

Douglas Kellner: My name is Douglas Kellner, and I call the meeting to order, and I introduce our fellow commissioners co-chair Peter Kosinski, Commissioner Greg Peterson, Commissioner Andrew Spano. The first item of business is approval of the minutes of the June 25, 2018 meeting. Are there any corrections? Those in favor say aye.

All: Aye. (Chorus of ayes; 4-0)

Douglas Kellner: Opposed? If the commissioners approve, we would like to take the ballot access rulings out of order and take them up before the unit reports because candidates and objectors may be watching online and want to know how this is handled. Are there any candidates or objectors who want to be heard with respect to the hearings that have taken place? Alright, I don't see anyone. We have a list of the hearing reports that have been provided by the board staff. Is there a motion to adopt all of the staff rulings?

Peter Kosinski: I will move it.

Gregory Peterson: I will second it.

Douglas Kellner: Alright. Those in favor say aye.

All: Aye. (Chorus of ayes; 4-0)

Douglas Kellner: Opposed? Alright, so the petition rulings are taken care of. We will then go back to regular order, and we will have the unit updates. We will start with our co-executive directors, Robert Brehm and Todd Valentine.

Robert Brehm: We have had certainly a very busy time since the last meeting with the various petitions, hearings. It, you know, the rulings that you just made to a certain number of people who either when they filed them made a few errors or upon objections. Largely the designating petition filings and to some extent the federal independent filings have been quite smooth. I don't know if that jinxes us because we have one more round to go, but it really has been, but it still is a tremendous amount of work, so the staff right here in the room and the staff of the agency helped, and the cooperation of a lot of candidates and objectors really helped to make that happen, so I want to thank them for all the work they did. For the people watching, we tried to make it clear to them that the determinations will go by overnight mail to everyone today, and that is one of the issues to try and take it out of order, so we can get them out before the close of business today, and the website will soon be updated. Today is the deadline to certify the candidates for the September primary, so based on your decisions, as soon as the meeting is over, I know operations is prepared to get that notice out and then counsel certainly has a number of cases that they are still working on that the certification will reflect where litigation is still pending. And as those decisions come in, we will notify the jurisdictions to either make an adjustment or stop waiting, keep moving. So that is a tremendous amount of energy. Some of the other items we worked on with regard to the agency, we have had another long-time employee announce they were retiring, Maureen Cahill, who has been here I think as long as just about everybody in this room, probably you and your time here, but Maureen has been here in the IT Department for a very long time, and she will be leaving us at the end of September. So

we want to thank her for all of her work on our behalf, and she will be missed. We are working to adjust, to fill that huge void because she has such an institutional knowledge of what we are doing, so we will miss her a lot. Cyber security has been another item that we have been busy. You know, the two of you made it to the election commissioner conference. We did do a workshop on a number of topics that we covered via web meeting for the Election Commissioners Association, giving them an update on cyber security. We had completed during the summer the six-regional trainings. Over 300 participants, both county and Board of Elections people, IT people, local government representatives. It was very successful. There is another round next week that we are working on getting notice out in various locations throughout the state. We are part of a national three days from the federal Department of Homeland Security, trying to improve communications on elections security. New York is one of 34 states participating in that session next week, and John and Cheryl have been very busy working to identify locations throughout the state that we could have people go to and link up to the calls. We have a few of them already and they can give us a report later. We are still working on more to make sure that we have good coverage throughout the state. So that's another thing that is happening quickly. Our procurements are moving forward. Our plan that we presented to you included a risk assessment that, those bids are due today, and we will be meeting tomorrow to evaluate the bids and hopefully move forward and select a vendor to provide those risk assessment services to review the security posture of all the county boards of elections. The other is intrusion protection devices for counties that need those. That procurement is back out on the street. There were no successful bidders to round one, as determined by OGS, so we are back on the street and have another round. I don't have the deadline as to when that round is up, but it is very soon. And then managed security services is also a procurement that is out there, so we are moving forward to put in place the resources to have the services for the counties, and then we will work hard to deploy them as quickly as we can in time for this year's fall. Some of them will have to be for the general election. The other item that we have done it that we have...

Peter Kosinski: Can I ask you a question? So my understanding is we have gotten money for cyber security; some state, some federal money. Is that money eligible for county use, as well as our own state use? Can we give, in other words, can we give any of that money to a county that might need an upgrade for cyber security purposes for their elections?

Robert Brehm: There was no process into the statutory language before, which took a certain amount and allocated it to counties. There was no allocation to counties, but it certainly allows us to spend it for those purposes. So the money is here, and we have the authority to spend it. If we have to sub-allocate it, there is no process we have yet to have the sub-allocation effort, but for those counties that will need intrusion detection services, they will identify what they need, and we will just buy it for them. For the managed security services; they will identify what they need, and we will just buy it for them. That is the faster route than to put in place a reimbursement program because then the county would have needed to have the funding, and we would have to have a contract process.

Peter Kosinski: Is that true for both the state money and the federal money? We can use both of those pots for those purposes?

Robert Brehm: They are not, certainly the federal money has no restrictions. It allows any of the original HAVA purposes, and it expands it more for cyber security purposes. So anything that it used to be, it could be used for as well as some expanded.

Douglas Kellner: Subject to the state appropriation of the federal funds, which would still require us to spend the money. We can't just...

Robert Brehm: You still have to; you four need to have a majority vote to authorize the expenditure.

Andy Spano: How will we differentiate between the requests from the various counties? I mean, you don't have an unlimited pot.

Robert Brehm: Well, that is true. That's why from our estimate and until we have the bids in to know exactly what the costs are going to be, and then we can adjust. We have an idea of what it will cost. We are assuming that every county will need the service, just for budget planning, so once we get the vendor in place and know the actual cost, and then we reach out to the counties and figure out, do they need the service or not. So theoretically, it would be, assuming our estimate is correct for the total cost, it should be less than that if the county already has an intrusion detection service, and they don't need our help.

Bill Cross: Part of the risk assessment is an overall report for all the counties that will identify any findings that need improvement in the counties and set priorities to those, so based on that list, I think we can make a good judgment on where the counties are in most need of assessment and where the funds should go. That is part of the overall risk assessment that we are doing.

Peter Kosinski: Is it anticipated that we will be able to put some of this on before this year's election or what is the timeframe?

Robert Brehm: It is not likely that we will have the risk assessments completed for every county in that period of time, but as they are completed, we can start to plan for those counties that are done. We estimated it might take six months to complete all of the risk assessments once we start. So, certainly if we know a county is done, then we can identify certain areas that are high priorities that we can help immediately. Plus the county can take steps immediately if they don't have a risk assessment already. Some counties already have one, and it is just a matter of, you know, re-examining to make sure we agree that it is to the standard that we have compared. The Center for Internet Security has already done work at the national NIST (National Institute of Standards and Technology) standards, about 180, 160 specific points to match against. The Center for Internet Security met with a group of national representatives from the election community. Our representative was Tom Connolly, who went, and they identified 66 of the items, 68, I am sorry, 88...

John Conklin: Piano. Eighty-eight keys.

Robert Brehm: ...of the 100 or so, so that is the number that we have identified in our risk assessment as the standard, as it is important to the community that we are working with in

elections. There certainly may be others that are important to a county outside of elections, but we wanted to at least cover that group that they identified or the important ones. So, I guess the real issue is once we detect if somebody is trying to intrude into the system, provide managed security service, and do the risk assessment; once we get that group and the answers back, I think we can better evaluate how to spend the rest of the money to fix the list of items that we get.

Todd Valentine: But we are also setting a baseline for training for all of the county employees that deal with the elections at all, so we sent out a list of, a series of basic trainings that we procured for the counties to do online, so that everybody has at least the same basic level of that. That includes the county elections employees, as well as their IT employees, or if they have done something equivalent to demonstrate to us that they have done it. So that should be done before the elections.

Robert Brehm: And, so the SANS training that is what, SANS Institute, is where we bought those licenses. That is a group of licenses we bought for both the State Board of Elections and for the counties. If we need more, we will go get more, but we think we have estimated, and we bought 2,000 licenses to cover both of us. And that we just started last week with the communication to the county boards. We purchased the SANS training our staff, and the IT Department has set up the log-in mechanisms, and then we have communicated with the County Boards of Elections to identify all of the employees, so we have their email addresses to give them log-in rights to the online training. And we have heard back from a lot of people, so hopefully it will, and we have gone through it. Some of us have completed it, some of us are just starting it, and we are going to add the four of you to the list too, so if we haven't mentioned that, consider we mentioned it. Because we want everybody to at least have a one, be aware of what we are asking them to do also. Since many of the risks are, the biggest risk is the people involved in the computer systems, to make sure that we are doing all that we can to prevent it. Anything else?

Todd Valentine: We also did, in order to provide space for the additional personnel for the secure election center, we have, we are in the process of obtaining space on the first floor of this building that has been empty to allow for additional cyber security people that we intend to hire in the near future.

Douglas Kellner: Alright, we will move on to the counsel reports, Kim Galvin and Brian Quail.

Brian Quail: Thank you very much, Commissioner. This is an exceptionally busy time in election administration, as the Commissioners know. Since the last meeting, the State Board of Elections has been named in 19 ballot access cases. Of those, eight are fully resolved, either by court decision or having been withdrawn. Eleven remain pending, whether they, we are simply awaiting a decision or adjudications have not occurred yet. And of those eleven, six of them relate to contested primaries or OTB's, and per the instruction of the commissioners, we are not taking any positions in these cases, but we are always working to get the courts to expedite and get these matters resolved to avoid ballot production issues for the counties. But I would say that in assessing the list of places where we have litigation pending in ballot access cases, at this stage compared to 2014, it is much better than it typically is. That is a good thing. Since the last meeting, the commissioners had approved at that meeting regulations, amendments to regulation

6215, relating to candidate websites. We filed that with the Secretary of State on June 26<sup>th</sup>. It was published and became effective on July 11<sup>th</sup>. In terms of other cases, the application for preliminary injunction in the Upstate Jobs case occurred, and we do not have a scheduling order as yet in terms of how that case is going to proceed back in the district court, on the merits or by additional motion practice. And we filed a notice of appeal in the Merced case, dealing with independent nominating petitions, actually the Attorney General on our behalf did so. We are finalizing a settlement in the Eason case, and that appears to be imminently on the cusp of resolution. And we have a new lawsuit in the Northern District related to electioneering and political apparel, which has been filed, but we have not yet been served in that action. Of course the July periodic was due between the last meeting and today. We have not made a referral on the July periodic, but as of right now, there are 2,765 non-filers on the July periodic. We sent 288 deficiencies for the fourth quarter and the first quarter -- fourth quarter of last year and first quarter of this year -- to the Enforcement Counsel through the Compliance Unit. The status of the January 2018 periodic is of the 2,530 that were referred, 2,069 remain outstanding. With respect to the total work of the Unit, the Unit has received 104,560 filings, and have review on 93,047 of those are complete, which is a very healthy backlog for basically keeping up with the rate which the work is coming in. And of those 93,000 that have been assessed, 65,671 upon initial assessment were found to be compliant, 11,378 engender training issues, and 15,998 were deficient. And that is my report. Kim, do you have anything to add?

