

New York State Board of Elections  
Board of Commissioners Meeting  
11/01/2013

**Douglas Kellner:** Good afternoon. I'm sorry about the delay in getting started. My name is Douglas Kellner, Co-Chairman. Ask the other Commissioners to introduce themselves.

**Evelyn Aquila:** Evelyn Aquila

**Jim Walsh:** Jim Walsh

**Gregory Peterson:** Gregory Peterson

**Douglas Kellner:** And would the staff introduce themselves please?

**Bob Brehm:** Bob Brehm

**Bill McCann:** Bill McCann

**Anna Svizzero:** Anna Svizzero

**Joe Burns:** Joe Burns

**Tom Connolly:** Tom Connolly

**Dave Loomis:** Dave Loomis

**John Conklin:** John Conklin

**Paul Collins:** Paul Collins

**Kimberly Galvin:** Kimberly Galvin

**Todd Valentine:** Todd Valentine

**Douglas Kellner:** And

**Bob Warren:** Bob Warren Election Operations.

**Douglas Kellner:** And would our guests introduce themselves please?

**Jimmy Vielkind:** Sure, Jimmy Vielkind, Capital New York.

**Jessica Alaimo:** Jessica Alaimo also Capital New York

**Douglas Kellner:** Thank you. Alright the first item of business is approval of the minutes of September 30, 2013, is there a motion?

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**Jim Walsh:** So moved

**Douglas Kellner:** Those in favor say aye

Chorus of ayes

**Douglas Kellner:** Opposed? The minutes are adopted.

Next are the unit updates. We'll start with the Co-Executive Directors Robert Brehm and Todd Valentine.

**Robert Brehm:** We have a number of items that took place since our last meeting, specifically related the agencies budget was submitted. The deadline to get that submitted was the 16<sup>th</sup> of October with regard to the budget. The budget call letter was a zero growth budget based on our last years' approved budget which was submitted with a budget message. We continue to work with the Deputy Secretary. Todd and I had a conversation with him on Tuesday of this week as to how best to communicate with the Division of Budget of our issues related to insufficient funds. And we continue to have those discussions as to how to complete that process because in the past we've had a budget side letter and this year they've indicated that they aren't receiving budget side letters, but we're working on that continually.

**Evelyn Aquila:** Now I'm concerned about next year, Presidential election.

**Robert Brehm:** Well I think it's in order to identify that which we need in order to complete our responsibilities and what are the differences in a state year that cause greater expenses?

Also we have a number of other issues that I think are important to certainly Bill and Todd and I testified on Monday before the Moreland Commission and I know we'll talk a little bit more about that later in the meeting, but we put our copy of the budget and our testimony just so that to make sure you had a copy in and review that.

There was some bit of good financial news since our meeting. We have been working to get the publications in the Newspapers that are required by statute for the legal notices and the Division of Budget had worked out that the State Office of General Service is going to pay for it. So, we had a conference call with the parties on both our end and their end to make sure that the paperwork was executed. It's important for us because it's an item that was approximately \$323,000 because there were six based of course on how many words, and the newspapers said they have to be published throughout every county in the state. So that was good news that that was resolved and I've started to see those, we did our part which was get the notices out to the groups to get that done. But that was good news.

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We continue to work with our host of agency OGS to get a better analysis of the fiscal picture. You know when they went into the SFS, State Financial System conversion the types of quarterly reports that we used to receive back when Pat Tracy did them in-house were when OGS hosted them for us before they went to this new system. We're much more on time and they are much more reliable as to year-to-date expenditures, quarter-to-date expenditures, and a projection to the end of the fiscal year. That has been a little bit more difficult to get out of the current system. So, we are working with our contact there, his name is Dan Sakes, he's been working on it. We had a two hour meeting with him to go over the details to better understand, he better understand our needs and our requirements, and we did get a good picture. Hopefully that will be ongoing. They're still working in getting a number what the outstanding balance in the Help America Vote Act funds that are not yet encumbered for some specific project. That's important to us for a number of reasons; one that we get that number agreed to, but we have a number of outstanding issues that are in the planning stage that were originally paid for with federal and Help America Vote Act dollars and we always knew at some point the ongoing responsibility would turn to a state responsibility. So we have to know how much is left and at what point is the unmet need. So, we know that he has additional meetings planned with Mary Zaremba and the team that we worked with over all those years when we originally did it later in the month and they were getting some additional help to do that. So we're hopeful that our later in November meeting with him, that we will be getting the final numbers, that are reliable. But it's been a risk to us. We've been working on it quite a bit and it's been a worry. So hopefully we're making progress in that regard.

