to amend the minutes and executive minutes for October 23rd, 2017.

Peter Kosinski: Are we doing them as a package?

Douglas Kellner: Do you want to do them as a package.

Peter Kosinski: Doesn't matter.

Douglas Kellner: Alright.

Peter Kosinski: I make a motion that we adopt them for the October 23rd open meeting and October 23rd Executive Meeting.

Gregory Peterson: Second.

Douglas Kellner: Those in favor say aye...[Chorus of ayes; 4-0] ...those minutes are approved. And the next are the minutes and executive minutes from December 15th, 2017.

Andy Spano: I move that they be approved.

Gregory Peterson: Second.

Douglas Kellner: Those in favor say aye...[Chorus of ayes; 4-0]...alright, those minutes are approved. So, then we'll move to the unit updates. We'll start with our Co-Executive Directors Robert Brehm and Todd Valentine.

Bob Brehm: Well it's been a busy time since our last gathering which was in December. The State Board staff and many individuals participated in the winter conference for the Election Commissioner's Association. And we covered a lot of topics that were related to regulations that you see today. How to deal with the UOCAVA classification of voters, certainly cyber security was raised as well as a number of other topics. And most importantly answered Commissioner questions.

We did, Counsel's office completed the legislative packet and Todd and I distributed that to the Chamber and the senior leadership of the Senate and the Assembly as well as all the members of the respective Senate and Assembly election committees. And it's also posted on our website for people to see the details.

We have clearly started the election season with federal filings for United States Senator and on Tuesday we'll begin the ballot access for designating petitions for federal office for the primary on June 26th. On, the day is Tuesday, March 6th is our first day to start circulating petitions.

Governor Cuomo, on February 5th, had to call the special election in the 11 vacant Senate and Assembly seats. So, the staff worked to get that information, certify a calendar, and distribute that information to all the County Boards of Election that touch on any part of those 11 specials. Two of those file here, the 102nd Assembly District and the 107th, so tomorrow's our deadline as a staff to certify the candidates in the special.

There are no prima facie issues that we are giving you today with regard to those ballot access because we didn't have any problems with those ballot access.

We have one general objection and today's the deadline to receive the specification of objections. So, there's a slight chance, if we receive something, there'll be a need to call a meeting with regard to any determination that might come out of that. But, so we'll need some flexibility from the Commissioners.

Douglas Kellner: It's not very likely.

Bob Brehm: It's not very likely, but at least we're letting you know it may happen. We'd have to schedule something if it comes to be.

Certainly, a lot of the other work that's on here we've all been involved with. Todd and Tom went to the NASED conference and they could give you a better firsthand account of the work at the federal level. Mostly it's been focusing on cyber security.

We have the budget. As you know, we submitted a full ask in the budget for approximately \$15 million in additional funds. Some of that was for personnel. A lot of it was for contractual services. The budget as proposed in the 30-day amendments provides information in the budget regarding a \$5,000.00 amount of contractual money for cyber security.

Brian Quail: \$5 million.

Bob Brehm: \$5 million, sorry.

Gregory Peterson: I was going to say, \$5,000.00?

Bob Brehm: Sorry. So, from our understanding it's confirmed it's a dry appropriation right now so hopefully as they talk during the budget that will be real money in there by the time the final budget is adopted. It's subject to a plan that the staff had been working on developing so we will, certainly depending on what the final budget looks like, keep an eye on those items. Yes?

Peter Kosinski: When you say it's a dry appropriation what do you mean by that term?

Bob Brehm: Well it's a spot to put money in but there's no money in there right now. So, we'll see if it's subject to where the money will come from that if they like our plan they'll move the money there. That's still unknown: where is the money. Or will there be money in there before

the budget is finally adopted. I don't know that part. But all I know is that right now it's a spot to put money.

John Conklin: So, we can't spend any of it.

Peter Kosinski: You can't spend what you don't have.

Bob Brehm: So, as you know, we've talked about the budget, we certainly have need at the staff level. Todd puts the description pretty easy. It's kind of like when you get on the airplane and they tell you to put the oxygen mask on you first before you try to help anybody else on the plane. So, we have to make sure that the statewide voter registration list and the statewide system is protected before we can really worry about the counties connecting to it. Because that's our vulnerability that we have to protect. And then we have to work with the counties in order to help them. So, our focus has been on all of the items that we've identified so far that cost more than \$5 million just to try and prioritize the items that we can accomplish right away that are higher priority that need to be done and try and focus on how much of that can we get done in the next fiscal year within the proposed amount of money.

Todd Valentine: And we're also trying to leverage any free services that are available from the Federal Department of Homeland Security that is available for risk assessments as well as to help counties go through what they call table top exercises which is basically a drill on what would you do if this happened, how would you respond to that. And we're planning a series of six across that state is what they would support. So, basically do it regionally wide and work from there with what we've got, so.

Bob Brehm: And one of the key items, there are many items that the Federal Department of Homeland Security will help states with, one of them is do the risk assessment. So, we're applying through Bill Cross to the Federal Government to have them do our risk assessment for the State Board to come in as a free service. They also will do that work for County Boards of Election, so it will help us to do it here and then try to encourage those counties that need that free assistance to also apply for it. At the federal level Department of Homeland Security has placed this work as a priority. There is a bit of a waiting list so we're trying to get that information to apply to be on the list and to adjust, if necessary, the NYSVoter upgrade of the entire computer system has been happening over the last couple weekends and we have a March deadline of target as I understand. So, it would really help to have that done before somebody comes and does risk assessment.

Peter Kosinski: It's March, Bob.

Bob Brehm: Well, I know that. And he's confirmed that it's March 2018 for me, so I keep working that.

Peter Kosinski: Okay, I just wanted to remind you, it is March.

Bob Brehm: So, we have a lot of people working on it and so far he hasn't told us that there's a problem. But it's significant to get that work done and it really will help us to upgrade and deal with some outdated software. So, we're waiting for that before the Federal Government comes in. Certainly, we will experience, I don't know if we're the guinea pigs, but we'll at least experience the interaction with the Department of Homeland Security to do our risk assessment. And hopefully that will be a good service for free for the counties.

And depending on what happens with the budget and whether or not there's real money or not in that pot we would then have to focus on as many free services as possible, or low-cost services anyway. Because we've identified about \$14 million and we only get \$5 million.

Peter Kosinski: So, you're anticipating six regional meetings with Homeland Security in our counties? Is that what you're? And when are those going to happen?

Bob Brehm: We're working now to set up the first one so if all goes well we anticipate the first one to be towards the end of March and finish them by mid to end of May. Knowing we have that Easter Passover period to work around.

Andy Spano: Did we ever have a follow-up on the recommendation I made at the convention about the security designation on each county?

Bob Brehm: That is, we've been looking at, it's part of our security designation already for voting machines. We're looking at that for security in general. As to what a regulation might be that we adopt that would put a requirement on every county, and that's one of the items in the draft. We met with, it was a conference call, but with the head of the state tax department. They had recently adopted regulations with regard to cyber security. So, we had a conversation with them as to a number of items. We adopted that...and that's one of the items that's in there.

Andy Spano: Do you know what I'm talking about? We're at the convention this whole area of cyber security came up. And I said wherever we've had in the past, we have the records management office, you have the FOIL requests officers. And it's not like it involves a lot more work it's just someone who's focused on this, it's not a new job. Because each of the counties are different, the small ones, big ones, etc. Some of them have problems with their IT department. So, if they had a series of questions, four or five questions, that they answered and reported to and just made checks on an annual basis and whatever else you could think of. And report it to us. Things like a Commissioner dealing with an IT director in a small county may be a problem. But if we knew there was a problem we could deal with it somehow from here which would be a little better. And we could get more done. But we would keep up with at least the problems that are going on.

Peter Kosinski: Good, yeah.

Andy Spano: That's all it was.

Bob Brehm: So, we had started to look at the draft of the reg...

Todd Valentine: And qualifying for other services.

Bob Brehm: ...And depending on what other services...

Andy Spano: Yeah, I know. I talked to both sides of the aisle when I was there. I mean everyone was okay with it.

Peter Kosinski: Yeah.

Andy Spano: Makes sense.

Bob Brehm: So, the concept is in there we're just trying to figure out what are the duties and training to go around.

Andy Spano: Oh.

Bob Brehm: So, we certainly have been looking at that as part of what we're proposing and trying to train around. And we've had pretty good luck reaching out to county IT departments and County Boards. We've had, since your last meeting, we've had two alerts that we have passed on to the counties that were, it came from either the State Troopers or the Federal Homeland Security contacts. There have been a few other, I wouldn't call them alerts, but just helpful suggestions or current trends in the industry. Some of that has been coming from MS-ISAC and others. When we receive them, we review them in-house and certainly with IT and we've been basically sharing those helpful hints with a little instruction to the counties. And when we send them to the counties we've been sending them to the contacts we have both the county IT department and the County Board of Elections knowing that in many of the counties it's a joint effort to protect the election infrastructure at the local level.

So, it's been very active in both our traditional bread and butter kind of getting on the ballot issues as well as the cyber security issues.

Peter Kosinski: So, is the idea here to bring Homeland Security in to assess the risk level that our counties have in the state to a potential cyber-attack? Is that the idea of these meetings around the state with Homeland Security?

Todd Valentine: Well no, those series of meetings are to, they're tabletop exercises and they're designed to have counties go through how would they respond in an event of an incident occurring and what is their readiness for that. So, it's a learning exercise on that.

The risk assessment is analyzing your system as it sits today. And it is what known vulnerabilities do you have that you should fix that you haven't. And I'll give an example of a risk assessment. One is on if you have passwords to your system because we're doing this ourselves because we identified as a vulnerability where you have people that had left and you don't clean up old passwords or you don't have a consistent password process to change them on a periodic basis. That's a known vulnerability because somebody gets a password and leaves

they can. And what access does each password have? So, if they don't need administrative rights you just don't give them to everybody, you should only go to the certain users. So, that's one of the risks they look at. And how you...

Peter Kosinski: So, is that kind of assessment being done?

Todd Valentine: Well, we're going to do that. We've done an initial review of that. That's part of what we did as a survey last summer to get some initial information from the counties on that. And that did alert us to the problem. We do need to do a more detailed level. But that's where Homeland Security is a little short on resources because there's like 9,000 election jurisdictions and they don't quite have that many people. They are ramping up. They can do it at a state level. But that was part of what our spending program was to do an assessment of the counties.

Peter Kosinski: So, is that part of the \$5 million that would be appropriated? Is that what would give us the resources to do that sort of risk assessment at the local level?