Kim Galvin: No, just thank you again to the staff, as Bob mentioned, for all the spec work. They did a good job this year, a very good job, and we are looking forward to the next filing period, which starts on August 14<sup>th</sup>. Other than that, the other items on the agenda are things we spent a considerable amount of time on that we can get to when we get there.

Douglas Kellner: Thank you. So we now go to Elections Operations, Tom Connolly and Brendan Lovullo.

Tom Connolly: Thank you, Commissioner. Our last board meeting was the day before the federal primary, so since then, we were working with the counties on election night to make sure that they were able to get their results to us. Obviously with some of the counties having a small-party primary and recording that information differently, so as to maximize voter privacy, that was a little bit of a different thing that we were working with, trying to make sure that we were able to get that information from them and up on our website in a timely manner. We did aggregate all of the results, and Bob and Todd certified those results back on July 19<sup>th</sup> for the federal primary, and I believe they are up on the website. We also had notified the winners of the various OTB, or the Opportunity to Ballot contests, those candidates that won by write-in, so they have an opportunity to accept or decline the nomination. For the September 13<sup>th</sup> primary, that's has been our busy season so far, we received 459 petitions for statewide and state legislative office, 209 for state committee and judicial delegates and alternate delegates, 289 acceptances, 254 authorizations, 208 objections -- those are general -- and then 98 specific objections filed, and we also received more than 3,600 records of candidates filed at local county boards that we received and entered into our own system. We then went ahead, and we are working on preparing the ballot access rules, which you guys voted on earlier. We have been preparing the certification to send out to the county boards of elections today, so that they can be sure that they have their ballots printed and ready to go out on time for this Friday's deadline for

military and Active UOCAVA (Uniformed & Overseas Citizens Absentee Voting Act) voters. We are also going to be providing them with certification guidance we provided in the past, both on small-party primaries, in case they have any; there have been some questions from county boards about who is eligible to vote in Reform Party primaries, so we will be providing guidance on that as well. And also, any additional information on military and overseas voters, as far as deadlines and reporting requirements that we may need to collect data on for the Department of Justice.

And we have also received some independent petitions for Congress, and there were some items that were also already ruled on for the ballot access rulings. We assume we will be preparing for more independent filings for the state offices. Which Kim just mentioned the 14<sup>th</sup> starts, so that will our next kind of busy season before the November general.

With regard to voter systems, we have completed our testing of the Dominion ICE machine. We are reviewing all of the reports that we received and all of the documentation to make sure that is all as it should be before we provide that information to you for consideration and certification at probably our next meeting. We did hold a public demonstration of that system back on July 2<sup>nd</sup>. We had a number of people attend that demonstration. A bunch of them were also disability advocates, and we had some good conversation. A number of them used the machines and provided us with some feedback, and we discussed both the machine and accessibility issues in general, which I thought was a very fruitful conversation.

22:32

We had received an inquiry on, while I am on Dominion, from the Schoharie County Board of Elections, and this somehow plays into issues that we are going to have to be considering as we go forward with regards to cyber security, is that when we certify software to be used by the county boards, it is certified on a certain system, and that system could be not just what the vendor themselves provide, but what kind of third-party software that they use, like Microsoft Sequel Server, so we certify software that can be used on this sort of system, this sort of operating system, and all of these different versions. But obviously those other systems move on and get improved, and there are new versions, so we had some concern from Schoharie County that the version of Microsoft Sequel Server that we certified the ES&S software to be used on is nearing its end of life, so we probably have to work with Dominion to have them submit a request for modification to their software, so that we can approve it to be run on a newer version of the Sequel Server, so that it can be more secure. With regard to ES&S, we did receive an application from them for their new ExpressVote XL system, both as a stand-alone tabulator, and also a stand-alone ballot marking device, along with a smaller version of their central count machine and a new version of their election management software. And I mentioned this at our last meeting, that Clear Ballot had submitted an application for a modification of their Clear Count software. Obviously with all the ballot access activities we have been doing, we haven't been able to jump on some of those things that they submitted to us, so we will be looking at that now.

With regard to cyber security, we did complete all the tabletop exercises around the state, and that was as of the last meeting day. The Department of Homeland Security is supposed to provide us with an after-action report, which kind of combines all of the things that they have collected, as far as feedback, and they will provide us with how they thought the whole thing went. Normally, we are supposed to get that a month afterwards, which would have been a little bit after mid-July, but they are running a little bit behind because they were also involved with a whole bunch of other states. They say they are going to try to get that to us as soon as possible. We have obviously, Brendan and I have been participating in the calls on cyber security, our cyber security plans and the different procurements that have already been mentioned. We interviewed a number of candidates for the cyber security positions that are in the Elections Operations Unit, as part of the Secure Election Center, so hopefully we are moving forward in trying to get those people in here, so that we can start doing some of that work. We have continued to work with the County Boards of Elections to get them to sign up for the Election Infrastructure ISAC (EI-ISAC) or the Information Sharing Analysis Center, as well as the Multistate Information Sharing Analysis Center (MS-ISAC). That is one of the things that we can try to get in place before the general election. The more people we can get to sign up for that; this way it enables them to get information that is being shared across the country with various election officials. As of this morning, we have 39 County Boards of Elections that are members of the EI-SAC, so we are going to be working on trying to get that number up to obviously all of them. So, we are going to be working with them. I know it was mentioned about us going out to the county boards to facilitate training with the County Board of Election staff on cyber security. We are also going to be trying to work with NYSLGITDA (NYS Local Government Information Technology Directors Association), which is the statewide associate of county IT directors because we want to extend that offering to the county IT staff that support the elections boards throughout the state, and so we have also been asking if we can present at their fall conference because we really think that we need to be strengthening that relationship both on the state level, but also on the local level between the County Boards of Elections and the County IT people that support them to make sure that we are on the same page.

Lastly, Brendan and I did do a session at last week's, was it last week's? The Elections Commissioners' conference at Niagara Falls, two weeks ago? We did it remotely because we were a little busy, so we did it from my office, and we did one on the federal elections, and there are a couple of things that the boards have to be mindful of this year. A lot of it had to do with either some data reporting or there are some things to remember regarding deadlines.

We are just awaiting OGS signoff for their awarding of our contract from an independent testing lab, which we use for the certification process. We did have a conference call with the Center for Civic Design on usability. We are starting to take some steps of having staff conversations with them, so we are working towards the ballot design of the general election. That got a little sidetracked with some of our petition processing, but we will be getting back on track with that. And that is pretty much it. Brendan?

Brendan Lovullo: I'm good.

Douglas Kellner: A thorough report and you hit all four of the items I was going to ask you about, so that's good. You mentioned the certification for the Dominion ICE machine. What is the schedule on that and when and what will be presented to the commissioners?

Tom Connolly: I think at this point, we have completed all of our testing. We have done all of the reports on the various testing labs and our own internal reports. We are going to be looking at all of the documentation that the vendor provides to us, so we can make sure that it is properly marked as not being confidential, so that we can then make sure all of that is out there. And then I imagine that we will provide that information to you probably within the next week or two, so that you will have enough time to look at it before the next board meeting, at which point you would probably vote on whether or not to certify the system.

Douglas Kellner: And all the public testing and public usability demonstrations have taken place already then.

Tom Connolly: Correct.

Douglas Kellner: I know you referred to the one before. Okay. Now with the ES&S application for ExpressVote, that's just starting now, right?

Tom Connolly: Correct.

Douglas Kellner: And the ES&S machine, to the extent that it is used as a ballot marking device, will generate the ExpressVote ballot, which is just a list of voter choices with a barcode on it, correct?

Tom Connolly: Correct.

Douglas Kellner: And that will be read by the DS200 scanner?

Tom Connolly: Right.

Douglas Kellner: And is that scanner part of the application process or is it just these two components?

Tom Connolly: I think it is just those two components.

Bob Warren: It will be part of the testing, but it is already equipped to handle it.

Tom Connolly: But the DS200 scanner basically requires that one thing that helps guide in the smaller piece of paper.

Douglas Kellner: And can you give an outline of what the schedule is for the ExpressVote certification process?

Tom Connolly: I am going to defer to Bob Warren on this one.

Bob Warren: It is going to take a while because it is a whole new certification. As you recall, the original machines took about a year and a half to two years. I don't expect it will all take that long, but this is going to be a lot longer than a normal upgrade because we will have to apply all the concepts from the initial certification testing to the testing of this system to make sure it meets all the requirements and guidelines.

Douglas Kellner: The one advantage they have, however, is that they have been federally certified.

Bob Warren: Yes, yes, and we can look at incorporating that information into it.

Douglas Kellner: Okay. So you are talking about a year or even more for that process.

Bob Warren: It could be less. It depends on how much of the federal cert that we can use towards the testing process.

Douglas Kellner: And what do you anticipate to when you will be announcing the public usability demonstrations?

Bob Warren: That usually comes towards the end of our testing process, so that we are sure that it works correctly, so that would be nine months, six months.

Douglas Kellner: And does the fact that the system is already being used in other states change the anticipated public demonstrations? I mean can other states' use of the machine qualify as the public demonstrations?

Bob Warren: Well, because the other states are using it, that would take into consideration federal cert, so that information depends on what we want to use of that that would allow that to be, we could move up the public demonstrations, but we want to be sure that it encompasses all the New York State requirements before we let people start using it and determining that, if it doesn't yet meet all the requirements, we don't want them using it and saying it doesn't have this, or it doesn't have that.

Douglas Kellner: And there was an application by the Village of Port Chester for a demonstration project. Are you familiar with that?

Tom Connolly: Yes, for the ranked choice.

Douglas Kellner: So, what is happening with that?