And in light of that, just yesterday we had a meeting, or two days ago we had a meeting with the General Government Cluster Group and that's the State Information Technology Service process that we are now engaged in this year for the identification of the important IT related services. And the two that are on the list in addition to, the two highest priorities on that list are the Campaign Finance Candidate Management System and also the Refresh and NYSVoter because they're got significant. One is over 2 million; one is over 4 million dollars. So they're on the list as far as a multiyear project to start the review and the approvals basically replacing the annual technology plan process that we used to use and budget was involved in that conversation. So I thought it was a very good conversation, answered questions. They better understood what our out year needs are, when the deadlines are, how real the deadlines are. The important prospect is where's the money going to come from? And our deadlines are getting close. So that was an important.

And then there's some other information in your packets with regard to those projects just to bring you up to speed on what some of the issues are and I know Dave will cover those in his report. But I think those are some of the highlights of that, the last month and Todd if you have any others that I missed?

**Todd Valentine:** No those are the highlights and just a reminder that with all that's going on, there's an election on Tuesday in case you had missed it. Because Anna will

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probably amplify some of this and we continue to deal with always issues throughout the state that just come up with regards to that.

**Douglas Kellner:** I'll ask Kim Galvin to give the legal report.

**Kim Galvin:** Well basically we've just been doing the routine business of the units. We've been involved in many of the issues that have already been talked about by the Co-Executive Directors. I think it would be good if Paul just brief for you his win in the ballot proposition case. That was the highlight of our time here since the last time.

**Paul Collins:** The interesting thing about that is that the court upheld the interpretation of the Board that indeed the Board had the right to actually dictate what the language shall be and was not merely a scrivener for the Attorney General and that's what your position was and that was sustained by the court and then the court dismissed the case by reason of various procedural deficits in the proceedings. But your ability to take and actually dictate the words of the proposition in the question was sustained by the court. You don't have to just accept verbatim what the Attorney General's Office might have sent over.

**Douglas Kellner:** Well thank you Paul and I know you worked very hard on the litigation and I thought you did an excellent job.

**Evelyn Aquila:** Yeah I thank you too.

**Paul Collins:** And there's no appeal.

**Evelyn Aquila:** That's very good.

**Douglas Kellner:** Anna Svizzero Election Operations?

**Anna Svizzero:** Thank you Commissioners. Pointing to taking Todd's lead, Tuesday is Election Day. We have been providing support to counties answering questions. For some reason pole watchers is a very hot topic this year. It seems like every election comes with its own little niche and that's this years so far. Just to brief you all, the units conducted, we conducted a web conference to share training for the Dominion Central Count System. A number of Boards have purchased that system but had never counted their absentee ballots centrally before they counted them by hand. So this was a new process for them and we, Bob and his team put a presentation together and those Boards participated by web so it was an excellent opportunity to hear from them and for them to learn some of the handier tips that they find will come in handy.

We have, in addition to updating our guide on How to Run a Board of Elections which we shared with you at the last meeting, we've now updated the List Maintenance Guide which directs County Boards in the processing of NCOA information that we provide to them once a year, the monthly notifications of death, felonies, and that kind of

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information, changes of address, etc. So we've updated that a bit. There is a lot of new postal information that has to go into that and we sent that on to the committee. There are four County Board Commissioners that are working with us on reviewing the updates and making suggestions etc. So we've sent that on to them for their review as well.