Bob Brehm: Part of ours is, from our perspective eventually the county will have to learn to do this as an ongoing requirement. And perhaps in our regulation to require a periodic risk assessment of the county. But our hope was, with the money, was to have help them to bring them up to a plateau of requirement level of let's do a risk assessment, figure out where the holes are, and then try to mitigate as many of those holes as are the higher priority right away as part of the budget. As part of the \$5 million.

Peter Kosinski: I'm just concerned if this \$5 million doesn't get appropriated, let's say, and it remains in its current condition that we won't have the resources to do those kinds of what I would consider to be necessary assessments and potential fixes to our election system in the state to protect us from this.

Bob Brehm: Yes, I can't argue that.

Peter Kosinski: I'm sure I'm not, I guess I'm preaching to the choir here but...

Douglas Kellner: Yes, we all agree with that.

Peter Kosinski: ...But I think we need to make sure that we pursue this as much as we can.

Bob Brehm: Well, when the budget first came out and there was money there we raised that in a monthly call with the County Commissioners. That there's money in the budget that we're working to come up with a plan and that it wasn't as much money as we asked for but at least it was a continuing appropriation it's not a one time and over because cyber security isn't a once and done kind of thing. It's a going forward kind of requirement. So, we weren't quite sure what help we would be able to give the counties but at least say that our plan is to include them in that help.

On Friday's call with the county commissioners after we learned it's a dry appropriation we at least alerted them that they should, that it's a dry appropriation it will depend on the final budget. And whoever they told at the local level that there was certain money they should tell them that they should make phone calls that it's less certain. And that we will do the best we can depending on what the final budget looks like.

Peter Kosinski: I understand, I just think we should make sure that those across the street who are doing the budget are aware. And I know we didn't even get what we asked for. I know this \$5 million was short of what we asked for. But now to have it we may not even get that, that's a concern. I think we were somewhat satisfied that the \$5 million would get us to a stage where we felt comfortable that we could provide the services that are needed. But if we're not getting any money at all that's a whole different ball game and I think raises a whole other set of concerns. I just want to make sure that we're transmitting that to the people who are putting the budget together that this hopefully would be a priority.

Douglas Kellner: I think we all agree on that.

Bob Brehm: And I know we have it at both the Senate and Assembly and the Chamber. We've had a number of phone calls since we learned on Thursday that it was a dry appropriation. Many people on all of those.

Douglas Kellner: I don't know that there's a whole lot more that we can do. I mean we've told the decision makers. I think we've fully briefed the decision makers on these issues.

Bob Brehm: And we've urged the counties to also let their local elected official how important this is to them.

Douglas Kellner: Good. Okay, anything else?

Todd Valentine: No.

Douglas Kellner: So, we'll turn to our Counsel and Compliance Unit, Brian Quail and Kim Galvin.

Brian Quail: Thank you, Commissioner. I'd like to start off by just giving a little bit of an overview on some of our cases. The LLC case is in the Appellate Division. The arguments have occurred and we're awaiting a decision in that particular case.

The Eason case which is the pertains to the accessibility of the State Board's website to persons with visual disabilities is proceeding. We're in an expert discovery round two stage right now and there's a trial that is, if it isn't settled, scheduled for the end of May.

In the Merced case which deals with the process of independent nominating "who is capable of being a witness" requirements. That case, motions for summary judgment have been made by

both the plaintiff and us and is in the near final briefing stages. So, that decision is moving forward.

In the *Merrill vs. Slewitt* case which had gone up to the Appellate Division relating to the Reform Party organization and the validity of their rules. The appeal in that case was dismissed on technical grounds. And a new notice of appeal has been filed. And a motion has been made in that case for a preference. And so, that's back on the docket.

In the Common Cause case related to ballot, rather NVRA compliance with respect to inactive voters on the part of the Board. The Board has made a motion to dismiss and requested oral argument. And that's the last docket entry as of January 12th.

In the *Parish v Kosinski* which relates to village petitioning witness statements and who's capable of being a witness on those petitions. We had stipulated to a judgment in order in that case and the plaintiffs had made a fee application. The magistrate judge has recommended a fee application amount and that is awaiting certification by the judge.

And we have one ballot access case, I think, in the 37th Senate District related to the Independence Party Certificate of Authorization which is returnable on March 6th.

I think that's our current case posture.

Douglas Kellner: Quite a lot of litigation.

Brian Quail: Always a lot going on. Always a lot going on. So, it's nice to just give a little thumbnail of that.

Douglas Kellner: And compliance?

Brian Quail: Yes.

Douglas Kellner: Where do we stand in our statistics?

Brian Quail: Right. In compliance a couple statistics we have as of March 1, 2,531 failures-to-file for the January Periodic. The total number of reports reviewed by the compliance unit stands at around 92,000 of which around, just shy of 80,000 of those reviews have been completed. And the ratio of compliant to deficient to training, I won't run through the exact numbers, but it is running pretty much steadily as it has.

We have received one request to make an assignment under [regulation part] 6218 to a hearing officer since the beginning of the year. And a hearing officer has been assigned. It is my understanding that the report has not been, we have not received notification from the chief enforcement counsel that the report has been served. So, we don't have that in the file yet.

We have two HAVA administrative complaint procedure complaints that have been commenced since the beginning of the year that are both moving through the process.

And let's see, in other areas we had a meeting in January with the Department of Justice to answer their questions related to list maintenance procedures under the NVRA. So, at some length we reviewed those procedures with them. It was a listening session. We also discussed with them an issue related to the DMV and in particular the possibility of amending the DMV address change form so that form would be able to stand as a voter registration form so it would accomplish not having a two-step process when a voter moves across county lines. Under state law, as the Commissioners know, if a change of address is received via the DMV process but not the whole form, and it's the voter has moved within the county, the county can simply change and update the address. The DOJ, in their interpretation of federal law, believes that it's important that that address transfer can occur across county lines and to accord, or I should say, to sync the federal law with state law requirements there was a discussion about making changes to the form to allow both statutes to be satisfied.

And I'd like to, it's an opinion that Mr. Cartagena worked on bitcoin that was shared between both sides of the counsel's office. I just wanted to touch on because it's kind of a unique situation. And the course that I would like to recommend is a little bit different. And Mr. Cartagena certainly can provide a summary of the opinion. But obviously with cryptocurrencies coming into the forefront lately the question has sort of arisen is how are those treated by political committees if they received contributions of Bitcoin. And are they analogized to cash because of certain attributes that they have or are they analogized to say securities or something like that. I think everyone agrees Mr. Cartagena drafted a very thorough and cogent opinion but it is an area where there is a lot of evolving thinking on this subject.

I know the Legislature is also thinking about it. And our thought was that we should share the opinion and see what, for example, the appropriate bar association committees or other regulatory entities that are looking at this issue might have to say about it because it is such a new and emerging thing. But that would, and because of that I think we just want to ask the Commissioners what the thinking would be on that kind of procedure.

Douglas Kellner: Okay.

Peter Kosinski: Well it's an interesting topic, I agree, and I did see your draft. I thought you did a good job. Has the FEC weighed in on this?

Nick Cartagena: They have. They've concluded back in 2014 that they considered crypto, or Bitcoin, because that's what I think the opinion was limited to, as an in-kind contribution. However, ...

Douglas Kellner: And that creates a problem under our statute if we follow that model.

Kim Galvin: The IRS did the same thing.

Peter Kosinski: They considered, the IRS considered it the same way the FEC did?

Nick Cartagena: Now I will note that even though it's an in-kind contribution under the FEC's opinion there's still a \$100.00 limitation because the questioner, limited to \$100.00, the question was can we accept a \$100.00 worth of Bitcoin. And the six Commissioners do have a diverging view after that. Three commissioners said the \$100.00 limitation is essential to their opinion that Bitcoin be accepted as an in-kind contribution. Three other Commissioners are more of the opinion that there is no \$100.00 limitation in regard to accepting Bitcoin as a contribution.

Douglas Kellner: So, the suggestion, Commissioner, is that we circulate the draft to the election law committees of the bar associations and good government groups and solicit comments.

Peter Kosinski: You say the Legislature is working on something as well?

Brian Quail: Not that.

Douglas Kellner: There's no bill and it seems to me...

Peter Kosinski: As a general issue though, maybe not in the elections arena.

Kim Galvin: I think they are holding hearings on it and I think the Department of Financial Services is still working through some of the regulations that they have on it.

Douglas Kellner: That's right.

Kim Galvin: So, things are, as they said and as Nick's opinion pointed out, that it is a very evolving issue. And we have talked at length about the various different ways that this could be treated and I think, personally, I think it would be a good idea to solicit some external opinions of this as well.

Peter Kosinski: Yeah, I mean I'm fine with that. I'm just trying to understand the direction we're going. Are we going on our own here or are we going to wait for the Legislature or some other governmental agency?

Kim Galvin: I think our situation is unique in regard to whether or not it can constitute a campaign contribution. So, in that variation of it I think we would have to figure our own way out. But certainly, looking at the various ways that these other entities have treated it and how they treat it. And there's issues of anonymity. There's issues of the various fluctuation in pricing. There's a variety of things that have to be considered, in my opinion, before we can come to a final consensus on it.

Peter Kosinski: Yeah, I mean from what little I know it doesn't seem to have a fixed cost attached to it, it does seem to fluctuate.

Kim Galvin: It's similar to a stock.

Peter Kosinski: I can see where that's an issue of trying to value it as to what the value is.

Douglas Kellner: Well, I think that if you handle it as solely an in-kind contribution that you could actually open up a loophole where people would use it to avoid full disclosure.

Bill McCann: There's also the issue of if you treat it as a currency similar to cash then there's a built-in prohibition under the law of cash contributions in the aggregate of \$100.00 so there's a kind of built-in protection there. So, really is it a currency and you're going to treat it as cash because of the anonymity issues or are you going to treat it as an in-kind contribution as a good or in this case a stock or some kind of instrument like that. So, it raises, there's all kinds of permutations that come out of it. And it's developing.

Douglas Kellner: And I think ideally, we should make a recommendation to the Legislature. Because even if we adopt the opinion it's only an opinion and without legislation...

Kim Galvin: [Can't hear].

Douglas Kellner: ...can it be binding, is another issue. But we're not there yet.

Peter Kosinski: Yeah.

Douglas Kellner: So, I think raising these questions and asking for comments from interested groups would be productive.

Kim Galvin: Yeah, and certainly it isn't limited to Bitcoin at this particular time because there's various emerging cryptocurrencies, seven, eight, or whatever is referenced in the memo. And there's more developing. So, I think the questions arose originally through the Compliance Unit is my understanding of someone called up and asked a question. So, therein lies the discussion and there's been quite a lot of discussion. So, I think any input we could get would be helpful.