Tom Connolly: It is still pretty, we have been kind of busy with the ballot accessibility, so we haven't really been focusing on what machine they are looking to use or what they are actually looking from for us and how it might at all be able to be used.

Douglas Kellner: And I raise the additional question why they would do a demonstration project and not just use the, either the Dominion machine that Westchester County already has or borrow an ES&S machine from one of the neighboring counties.

Tom Connolly: Well we will look into that more for sure.

Douglas Kellner: Alright, well I do think they are entitled to an answer to their request. They made a formal request, and I think they are entitled to an answer. Alright, that is all I have. So, we will move to Public Information, John Conklin and Cheryl Couser.

John Conklin: Thank you, Commissioner. The Public Information Office has been very busy since the last meeting. Lots of inquiries with regards to the petitions for state and federal offices, the results of the June 26<sup>th</sup> federal primary, questions about fundraising, as Brian mentioned the July periodic report was filed in the middle of the month. The Governor's Executive Order granting conditional voting pardons to some parolees continues to be a hot topic. There have been a number of articles about that. The unit has participated in a monthly ECA call since the last meeting. We continue to be part of the discussions on the cyber security plan. We processed 86 FOIL requests in June and 160 in July. That is typical of the petitions coming in. The unit continues to participate in meetings on the Eason lawsuit that Brian mentioned. We have started to interview candidates for our positions as well for the Secure Elections Center. Cheryl and I have been working with the county boards and county IT departments on, as Bob mentioned, the SANS security awareness training and compiling rosters of county board employees. And also the Department of Homeland Security is conducting another round of tabletop exercises as also was mentioned. Cheryl has been taking the lead on that, if you want to talk about that a little bit.

Cheryl Couser: Sure. DHS will be holding national security exercises. They call them Tabletop-to-Vote 2018. They will have three days of exercises on August 13, 14, and 15<sup>th</sup>, from twelve to four p.m. About 34 other states are participating. Initially, we thought we only had one video feed, it is a FEMA-approved video conference feed. We had a call with DHS, and they actually said we can have more locations around New York State to call in, which is good. So next week, August 13, 14, and 15<sup>th</sup>, here in our boardroom, we will participate and have it open to county board of elections officials and county IT. We also reached out to Clinton County Emergency Services, up in Plattsburgh, and they will host a site on August 14<sup>th</sup>, and then on August 15<sup>th</sup>, there will be another location at the Erie County Training and Operation Center out in Erie County. August 15<sup>th</sup> is the day that IT and election vendors can also participate, so we are reaching out to those vendors, so they can also participate in the training. We are, I have reached out to New York City, and we are looking at Jefferson County and Westchester for additional locations. When we find a location, we have to test the connectivity and once we do that, then we can notify people that they can use it. It is not the ordinary feed. So that will be next week. And again, they are from twelve to four. We think there may be from the call substantially similar to the regional exercises we held, but we would really like anyone from a county board or county IT who hasn't had the opportunity to take that training to take this training or anyone else who is interested.

John Conklin: So just a couple of things on the website; we are updating the candidate websites page, as Brian mentioned. So far, we have 70 candidates listed there; 53 from the Senate, 16

from the Assembly, and one statewide. So after today, we will start to list the candidates that have not provided us with website information. We posted the certified results for the federal primary from June 26<sup>th</sup>. We posted a notice on the voting machine demonstration that was done by Election Ops. We have done a list of nominations received for the September 13<sup>th</sup> primary. We posted the webcast and the transcript for the June 25<sup>th</sup> meeting, and we posted filings received last week for the independent Congressional nominations. The last thing is that we did an NVRA training in Harlem with the Office of Temporary Disability Assistance and New York City Human Resources Association. We had approximately 40 attendees, so that's all I have.

Douglas Kellner: And John, are you comfortable with the requirements of the settlement in the Eason case for accessibility?

John Conklin: I have recently been appointed the accessibility coordinator for the agency. We have begun analyzing the things that we have to do to be compliant with the lawsuit for this year and for next year. We have begun doing some of those tasks already, so I am confident that we are proceeding as we should be.

Douglas Kellner: Very good. Thank you. Anything else? Alright, next is Information Technology, William Cross.

William Cross: Good afternoon, Commissioners. Board of Elections projects; CAPAS-FIDAS development continues on EFS, both itemized and non-itemized, about access and data conversion. However, as I reported last time, we have had to divert several staff to adjust a new digital ads application. Progress on that effort, at least a short-term solution to meet the legislative requirements is going well; however, we are still trying to obtain some additional contractor-based programmers to minimize the impact of the mainline project. That request remains pending with DOB approval. We did have one new state-based programmer begin shortly after the meeting or last meeting. He appears to be coming up to speed quickly on the project. NYSVoter we continue to work on finalizing project deliverables for that implementation, including testing and documentation, and we are starting to use the new infrastructure that was put in place for that and moving some of the other non-NYSVoter systems over, such as our public website and a few internal systems to utilize that new infrastructure. And the progress on MOVE is also continuing to replace the outsourced application. Our main focus in this period, as has been for quite a while, is information security. IT works, has worked, with the rest of BOE on secure election center implementation, including staffing and acquisitions. IT has acquired the cyber security awareness training, this has been mentioned a few times here, for all state and county board staff, as well as county IT that supports elections. As of today, and this was just released to them last week, as of today, 24 county boards have completed a list of staff to be included, including 165 county board staff and 61 IT staff in just about a week, so the demand is high for this training. Significant effort has also been spent, as mentioned by Bob and others, on the RFP and RFQ's for the risk assessments and intrusion detection, and managed security services. These have all been released, and the RFQ for the IDS has been re-released. For the Secure Election Center, IT has added our first position, and we have the interview scheduled for next week for the overarching security manager position. BOE has also partnered with the Center for Technology in Government to discuss some of the other secure election center initiatives. CTG has a unique position and close

relationship with local government, as well as a significant research capability, so we hope to leverage them in including them in our efforts going forward for some of the additional initiatives for the Secure Election Center. In terms of the website, traffic for the main website, as well as the voter lookup site nearly doubled at the end of, as expected, related to the June election, towards the end of the month. It quickly settled back to normal for July.

Douglas Kellner: Any questions?

Peter Kosinski: So we are planning to do these regulations today on the independent expenditure committees. Do you feel comfortable that you are far enough along to make that work for this year?

William Cross: Yeah, we....

Peter Kosinski: You are having some problems filling positions, is that what you said?

William Cross: Well we had, we have had to divert staff off the main CAPAS-FIDAS development to do this effort, and what we are trying to do is supplement them with additional contact positions, which always takes quite a while, as well as fill the seats we always continue to try to fill for this. On that effort, though, we have made good progress for that. We have been working with one outside vendor, and I think we are getting close to starting our testing phase for it.

Douglas Kellner: Anything else? Now we will hear from Risa Sugarman on Enforcement.

Risa Sugarman: Good afternoon, Commissioner. I see on the agenda there is listed a vote for final adoption on the 6203 Enforcement Regulations. I would request an opportunity before that vote to make a statement. Other than that, I don't have any report.

Douglas Kellner: Okay, then we have done our ballot access rulings, so the next item on the agenda is the vote for a final adoption of the regulations for part 6200 on Digital Advertisements. Now my understanding is that we're, because we've made some modifications from the original publication, that we cannot do final adoption of the regulations today, but also because of the urgency of adopting regulations because the statute does not go into effect until after we publish the adopted regulations that we are going to adopt emergency regulations today, and that will continue the comment period for final adoption of the regulations at some point in the future. Mr. Buley, you had given us some report last time. Do you want to say anything today?

Jeff Buley: Is the next comment period 30 days or is it longer?

All: Thirty days.

Jeff Buley: Okay, that's what I thought. I have David Donovan here, who is the head of the State Broadcasters, so I am going to defer to him.

Douglas Kellner: Do you want to say anything, Mr. Donovan, on the adoption of the emergency regulations?

David Donovan: Well first I want to thank the board and the staff for working on these very complex regulations. In many respects, we are treading new ground here. One of the issues that I want to make sure is that the way the rules are drafted is to perhaps work with the committee and clarify if there are any issues that crop up over the next 30 days to deal with any, I have been drafting regulations and rules all my life. There are always some things that may need to be clarified, so with the Board's permission, I would like the ability to review with other members of the public, to review and ...(unintelligible)

Douglas Kellner: Well I think I speak for everybody that, you know, we welcome your participation and comments on that, that there have already been constructive comments, particularly in clarifying that the Board's intention is not to invade the prerogative of newspapers and journalists, as already set forth in the election law, and I think the regulations have clarified that.

Kim Galvin: Commissioner, just a comment on Mr. Donovan's statements, as with all things, when we circulated what we are going to adopt today, sometimes we unintentionally touch other parts of things, and, you know, especially with something as complex as this, so I told Mr. Donovan obviously that Nick and I and the rest of the staff will continue to work with him to clarify what we feel we are all on the same page with, but just to make sure that it is perfectly clear as the final push comes out, so we are committed to working with him and any other commenters as we move forward.

Peter Kosinski: Yes, I just thought somebody maybe could give a little, just a brief explanation of what these are about. My understanding is these are about attributions for independent committees that put up advertisements or messages on Internet websites in New York, so there will be an obligation now for those entities to disclose who they are when the ad is put up, as well as making a filing here at the Board of that ad and who it is attributed to, so that if people have any questions about the ad and the attribution, who is paying for these, they will be able to come to our website, which is what we were addressing with Bill earlier, that they can come to this Board's website, look it up and see who is paying for certain ads, as well as looking on the ad itself that is distributed on the Internet site to see who is paying for it.

Nick Cartagena: That's correct, Commissioner. There is also an obligation in the regulation for online platforms to perform certain duties, namely to collect the registration document that the I-E Committee files with the state board prior, upon the purchase of an advertisement. This, it also bans foreign nationals from purchasing I-E's for state and local elections.

Gregory Peterson: Russians don't have to apply. Is that what you are saying?

(Laughter)

Douglas Kellner: They cannot.

Brian Quail: They need not...they cannot apply.

Nick Cartagena: They need not apply.

Kim Galvin: Unless they learn English.

Nick Cartagena: That pretty much sums it up.

Peter Kosinski: This will be available 30 days from today, is that the idea that the platform we are creating for this purpose will be available 30 days from today if people want to look at our website to find out this information, is that correct?

Kim Galvin: Well that's correct.

Douglas Kellner: That's the plan.

Kim Galvin: That is what the statute requires.