Our unit staff, Bob and a few members from that team are working with the IT Department to effectuate the requirements of posting election night results, not only on the County Board end to post locally but also our receipt of election results on election night, those unofficial results.

We are continuing to visit Boards around the state. We're doing the physical asset audits that we're required to do for the items that were purchased with federal dollars. We're monitoring scanner use. We'll be doing that after the general election obviously, because that's the information we're hoping to capture. We are also collecting procedures and forms and documents that Boards have created that we'll be reviewing over the next number of months.

We will be piloting our new Asset Management System, knock on wood. Five years into the program, we're hoping that we actually get a product this time, but we'll be piloting it in Saratoga County in mid November and if that pilot is successful, phase 2 of the pilot will be in Westchester County and then we're still hoping for a rollout later this year and that Asset Management will not only be a tool for local Boards to manage their equipment, everything from scanners and ballot marking devices to whatever laptops or whatever else they may have purchased to implement how but also signage that they have, the fluorescent traffic cones to help segregate parking spots for election day when they visit poll sites etc. so they can use that to manage their own operations and it will also record maintenance pre-election testing, post election testing and any anomalies that arise will be posted within that system so that we can see them at a glance and better determine which Boards need on-site assistance, which Boards need a phone call, which Boards might benefit from a broader web conference or a presentation personally at one of the upcoming conferences.

We certified the general election ballot to the County Boards. That was done a couple of days early this year. We had to amend that due to substitutions that were made and also the results of a court case in one of the judicial districts that dealt with a nomination and a subsequent substitution. So all those amendments were provided to the Boards. We'll be sharing with them today the list of judges that are assigned for Election Day duties and we'll do that when we get back to our unit after today's meetings.

We were the last unit in the agency, deliberately the last unit in the agency to migrate to new computers and software updates. Some are managing that transition better than others but IT has been very hands on in making sure that we can still do everything we used to do and we can do even more moving forward. So, I'm glad that that worked itself out without much of an interruption in anything we had planned.

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Other than the routine response to Boards concerning ballots and voters and issues related to the upcoming election, that is it for Election Operations. Joe do you have anything?

**Douglas Kellner:** What about your oversight with the New York City Board?

**Anna Svizzero:** That was very productive I am happy to say. We spent a number of hours on the phone reviewing some of the new forms they have developed. They haven't quite grasped the complete handle on a consolidated canvass sheet, but they've made a lot of changes. They'll be implementing a number of those at this election. We're also working with them on a more responsive ballot reconciliation process. They have incorporated that into the canvass sheet and it really is a bit misplaced there. But they understand the issues. We've been dealing with the Election Day operations team there and the management team. They've adopted, as I said, a number of the recommendations that we've made. Some they can't adopt because it's too late to roll this out to the inspectors and have them really understand those changes in time for the general election, but I'll call it a committee at the City Board was committed to making those changes in the future in time for the June primary. We've made some tentative arrangements to spend some time together face to face here when they come up to the conference in January to review those forms and discuss whatever issues might be on the table then. So it's been very positive, very reaffirming. I think there's a new agenda there, if you will, and there is a lot that they can take advantage of in the City that is happening elsewhere in the state and there seems to be a more of a willingness to do that now than there was before. So I'm looking forward to a lot of positive progress there.

**Douglas Kellner:** Good thank you. Anyone else? Alright John Conklin

**John Conklin:** Thank you Commissioner. Just a few of the highlights of our written report. We've been on the news quite a bit lately not just the Moreland Commission but a lot of press inquiries about local campaign finance filings and the statewide ballot propositions which Tom and I have been handling. As Bob mentioned, we placed the order for the legal notices in all the newspapers around the state with the 6 ballot propositions this year that cost us \$223,000. We've been working with IT on the development of election night reporting system which I'll leave to Dave in his report to discuss. With regard to NVRA we've completed a schedule to finish our Board reviews by the end of the year for the remaining Boards we haven't visited yet.