Douglas Kellner: So, do we have a consensus that the counsels should circulate?

Peter Kosinski: Sure.

Andy Spano: Absolutely.

Douglas Kellner: Okay. Alright, is there anything else? Well I guess I had one comment that the, you said there was 2,531 non-filers for January. And is that just the January Periodic or is that the cumulative non-filer list?

Brian Quail: That is just the January Periodic.

Douglas Kellner: So, that's a record, isn't it? I mean that's the most non-filers historically ever, I think. And is that a factor of the fact that there's virtually no enforcement anymore?

Risa Sugarman: I think, Commissioner, that's about consistent with what the non-filers are.

Douglas Kellner: 2,500?

Risa Sugarman: That's about a consistent number. It's generally 75% of those are local C filers and 25% are the state filers.

Brian Quail: The number for the January Periodic in 2017 was 2,105.

Douglas Kellner: Yeah.

Brian Quail: Your statement that it is a record, I actually the report that I have in front of me only shows the last since 2016 so I only have three years, but it is the biggest number in three years. I believe.

Douglas Kellner: Yeah.

Peter Kosinski: Do we see much difference between January and July as far as numbers go?

Brian Quail: It is by way of reference in January of 2017 the initial number was 2,105. The July number was 1,879. So, relatively somewhere within a few hundred.

Peter Kosinski: So, we're talking about each year 5,000 files aren't made?

Douglas Kellner: Well often it's the same committee.

Risa Sugarman: Yeah, it's the same committees. You can't.

Peter Kosinski: No, but I mean, no, no I'm not talking committees. I'm talking individual filings are not made, give or take.

Brian Quail: Yes.

Peter Kosinski: Filings.

Risa Sugarman: But those committees have been, a significant number of those committees haven't been filing for several years.

Peter Kosinski: That could be, that could be, I'm not saying any different. But it's a large, large number.

Risa Sugarman: And those committees, if you look at the numbers, have significant numbers of judgments against them. So, I'm not sure that there are...

Peter Kosinski: But not in the last couple of years. Is that fair to say?

Risa Sugarman: That's true. Absolutely true.

Peter Kosinski: Those are judgments that predate you.

Risa Sugarman: Yes, but they're not committees that, those committees that were not filing continue not to file. The fact that they got judgments before didn't, in my estimation, cause them to file because they were sued and got judgments.

Peter Kosinski: Do we have any evidence of that?

Brian Quail: I do want to weigh in. I mean certainly we've had discussion here before about how perfect the list is, and I've conceded that there obviously is, there are some issues with committees that perhaps we should find a better way to get them off the list. But there's some really solid evidence that the process that the Board previously followed, I will refer to 2014 as an example, that the process itself which we are not presently following resulted in that. So, by way of example, I just gave you the numbers for 2018 but in 2014 at the point of the five-day letter there were 2,400 letters that went out. Ultimately, at the time of the order-to-show-cause, there were 559 committees to add to the order-to-show-cause and then there were 409 judgments.

Peter Kosinski: I'm sorry, Brian. Can you go back over that again for me? I'm missing a little bit here. So, you're saying that, what are we talking about, January of 2014?

Brian Quail: 2014, so the...

Peter Kosinski: Okay, how many didn't file in January of '14?

Brian Quail: 2,400 and...

Peter Kosinski: So, then you have the five-day letter. That's pre- five-day letter?

Kim Galvin: Correct.

Peter Kosinski: Okay.

Brian Quail: That's the number at the five-day letter.

Peter Kosinski: Okay, so now the five-day letter is sent out at what point? Like two weeks out?

Brian Quail: I don't know the exact...Bill what would you say...

Kim Galvin: It was like a month, right?

Doug Kellner: Yeah, it was more like a month before they go out.

Peter Kosinski: Okay, a month. Let's say a month. So, after a month or.

Bill McCann: Typically, within ten days of the date of the filing was due. That's why we call it a five-day letter. No, it did go out. There's no question.

Peter Kosinski: Oh, ten days, okay so within 10 days you send out a five-day letter which says you have not filed you must now file within five days. Right?

Brian Quail: Yes.

Peter Kosinski: That's what we call the five-day letter.

Brian Quail: Yes.

Peter Kosinski: Okay, so that letter goes out to those 2400 filers and what happened?

Brian Quail: Then what ended up happening was between then and I don't have a date but whenever the prior enforcement unit brought the order-to-show-cause in Albany County Supreme Court to compel or to seek a fine for the non-filing the order-to-show-cause number listed in the order-to-show-cause was 559.

Peter Kosinski: So, of those 2400 we're now down to 559, is that correct?

Brian Quail: Yes.

Peter Kosinski: So, almost 2,000 of those filings came in? Is that what I'm to assume?

Kim Galvin: Yeah, well the compliance stuff is argued repeatedly that the five-day letter was the most effective tool to bring those non-filers into compliance. They have repeatedly urged.

Douglas Kellner: Well coupling with the fact that the...

Kim Galvin: The enforcement was coming.

Douglas Kellner: ...That once we filed an order-to-show-cause they had to pay something.

Kim Galvin: Correct.

Brian Quail: Well then actually, yes, and then between the filing of the order-to-show-cause and the court actually signing it. So, that in other words the Board discontinued against committees that came into compliance after the order-to-show-cause but before judgment -- not the order-to-show-cause, the judgment pursuant to the order-to-show-cause -- the ultimate number of judgments that was received was 409.

Peter Kosinski: So, another 100 came in.

Kim Galvin: So, 1,600 out of the 2,100 there was no judgment against.

Brian Quail: Bill was here during that time. Is there anything missing in that?

Bill McCann: No, that's about the par for the course. Now I will say I think a lot of the committees just relied on the fact that if the filing was due they would get the five-day letter and treat it as a notice. Oh, I better get it in or else. And certainly, I think it had a prophylactic impact on that. But that's certainly not the case anymore.

Peter Kosinski: So, with that in front of us now Risa, how do you feel, do you still believe there's no evidence that an effort by this agency to pursue these people is ineffective?

Risa Sugarman: Well I don't agree with the numbers that, the cold numbers that are presented, are accurate in terms of how many committees filed and how many of those committees that got letters were sued. That in the subsequent July filings the numbers again who didn't file didn't go up and then the January Periodic again didn't go up. So, I don't have the numbers in front of me but I don't believe that those stark numbers reflect the accuracy of how the autopilot litigation was effective in getting people to file. Because if that were accurate then committees wouldn't have 24 or 10 or five or three judgments. It just wouldn't happen. And over and over again.

Peter Kosinski: So, you're talking about the effectiveness of actually commencing a lawsuit against a committee and actually getting a judgment against them and whether that act is sufficient and is productive in getting people to file.

Risa Sugarman: I just don't...

Peter Kosinski: But what about the five-day letter issue?

Risa Sugarman: Well I don't...

Peter Kosinski: What about the evidence here that they are showing, it seems, that the mere sending of a five-day letter to 2,000 committees is productive and does result in a large number of them coming into compliance?

Risa Sugarman: I think that it didn't bring people into compliance. I think what happened is that people called, got to pay a \$100.00 or whatever and then they went on their merry...

Douglas Kellner: This is before that.

Risa Sugarman: Okay.

Peter Kosinski: Yeah, I mean I think...

Risa Sugarman: I understand what the numbers are that they are saying. I don't think that that's what actually happened.

Peter Kosinski: So, now in our current state of affairs when we have 2,400 not file in January of '16, what happens? Where are those now? Have any of those come in? Is there any indication of how many of those now comply? Is there any way to compare?

Risa Sugarman: The numbers go down statistically every few weeks because people file late generally. So, you'll see the numbers go down.

Peter Kosinski: Do they go down at the same rate they went down when the five-day letter was being sent?

Risa Sugarman: I think that they probably don't go down as much, no. But...

Peter Kosinski: So, you would agree the five-day letter was productive in getting people to come to compliance?

Risa Sugarman: I think that the five-day letter probably had some effect yes.

Peter Kosinski: And...

Bill McCann: If I could just add...

Peter Kosinski: Hold on. But you're no longer sending the five-day letter, is that correct?

Risa Sugarman: Correct. Because I think...

Peter Kosinski: So, if you agree that it's productive, Risa, why don't you send the five-day letter?

Risa Sugarman: Because the list upon which it's based in my opinion is still not accurate.

Peter Kosinski: But even if it's not what's the harm in sending the five-day letter?

Risa Sugarman: Because the people who get the letter are generally not responsible for filing. The list at this point is just. Kim, you can shake your head....

Gregory Peterson: Aren't those the treasurers you're sending it out to I would assume.

Kim Galvin: Yeah.

Bill McCann: If I can just clarify, the distinction between filers, first and foremost. Firstly, the five-day letter which is a notice that you haven't filed, it's not just a letter it also had the threat of the or else. We sent that out, as required by statute, certified mail and also by first class mail because we wanted to give extra notice. With candidate committees there was a marked distinction because the statute under the Carl McCall law required that in addition to sending out that notice to the treasurer, if it was an authorized candidate committee, we had to send it to the

candidate also. So, it's not only the fact that there was a letter that was sent out by first class mail as a bonus, if you will, because we wanted to get more compliance, but it also went to the candidates. But it was also the threat which then was ultimately carried through of the lawsuit.

Now, I will certainly agree with the opposing counsel that there are a number of recalcitrant, recidivists, that carry forward each year especially as it relates to periodics. However, what you then, and I will also add this by way of factor, is that July's are typically a little smaller than January's because of the election cycle. Typically, in January you're coming out of an election cycle and it people haven't gotten terminated, etc., with their Post General Report they have an obligation to file the January. And then people will typically terminate. And then when you get to July you're ramping up to the next election cycle particularly for local filers. And so now, it's really after July that people might start to form their committees. So, July is historically going to be smaller than January.

But it ultimately comes down to the number of recalcitrants which I might also add is typically your PAC's, what you're missing is that in each election cycle when committees register, whether they are state filers in the even years or in the odd years more local filers, it's those brand-new filers who file and register who then get on this list who will be more apt to then be responsive to it. They're not the recidivists that just don't care and they could have judgments pile up on them ad nauseam. But it's the annual ebb and flow of new filers that that letter and process would have the effect of getting people to comply. There's just no question about it.

And so, to send even a postcard that we send now, whoop dee do. I mean a postcard just says hey. And it's just a notice to say a filing due and if you have to file that'd be nice you should do that. But that's not the same as getting a certified letter in the mail that also goes to the candidate that says if you don't file this is what's going to happen. You'll get sued and the judgment will be entered, etc., etc. That's a whole different process.