Douglas Kellner: The statute and the regulations will go into effect either tomorrow or Friday, when we actually file them, so the effective date of the statute was upon filing of the regulations.

Peter Kosinski: But then the actual website that we'll provide...

Kim Galvin: Thirty days.

Peter Kosinski: ...thirty days from today, so....

Kim Galvin: It's technically, and if I might speak to this for just a minute, it's technically considered a database, I think, and as Bill touched on, what we have done is the statute requires certain registration information from these I-E committees, independent expenditure committees, to be placed on the website, and so we've had people look at the current registration documents, compare it to what the statute requires, mock up a form that we are going to have to manually enter for our 80 committees or whatever we have, and then we are going to have to work with IT, so that the registration document and any of the ads that are placed, which we are assuming is going to be extremely voluminous, are connected, and then we are going to have to designate certain staff people that are already committed to their full-time jobs to make sure these go up in a timely manner, and so that's the second phase that we have to move to immediately. We've started working on it obviously, but there is a whole second chunk to do within the next 30 days that is....

Peter Kosinski: So the obligation is on the Internet provider to make sure the independent committee gives them the name of the committee paying for it, so that they can put attribution on the particular ad itself?

Kim Galvin: No, it is not the name. The provider, whose ever covered under the regulation, will have to receive a copy of the state board registration form, but there is also a self-identifying

requirement that the independent expenditure committee can't, you know, try to dupe any of these people out there, and they have to provide it as well and self-identify themselves as someone who is required in New York State to place the attribution. And it speaks to that and the attributions have certain requirements as contained in the regulation, and it is going to be, I think. IT has done a fantastic job mocking up or working towards a mock up, as what we have seen, a database that will flow hopefully smoothly, but the weekly and the 24-hour requirements that these independent expenditure committees are going to have for their filings, it is going to require a great deal of effort on our part to get these things up, so that they are visible for the outside world to see. So we are still talking, you know, all of us in the counsel's office and the whole building about who is going to do that, who is going to be dedicated to it, how it is going to happen.

Peter Kosinski: So, we have a 70 million dollar, I'm sorry, 70 million per website hit...

Kim Galvin: That's the definition...

Peter Kosinski: ...users, visitors, to that site as a threshold to be governed by this particular regulation that if your website gets less than that, you are not governed; if you get more than that, you are governed. Is that?

Nick Cartegena: Yeah, I mean we define online platform as actually two portions; one, you are correct, the 70 million websites that get the unique monthly US visitors; we also added something related to what we dubbed third-party advertisement vendors, so basically, there are several ways in New York where you can purchase digital advertisements. One, you can purchase it right directly through the website, directly through the publisher. You can also publish through an ad network, and then there is this thing called "programmatic advertisement," which is the most popular way now to purchase advertisements for digital advertisement. I read one report that said this past year approximately 84 percent of digital advertising is bought through this method. And basically there are several different entities involved, and the purchases are done in a millisecond, there's a lot of algorithms that are used, and demographics are used in this purchase. So, we thought it appropriate to include these entities in the definition of online platforms if they directly, the entity that directly interacts with the I-E Committee because that is again, how most digital advertisement is purchased. And through our research, we looked at different ways to measure these vendors. One way we did look at was a revenue-type model, but we thought it more appropriate to stay consistent with a unique visitor's type-model, as measured by an accredited agency, and we found one website, "Comscore.com" that listed all the top networks that buy unique visitors. And again, it is like if these vendors directly interact with the I-E Committee, then they are the entity that would be responsible for collecting these forms.

Kim Galvin: Right. One of the big things that we have found in working through it, and 70 million seems like an astronomical amount to me, but apparently, I am very old because 70 million isn't that much. I mean it is a lot to capture the main people that we are trying to capture, and that is an 18-year-old age platform visitor, that is the voting population, and I, just for the clarification of anybody that might be listening, I was unaware that, you know, we got a lot of comments of, "We're these platforms, and we don't control what ads come up to us". There is

no interaction directly between people, the IE and these people. They go to the programmatic ad agencies, and I could be looking at one webpage, and Nick could be looking at the other, and we both see different ads. And that is not controlled by the platform itself it is controlled by the ad agencies and the demographics and things that they do. So we thought it fairer and the statute itself did include ad networks in the language of the statute, to make the requirement that you take the registration form from the IE, and that the IE self-identify to these large ad networks that do place most of these and in a way, help, in a sense, the platforms that don't know which ads are appearing on which day. It's a, I'd say it is interesting, but that would be a lie, but it has been a very unique (everyone laughs) exercise.

Peter Kosinski: So this exempts out newspapers; I mean if like the New York Times has ads...

Kim Galvin: It does. There is a statute in our Election Law that basically says we can't infringe upon newspapers, and the logical extension we felt was to exempt the platforms, so that they have, and it also is, interestingly enough, Nick can speak to that. He obviously understands these things more than I do, but one other thing was an issue of a retransmission of a television broadcast or something that is now a podcast or on Sling TV or something....

Nick Cartagena: Like iHeartRadio that just rebroadcasts like radio stations that are on the airway.

Kim Galvin: So if you don't catch them here, you can't catch them there basically, and it has been, the help of the broadcasters and the newspaper publishers, I mean, they were, even our interns were instrumental in helping us understand and get to where we are now.

Peter Kosinski: So give us examples of who is covered.

Kim Galvin: Facebook.

Nick Cartagena: Major social media, basically almost every major social media site will be, platform will be captured under this, and any major search engine will also be captured under this regulation, and the top, though it is not a technical term, actually, but the third-party advertisement vendors, so you are talking about your ad networks, ad exchanges, those types of entities will also be captured.

Brian Quail: And I would just note that that is for the online platform designation, where they have the obligation to affirmatively collect the I-E's registration form. The attribution requirements and the reporting requirements for paid Internet digital ads will apply universally in terms of the disclosure and the attribution of the discussion that Kim and Nick just entertained with the commissioners was just in relation to what the online platform is to have that affirmative obligation to collect the registration document.

Peter Kosinski: So, are you saying that if I, if I am an I-E, and I take an ad out on the New York Times webpage, I would have to have an attribution?

Brian Quail: That's correct.

Peter Kosinski: Because the New York Times will not be required to collect the information and supply it to us. That's the distinction.

Kim Galvin: That's correct.

Bill McCann: If I could just add one thing, and Bill Cross could speak to it more specifically, I want to be clear that the solution that we have right now is a stop-gap interim solution for the purpose of implementing the statute because we have the new system that will be coming into place, and so that would be more robust than this, but as he indicated, staff had to come off that project for this, so this will be to fill the gap in the interim for the purposes of disclosure, but the new system would have all the bells and whistles.

Robert Brehm: And a new interface.

Bill Cross: Well it will be a different interface. We'll be listing independent expenditures committees, and they will be drilled down into the information that they submitted as opposed to a typical database search. We are doing what we can with what we have and the amount of time that we have. The new system will incorporate more traditional database type functionality and take some of the less manual efforts required for filing and uploading and correlating this information will be improved when we incorporate it into the full system, but this is to get it done.

Peter Kosinski: And what is the penalty for failure to comply by let's say an entity that was required to, you know, supply attribution, where does the penalty lie? Does it lie with the I-E, does it lie with the platform that didn't collect the data?

Kim Galvin: That's the platform.

Nick Cartagena: Over the failure to collect the registration document? That would fall on the platform.

Peter Kosinski: So, if there's not an attribution on a particular site...

Nick Cartagena: ...the attribution...I'm sorry.

Peter Kosinski: ...the liability lies with whom?

Nick Cartagena: The IE Committee. Because the platform is not obligated to police whether an attribution is there or not.

Peter Kosinski: And what is the penalty?

Kim Galvin: I think its \$1000 per incidence.

Peter Kosinski: \$1000 per event.

Douglas Kellner: Per violation. Alright well many thanks to the many people who have worked on getting this in place. I think it is impressive that this very new system was able to be in place and as I mentioned before, will be in effect that the law will actually go in effect now no later than Friday. That many people have worked on this. Governor Cuomo first proposed this legislation to respond to meddling in fake accounts on Facebook with the purpose of having new online political ad transparency laws and New York is the first state to enact such a statute which is why we're really setting precedent in terms of putting all this together. And, of course, to enact the statute required bipartisan support with agreement on the details. Last week, Governor Cuomo called upon the Board of Elections to issue the strongest possible regulations to implement the new statute and I believe that the staff, again, working on a bipartisan basis has done just that. We have very thorough regulations that are designed to cover the key issues. And I note that since the legislature adopted the enabling law with the budget in March of this year, I have been contacted by a number of election officials in other states who are very interested in how New York is addressing this issue, and already legislation has been introduced in more than a dozen states modeled on the New York legislation. So this is something where with the Governor's leadership and strong bipartisan support, we have really taken the lead on an issue and are the first in the nation to put it in place. I'm hoping that everything goes well in the next few weeks as we set off the initial implementation. And again, thanks to all who have worked so hard on it. So with that are we ready to vote? Those in favor say aye.

(Chorus of ayes; 4-0) opposed? Alright the regulation is adopted.

Next, we turn to the final adoption of the amendment to part 6203 and Ms. Sugarman said she wanted to make a statement.