**Bob Brehm:** Can I make one correction. You said \$223

**John Conklin:** Oh did I, I'm sorry \$323, sorry that's, so \$323,000. Sorry.

**Douglas Kellner:** And I guess I remind everyone that we, that the Board of Elections has been asking the legislature over and over again to repeal that publication requirement now that we're on the Internet age and most people would get that information off the Internet rather than looking at the newspaper which would, is not a very effective means of communicating that.

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Alright. Anything else for John? Then we'll go to Bill McCann, Campaign Finance

**Bill McCann:** Thank you Commissioner. Just a couple of highlights. For October we have registered 317 new committees. We have over 3100 year to date. We've terminated over 1600 committees to date. We currently have over 14,000 active and registered filers which is a record. I think that number continues to go up on a monthly basis. We had our call center process over 1500 calls with nearly 13,000 to date and that's in addition to their work on the subpoenas and FOIL requests and other items.

Our EOT Unit is developing a new seminar presentation, Winding Down Your Campaign, try to be proactive on assisting filers when they come to an end of a campaign to know what steps they might need to culminate their obligations so they don't get caught up in any post election failure to file and things like that. So, they're working on that now.

We're also working continuously with ITU on our ongoing projects. We're working on a new software package on our scanning so that we can link documents to a particular filer in our system so we can readily access the data as we're looking at a particular filer. In July we did bring to judgment, or we sued 381 individuals for failure to file and 179 were brought to judgment while 149 of those full and 30 partial. This was our first order to show cause with our processor. We have new process servers. It took a little time to get that through the procurement process but we're actually have a follow up meeting or a conference call with them next Wednesday to talk about any issues that might have come up on either side to work out an procedure or processes so that going forward we know that the process will work appropriately.

And then, finally, the federal courts have been busy. Last week the second circuit court of appeals reversed a decision of the lower court in mandating that a preliminary injunction be imposed relative to a particular independent spending committee that was as applied and that has a legal implication and also has some relationship to another matter that we had which is the Hispanic Leadership Fund which is in the northern district and there has been some interactions with the Attorney General's Office on those litigations and so I believe in Executive Session there will be some discussion as to the Board's posture on those legal matters.

**Douglas Kellner:** Okay anything else? Alright than last but not least Dave Loomis

**Dave Loomis:** Thank you Commissioner. In addition to my monthly report, I included in your packets overviews of the major projects that we're working on that we want to at least point out to your attention at this point. I just want to highlight in the Campaign Finance Redesign Project we have, we continue to work on that project as resources allow. We've met with, as Bob mentioned. I'm sorry. Do you need the handouts?

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The Candidate Management System we've, as Bob mentioned that with ITS the state Information Technology Services Office, Division of Budget, make sure everyone is clear on where our resource requirements are, what we need to complete the project. We are down one staff member right now that we're also continuing to work with the Division of Budget on to approve the waiver for that item. And this project will continue to push forward as resources allow.

The NYSVoter Refresh Project is a project that will be a 2 year project. It's required as all of our hardware and current software are in need of replacement for the main infrastructure of the system and we've continued to work with our current vendor and come up with plans and bring in a project manager to design this new system. And again, that's another item where we are working with budget and ITS to make sure that everyone is aware of what our needs for this project are.

I guess the election night reporting is a separate agenda item so I'll hold off on updating on that. I did want to also mention, which I failed to mention at the last Board meeting is Hope Hardwick from our unit won an IT Service award from New York State Government Technology. So I wanted to publicly congratulate her on that and a well deserved award.

**Douglas Kellner:** What did she do?

**Dave Loomis:** She was recognized by the New York State Government Technology Group as an IT outstanding service award. So they had an award ceremony at the hotel next door and was there, for her work with Campaign Finance Group on a 5 day letter project and automation of that system. Sorry.

So that's it unless you have another questions and like I said we can talk about the election night reporting later on.

**Douglas Kellner:** Alright and we'll move to our business agenda. The old business was the calendar for the 2014 Federal Primary and general election regulations that are affected by NVAC [sounds like] compliance. Bob or Todd do you want to just explain where we are right now?