Douglas Kellner: Okay.

John Conklin: Commissioner, could I ask a question?

Douglas Kellner: Go ahead.

Peter Kosinski: John, is.

John Conklin: Just a minute ago you said you don't believe our numbers. Have you done your own analysis?

Risa Sugarman: I'm not, you know what I don't. I've done several analyses and I don't think.

John Conklin: Can we see your analysis?

Risa Sugarman: No, you cannot and I don't answer questions from Mr. Conklin. Thank you.

Peter Kosinski: Well, as you know, Risa, this has been a source of frustration.

Risa Sugarman: Absolutely.

Peter Kosinski: I think for the four Commissioners...

Andy Spano: Yes.

Gregory Peterson: Absolutely.

Peter Kosinski: ...I think I can speak on all of our behalves in this area. I frankly don't find your answers very satisfactory.

Risa Sugarman: I understand.

Peter Kosinski: I think you have conceded that based on Brian's numbers there is some usefulness to this five-day letter and this process that the Board had used for all those many years trying to get people into compliance. Why you don't adopt that is beyond me. If it's useful...

Risa Sugarman: I will adopt a process when I know that a list that I'm using is a valid list. And I've said that over and over and I, you have, we do this over and over again and perhaps when the new system comes into existence I can rely on a list that will justify me sending out a letter that threatens litigation. And until I have that I will not use that list.

Bill McCann: If I could just say one cogent point though, the list isn't reliable. The judgments aren't reliable. But yet when a case is brought to a hearing officer it's cited directly in the memorandum to the hearing officer the litany of judgments that are held against them. So, if you're bringing a procedure to seek potential penalties against a filer on judgments that you say you can't rely on why do they then form the basis of a procedure brought in through the administrative process?

Peter Kosinski: Fair enough. Brian, did you have something else?

Brian Quail: I do and I don't desire to bring the Commissioners through territory that you've gone many times before and to try to overtake these fundamental disagreements. But one of the things that I said at the onset and I would like to underscore is that the process itself previously helped to clean the list.

And it is important to remember that every treasurer who files a piece of paper with us is saying I am the treasurer of this committee, I am the fiduciary, and I am responsible to do the things that the law requires me to do. And that piece of paper is filed with us. And they're told when they become a treasurer that until do the things they are supposed to do under the law to relieve themselves of that obligation they are to continue to keep doing it. The idea that the people who are on the list are not actually responsible for the filing I think is hard to understand. They signed up for that. There's no doubt that because of the passage of time, because of facts,

circumstances, or people have gone beyond or things of that nature of a practical matter of obtaining compliance with them is not possible, all kinds of things like that. But the reality is that on the core point of is the list accurate with respect to committees as a list of people who said I am the treasurer and I am obligated to do this, it is. It is.

Risa Sugarman: And I just have to say that, I just have to say...

Andy Spano: How much does it cost to send this out?

Peter Kosinski: You mean the five-day letter?

Andy Spano: The five-day letter, right.

Peter Kosinski: I don't know, do you have any idea what the budget was for the five-day letter?

Andy Spano: That's like 2,000 people. What does it cost?

John Conklin: I don't know.

Bob Brehm: But those go certified mail.

Todd Valentine: It's certified mail so first class is...

Peter Kosinski: And you're sending to the treasurer and the candidate. I don't know. I don't know, thousands of dollars I'm sure.

Todd Valentine: Yeah, it would be thousands of dollars because first class mail is about 50 cents right now. Then the certified I don't even know what they're charging for it now.

Andy Spano: Ten grand?

Todd Valentine: Not that much but it would be a couple thousand dollars, plus you have to have envelopes and paper and all that. It's not just postage.

Andy Spano: Would we spend ten grand to find out if this argument can be solved?

Todd Valentine: Just to do a mailing?

Andy Spano: I think that we could send a letter that says we have sent this to the enforcement counsel and should you not respond she has these options and go through all those options that we talked about before and see what happens. We're not doing anything that the law doesn't allow us to do.

Peter Kosinski: I guess we could, I don't know if we could or couldn't. I just, I guess what I'm trying to understand though is why our enforcement counsel...

Andy Spano: What I'm trying to understand is, I've listened to this argument, I haven't said much on this argument. I've listened because it's being articulated very well by the rest of the commissioners. But we're never going to solve this. Unless we do something. I mean one person says one thing, the other person says another thing. Let's see what happens.

Gregory Peterson: You know something, I agree. There really is no, that's an excellent suggestion that we necessarily, as a Board, do what we did before. Get the letter out and if frankly we can show Risa look what happened. On the one hand.

On the other hand, Risa, is this is not an adversarial situation. What is being said here, basically, forget, get all criticism and everything else out of your head for a second, what we're basically saying is there was something that worked. And frankly, I don't see us sitting here trying to weigh both sides. I don't see why you just don't do it. It's not a big deal. No egg on anybody's face. Do it and let's see what happens. It's not a problem. Shouldn't be a problem. And then by the way if it doesn't work you can come back and say see this, I did this you guys and you were all wrong. Frankly you'll wind up seeing that it was probably effective. It's another tool that you have so I don't see why you have an objection to it.

And by the way, if it gets sent to somebody who it shouldn't be sent to the guy says, hey what'd you send this to me for? Oh, sorry.

Risa Sugarman: I get those phone calls a lot, Commissioner.

Gregory Peterson: Fine, we've had them in the past too. Then you yank it out and that's it.

Risa Sugarman: Well I understand that but I don't, see the problem is I don't threaten litigation in those situations. I just don't. It's not the way I do business.

Gregory Peterson: Well it's not a bad tool.

Risa Sugarman: It is a bad tool.

Gregory Peterson: It isn't...

Risa Sugarman: It is.

Gregory Peterson: ...Because you're saying if you haven't done this you will bear the consequence. There's nothing wrong with that. If you steal a pen from this table you will bear that consequence. It's the same thing. Fine I didn't steal a pen so I have nothing to worry about.

Risa Sugarman: Well.

Gregory Peterson: So, I fail to see the logic of your position.

Peter Kosinski: Yes.

Gregory Peterson: Alright.

Peter Kosinski: Well, I know we've been over this but I...

Gregory Peterson: I think we should do what Commissioner Spano has suggested.

Peter Kosinski: Well.

Gregory Peterson: Do it ourselves and see what happens. We got nothing to lose. We're certainly not making any headway this way.

Andy Spano: Is it just the amount of money?

Gregory Peterson: Yeah, what's a couple of thousand dollars, that's it. We'll take it out of that spurious account that he's got over there with nothing in it. Anyway.

Douglas Kellner: Alright, so I think we should move to Election Operations. Tom Connolly and Brendan Lovullo.

Tom Connolly: Thank you, Commissioner. Just to kind of recount a couple things that have already been mentioned. Obviously, we've been receiving a number of filings for the upcoming elections. We did receive several Certificates of Nomination for the 102nd AD and several for the 107th. We also received one independent nominating petition for the 102nd. We received four Certificates of Nominations to date for the federal primary in June. We did receive all related and necessary authorizations and acceptances. We did receive and it's on the agenda later on some filings for governor which on the prima facie review were deemed invalid so we'll have those for you later on.

As such we've been finalizing the certification for the April 24th special election which is to go out not later than tomorrow. We'll be finalizing the statewide kind of certification of offices to be filled next week.

On the voting machine front we have started the certification procedure for the Dominion Ice machine which is the Image Cast Evolution ballot marking device modification. That's including meetings with NYSTEC who we work with internally to discuss the approach towards the testing procedures. Meetings with Dominion regarding some of the issues that we've encountered already with the equipment as far as just part of the testing. And also, the creation of test cases for going forth with the certification testing.

We also received an assessment from SLI, one of our independent testing labs, about an engineering change order for Dominion. Their central-count system uses an all-in-one computer. The one that was being used is no longer being sold so they were replacing it with the newer model from Dell of the all-in-one computer and the SLI assessment was that that was de minimis.

A lot of things on the cyber security front. Obviously, it was mentioned, we've been working with other units about developing the tabletop exercises with the DHS. I do want to address one thing that Commissioner Kosinski had asked before about whether or not the counties would be able to avail themselves of some of those services. The tabletop exercise itself is usually around a two-hour event. We kind of liken it to a play where you kind of see people in different roles that would be familiar and you would present them with a realistic but still hypothetical scenario and kind of explain what you would do in that. So, it's a very, it's a good learning experience. Bill Cross and I had gone down to New York City to watch a tabletop exercise that was conducted by the FBI which had nothing to do with elections but I think we both saw the utility of conducting such exercises. In fact, there were people from the New York City Board who were also at that tabletop exercise.

We've been working with DHS on phone calls to try to develop who should be involved in the planning process and what kind of scenarios should play out. As part of the idea for conducting those tabletop exercises across the state we're looking to probably to three to four hour total event so if two hours of that event is really the exercise we want to leave time for discussion, questions, but also the possibility because there will be DHS staff on hand for them to kind of go through some of their various offerings that they could then offer directly to either the county IT people who will be there or the County Boards of Elections who will be there. Anywhere from vulnerability assessments to kind of more in-depth surveys. There are also a number of self-assessment tools which DHS provides which could also be provided to the counties.

I know that Bill may mention it later on NYSLGITDA, which is the state organization of IT directors, is having a conference in July. May?

Bill Cross: May.

Tom Connolly: May. And they actually asked if we would be interested in presenting so I think that we'll probably take them up on that offer just to kind of help create those kinds of bridges. Because we realize that on the County Board end that their relationships with their County IT can sometimes be very varied as far as the closeness of that relationship.

I've been working with IT to also engage DHS about some services that we'll be taking on. They have two of them in particular, one is the RVA or the Risk and Vulnerability Analysis. And the other is the cyber infrastructure survey which is a little bit more in depth. We've been in contact with DHS, we are in the process of completing that paperwork so that we can at least get in the queue. As we've heard from a number of different people we are being moved, by we, I mean the elections sector, to the top of the list. But obviously there are a lot of people in the country who want to avail themselves of the services. So, that queue is still kind of building. So, sometimes it's a matter of a couple months wait.

Later this month I'll be attending also with PIO the Belfer Center which is out of Harvard University. They had developed some cyber security playbooks for both campaigns and local election officials. They are conducting a two-day conference on the 27th and 28th of March which is kind of like a train-the-trainer for tabletop exercises. Part of our goal internally was to

try to conduct our first tabletop exercise towards the end of March, use that and the lessons learned from that experience, also the lessons we learn from the Belfer Center experience and then work with DHS to kind of tweak things as necessary for the remaining five exercises.