Risa Sugarman: Yes, thank you Commissioner. I make this statement in opposition to the proposed regulations seeking to amend parts 6203 Title 9 NYCRR (New York Codes, Rules & Regulations). The amended rules inject partisan political influence where there must be closely guarded independence. I will endeavor to keep my comments today brief, but the record must be clear, and the public must know the depth of the intrusion into the work of the Division that these regulations will cause. It must be known for all to see. To begin, the work of the Division cannot and must not be done on autopilot. Investigations must be conducted in a non-partisan, impartial, detailed manner without regard to who the target may be, what political party he or she belongs, or what the political ramifications of the course and conduct of the process may be. Each complaint, each case, each investigation is different. The course of each investigation must be determined by the specific nature of the case itself and facts must be followed as a case develops without interruption. The investigation must be conducted by experienced attorneys and investigative and audit staff and without interference by outside political influence. The decisions as to who will be the target of the investigation and who will be the recipient of a subpoena must be determined only by the facts of the case and only by those with knowledge and investigative experience to make those decisions without regard to political and partisan influence. The legislative intent of the Public Trust Act was clear creating independent Chief Enforcement Counsel at the BOE to conduct all investigations necessary to enforce the

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provisions of the Election Law. The Board, by these regulations, legislates where the Senate and the Assembly have not. They grant themselves authority that the law does not provide. The Board has clearly overstepped their authority. And when I ask why, the answer I see is not transparency or accountability, but politics. The answer I see lies in the investigations conducted and the reach of those investigations. The answer I see lies in the lawsuits filed whether by the Division or by the targets of those investigations. The answer I see lies in the refusal to do things the old way. So when the Division wins the lawsuit and wins the public's trust and the legislature does not act, the next step, let's get rid of Sugarman. Nope, that didn't work, next. Let's place some new rules to clip her wings. The Board hides behind the catch phrases of transparency and accountability but their intent is clear. The regulations submitted today are wide ranging and comprehensive and seek oversight on every aspect of the work of the Division attempting to remove any semblance of independence and vision by the legislation. From reporting requirements to personnel issues, to subpoena oversight the rules impose control over the internal and confidential workings of the Division. While most of the public attention and feedback has been on the rules dealing with the subpoena authority, I would like to comment briefly on the reporting requirements. Enforcement is not neat and simple, and it is not readily reducible into numbers on a spreadsheet or in columns on a quarterly report. It is not an auto pilot litigation system or a system where investigations fit into a 6-month time period and stop, end of story. Enforcement is not sending threatening litigation letters based on an inaccurate database. Enforcement cases involve review of all statutory filing requirements for hearing officer and court proceedings, evaluating a person's legal filing obligations over multiple accounts including years of possible violations and making the decisions about which cases are legally sufficient to proceed. The legislature has mandated when the Chief Enforcement Counsel must report actions to the Board, the Governor, and the legislature. The Board is entitled to notice if the Chief Enforcement Counsel dismisses complaints in two specific situations. The Chief Enforcement Counsel must submit an annual report to the Board, the Governor and the legislature summarizing the activities of the Unit during the previous year. These rules require the reporting based on data unavailable to the Division invade the deliberative process of the Chief Enforcement Counsel and violate ethical standards imposed on attorneys engaged in law enforcement and investigative activity. The proposed regulations violate the statutory reporting requirements designed to ensure the Chief Enforcement Counsel's independence. And so we come to the rules relating to the subpoena requests. Where to start? I said before that investigations must be conducted by experienced personnel without interference by outside political influences and yet the rules presented provide just the opposite. At this moment in time, the Division of Election Law Enforcement has 4 attorneys, 5 including me, 2 auditors and 1 investigator. The audit and investigative staff have a combined experience of 33 years. My legal staff, without me, has a combined criminal investigative prosecutorial defense, appellate and civil experience of 50 years. And if you add my plus 40 years of criminal justice experience, the Division has a combined 90 years of legal experience, 90 years. And yet the Commissioners have created rules that ignore that experience and say, we, the Board with no investigative experience are better suited to determine the course of the Division's investigations. What do the rules require? A full explanation of the basis of the investigation and who and what will be subpoenaed. These rules would require the disclosure of sensitive and confidential information to the politically appointed commissioners and co-executive directors. The Commissioners have granted to themselves the authority to determine what is relevant and material, who shall be investigated and what information may be obtained. Under these rules, the Commissioners

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control the course and content of the investigations. What do the rules impose? Arbitrary time limits for investigations. Investigations take the time they need to conduct a fair, full and impartial investigation. A 6-month time limit encourages delay until the subpoena has expired. The Chief Enforcement Counsel must return to the Board for each additional subpoena request. Information obtained during the course of an investigation must be pursued without delay. The requirement to return to the Board for each additional subpoena request is guaranteed to delay the course of the investigation. And the Board has created a motion to quash, rescind or modify to “provide certain due process rights that mirror the rights found in the federal regulations for the FEC.” This is the same FEC that was described by former FEC Chairwoman Ann M. Ravel in the New York Times in 2015 “People think the FEC is dysfunctional. It is worse than dysfunctional.” And again, in 2017, “...the FEC is betraying the American public by failing to enforce campaign finance laws”. And, of course, in 2015 referring to the FEC’s lack of enforcement, prominent campaign finance attorney Robert Kellner “We are in an environment in which there has been virtually no enforcement of the campaign finance laws.” But it doesn’t stop there. While pointing to the FEC regulations for support, the Commissioners fail to point out that those same FEC regulations includes “standards of conduct” which prohibit Commissioners from discussing enforcement matters with persons outside the FEC and make it a federal crime to disclose enforcement matters. Not so at the BOE where the Commissioners and their documents policy passed over my vehement objections, allows release of sensitive Division documents on the vote of the Board. These rules demonstrate that lack of expertise and commitment to impartial, nonpartisan investigations. I hand up to the Commission for this Board Meeting the public comments submitted to the Board about these rules. In addition to my comments, they include comments from 7 citizens living in New York, Reinvent Albany and Rochester for All, two good government groups, the office of the New York State Attorney General, 5 members of the Moreland Commission including Congresswoman Kathleen Rice, District Attorney’s Fitzpatrick, Sprague and Zugibe and the Honorable Milton L. Williams, and the Honorable Stephanie Miner, Former Mayor of Syracuse and candidate for Governor. They all have one thing in common, opposition to these rules. The Board has the authority to create rules that are consistent with the law but does not have the power to create entirely new law. Yet the Board has unilaterally decided to circumvent the legislative process effectively creating new law. The rules would shift the Chief Enforcement Counsel’s statutory investigative authority to the Commissioners and return partisan control to the very Board from which such authority was removed in 2014.

In addition, the rules would violate statutory reporting requirements designed to ensure the Chief Enforcement Counsel’s independence, the Public Trust Act to restore the public’s trust in elected officials. If these rules go into effect, the Division’s investigations will be severely impaired. Politically partisan intrusion into the investigatory process will increase substantially and Election Law violations will go unchecked. Decisions concerning whether and/or when to pursue any given enforcement initiative must be left to the discretion of the independent Chief Enforcement Counsel without influence from partisan political appointees to the Board. By your vote today you will send a message loud and clear. Vote yes and you vote for interference in the work of the Division of Election Law Enforcement for partisan politics not for transparency, not for accountability, but for enforcement when it suits your political partisan purposes. Vote no, reject the regulations and your vote stands for fair and complete investigations without regard to political party or influence.

Douglas Kellner: I have one question, to start out is your statement about the reporting requirements, how are these reporting requirements different from the metrics that Mayor Giuliani agreed with the 5 New York City district attorneys to provide to the Mayor's Budget Office on an annual basis and which are publicly available?

Risa Sugarman: Commissioner, I don't know to what you refer but I'm referring to what is required by statute and what your regulations...

Douglas Kellner: You said our regulations would require disclosure of information that would be unethical and yet the regulations are based on the metrics that Mayor Giuliani imposed on the 5 district attorneys in New York City to make publicly available data, so the public would have metrics on the activities of the county district attorneys.

Risa Sugarman: Are you talking about when he was Mayor of New York City?

Douglas Kellner: Yes.

Risa Sugarman: I can't answer that question.

Douglas Kellner: And those are still in place. Mayor Bloomberg and Mayor De Blasio have continued them, and anybody can go on the New York City website and pull up the metrics from the 5 New York County District Attorneys.

Risa Sugarman: I think the specifics of your regulations in terms of what the deliberative process is, what the...

Douglas Kellner: I'm talking about metrics now.

Risa Sugarman: Yes, and that's included in your metrics and I have no idea what you're talking about in terms of what Mayor Giuliani then required.

Douglas Kellner: Well that's my emphasis that you have no idea what we're talking about and you have put your head in the sand to learn about what we're talking about in order to avoid any kind of accountability. There maybe some other questions and then I have a statement I eventually want to add.

Peter Kosinski: I don't really have a question...

Gregory Peterson: Why don't you make your statement at this point.

Peter Kosinski: I have a few comments I want to make but Commissioner if you want to go ahead first feel free.

Douglas Kellner: Alright well let me say that in my service as Commissioner, I have found that there are 4 principles of election administration that are guiding values on everything that we do

as election administrators. And those four principles are; uniformity, accuracy, transparency, and verifiability. And that these four principles apply to all of the aspects of election administration. Certainly, they apply to the conduct of the vote and the canvass of the vote, but they're also important to apply to voter eligibility and registration, to the ballot access process, and to the conduction of the election campaign which includes the finance regulations. And, it is very important that within each of these aspects there be uniformity, accuracy, transparency and verifiability. That is the most important principles in order to give the public confidence that our democracy is really working and being administered in a fair and appropriate manner. Campaign Finance disclosure is an important aspect of how we regulate political campaigns. Indeed, that was the reason that the State Board was established in 1973 following the Watergate scandal was to require campaign finance disclosure in New York and to change the process of election administration from having a single appointee of the Governor, the Secretary of State, administer elections in New York and to go to bipartisan election administration. Bipartisan election administration can be difficult at times because it means that we have to try to come to agreement, but I am convinced that it is better than any other system because of that need to develop consensus, especially when the people involved in it work off the principles of uniformity, accuracy, transparency, and verifiability so that we can watch each other and that things are done transparently. This applies most importantly to Campaign Finance disclosure and enforcement. The system can be grossly abused when it is not enforced in a uniform manner. It is important that the enforcement of the Campaign Finance disclosure laws be transparent, and they be verifiable. And what we have had is a system where that has completely broken down with the incumbent Enforcement Counsel.

Campaign Finance enforcement has several elements to it. One is the filing of the actual disclosure reports themselves. The second is complaints regarding violations of the Election Law either in the conduct of the election, conduct of the campaigns or exercise of the franchise. A relatively tiny portion, but still important element of campaign finance enforcement is our criminal referrals, and then there's the issue of judgment enforcement of enforcing court orders. The system prior to 2014 some of these elements were being handled well. The filing of disclosure reports had a bipartisan system in place where if people did not file, there was a procedure by which they were notified of their failure to file, reminded to file and then if they did not file an order-to-show-cause was issued that would seek penalties for the non-filing. The system for those orders-to-show-causes was automatic and bipartisan. If somebody didn't file, which is a pretty objective issue isn't it, then the order-to-show-cause would be issued. If they came into compliance prior to the final judgment of the court, settlements were made with defined amounts so that everybody paid the same amount on the settlement with very rare exceptions that had to go to the Commissioners for approval. So, all of the rest of this happened on a staff level. And prior to 2014 roughly 1000 people a year were prosecuted. Those details are available in reports that we have available. And penalties were assessed, and judgments were issued for the failure to file.