**Bob Brehm:** We had proposed and talked about a calendar that only addresses the issue that Judge Sharp ordered us in 2012 which was he said until such time as New York establishes their legislation a change to election law and bring it into compliance with the Federal Move Act that he set it for Tuesday in June in an even year for federal primary and directed the Board to give him a calendar which we did in that year and he adopted a calendar and that we prepared a draft to go back to the judge for 2014 in the event that the legislature and the Governor don't come to an agreement as to any statutory change would be at least the basis of the June primary next year. So we have that in your packet as a calendar. We've discussed it. Certainly it would be something available for the judge to consider to implement at his discretion and certainly he has indicated that should

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the legislature come up with a different mechanism to comply with the law that he would consider that and then put that in place instead of our interim solution. So that's our [coughing]. It carries forward for those people who remember what we did in 2012, the same concepts of being done 54 days before the primary for the certification of federal level candidates and at the general election for federal level candidates and 53 at the local level and it adjusted the petition filing periods, etc. with regard to federal offices. What we do change in here are independent petitions. We learned in 2012 it was very tight for a congressional independent petition and we didn't really have that many but considering that it's a big jurisdiction, the signature requirements are high when we get the line by line challenges it's a substantial number of staff work that we have to do in order to review them, to be able to schedule a hearing and then have an effective hearing where you can go through, both parties have something to be said, and make that ruling within a very, very short time. It worked in 2012. But in light of some of the other litigations since then, where more people are doing independent positions because they may get in an extra line on the ballot, we recommend that we move for federal office the independent petition to start 2 weeks earlier and to end 2 weeks earlier. It doesn't change the state filing period for state and local level candidates, it only does the federal level because that's the group that we have to, we the state Board have to complete our work and the County Boards where they're filed at the county much earlier. The deadline is the Thursday after the primary. So that's a really short window when you're receiving documentation. Usually the third week of August and then the 6 days and the 3 days for objecting is 9 days, you're almost to September 1<sup>st</sup> in order to have the objection, in order to start that and that's only on a per committee basis, or per petition basis. So we recommend that that would be the substantive change from the concept that is in here other than in 2012 they hadn't completed redistricting so we had to start a little bit later than normal. We go back to a normal number of days to do petitioning and the normal number of signatures that are required for federal office because we had to shrink the number of days because they didn't have the district lines drawn, we shrunk the number of signature 2 years ago. We go back to the normal number of days and normal number of signatures for federal office. So, I think those are the substantive differences. And that is our recommendation.

**Todd Valentine:** Yeah in summary we applied the election laws as it is today and ultimately made a change necessary to meet the court's order.

**Douglas Kellner:** Good. We've had the draft of this calendar on our own agenda now for 2 months. So I think there's been plenty of opportunity to vet it. And so what I would propose is that the Commissioners ask council, Kim Galvin and Paul Collins to get a motion before Judge Sharp as soon as possible and...

**Paul Collins:** Commissioner I don't mean to interrupt you but we have a proposed order that I prepared, Todd made some changes. I believe this is probably done best by a letter application to the court rather than a formal motion.

**Douglas Kellner:** Oh really?

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**Paul Collins:** Yeah, yeah because that's how we've done it in the past and if we get the United States Attorney and the Attorney General to sign off, you'll have it much sooner than a formal motion. So I'm looking for authorization to make that application to Judge Sharp.

**Jim Walsh:** I'd like to make a comment. I did write this up for the minutes so we'll be exact. We're recommending this political calendar to comply with the court's order. It applies to the existing election law and only makes changes needed to ensure compliance with the court order to hold federal primary at the end of June. So we are not endorsing any legislative change at this time, it's for the state legislature to set the date of the primary but until then we are obligated to comply with the court's order.

**Douglas Kellner:** So, well the motion will be to have council submit the proposed order to Judge Sharp.

**Kim Galvin:** Right

**Douglas Kellner:** Alright. Those in favor say aye.

Chorus of ayes

**Douglas Kellner:** Opposed? So that's adopted.

Then we turn to new business.