As far as the conferences go, I was mentioned before I did attend the NASED conference down in D.C. with Todd. In addition to that conference, there were also meetings with the Government Coordinating Council of the Elections Infrastructure sector. With DHS, I was also able to attend a meeting about securing voter registration databases with the Center for Election Innovation and Research and, also, there was a public meeting of ERIC the Electronic Registration and Information Center that I attended. I also, the Center for Internet Security, which is based over in East Greenbush and is the parent I guess organization of the MS-ISAC which is the Multi-State Information Sharing and Analysis Center which gets talked about a lot with regard to cyber security. It was designated, while we were in D.C., by the Government Coordinating Council as to be the elections infrastructure ISAC. So basically, they're the ones that are going to be collecting a lot of the intelligence information and trying to distill it down in a meaningful way for both election officials but also IT officials that work with those election officials. So, I worked with CIS, the overarching organization on the development of a handbook for elections infrastructure security which was rolled out while I was down in D.C. I took part in that with a couple other state officials over the past two months. That has been received very well. I like the approach because it breaks up into a couple different parts. It focuses on the cyber security of election infrastructure but one of the parts really kind of speaks in a very nontechnical way to some of the more policy people was the county board commissioners, but then there's also a list of 88 different controls with a lot more specific information with regard to IT that county IT staff can implement.

We also had the Winter Conference. We participated in a couple different presentations. Brendan and I also participated here with the New Commissioner Workshop. The staff also attended the Dominion and ES&S user group meetings. Following up on accessibility and usability we are continuing our conversation with the Center for Specific Design which the state board has worked with in the past with regard to usability and accessibility. We're going to be working with them on ballot design but also form design. They do produce a set of 11 field guides that talk about how to kind of improve accessibility and usability. I did discuss that at the conference with the county commissioners but I also was able to get a set of those guides for each county board so we sent those out to each county board so they would have that set of field guides. And we're going to be working going forward with both Dan Chesnel and Whitney Quesenbury from the Center for Specific Design on a number of different fronts.

We were working with IT as part of the Eason Case to would we need some of the content that's on the website for accessibility purposes? And also to make some changes to the interactive systems to try and make them more accessible. We've also done so with some of the documents, for example the filings that have been received for both the April 24th special and also the federal primary. We've been posting reports that we've always posted on the website but we've also been posting optimized reports for screen readers as part of the certification that we've been preparing for the special. I've been doing that or remade that in a way that it is accessible from the get-go. So the idea is that if we can kind of distribute things one way that covers both bases,

that's a lot easier than having two versions, one for one separate. So we're going to continue working on that. I had scheduled some basic accessibility training that covered 24 different staff members here. That was very well received. It kind of covered for 4 hours, two half-day sessions. Some basic accessibility principles. I am scheduling another half-day session for anyone who was not able to make that and then three more half day sessions of more advanced topics for people in Word Excel and Adobe Acrobat so that we can better understand how to make our content accessible going forward.

Miscellaneous front, we've been in conversations with DOJ, I had a conversation with them yesterday, I believe the two Co-Chairs received an e-mail from the DOJ regarding our UOCAVA or military and overseas voter population. I would say we're going into a federal year so they are very keen to make sure that we are all set to comply with the federal law. I did have a conversation with them yesterday. We did run through the various election dates, what we've done so far and what we plan to do as far as educating the county boards as to the deadlines and making sure that they, themselves comply with that and any kind of changes on the legislative front. I did discuss with them the regulations that were on the agenda today for the special federal voters. To that point, we have also been finalizing some of the guidance for county boards on how to treat these special federal voters as described in the new regulations. How they would go about it in their own local systems. How those local systems, local voter registration systems should be matching up with the state NYSVoter system, so we can make sure that's a smooth transition. We have been participating in demos with the new CAPAS system for candidate management with IT. We've been finalizing the annual statistical survey that we've been collecting from the counties in addition to receiving their annual reports and we had sent out contract extensions for the shoebox funds which the counties reuse. We have to renew that every year and we've been getting those signed documents back. Although one thing I do want to jump back to, obviously we are working with Counsel on some of the comments we received with regard to the audit regs and we've been working on finalizing the procedure for the audit tool. One of the commenter's, Dr. Mark Linderman from Columbia University, had reached out to Brendan. Brendan spoke with him this morning. We are going to try to meet with him, I know there's a lot of interest on some of the commenter's in regard to risk limiting audits which have been discussed briefly here at some of the Board meetings. So we're going to be probably trying to set up a meeting with him just to kind of hear him out and learn a little bit more about the whole process. Besides that do you have anything?

Brendan: No, I don't think we need to take up any more time.

Peter Kosinski: Can I ask a question. That was a lot of information. Only one by the way...

Kim Galvin: Only a little about Election Ops though.

Peter Kosinski: Well I guess maybe that's true. You said you had a conversation with DOJ yesterday about our implementation of the overseas voter. What was their reaction? Did they feel our deadlines are compliant? Are they concerned in any way about what we're doing or what our timeframes are under state law to comply with the Act?

Tom Connolly: No, I think they're fairly comfortable as they worked with me over the past since I've been actually at the Board and they do know that...

Kim Galvin: It used to be "us" but now it's "you".

Tom Connolly: I do let Kim and Brian know when they call up but apparently, they're fairly okay with me just talking with them. You know they realize that I'm going to usually hound the counties as we get closer and closer to make sure that we stay compliant and we've been doing a good job of that for the past few years.

Peter Kosinski: So, you say it's more about people actually following the law than it is about the law itself.

Tom Connolly: Right, no, they didn't really have any issues with our law as they understood that we have obviously different deadlines under state law for state and local offices vs. the federal law.

Kim Galvin: And to this point, we used to be a very bad state in compliance.

Peter Kosinski: You mean we weren't adhering to state law and getting ballots out.

Kim Galvin: Federal law

Peter Kosinski: For federal law or state law, don't we have state law in this now.

Kim Galvin: But since Tom has took over the reporting and the follow up of counties it has gotten remarkably better and I think we're in the good state category now.

Peter Kosinski: So DOJ just does these periodic updates with every state?

Kim Galvin: Yeah, there's a form letter that you got.

Peter Kosinski: Because we'd gotten that letter and I just didn't know that's...

Kim Galvin: It was a form letter that went to all the states.

Tom Connolly: In the past they wouldn't have sent it to you they would have sent it to Kim and Brian and myself. They did explain to me, DOJ called me before they sent the e-mail letting me know that this was just part of their new procedure, that they were going to be sending it out to kind of like the heads of each state. This is what they kind of do at the beginning of every federal year just to make sure that every state is poised to like make sure that they comply with the federal law.

Douglas Kellner: Can you tell us about Voter Registration compliance issues on the county level? I know that there's been a lot of discussion in New York City about New York City

implementing loose maintenance procedures following the entry of the consent order and can you just tell us what's going on in terms of state monitoring? Thank you go ahead Bob.

Bob Brehm: Since the Brooklyn situation, we the state board had put in place...

Douglas Kellner: That's two years ago.

Bob Brehm: April of 2016 a weekly syncing of the two databases, the city and the state board in addition to what else is happening and staff looks at the numbers to make sure that there aren't any anomalies that are identified. Recently, the staff had identified a change in the number and they alerted us, Shaikh Aman is the staff member, sent out an e-mail generally to us at the staff level that they had identified a change in the numbers. The identification happened a week after a conference call that the senior team of people includes John and Todd and I and a few others, IT department as to some of the changes we were making to the list maintenance information we were going to share with the counties based on conversations to provide better information of the counties at least to review as potential matches. So we weren't sure when we saw the numbers were they that quick to some of those changes we had just given them or not? But I had a call into Director Ryan anyway on something else and I said, we just got this note from our staff noticed this. And he had indicated to me that he had covered the details in the week before public meeting at the city board as to what they did. He did assure us that it did not include the more recent maintenance things that we gave them because it was too new; it was some of the older things. And basically there was litigation that came after the Brooklyn situation and they pretty much had a freeze on what they were doing with some of the dupe maintenance, felons, deaths until that litigation was settled to make sure they were following the proper procedures. But since it had been settled, they had then implemented some of the things that had been deferred. So it included the people where the information that was provided by the state as the potential duplicates where people had registered outside of New York City had been reviewed. But also dealt with pending felons, pending deaths. Another category that they had during the period of time that they looked at was they might have treated someone as a duplicate in their system but it also identified as a death or a felon and they had inadvertently not made the connection to both parts of their file, so it didn't completely catch those. But they had known about them during the review and the discussion.

Douglas Kellner: So the state board is reviewing this and we're on top of it.

Bob Brehm: We had, 1) we identified the issue immediately and we had made the call. I did share the information generally that this is what he had and the report identified it. So, I don't think it is a critical issue other than they were doing the appropriate stuff that they had agreed to do in the consent decree was to have a meaningful list maintenance where there will be people removed from the list because that's appropriate activity. And in some instances, they're inactive with a confirmation notice awaiting two federal general elections if they don't respond to then be removed from the list. And another instance is where death or some of the other situations would allow them to be cancelled sooner. But he had assured us of that and I did get a chance or at least share it with them, it is covered in the minutes that they had posted online with some of the statistical information. There will be others people to notify if people are interested.

During the conversation with the city and other boards of election, we had modified the information that we share in the area of felons, deaths, and potential duplicates and we had a small example, middle initial was a mandatory match field. So if Robert Brehm was in the county record of the old county but Robert A. Brehm was the county record of the new county, that would not match because we had a mandatory middle initial field. We had now removed it as a mandatory match. If one says Robert Q. Brehm and one says Robert A. Brehm it won't match still. But if it's in one and not in the other, it's a potential match that will go to the county as at least something they need to look at. That identified a large number of people that were potential new records we had not shared with counties before. With regard to deaths, we made the decision to go backwards in time to a period and I believe it was 2007 but I'd have to check for sure.

John Conklin: 2007, that's the beginning of NYSVoter.

Bob Brehm: But that's when we began NYSVoter. So, we gave some historic information because we felt comfortable going backwards would be okay in the area of deaths because it's not like you reregistered somewhere else after dying. In the area of felons and moves, we did not go retroactive, we just implemented that going forward so we would provide new information to people. Because the potential felon dupe if it was old could have completed the maximum sentence and reregistered. And if we provided that retroactive look for that data, they might have made an inappropriate decision. So we just did a call with New York City separately because they have a larger percentage of the list to make sure that they understood what we were proposing. It was conversations we had had with New York City all along and then after we had the conversation with New York City probably was like a Tuesday or Wednesday, we had the monthly call with all the counties on that following Thursday and shared the same information with all the county boards, and sent out an e-mail reminder, and we started to implement on a going forward basis those changes. So people will see in the area of deaths, another group of them, probably in the April 1 enrollment numbers because New York City really was trying to look at the window of when could they do certain things this year with a special election, with a federal primary looming, with the September primary, and they had encouraged us to get in the death information early because the window was like now to actually have staff review it and perhaps be able to intake a bit better look-back since it was a large file. So we will see more number changes on April 1, we anticipate.