Since 2014, with the advent of the new Enforcement Counsel, the rate of non-filing has been rising somewhat dramatically while the enforcement against non-filers has been virtually nonexistent. So, instead of many hundreds and sometimes thousands being prosecuted each year for non-filing, in July of 2014 the Commissioners referred to Enforcement 533 non-filers, 277 of which still have not filed and all, but a handful have not been prosecuted by the Chief

Enforcement Counsel. In January 2015, we referred 1,682 non-filers to the Chief Enforcement Counsel, 402 of those reports are still owed and again, only a handful less than 10 has any action been taken by the Chief Enforcement Counsel to recover penalties for the non-filing. July 2015, the number goes up to 1,154 referrals, 574 of which are still owed, still outstanding and again, less than 5 of those have been the result of any action by the Enforcement Counsel for the failure to file. And I could go through each of those required reports, the most recent one where we've made referrals to the Chief Enforcement Counsel 2,531 referrals, since that time almost 500 have filed and cured their non-filing but there's still 2,074 committees that have failed to file their January 2018 periodic report. The Chief Enforcement Counsel has not taken formal action against a single one of those 2,074 non-filers, not one out of 2,074. Essentially what we have is the Chief Enforcement Counsel saying, unless you've done something really horrible to get on my radar, but I'm not going to tell you what it is that will get you on my radar, I'm not going after non-filers with the hearing process. Now the interesting thing is that in 2014 at the time this legislation was passed, we established, or the legislature established a new procedure where there would be hearing officers. So rather than bringing orders-to-show-cause to court, there would be hearing officers. In the budget for the initial plan for the hearing officers, we budgeted as a startup basis we would try with 10 hearing officers and we expected roughly 1000 or more cases a year to be referred to the hearing officers. Indeed in the startup I've got to find my own quote here, shortly after Ms. Sugarman was appointed, she actually indicated that it was also her plan to be filing as many as half a dozen cases per day with hearing officers. And agreed with that initial budgetary approach for the hearing officers. But, what has actually happened since Ms. Sugarman has been appointed, in 2015 which was the year of appointment there was just one proceeding commenced before a hearing officer. In 2016 out of the thousands of referrals that were made by the Commissioners to the Enforcement Counsel 11 hearings took place, in 2017 again with thousands of referrals to the Enforcement Counsel there were 6 hearings and so far in 2018 with many thousands of referrals still outstanding there have been 2 proceedings before the hearing officers. What has happened is that the Enforcement Counsel has effectively announced, "I'm not going to do enforcement proceedings any longer." It's as if the Mayor had said, "I'm telling my police commissioner not to issue parking tickets any longer because issuing parking tickets is a waste of resources of the police department." And yet it's issuing parking tickets that is critical to getting parking compliance on a routine basis by the population. So, what we have is because of Enforcement Counsel's refusal to bring enforcement proceedings against non-filers, we have this huge expansion of people of committees that are not complying with the finance disclosure laws by not filing.

Another aspect was added to the statute in 2014. And I will freely admit that prior to 2014 we would say that you could file a piece of toilet paper and that would put you in compliance that you would no longer be on the non-filer list. Why? Because year after year our budget was being cut and the only place that we could effectively absorb those budget cuts was in the one area that was not statutorily mandated which was auditing the campaign finance disclosure filings. So this was a major issue and with the support of the good government groups, they added to the statute a requirement that every report that was filed be reviewed by Board of Election staff for compliance with the Campaign Finance Disclosure Laws. And, the appropriation for that activity was increased to provide adequate staff to perform that function. That function now operated under the supervision of our Counsels, does effectuate a review of every single disclosure statement that's been filed since June of 2014 and results in one of three

things that happens; if it's in compliance that's fine. If it's not in compliance they determine whether it's a matter of training that the campaign has to be advised on how they should proceed so that they don't repeat errors in the future. Or, if there's missing data or information, then it's a discrepancy and as the statute provides, they're given a notice to correct the discrepancy and there is a deadline in the statute for correcting the discrepancy. And if they don't correct the discrepancy, they're subject to a fine. Not a big fine but a fine. And that was the intention of the legislature was that not only would you get fined for not filing a campaign finance disclosure report, but there would be a fine if you did not correct a deficiently filed report. And both the legislature and the staff at the State Board of Elections assumed that uncorrected discrepancies and deficiencies would be subject to this hearing officer process that would generate fines for those who thumb their noses at the statute. As far as I know, only one proceeding has gone forward on the basis of not complying with a deficiency notice and even in that proceeding there were other issues so that out of all of the referrals for deficient filings that have occurred, again, there is no enforcement. Enforcement Counsel has decided not to issue parking tickets to people who thumb their noses at the Board for failure to correct deficiencies. Right now, the current status of deficiencies is 1,590 that were referred to Enforcement Counsel by the Compliance Unit at the Board of which 1,224 remain deficient and remain without any enforcement by the Enforcement Counsel. So these are two major categories where enforcement has absolutely stopped. It is beyond me why there has not been public outrage at the fact that this has happened. I joined with the Good Government Groups in 2014 complaining about the failure of the Board of Elections to review the sufficiency of Campaign Finance Disclosure reports and to urge the adoption of the legislation providing for penalties of not correcting deficiencies in the report. But, of course, they adopted the statute and on the compliance side those reports are being reviewed and processed and then referrals are made to Enforcement Counsel who, under the law, has the sole authority to proceed with enforcement and virtually nothing happens. It's beyond me why the Good Government Groups are not outraged at this. It's beyond me why these 5 and only 5 of the members of the Moreland Commission who call out for restraining the subpoena authority have not also joined in the criticism of the Enforcement Counsel for not dealing with deficiencies and non-filers. And I might point out that it's only 5 that a number of the members of the Moreland Commission declined to participate as have most of the Good Government Groups who have not objected to the regulations that we've proposed.

Enforcement Counsel does not believe in transparency. She believes that her work needs to be done behind closed doors in confidentiality and without any verifiability, without transparency, and without uniformity, without stating that the procedures are on how she determines what to go after. As far as I can tell, the only unifying theme in determining how the Chief Enforcement Counsel decides to prosecute a matter, and it really is just a handful of matters that are being prosecuted, is how much press attention they will ultimately generate. And people should realize how little is going on. So, the Enforcement Counsel...where's my subpoena stats...they're less than two...; the number of criminal referrals is 18, Brian am I correct?

Brian Quail: Yes.

So, since 2014 the Enforcement Counsel has come to the Commissioners as required by the statute for authority to refer cases for criminal prosecution and the Commissioners have granted every single one of those requests for referral to prosecution. I might add to our friends who are

at the Moreland Commission, that District Attorneys have declined to proceed and prosecute on several of those matters that have been referred by the Commissioners.

As to the subpoena authority, the statute is unambiguous that the subpoena authority of the Enforcement Counsel is subject to approval of the Commissioners. And this effort to make out like the Enforcement Counsel is a victim of the Commissioner's intrusion is completely oblivious to the statutory language. Indeed, the reason for spelling out these procedures is so that there is a uniform process. And with respect to the addition of a procedure for quashing the subpoenas, this has been called for by numerous of the members of the Election Law Bar who have been objecting to the abusive use of the subpoena authority given by the Commissioners to Enforcement Counsel. And I wish I could go into some of those abuses that have occurred on the part of Enforcement Counsel but, we are bound by the confidentiality requirements, so I cannot disclose the abuses committed by Enforcement Counsel that should be appropriately reviewed by the Commissioners. And, this idea of hiding behind confidentiality is complete anathema to Election Administration Enforcement where we should all see what's going on and we can see that it's above board and on a bipartisan or nonpartisan basis. And all I can say is that the abuses that I've seen tell me that this process is not working, it's completely broken, and the legislature needs to address the process.

Chief Enforcement Counsel constantly refers to the work "independent". The word independent does not appear anywhere in the statute. The Moreland Commission recommended an Independent Enforcement Counsel and that idea was rejected when the Governor and the legislature enacted the 2014 law. Instead, they worked on a compromise where the Enforcement Counsel would have exclusive jurisdiction to proceed with enforcement and Enforcement Counsel would break the ties of the Commissioners with respect to subpoenas and with respect to criminal referrals. But subpoenas and criminal referrals remain within the jurisdiction of the Commissioners to approve and supervise. Furthermore, the statute explicitly provides that it's the Commissioners that make the regulations that govern the Enforcement Unit and the application of the Enforcement Law.

So, I think it's pretty clear that I'm fed up with the current process of the Enforcement Unit. I call upon people in the Good Government groups and who care about the uniform transparent enforcement of Election Administration to look at the numbers, to look at the numbers of non-filers and to look at how Enforcement Counsel has handled those non-filers. And I think it's a reasonable question to ask Enforcement Counsel why you haven't gone after the many thousands of committees that remain noncompliant with their disclosure obligations? And that it's not an acceptable answer for Enforcement Counsel to say, "That's confidential and that invades my discretion as to how I should proceed to carry out my job." The legislature mandated that the Board review every filing for deficiencies. They funded it. We hired people in the Compliance Unit to make those reviews and we referred those deficiencies to Enforcement Counsel and all but one of those referrals have been ignored for formal enforcement. And people should ask, is that acceptable? And again, they should be asking Enforcement Counsel, how do you decide which one that you're going to enforce while ignoring the other 1500 and it's not an acceptable answer to say, "That's confidential, that's within my discretion."

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So, the metrics matter. The Enforcement Counsel restates her current policy that she will not commence a lawsuit for each missed report as was the practice before 2014. But the Moreland Commission did criticize the Board for undifferentiated treatment of non-filers and opined that obtaining judgment against every non-filer was not a prudent use of resources but to the contrary, the Moreland Commission said that they would not have envisioned that enforcement for non-filing would be so curtailed. They said that improved campaign finance laws will do little good unless these laws are promptly vigorously and impartially administered and enforced. Indeed the better the campaign finance law the more important its effective enforcement. Contribution limits and disclosure requirements are meaningless unless candidates, parties, political committees and donors are actually required to abide by the limits and to make the full disclosures required by law in a timely fashion. Again, they say, it will do little good unless these laws are promptly, vigorously, and impartially administered. Well how do we know that they're impartially administered when Enforcement Counsel refuses to make any disclosure about the metrics of what she's doing? And we certainly know that they're not being promptly and vigorously enforced when there are thousands of outstanding non-filers, there are thousands of outstanding deficient filers, and there are only a handful of proceedings to actually bring about the enforcement? I'll leave it to my fellow Commissioners to address the specifics of the rules. I thank you all for your attention and patience while I got that off my chest.