**Gregory Peterson:** Commissioner Kellner under new business if I might, I'd like to make a motion for the Board. We are a state created agency with certain responsibilities which are defined by law. We operate within a budget and personnel constraints. However as with any government agency or practically any corporation of business nothing is perfect, and those things which are within our control I think it's our responsibility to take control and change direction when that is necessary. I would like to put a motion for the Board that it be henceforth the Board's policy shall be that all anonymous complaints received by the Board which are determined to be meritorious and substantive with documentation be fully examined and investigated. And that's my motion if I just might add that where we receive complaints, most of them are signed by a complainant and we can see who has submitted it and it is vetted. It's important also however when an anonymous complaint comes in and you can see by the detail within that particular complaint that there's substance and perhaps because of fear or fear of reprisal or for any other reason, the person does not want to sign it and it come in anonymous, I think it is still our responsibility however to fully investigate it. So I put that motion forward as the policy of this Board from this point forward.

**Douglas Kellner:** Well I second the motion. And I think

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**Evelyn Aquila:** I'm not a lawyer so I'm not...I hesitate a little to second

**Douglas Kellner:** Well I think Commissioner Peterson has put it very well and it makes sense to reexamine that policy which has been here before any of us were there.

**Evelyn Aquila:** Then I will second.

**Gregory Peterson:** You know, just to add to that Commissioner Aquila that many times, let's face it, with any kind of a political race there are charges, counter charges made back and forth and sometimes people will try to use this Board as the sword of Damocles so to speak and a lot of the things that are put to us as complaints can be very, very politically motivated. However this Board can't look at it from that direction, we have to look at it as unbiased and with an eye toward doing the right thing as far as our investigations are concerned. And that becomes a little difficult when you have an anonymous complaint because it's not for us to determine what's political and not political. However, that being said, certain when somebody comes in and gives us a litany of evidence although they haven't signed it, it certainly is our duty and should be out duty to follow through on that.

**Jim Walsh:** I think you said it very well and I must add to it. I think we all have the same feeling that some anonymous complaints that come in are obviously political and they're meant to do some damage to the person's campaign and their reputation just before Election Day, but others do seem to have more information and we feel we should be looking a little bit deeper into. There may be something that we should change in our operation and that's where we're going and I think all the Commissioners agree.

**Douglas Kellner:** Right so those in favor of Commissioner Peterson's motion say aye.

Chorus of ayes

**Douglas Kellner:** Opposed? So the motion is adopted. I think there was another issue that came up from the Moreland Commission which was this idea that the Board of Elections does not process complaints during the election period and I think that it makes sense for us to reexamine that. I have some concerns about having the agency get involved in investigations during the time period immediately before an election because it does smack a partisan involvement and most jurisdictions, I understand, have similar policies. But I think that we should examine what other jurisdictions do and try to define the policy a little better in terms of what is the relevant time period and how we, and one of the suggestions that District Attorney Hogan made at the Moreland Commission Hearing was the idea that you can still do confidential investigations during that time period that would not have an immediate impact on the election process. And that might be worth exploring further too.

I want to point out on the other side however that relatively few election lawyers seem to be aware that there is in the election law a special proceeding that is authorized where the

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court has jurisdiction to enforce the campaign finance laws and several parties in the last decade have very successfully used that civil proceeding as a means of bringing about enforcement without relying on the Board of Elections to get involved. And so I want to remind people that there is that other remedy. At the same time I think we should be reexamining the policy to make it more precise and defined and to make sure that we're not unnecessarily hampering ourselves by having it an inflexible policy that could be abused.