Tom Connolly: And Bob are we also going to do the name changes?

John Conklin: The DMV mismatch, the third part of it is the DMV what I call the DMV mismatch which is if the first three letters of the first name match, the date of birth, the DMV number all match but the last name doesn't match, you may have a potential match because it may be someone has changed their last name most likely a female but not always or you may have a data entry problem. So the record needs to be looked at and assessed if there's a misspelling, if the DMV number has a bad number in it and those things can be corrected. So that was another set of potential duplicates for the counties to receive in the NYSVoter System in addition to what Bob said the deceased and the felons.

Douglas Keller: Alright and am I correct that the lawsuit that was challenging the Nassau County list maintenance procedures was dismissed and that that's resolved?

Brian Quail: I do not know the answer to that Commissioner.

Douglas Kellner: Alright and then somebody mentioned an issue with Westchester? And is that now resolved?

Bob Brehm: We had looked at Westchester when they were doing the November enrollment report we had noticed a change in Westchester similar to the Brooklyn situation and reached out to Westchester and they had, it was close to window so they had restored those individuals and made sure their names appeared in the poll book. I think it was a question of timing but they made them inactive just prior to printing the poll books or did it have to wait until after the election but we had noticed when they did the November numbers that Westchester was off slightly and when we called down there, they had put them back so that they didn't have a problem on election day. It would have been appropriate to make them inactive after but not that close to the election. So, we do look at them and Shaikh does a great job for us in the IT department to try and alert us and the alert goes to many of us.

Douglas Kellner: Great. And I want to thank you cause you included the usability issues in the report so I don't have to ask questions about that, I can see that you're working on that and its good. The last item I had for operations was to ask about the close contest in Clinton County. And if you could review that situation and write a very short report for the Commissioners on what happened because I understand that there were again issues in anomaly in the Candace process but I'm not, from reading the appellate division decision I can't tell whether the hand count that actually occurred changed the outcome or whether the hand count was generated because the clear ballot process simply alerted the canvassers that there was an issue that needed to be reviewed. But, I would appreciate learning the details of it so that we can continue to make a record of where we have identified places where the machine count has not been accurate. Great. Alright, anything else for Operations?

Alright then we go to Public Information John Conklin and Cheryl Couser.

John Conklin: Thanks Commissioner. Well Public Information has been busy since December, lots of calls about the January Periodic campaign finance filings, the April 24th special elections for the 11 vacancies in the State Legislature, the security, cyber security issues that are in the paper now it seems almost every day. In addition, we, like everybody else, attended the Winter Conference for the Election Commissioner's Association, members of the unit made some presentations for that.

As Brian mentioned I think previously, there was a new law passed last year requiring us to publish campaign websites for state offices. The statute was effective December 1st and the Board was given 6 months to draft regulations. We have regulations in the packet today to be approved. That's a consensus draft that different parts of the agency have worked on. Ordinarily it would not have come into play until the petitions that were filed in July because that would be

the state offices for the fall, but with the special elections April 1st, it is effective now. So that's why we're going to do it as an emergency regulation.

In addition, the unit participated in the monthly ECA calls in December, January and February. We continue to be part of all the meetings about cyber security reviews and assessment.

We processed 70 FOILS in December, 115 FOILS in January and 104 in February.

We were continuing to participate in the calls on the implementation of the Executive Order 169.

We participated in preparing materials for some of the lawsuits that Brian and Tom mentioned. We were part of the meeting with DOJ to discuss the monitoring of NVRA Section 8.

We have sent out an e-mail asking the agency units to prepare their portion of the 2017 annual report and please get those back to the PIO by March 15th.

There has been a discussion about the agency taking on the Winter Conference as its own annual conference. So, Cheryl and I have been attending various hotels that would fit our needs in the area. We're not sure if that's actually going to happen. There was some debate about whether that would happen so it's a little bit on hold, but we have visited a number of sites and we're prepared to move ahead if that's what ends up being the decision between the ECA and the agency.

We received our delivery of Voter Registration Forms this week. We have approximately 500,000 on hand here at the Board both English and Spanish and we had another group of approximately 300,000 that was delivered out to the counties of both English and Spanish as well.

We assisted in the cyber security tabletop planning's that Tom mentioned, and we'll be part of those as those move forward. And Bob mentioned the changes to the matching procedures in NYSVoter that was going to be part of my report as well. So that's been covered already.

So, in terms of the website, for the April 24th special elections, we posted nominations, the Governor's proclamation and the political calendar for those elections. We posted filing nominations for the US Senate, the webcast and the transcript for the December 15th meeting has been posted. The 2018 legislative package has been posted. The Campaign Finance Filing Calendar for 2018 has been posted and the Campaign Finance Compliance Webinar has been posted as well.

Lastly, the unit, since the last Board meeting has visited Dutchess, Rockland, Putnam, Warren, Rensselaer, Saratoga, and Monroe Counties for NYSVoter reviews. So, anything you have to add Cheryl?

Cheryl Couser: I just wanted to raise that the Legislature passed the bill that would move the September Primary from September 11th to the 13th and it was sent to the Governor on February 20th and the Governor has until March 3rd to sign it.

John Conklin: And we sent a letter of support for signing that bill.

Andy Spano: On the website, where is the URL going to appear?

John Conklin: We'll put up a special page certainly for this election the April 24th, election and then it will be a list of the offices...

Andy Spano: Is it a hot button?

John Conklin: It will be.

Andy Spano: Is there any thought of reconfiguring the page at some point?

John Conklin: Well I think for the fall election when we have the full slate of the whole Legislature and the whole statewide offices, I think that that is what we will probably do. We haven't completed all those internal discussions yet. But, I think that is what we will do.

Andy Spano: Is there any search capability on that page? Or is there any thought of putting it on? I put my address in, I get my candidate?

John Conklin: We have a search feature already to determine who your elected officials are, it's in a different spot. I don't think we've raised the idea of marrying the two. It's not a bad idea, we can certainly explore that.

Andy Spano: I think the more and more we can marry that kind of information the better it is for the voter. You know it's right there, simply. I know it's not easy.

Doug Kellner: Good idea.

Tom Connolly: One of the things I may mention I know and Bill probably covered it in IT, we talked about it in a number of different meetings with regard to the redesign of CAPAS and FIDAS, part of CAPAS for the candidate and petition process is we try to figure out how to better get candidate information from county boards, cause obviously we have information for people who file here but we may not know all the information that's filed at the county boards. So if we can get that information to our new system, that is certainly a way that we can then provide that back out to an end user. And like what John was saying, you do have an elected officials look up now where you can type in your address and it will tell you what districts you're in and who your current representatives are and show you a map of the district. It certainly could be repurposed for also showing you who's on the ballot.

Andy Spano: All the candidates that you would vote for at that address. How about pictures?

John Conklin: Pictures of the candidates?

Andy Spano: Yeah.

John Conklin: Well we don't have a means to provide that yet.

Andy Spano: I understand. I think that if you get this in a comprehensive format that has a lot of information like that, it would behoove the state to put out advertisements during campaigns that goes directly there, not even just steer people to it. Because if the two candidates put up their own websites, when someone says something, they can go to the other website and look at what the other one said about what this one said. And they don't have to depend on all this rigmarole we're talking about in the newspapers, television, etc. They can look at it more quietly. They can make up their own decisions and so on. I'm talking long-term down the line.

Bob Brehm: Do you think it will solve our cyber security problem? Because we might have some money to do this.

Douglas Kellner: A whole new target for hackers.

Andy Spano: ... and we have some capabilities to do it we ought to do it or at least try to do it.

John Conklin: Well this is a brand new road for us to put that kind of material on our website for purposes of any kind of campaign and I think we can explore what you're talking about. We have to be extremely careful because balance is one of the most important issues when you're doing that. If one campaign for whatever reason doesn't provide you with information and the other one does, and even though you put a small disclaimer there, it still puts us in the middle of a situation where we're showing information for one campaign but not the other and whether it's our fault or not, some of that blame will be directed at us.

Andy Spano: That's politics. Just the fact that someone doesn't do it is a statement. That's all I'm saying. If you have no money you have a website. I mean people know to do that when they run for office.

John Conklin: They certainly do.

Douglas Kellner: Anything else? Then we'll turn to Information Technology, William Cross.

William Cross: Commissioners, I'll start with projects. CAPAS FIDAS we remain on track for the current development schedule which I've said here previously, it hadn't changed. We are on track still. We continue to have resources issues. However, as I mentioned in the past, we're fully staffed in terms of contract-based help but we're continuing to work to fill 2 permanent programmer positions that are vacant and in addition, networking position continues to be a challenge filling at the civil service level but we're trudging through it.

In terms of funding, I reported last meeting that we were requesting the balance of capital funds from the Office of IT Services to fund the project. I'm happy to report those funds have been transferred to BOE particularly to pay the contract-based help we currently have. It was mentioned I think by Tom, based on previous data collection and the county working group meeting we held in September, we prepared an updated survey for the counties to give us feedback on the type and format information that we currently manage so we can incorporate it into our system and possibly make it published as well. We received responses from all but two counties. We appreciate the valuable feedback we've been using in the development of the new system. Another development that continues on track with ESF use cases, political calendar. We're starting ballot access functionality and continue with data conversion. We're also implementing, per the new legislation, the capture and publication for the candidate campaign websites both as a means to capture into the current Legacy system and that we built it into the requirements for the new system as well.

For NYSVoter, as Bob indicated, we are in March, we are in the final stretch of updating that infrastructure. All the new equipment, all the new software, everything's installed. We're currently going through the process of migrating Legacy systems over to that new environment. We've had activity every day, every weekend pretty much. We are shooting to have it complete in March. Things are going well. We've taken some hits with staff time but we're pretty close. So as Bob knocked, I will do also.

For MOVE, the process is continuing development for the in-house move application to replace the outsourced application and that's progressing. I think I mentioned last meeting also the State Office IT Services is requiring that we again move our data center to a new location. We've obviously resisted because we're right in the middle of redoing our entire infrastructure and we need to work around specific calendars particularly the special election coming up. Nevertheless, we are working with them and their related vendors to plan the relocation. It is inevitable. We have to set a particular date for it.