Peter Kosinski: I just have a couple of comments I want to make. The Enforcement Counsel characterizes what we're trying to do here today is outside of our jurisdiction and I just want to speak specifically to the subpoena authority. The subpoena authority is still contained with this Board. The statute did not change that authority. What it did was it made reference to Enforcement Counsel being extended the ability to pursue investigations through subpoena if the subpoena is approved by this Board. But the power to issue the subpoena was retained by this Board under the statute that was enacted in 2014. So the characterization that what we're trying to do in the context of the subpoenas I think is mischaracterizing what the statute actually provides. It provides that this Board must be consulted, must vote on each subpoena that the Enforcement Counsel wishes to serve. Trying to characterize that as interference into an investigation I think also mischaracterizes it. That's one discrete part of an investigation, a subpoena but it is not the full investigation. So certainly the Enforcement Counsel has the authority to investigate herself through her Division, but it's clear that the statute and the legislature anticipated that subpoenas would come through this Board. So, this regulation is really just an attempt by this Board to flesh out how those subpoenas should be pursued, and what information this Board needs in order to approve a subpoena. A subpoena is a very powerful tool that an investigator can utilize. It should be utilized cautiously. It should be utilized only when necessary. But, I think it's unfair to have this Board to be expected to vote on issuing subpoenas without adequate information. What this regulation seeks to do is make sure this Board has the information that we need in order to make a reasoned decision regarding the request for a subpoena. I think also the whole scheme that was created here by the legislature was somewhat of a check and balance, which I think is the bedrock of our government which is, there is no one person with unfettered ability to pursue certain matters. The legislature and the Governor decided in the legislation that in order for a subpoena to be issued, in order for a referral of an investigation to be made to a District Attorney or to the Attorney General, that there be a check and balance. That check and balance being that the Enforcement Counsel must come to this Board for our approval. I think that's a very reasoned way for the State to proceed.

It's the way that the legislation anticipates it to proceed and to object that this Board get the information it needs in order to make a reasoned decision, I don't think is warranted.

The issue about the timeframes that you raised, that the 6-month timeframe is too short, I think that particular aspect is reflected in the entire scheme of the Election Law. We're under time constraints in many areas in this business whether it's filing petitions or whatever is going on in the elections arena, time is of the essence. Why? Because the voters have a right to know who they're voting for and what they're voting on. The statute already has very strict timeframes for this Board to act. For example, if the Enforcement Counsel brings to us a request for a subpoena, we have 20 days in which to act. If we don't act within that timeframe, the Enforcement Counsel has the right to issue the subpoena without our approval. But I think the legislature recognized that in this arena time is of the essence. We have to act within 20 days for a subpoena; we have to act within 30 days for a request of a referral. Those timeframes are critical to making sure that any matter that relates to an election is handled in a timely manner. This requirement under the regulation that we have a 6-month window for a subpoena to be served and acted upon by the Enforcement Counsel is merely a furtherance of that, a recognition that in the elections arena time is of the essence. The public has a right to know. These investigations should not be strung out for long periods of time. If an investigation is undertaken, there should be a timely commencement of it and a timely wrapping up of it, so the public knows what the resolution of that particular investigation was. So, I think to again assert the 6-month window is unreasonable. I think it's very reasonable in this timeframe. I would also point out that the regulation allows for discretion. That if there's a case made that 6 months is too short, and a longer period of time is needed, that argument can be made to this Board and we can extend that time period. But I think the timeframes are just something that in the elections area we all live under and for good reason. The public has a right to know and they need to know in a timely fashion.

The other issue about the quashing of a subpoena, Enforcement Counsel made the argument that this new regulation allows a subject of a subpoena to come back to this Board to seek a quashing of it is not warranted. I think it's belied by the CPLR which, in fact, the Enforcement Counsel points to in her arguments that a party has a right to go to court to quash a subpoena but I would note that in the CPLR it specifically says that if the subpoena is not returnable in a court, a request to withdraw or modify the subpoena shall first be made to the person who issued it and a motion to quash fixed conditions or modify may thereafter be made at a supreme court. So this regulation that we have is merely carrying out what's anticipated by the CPLR in this state anyways which is, if an administrative agency issues a subpoena that is returnable to the administrative agency that the first course of action for someone who wishes to quash that is to come back to the administrative agency. So this is nothing unique to this agency that somehow, we just made this up to apply only to elections areas. This is something the CPLR provides and we're merely enacting it as part of our procedure here at the State Board of Elections as well.

The piece that the Enforcement Counsel objects to about the reporting, and I think that the main complaint there seems to be that somehow this will divulge information that would be confidential, that might compromise an investigation. I fail to see how any of that could happen. Let me just give you an example of the types of reporting we're looking for; total number of complaints received, total number still under active investigation, total number closed, total

number of hearing officer proceedings initiated, total number of settlements entered, total number of special proceedings commenced. I fail to see how just providing numbers to this agency and to the public frankly of the totality of what's going on in the enforcement area, total number of complaints received, total number of special proceedings brought would have any bearing on the confidentiality of those particular matters. We're merely asking that numbers be provided so there be some understanding in the public about how large these numbers are, how small they are, what the numbers are so people have an idea of what's going on at least from a metrics standpoint as it relates to the Enforcement Counsel's Division. But I think it's totally misplaced that you would assert that that's somehow going to compromise confidentiality of any of these proceedings. So I don't see where there's any merit to that point that you're making in your statement here today. I think these are very warranted, I think they're overdue. I think what's happened is that this office, this division was created back in 2014. We've had almost 4 years now of experience with this. It's now our understanding that we should be making some final decisions on exactly how we interact with that Division. These regulations are merely that after 4 years of experience, these regulations reflect what this Board feels is the best way to proceed when we are interacting with the Enforcement Counsel's Office relating to subpoenas and how to issue them. I think that's a very reasonable way to proceed. It's understandable after our 4 years of experience that this is our best way to proceed and we think it definitely will help us make better decisions as it relates to the subpoenas and our obligation to issue them when warranted. So those are my comments. If any other Commissioner wishes to.

Gregory Peterson: Yes, I'd like to address a few things; I found the opposition to our regulations frankly an exercise in hyperbole and mendacity. It's so distorted and I think that part of the problem too has been in the press it's been distorted up to this point as well and as already been said, 3-104 has always given us the right from day 1 to review the subpoena power once its presented to us. If its presented to us we will vote on it. If it's a 2/2 tie, the power goes to the Enforcement Counsel to be the tiebreaker and that's important. As a member of this Board each one of us has been appointed. I'm proud to be a part of this Board because it's bipartisan. The first bipartisan organization I think I've ever belonged to. Just like the Commissioner of Motor Vehicles is appointed, he is not a civil service position and the Chief Enforcement Counsel, last time I looked is not a civil service position either and it's an appointed one. Appointed by who? A political person, namely the Governor. So it's also an appointed position and it's also political in whatever way you want to cut that. It has to go both ways. This whole thing this whole brouhaha has come up because of what? Because we try to define certain things of certain metrics that are responsible to full disclosure. Responsible as far as we are concerned, exercise our duties and Commissioners and get out from behind the scenes and expose things that are appropriate. When its confidential fine, it remains confidential. But we can't do our jobs if we don't know. And one of the things has been in fact a report that was prepared for us and I'll read just a small portion of it which I thought was really right on and by the way that has to do also with the Moreland Commission. The enforcement proceeding metrics by a proposed regulation the Board is simply requiring the Chief Enforcement Counsel to identify, as the Commissioner has just said, the number of proceedings commenced in each quarter in 3 broad categories. The Chief Enforcement Counsel readily possesses this information they can easily provide it. The Chief Enforcement Counsel's resistance to any required metrics disclosure suggest an inexplicable aversion to providing basic information. In a table entitled "*Company's Analysis*", the Moreland Commission report identified 7 annual metrics related to complaints; they include

among other things the number of complaints, number closed, number still open, investigations and referrals to DA's, etc. And it goes on and on. It is incongruous that the Chief Enforcement Counsel sites the Moreland Commissioner report in support of her practices yet vigorously opposes the Chief Enforcement Counsel simply reporting many of the same types of routine metrics evaluated and made public by the said Moreland Commission. That to me is mind-boggling. You know what, this is democratic society, it's as simple as that. We have checks and balances that have already been mentioned, and that's an important part of any democracy going forward. We do not have a star chamber proceeding. We do not have things being decided or should not have things being decided behind closed doors. Even a grand jury proceeding when you come right down to it, a grand jury proceeding can be reviewed by a judge. Take a look at this thing and say, wait and he either bounces it or accepts it. So, there are a lot of ways, again checks and balances that work. I think here we're talking about checks and balances which have gone awry. We have none. So what are we doing here? Are we trying to pull the teeth of the Chief Enforcement Officer? Absolutely not, but we are trying to get in some metrics, so we understand, and the public will eventually understand what's going on, how we evaluate things, why we prosecute certain things and don't prosecute others, and then in total embarrassment of having over 2,074 cases which people haven't filed. I ran for elected office, I know I had to file and I did. But 2,000 and (makes rushing air noise) it goes up in the air? It's embarrassing. And who do people look for? They don't look at the Chief Enforcement Officer; no they look at the 4 of us and say, "You guys aren't doing your job." Well you know what, I'm tired of it too and I'm frustrated just as the Commissioner said before. And frankly I think that this is something that's long overdue at this juncture, we should pass this today and start living under rules where we can actually have transparency which we could actually have accountability. And I think it's very, very important for us moving forward in a manner which is bipartisan and just.

Andy Spano: I always wait for the three of them to finish. It gives me a legal perspective which I don't have and whenever an issue like this comes up I tend to look at it very carefully in terms of what they say and what the Counsel's say here when there's a legal issue involved. So far, everything sounds logical but I'm not sure. However I want to point some things out to you. The three statements made here by the Board, one statement made by the Counsel, none of these 3 statements were political, the only political statement was made by the Counsel, right there (pointing at Ms. Sugarman). The only political statement accusing all of us of making political decisions when we look at things. Now I want to ask you guys right, did you ever consider running for judge? If you did right, you could have been nominated this year, you could have been on a ballot in November and if you want you could have been in office January 1<sup>st</sup>.

Gregory Peterson: We'd have to file then.