**Jim Walsh:** Just a quick comment. We're talking about some potential changes without our operation here and I know we all know this but just for the record that we have understood a great responsibility to the voters to make sure that they have access to fair voting possibilities and abilities. But I also would like to put a word in for the candidates. We have to protect the candidates and not allow someone to do damage to someone's campaign or some reputation of a candidate. So what we come up with for changes are going to require a lot of discussion, a lot of cases that we might say, "Well be careful if you do this because", as you know, anyone who runs for office you spend months and months of time going door to door and campaigning in all the places you can go to and spending a lot of money and to have someone smear your campaign in 10 days or 3 days before an election is not fair. Not fair to the candidate. It's not fair to the process. It's not fair to the electoral board itself. We have to look out for both sides and protect both sides, that everyone is treated fairly. Thank you.

**Douglas Kellner:** Is there anything else that we should be discussing in response to the Moreland Commission Hearing?

**Gregory Peterson:** I think that there's one thing that needs to be said is that I think today we've made a step forward and any organization if you examine things, can there be a better way of doing it? Yes. And I certainly think that when criticism is undue well that's one thing, when criticism however is constructive and says you know, there's certainly things you have to look at, I think it's our duty to examine those things and make those changes. And I think that certainly within the next, I should put it this way, don't put a period on that. with a very short period of time I think it's important that this Board show that we are doing within our legislative responsibility that's been delegated to us that we carry those things out by making certain changes without our procedures to make us more efficient, I think more defined and in fact easier not only for the elected but for those that the people that we serve. And I think again that we can direct our staff to come up with the changes that are within our control. Certainly anything that has to go before the state legislature is not again within our purview however certain things here certainly are. And we can make those changes here to make us more efficient and carry out our responsibilities appropriately then I think that's what we should do and I think staff should be directed to come up with those things at this point.

**Douglas Kellner:** Great. You know one of the commission hearing this week concentrated on enforcement, especially the criminal enforcement issues and I don't disagree with a lot of the suggestions that they were making but I would reiterate that I

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still stand behind our policy of emphasizing that the main mission is to provide for disclosure, campaign finance expenditure disclosure and that making the disclosure system work is the primary goal. And of course, to make the disclosure system work, you have to have people file and the norm is that people file without us having to take enforcement action against them. 97% of the all the required filings are done on time and properly. It's also equally important that the computer system be as efficient as possible so that the public can get access to that data and that's another very significant priority that I wish those who were responsible for our budget took more seriously because our computer system is really archaic and makes it hard both for the public who want to access the information as well as the people who have to file it.

And then I also emphasize that most of the filers are volunteer treasurers who are doing a public service by assisting candidates who are running for office and indeed the majority of the candidates who run and are required to file lose and they're not elected to office and their performing a public service by running, often without any real chance of success but they do it so that the public has a choice in elections. And we do not want to make the system so ownership that no one will volunteer to be a treasurer or that no one will run for office. And therefore our resources are primarily geared to helping people file. The law is complicated even very knowledgeable lawyers constantly have questions about the interpretations to make sure that they get it right when they file their disclosure statements and virtually all of the effort is focused on that and the enforcement parts of it are really designed to make sure that there are at least some consequences for the people who don't comply with the system. And so enforcement is important as stick, but more important is to make it easy for people to file and to access the information. And I think that that has been our priority and I'm not inclined to change it. While I still think that we can do lots to improve the enforcement system and I think we've certainly been trying to do that over the last several years.

**Evelyn Aquila:** I agree. We want to encourage people to be candidates not to make them turn away because we have so much, so many things that they have to do that they don't even understand. I agree 100%.

**Gregory Peterson:** Commissioner Kellner I think that you put forth, very well put forth a synopsis of exactly what we're all about and I thank you because that's important for people to know and who ever is watching this it's important for them to know that, that aspect of it. We're not here to beat you over the head, we're here to help you and he help you to apply the law and apply it properly and apply the dictates that have been given to us and carry them forth. And I think it's also important to add a post script to that, we are not a prosecutorial agency. We do not have the wherewithal nor the authority to prosecute. That's up to the District Attorney's who receive some of these complaints. But there are a small minority on the grand scale of things and I think it's important and I'm glad that you pointed out that we really are here to facilitate rather than come after people.