Cyber security and the benefit of going towards the end of this is I think most of everything I have on my sheet has already been reported but I'll reiterate, as part of the new fiscal year budget we have some a pretty comprehensive list of security initiatives to improve both the state and county BOE systems. Based on the proposed budget we've worked further to prioritize these initiatives. But there is a serious concern about the reality of the funding. While we fully intend to take full advantage of free and low cost services such as those from DHS that we've mentioned, the serious ongoing threats to election systems can only be mitigated by an investment in proper protections and technology. So there is a concern there. Nevertheless, we maintain a plan going forward of what can be done short-term and long-term and try to do the best we can with it.

Again, there's been a few mentions of the tabletop exercises. We're working with a group internally to craft those for DHS and mentioned is we've begun the process to engage DHS to perform full risk assessment for our own systems here pretty much as a confirmation of the new building we're putting up in NYSVoter.

For the website, as expected, the website traffic has pretty much returned to normal levels following the general election. So stats for December, January, and February on average about 200,000 views per month at our main site and about 50,000 for voter lookup. That's all I have.

Douglas Kellner: Anything else? Great, thank you. So, we now go to Enforcement, Risa Sugarman.

Risa Sugarman: Good afternoon Commissioners. First, I'd like to say Happy Purim, I brought my grogger if anybody would like to use it. I did participate with ITU and my staff on CAPAS FIDAS. We had a meeting with the staff. They asked us to present, we discussed the issues for enforcement and how we would interact with the new system. The meeting I thought was very successful. We had a lot of questions; they had a lot of questions for us. And I think we finished with a memo that we're presenting for them in terms of the new system and I'm just about ready to send it to them. And that's all that I have. If you have any questions for me.

Douglas Kellner: Anything? Alright, we'll go to old business. The first item is vote for final adoption of the new regulation part 6219 on Special Federal Voters. Is there a motion to approve it?

Andy Spano: So moved.

Douglas Kellner: Do you want to have any discussion?

Gregory Peterson: Second the motion.

Douglas Kellner: Okay those in favor say aye. (Chorus of ayes; 4-0) alright the regulation is approved. Next is the opinion of the Board on expenditure to 500 or more persons. Is there a motion to approve that?

Peter Kosinski: I'll move that.

Gregory Peterson: I'll second.

Douglas Kellner: Alright is there any discussion? Alright, those in favor say aye. (Chorus of ayes; 4-0) approved.

Peter Kosinski: I have one more item.

Douglas Kellner: Certainly.

Peter Kosinski: One more item under old business I meant to bring up. At the last Board meeting we had a discussion about releasing information that occurred in Executive Session in October. At this meeting we did adopt minutes from that meeting which I know last meeting we did not adopt so we were discussing releasing the transcript of the meeting and I know there was some uncomfortableness with that and we ultimately haven't done it. But we did adopt minutes

today from that Executive Session, I would like to reiterate my call that we release those minutes. I think that what occurred in the context of that meeting in the discussion and decision component of a subpoena that was issued would be important for the public to know. I think that the discussion was educational. I think the decision is also very important that the people out there who are engaged in any activity related to office holders or campaigns know what the decision was and what the discussion was. So, I would like to reiterate my call that we disclose or that we release those minutes from that meeting as an educational tool for the public at large to understand the direction this Board is taking in the context of that particular item.

Brian Quail: If I could be heard on that Commissioners. And just a quick little bit of background at the last meeting the Commissioners asked Kim and I to look at the documents related to the October Executive Session and to come up with some proposal as to what would be appropriate for release and of course, you rightly noted at that time the minutes did not exist. So I have not done that specific review for the minutes, it was based on the transcript at that time and on the enforcement documents. Kim Galvin prepared a proposed redaction. I reviewed her yeoman effort in that regard and my conclusion was that even redacted that it was possible to identify exactly what was involved in that particular matter and that the nature of the matter being such that there could be additional rounds of information sought and the fact certainly that the Board does have the authority to release these documents, but nonetheless, it was my view to recommend that in as much as it's an open investigation still and that there is at least hypothetical or theoretical harm if the nature of the particular investigation were to become known to suggest that at this time the Board not release anything. And then in having read the transcript, not of that meeting but of the December 15th meeting, it became very clear that the Commissioners objective was an educational one and you reiterated it again today Commissioner. The objective is to have the regulated community understand certain important issues about an area of the law where there is a disagreement as between the Commissioners and the desire that the regulated community understand what the nature of that disagreement is. so what I suggested is we could consider doing an opinion to the extent that we agree but, it could also underscore areas where there remains fundamental disagreement or do something we haven't really done before but given the importance that the Commissioners have placed on this particular topic, we could do a policy paper that would essentially potentially articulate both views and then articulate what the differences are. And it is my opinion that such a policy document could even indicate in the abstract, for example, that it appears that the Chief Enforcement Counsel leans more toward this one versus that one which could have the ability, I think, in a very expository manner that is well considered to actually provide more insight to the regulated community as opposed to less. So that would be my recommendation and I'll pass it to Kim for her thoughts.

Kim Galvin: I don't really have any thoughts on what Brian just said other than the transcript was clear. You told us to exchange drafts. There was a comment made that there were words also in there that should be removed. When Mr. Quail made that comment, Commissioner Kellner said no, just the identities. I did so. I was fully expecting a return draft to come back after my initial redaction attempt which I didn't receive. Brian had all along told me that there were issues surrounding the release and the knowing of who the complainant was. I reiterated all four Commissioners assent in the transcript that if you could redact the identity that they all

agreed in the transcript to seemingly release it at that point. But I took him at his word. We had a lot of discussions and then ultimately the decision somewhere was made that this would be the conversation instead of a motion to approve something that we had agreed on so...

Brian Quail: I do not fully agree with that characterization. I have a different take on it, but I think in going back to a penultimate statement during the actual discussion the Commissioners had in December, it was clear that we were directed to look at the documents and to come up with something as to what would be appropriate for release, that's a direct quote. Ultimately, I was not able to conclude that anything was. Ms. Galvin in good faith concluded that something was. And in part, my recommendation in this regard was based on the fact that I was able to take a phrase that was in Ms. Galvin's draft and Google it and immediately identify at least the parties that were involved in this particular issue. In that reading the redacted draft and as it might need to be further redacted, by the time it would be completely redacted it would be nearly completely useless in terms of an educational tool. So thus, the differences in our, I think, principle agreement about what should happen.

Peter Kosinski: Okay well fair enough. I'd like to just have a discussion amongst the Commissioners I think if the staff can't agree. I do think this is an important issue as you know. I brought this up at the last meeting, I'm going to bring it up here again today because I think the nature of what was done in that October meeting is much broader and the specific instance that was before us. I will grant you there were facts specific to that particular discussion because we were looking at a specific item but I think that the discussion itself and the conclusion has much broader implications and I think would be very educational and useful for anybody out there practicing in this area to understand what we concluded.

Douglas Kellner: So what do you think of writing up a policy statement?

Peter Kosinski: I don't think that accomplishes it. I think the minutes go much further towards just identifying the issue and making it very clear what the discussion was and what we were doing. A policy discussion I'm not sure where that gets us beyond what the minutes would do, I think in a much better way because you could see right there what people said and what their thought patterns are and what their conclusions were in this context. A position paper to me, I'm not sure what that does. I'm not even sure what form that would take. We clearly have a disagreement at the Commissioner level on this particular issue but I think it's a fundamental issue. I think it goes to a very fundamental issue as it relates to enforcement of the Election Law in this state.

Andy Spano: You're talking only about the October meeting?

Peter Kosinski: At this point I am. I'm talking about the October 23rd meeting, yes.

Andy Spano: Do we each get one to...

Peter Kosinski: If you want to bring one up Commissioner I'd be happy to entertain it. If you have some meeting...

Andy Spano: I mean that's what it boils down to.

Peter Kosinski: No it doesn't. I don't agree with that. I think if you identify a discussion in an Executive Session that you feel is of that nature and you want to bring it to the Commissioners for release, I'm open. I'm open to discuss it.

Andy Spano: But suppose its 2/2 and it doesn't go out?

Peter Kosinski: Then it doesn't go out. I get that and I mean we're having the same discussion here. I'm just prompting it because I thought this one, and we did agree in March of last year to have a policy where if we felt there was that type of discussion in an Executive Session that that would be something to release to the public.

Andy Spano: I agree.

Peter Kosinski: I think this fits within that policy that we adopted back in March. I mean I will say this is the first one I identified but I'm not going to say I'm close-minded that there might be others. I'm willing to entertain them, I'm just bringing this one to the table.

Andy Spano: Conceptually I'm with you, but he's my attorney and I have a practice if I hire a guy or if I've got an attorney I've got to listen to him. And I mulled over what he said, I mulled over what you said and I can't go along with it right now.

Peter Kosinski: Okay. Well I mean I can't make you do what you don't want to do but I just bring it because I think it's important.

Andy Spano: I just don't want people to get the impression...

Peter Kosinski: And I thought there was some more, I thought there was some agreement or certainly understanding at that December meeting that we all agreed it was important enough for release. It was just how are we going to do it? But now we're at a point where we're releasing nothing.

Andy Spano: You heard the analysis.

Peter Kosinski: I did hear it, I did hear it, it doesn't mean Commissioner I agree with it. I just heard it. The fact I hear something doesn't mean that I agree with it let me just say that and this would fit into that category I might add. I don't agree with that at all.

Andy Spano: It happens in court too.

Peter Kosinski: It does, it does I'm used to it, no question. Happens all the time.

Gregory Peterson: Hey look, it's a very delicate balance here. When we go into Executive Session it's obviously Executive Session because there are certain discussion that will be had and

I think everybody in that Executive Session should have the freedom to speak their minds otherwise we limit what the usefulness of an Executive Session is. That being said, you say something you don't necessarily want it broadcast into public when you're discussing a hot button item shall we say. However the other part of it is that we set down in that session a different channel a different direction which frankly, people out there would be very interested in because they can guide themselves accordingly those that wrote the report, etc. I certainly agree with Commissioner Kosinski on this that yes, at certain points we should release it.

Douglas Kellner: But wouldn't it be better to write it up as an opinion or a policy statement and so that...

Gregory Peterson: Yeah, but except that within the context of what we discuss sometimes that sheds a little bit of a different light on it. Again, as I said, we're in a very delicate balance here to try and maintain privacy on the one hand and yet full disclosure on the other hand and certainly by releasing something, let's say a synopsis or a direction which Brian was leaning toward is appropriate, there's also another possibility here too because apparently we don't want to do this because there's still certain things that could be brought to light somewhere down the line in which case, fine. You want to put it off but there should somewhere come a point where we say it's all done, it's over with, lets release it.