Andy Spano: No, but beyond that she'd have to talk to you and you'd be erudite enough to hear what she had to say. Right now, you're not, but in two months if you had been elected you could be erudite enough to hear what she's saying. I point that out. How did she get her job? She was appointed by the Governor, by the legislature. How'd we get our jobs? We were appointed by the Governor and the legislature, in fact when the second floor called me, I didn't pursue this job. They said, "How would you like to be Commissioner of Elections?" And I said, "No way Jose."

Gregory Peterson: That was smart.

Andy Spano: I said, "They think they're all guys that wallow away in Democratic Party or Republican Party." And I said, "I'm not doing that unless I can do whatever I want." They said, "Go ahead do whatever you want we just want someone there that has your background" and so on and that's it. No one's ever called me and said, do this and do that, vote this way. I do what I want. And I'm retired, I have a lot of money and I don't need this job. Now a couple of things bother me. This thing with the compliance group, from just a personal perspective, I watch them, what'd they get 10,000, 12,000 last filing. You guys are always so exact; you're good with numbers, whatever. They've got to go through all of these filings, they've got to look at everything and then do all the things that he talked about. And then when they're all finished trying to get this one to comply, trying to get training for this one, trying to do that for that one, this whole group, turns it over and it goes to the Enforcement Counsel, anyone who hasn't filed or done anything. And it disappears. You talk about an investment in energy, and resources, give me a break. Now I hate to use Rudy Giuliani, but he used it, we use Republicans, you use Democrats, when he was in office he started working on the little things, the squeegee guys, right. Things like that because he knew, and his police knew that getting after those little things and making an example of that would have more effect on crime in general, and it did. And you see what's happening here. What's happening here is because we're not paying attention to the little things, we've got these numbers going up. Those are metrics that you can look at. That's what this is all about. Now, I, having said all that, having said all that, I have a problem. I have a problem with the way tomorrow's newspapers are going to play this. This is man bites dog or dog bites man. Her's is a much more powerful statement than we have because it's much more politically oriented and directed at us. We have an Attorney General that comes out right after we say we want some feedback on it; his feedback was go public and say, whatever however it was said that day. And of course, he was gone the next week but that's beside the point. We had an editorial in one of the newspapers, I went to dinner the other day with someone who you know hangs around politics and said, "What are you doing up there at the Board of Elections?" And I had to explain this all over again. Now we have never had in this group on this issue dialogue like we just had. She made a presentation, we made our presentation, it's out there, it's public we're on TV somewhere and a lot of other people are seeing it. I just think it's a mistake for doing it today. That's my question for those reasons. We're in the middle of "funny" season. Why haven't we heard from the Bar Associations? Why haven't we heard from the Good Government groups? Where are they in this issue? They heard what you said today, they heard what she said today, they can see the metrics, they can do some research, that would help them and why don't they let us know what's happening? Why don't they let us know where their heads are, so we know what's going on? Look, we're always in a lose-lose situation or maybe we win but probably will lose situation. We're never in a win-win situation and this is one of those times of a lose-lose situation.

Peter Kosinski: Well let me just say to that Commissioner and maybe somebody can help, when were these regulations put out for public comment?

Nick Cartagena: May 2<sup>nd</sup>.

Peter Kosinski: May 2<sup>nd</sup>. So it's been since May 2<sup>nd</sup> that these have been publish for public comment, that's May, that's June, that's July it's now August 8<sup>th</sup>, it's been 3 ½ months, 3 months

plus where people have had in my opinion a more than adequate opportunity to respond to the regulations.

Andy Spano: There were some that got angry.

Peter Kosinski: Well we do have a few comments as you mentioned.

Andy Spano: I picked this one out I thought this was great. This is someone, I'm not going to tell you what the issue was, but this person sent complaints into the Board of Elections okay and, this is typical by the way.

Douglas Kellner: Read it.

Andy Spano: Yeah, I'm going to read it. For the past year our group has urged the Board of Elections to investigate a blatant disregard of Campaign Finance Laws by so and so. Then there's a whole explanation and then it says, the Board has ignored at least two complaints about this matter going over the years. The integrity of our elections is at stake. The Enforcement Counsel needs to be strengthened not weakened. Does Election Law matter anymore? They're blaming us for inaction.

Douglas Kellner: And you know Commissioner I had a whole section to go in to the complaint process and I dropped it because my speech was long enough as it was. But under the old process which I was a big critic of the old process and Bill McCann still probably has hard feelings for me over some of the things I did when he was in charge of investigating complaints. But in retrospect, the process that we had in those 9 years was relatively transparent. It took forever to get McCann to do anything but, in the end, there was a report, we know what the issue was and what we started to do was triaging the complaints so that publicly people understood why their complaints weren't getting any attention. And from what I understand the incumbent Counsel gets about the same rate of complaints, roughly 300 a year and her staff was increased, the budget was increased. We had basically one quarter of a person to work on processing complaints and now the staff was increased by a factor of 4 or 5 in order to fund the new Enforcement Unit. But what I was getting to was Enforcement Counsel does not report on any of these complaints to the Commissioners. I think she's right that she's not required to report other than when she closes the file, but she doesn't even report when she closes the file. And I believe it was the legislature's intent that she would follow the procedure that the Board had already been using for closing files which would be to at least summarize what the complaint was and what the ruling was. And what we've lost in this process is that out of these 300 complaints a year, some of them would result in investigations or referrals but many of them resulted in formal admonitions where we set policy and where the Election Bar anyway understood that we set policy and several of them resulted in more formal opinions by the Board of Elections because we were alerted to the nature of the problem. And that has shut down because Enforcement Counsel refuses to disclose any of the complaints that are referred to her unless there's a press release and that she's going to make on it and does not report to us how these complaints are responded to and doesn't give us or the Bar the benefit of making policy. I'm sorry I did that speech again.

Andy Spano: We just had an example of Broadcaster's Group coming in and getting involved in a discussion and helping us with regulations and we have had no process like that.

Peter Kosinski: Well we have though...

Douglas Kellner: Yeah, I have too.

Peter Kosinski: ...the Broadcaster's I believe have given their input, not at the meeting but prior to the meeting and I believe they've given written as well as verbal comments to us that we can incorporate, and I think that's great. In this case, the communities had the same opportunity. These regulations were put out in May, everybody knew about it, it was advertised. If you had a comment you were open to make it. You've had 3+ months to make it, a few people have as the Enforcement Counsel mentioned, but to me to extend the period offers nothing. I don't see where there's any advantage to just extending it out. I agree we've had a good discussion today. I agree with you that we don't often get our point of view out to the public which we need to do. I'm hoping today we've done that.

Andy Spano: We haven't on this issue.

Peter Kosinski: Well I think today we've done that. This is our opportunity to.

Andy Spano: We're in a room in Albany.

Peter Kosinski: Nonetheless, there is some press here and I hope they report it. I hope they report both sides of the equation in their reporting and that's fine. I will accept that, but I think we've had a chance to articulate our position. I certainly feel I have regarding this particular matter. I don't see any benefit to waiting. I think this has been hanging for a long time already. As I said, this experience that we've had has been almost four years now in the making where we're worked with this Division for four years and now I think is our opportunity to put into regulations some formal processes that we agree are necessary to make this work better. I don't see any advantage to waiting other than just delaying, for no particular reason.

Andy Spano: You know I can use your same argument, we've had this going on for so long.

Peter Kosinski: Fair enough.

Andy Spano: What's another two months or one month or whatever we decide.

Peter Kosinski: Fair enough, I understand but I just don't see the advantage to it. So in my view I think we've had that chance, but I do agree that it is important to get our position out. We've prepared I believe some formal response to this matter that I think will be public as well, but I think we've articulated most of that here today and...

Douglas Kellner: I'm ready to vote on this.

Peter Kosinski: I am too.

Douglas Kellner: And I want to say that I have spent a considerable amount of time discussing this with members of the Election Bar. I discussed it at a meeting of the Election Law Committee of the City Bar Association and I have discussed this with numerous representatives from Good Government groups and I am very comfortable in these regs.

Peter Kosinski: Sometimes let me just say this I think there's some misunderstandings about what the law provides and I'm hoping we can clear, you know we cleared some of those up. Because I read articles that characterize this as somehow, we're usurping power, we're going outside the statute, we're taking the power unto ourselves and away from the Enforcement Counsel which is totally contrary to what the statute provides. We are merely taking the statutory provisions and we're fleshing them out and we're taking what the statute provides and giving some meat to the bones about how the subpoena process is to work. But it's clear that the statute says, we have to approve the subpoenas.

Douglas Kellner: Right.

Peter Kosinski: And I think it's terribly unfair to say to us, you should approve subpoenas, but I can't tell you all the information about that subpoena or what that subpoena is or why I need that subpoena. I think that's terribly unfair to this Board that I'm supposed to vote on a subpoena a very powerful legal tool without the necessary information.

Douglas Kellner: And never intended by the legislature just as they require that any criminal referrals be made through us. And the idea that this is an obstructive process is misplaced as I've said we've approved every single criminal referral request that's been made in the 4 years and as I said, I'm aware of abuses of the subpoena process but unfortunately the confidentiality rules prevent me from disclosing them. So, are we ready?

Gregory Peterson: You're ready to move the adoption?

Douglas Kellner: So, I'll move the adoption. Those in favor say "Aye".

(Chorus of ayes: Kellner, Kosinski and Peterson in the affirmative 3-1). Alright so Commissioner Spano has voted no, the other three Commissioners have approved. So the regulations are adopted. Counsel will proceed to do the formal filing. I think that's the last item on our agenda but Commissioner Kosinski indicated...do you still want to have an Executive Session?

Peter Kosinski: No, I think we're okay

Douglas Kellner: Do we have a date in September?

Bob Brehm: We were looking for the 7th or 11<sup>th</sup>.

Peter Kosinski: Didn't we already make a September date?

Andy Spano: Yeah, we did. We did.

Todd Valentine: We were focused on the 11<sup>th</sup>.

Bob Brehm: The 11<sup>th</sup> worked originally when we asked; the 7<sup>th</sup> or the 11<sup>th</sup> I think was working.

Peter Kosinski: So...is the 11<sup>th</sup> acceptable to everybody?

Douglas Kellner: Yes.

Andy Spano: Yes.

Gregory Peterson: Yes.

Peter Kosinski: Yes, so we will do the 11<sup>th</sup>. Okay.

Bob Brehm: And our expectation is we will clear up whatever independent nominating petitions related to federal office because we have to certify the federal candidates on September 13<sup>th</sup>. If there's any statements we can get in there. we will try that too.

Peter Kosinski: Okay, so are we adjourned?

END.