Douglas Kellner: Well when Risa makes her referral.

Kim Galvin: Just in fairness, too....

Douglas Kellner: The investigation is still ongoing right, and they have not fully complied with the subpoena yet?

Kim Galvin: I said just in fairness if you do the Google search as Brian indicated not only does the target come up, the fact that the target made the complaint and the actual thing that was in question all of your newspaper articles in the past 4 months. So, it's not a big secret.

Douglas Kellner: Right, which sort of cycles back to my point is that we shouldn't do any of this stuff in Executive Session and that everything should be public.

Brian Quail: The thing that I would note on that is the difference is not just the subject matter but the awareness of people that certain things are occurring with respect to that subject matter is different.

Kim Galvin: I agree.

Brian Quail: It's not identifying what it is, but it then telegraphs certain individuals with respect to something that something is happening. And if you're all concerned about spoliation of evidence particularly in the kind of case where it's a peel-the-onion kind of case, then there should not be a disclosure...

Kim Galvin: Where it is that type of case I do agree with you. However in this case the person admitted they made the complaint. They talk about the ongoing State Board of Elections investigation.

Brian Quail: I think too much has already been said.

Risa Sugarman: I agree. Thank you, Brian.

Peter Kosinski: I tend to agree that a lot of this, most of this, all of this is out in the public in some way already and the idea that there's some big secret here and some big confidentiality that we're protecting I think is just misplaced. I think that it's out there. But more importantly, in my view is that this is a much larger issue than this one instance. Because of this is a decision we made in this one instance and it can easily, I believe, be extrapolated to any number of other instances of similar nature, it's not fair the public is not aware that's the direction to go.

Douglas Kellner: Well than I think we should write it up as an opinion or a policy paper without putting our thumb on the scale on this particular investigation.

Peter Kosinski: Well, I don't think we're putting our thumb on any scale. I think we can do it in a way that doesn't compromise the investigation but accomplishes the bigger goal of getting the information out there so people are aware of what they can and cannot do in the context of these types of activities. I think right now if we're not being fair...

Douglas Kellner: And how does an opinion not address that?

Peter Kosinski: Well, it delays it. I don't know how we're going to craft an opinion on this. Obviously, we don't agree on it first of all. Secondly, we've already got minutes that articulate I think pretty well what the discussion was and what the decision was. I don't know why we need another document to do the same thing. I think it's very clear right there. I think this follows our policy that we adopted in March which was we would release minutes when I thought met this standard of a policy decision made in the context of an Executive Session. I think it meets all those criteria. I think we have the perfect instrument to do this with and to not do it and then push it off on to some other avenue it just doesn't make any sense to me. I know Commissioner that you're in favor of transparency, I think this is a perfect opportunity to offer some transparency.

Douglas Kellner: Yeah, when it suits you we're transparent then when it doesn't suit you we keep it a secret.

Peter Kosinski: That isn't fair. You haven't come to me with some other things.

Kim Galvin: ... other things and I asked them to confirm that those were the transcripts you wanted released and it was never confirmed. We were willing to entertain that.

Peter Kosinski: I'm willing to entertain others.

Andy Spano: We're not talking about an open meeting period.

Peter Kosinski: I'm willing to entertain that if people want to.

Andy Spano: ...taking the meetings and making them open, every meeting should be open.

Peter Kosinski: I'm willing to entertain that too if you want to entertain it. I'm just saying that I'm bringing this one to the Board this time. To say there might be others is not a reason not to approve this one.

Andy Spano: No, but I have advice here and I have a perception that he's given that matches some of my own that brings me to not want to release this.

Peter Kosinski: Fair enough. I think you've made your position clear and you're going to rely on Brian's opinion. I don't know about Commissioner Kellner I think that...

Gregory Peterson: I think that we are at an impasse and we should move on.

Andy Spano: Is that what you call it?

Gregory Peterson: I call it an impasse. It's not going to go anywhere.

Andy Spano: But I think that we should leave the matter open.

Peter Kosinski: Well I don't think it's open if you're not willing to discuss this one. Why is it open? How does that make it open?

Andy Spano: Well I like what he said too.

Peter Kosinski: So you want to open up all of our meetings.

Andy Spano: Not that I like what he said, I would like to hear from some of the other people going crazy after I said that.

Peter Kosinski: I don't know who's going crazy over it, but I think it's unfortunate if we're not going to do it because I think we're really doing a disservice to the community out there. If that's the conclusion, that's the conclusion.

Andy Spano: I'm leaving it on the table. In my head, I'm leaving it on the table.

Peter Kosinski: You're leaving it on the table, so I will bring it up next meeting. Fair enough Commissioner.

Andy Spano: Because I may have one that I want to bring up.

Peter Kosinski: Fair enough bring it.

Douglas Kellner: And I think you should turn the minutest into either a draft opinion or policy statement.

Alright, so now we go to new business. Prima facie ballot access rulings. It's my understanding that there were no issues with respect to the special elections called by the Governor but that there were some filings that you want to bring to the Commissioners.

Bob Brehm: There are no prima facie issues with regard to the filings we received for the special election in the 102nd, the 107th Assembly District. There is a general objection to the independent nominating petition that was received that may or may not percolate. We'll know in the days ahead. There were three separate single page petitions of an individual attempting to run; a designating petition for Governor, an OTB petition for Governor and an Independent Nominating petition that would fail as to insufficient number of signatures and they were filed prior to the first day to sign the petition.

Douglas Kellner: Okay. Let's not belabor this. Do the Commissioners agree that those filings will be rejected?

Peter Kosinski: Yes.

Gregory Peterson: Agreed.

Peter Kosinski: Do we need a motion. I'll make a motion if you want to make a motion.

Douglas Kellner: Good.

Andy Spano: Second.

Douglas Kellner: Those in favor say aye. (Chorus of ayes; 4-0) opposed? Alright.

Next is vote on the final adoption of the addition to regulation 6210 relating to the audit tool which has been published and then was revised and the revised version has been posted for publication. And I think we have gotten some comments on it which have been circulated. Most of the comments are really that we should be using risk limiting audits rather than the 3% audit which really is an issue for the statute. As to the substance of the regulation itself, I think that we have reached a consensus within the agency. Alright so those in favor of adopting the regulation say aye. (Chorus of ayes; 4-0) opposed? Alright adopted.

Now the next item on the agenda was to authorize the audit tool but there was no specific resolution submitted with respect to that.

Peter Kosinski: This is the resolution.

Douglas Kellner: But it doesn't have a procedure that is attached to it.

Brendan Lovullo: I have, Commissioner if I may, please pass them up to these guys here. These are the ones that we've had for a while now. Bob you may have an answer, we've been looking for these for a couple of years or whatever. So we can certainly pass these on...

Andy Spano: ...Whereas the rules and regulations regarding the audit tool and so forth have been adopted by the...

Douglas Kellner: Right, and I have no problem using the Clear Ballot count system version 1.0.8 as an automated audit tool but I think it should be done with respect as part of the actual procedures we're implementing it and I got this draft this morning so I would ask that we actually publish the draft for comment and that we vote on it at the next meeting. And as I say, as far as I'm concerned it's a go for Clear Ballot.

Peter Kosinski: So, you want to wait on approving the Clear Ballot system until we publish and then vote on the procedures.

Douglas Kellner: It should be part of the procedures.

Peter Kosinski: Is there a problem with us voting on the procedures? Have we done this before? Is this something we normally do?

Douglas Kellner: Well, actually we did with respect to each of the voting systems. When we certified the system we still had procedures for implementing those procedures which Anna circulated and...

Peter Kosinski: And we adopted? I don't remember voting on them that's all. Did we vote on them?

Andy Spano: On what?

Peter Kosinski: The procedures themselves. I just don't remember.

Brendan Lovullo: The initial voting procedures that would have been 10 years ago or so. So I was not here at that point.

Kim Galvin: I don't believe you adopted the procedure. It went out to the county board. I was the Deputy then I don't think we adopted the procedures. I think you adopted the resolution and reports.

Bob Brehm: At the time we adopted the system but I thought at some point...

Kim Galvin: I mean all the procedures...

Douglas Kellner: Why do we need to adopt this resolution?

Brendan Lovullo: Because the Board needs to authorize an audit tool per 9-211 and that's what this resolution will do.

Douglas Kellner: And to me the authorization should be part of the procedures so that it should be written into the procedures and we'll authorize it.

Bob Brehm: There's no county that owns the Clear Ballot system now that's in the April 24th special election that I understand...

Kim Galvin: New York City did ask about whether or not we were authorizing them at this meeting?

Douglas Kellner: Well I have no problem telling them to go ahead and use it for the special, if there is a jurisdiction that wants to use it for the special. But I'd like...

Peter Kosinski: But can they do that without us voting on this?

Brendan Lovullo: They can do it, but they still have to do a 3% audit. This would be something...

Douglas Kellner: We're meeting before the special and we'd be meeting in the first week in April and all I'm asking is that we circulate this draft which, as I say was handed to me this morning.

Peter Kosinski: Is there any problem with delay?

Brendan Lovullo: There's always problem with delay but no problem with pushing this out for the counties if that's what the Board decides.

Douglas Kellner: Okay thank you. Alright next is regulation on candidate websites 6215 and to both provide for emergency adoption and publish for public comment. I think as John Conklin pointed out before that since the statute is effective immediately and we have a special election coming up, we need to have the regulations in place for the special election. Alright those in favor say aye. (Chorus of ayes; 4-0) opposed? Alright the regulation is adopted.

And then the last item is the draft opinion related to contributions by federal candidates which has been circulated. Is there any discussion on that?

Peter Kosinski: I move the adoption.

Andy Spano: Second.

Douglas Kellner: Alright those in favor say aye. (Chorus of ayes; 4-0) opposed? Alright so that has been adopted. Do we have any business for Executive Session?

Todd Valentine: Nope.

Douglas Kellner: Okay so we just need to discuss the dates of our next meeting. We were talking about the first week in April.

Peter Kosinski: I think Easter is April 1.

(All talking)

Douglas Kellner: And then we're also talking about May 3rd.

(All talking)

Peter Kosinski: April 5th is good and then May 3rd, can you do May 3rd.

Gregory Peterson: I can do May 3rd.

Peter Kosinski: April 5th, May 3rd. Okay. We need a motion to adjourn.

Douglas Kellner: Those in favor of adjourning?

(Chorus of ayes; 4-0) Alright we stand adjourned.