**Douglas Kellner:** Alright well thank you.

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**Evelyn Aquila:** Well said.

**Douglas Kellner:** So, we're on a okay. So, alright we had the text before us the amendment to part 6210 and repeal part 6211 of our regulations regarding the Central Count Absentee Voting Systems and we also have an amendment to part 6206 relating to the designation of polling places and accessibility surveys. We have the text. I think we talked about it last month. Does anyone want to discuss it? Otherwise we can take it up for a vote.

**Jim Walsh:** So moved.

**Paul Collins:** There's an actual resolution written that has been...

**Douglas Kellner:** It's been circulated. Alright so those in favor of the resolution say aye.

Chorus of ayes

**Douglas Kellner:** Opposed? Alright the resolution is adopted and thank you Paul for getting that drafted and done.

Dave Loomis, we'll hear now on the election night results project which we thought was important enough to make a separate agenda item.

**Dave Loomis:** Thank you Commissioner. The project that we're undertaking based on the legislation from the summer is to be able to accept the unofficial results from the County Boards and upload that into our Central Web System and then be able to present those results onto the website. So we've been working a good team effort with the PIO and Election Operations to build out the system, to come up with the website. To make a system easy enough that works into the county system so that as they're uploading their memory devices and creating their results for their websites that they can also create a file that we can then use to upload into our system. So we've worked with and continue to work with all the counties on how to get us that file that we need, how to upload it and we've been working with them on how to test that and can upload it. So that on election night this year, as a proof of concept system, we're going to be showing the results for the 6 ballot propositions. So we'll be able to show those by county and by statewide total. So that's the goal of the project for Tuesday night.

**Douglas Kellner:** Are all 58 Boards of Elections ready on this?

**Dave Loomis:** We have the majority are definitely ready. We have a few counties that we're still working with to refine how they would do it because not everyone does it the same way and so, for some of this just putting on the website is new to them so we've been working with them to try to figure the best way for them to get us that information.

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**Douglas Kellner:** And how are you staffing this logistically? I mean are people going to be up all night on Tuesday? .

**Dave Loomis:** Yes we'll have staff here through the night on Tuesday. We've asked that each County Board give us their initial results by 10:00 p.m. so that if there's any technical issue...

**Douglas Kellner:** Well that's ridiculous.

**Dave Loomis:** Well as a test file to technically test out that and then...

**Douglas Kellner:** Some Boards will but

**Dave Loomis:** We're not looking, I'm sorry, we're not looking necessarily for the results...

**Douglas Kellner:** In New York City the PMD's aren't even they haven't moved them away from the poll site

**Robert Brehm:** Hopefully that's because they would be cutting off the little tapes and they made other improvements at the city to move that process along but I don't, the PMD in the past in New York City came as the second pick up not the first pick up so we are hopeful that the conversations that Anna has had with the City and some of the modifications that the PMD is going earlier in the night which will be, that alone will help the timing in New York City and in our process.

**Douglas Kellner:** 10:00 is not

**Robert Brehm:** It's not early in many, in Monroe County it's close to being final at 10:00, it all depends on where you are.

**Douglas Kellner:** Alright. Well I don't want to suggest that we're going to have final statewide numbers...

**Dave Loomis:** No, I'm sorry I wasn't suggesting any of that. The first times, we're going to allow, the system is going to allow updates throughout the night. So as counties...

**Douglas Kellner:** Throughout the night we mean all night like, you've got staff that are going to be there until the regular staff comes in at 9:00 a.m.?

**Dave Loomis:** Well, we have staff that are going to be there until the majority of the counties are done. With New York City, obviously they're going to be there the latest. We've been working with them. We have automated a process...

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**Douglas Kellner:** New York City typically, after they started using the PMD's they weren't really finished until 3 or 4 a.m.

**Dave Loomis:** Right. That's what they're telling me. So that we'll have, but we have built an automated process with them so that they are actually sending us updated files, going to send us updated files every 10 minutes automatically. So, we don't have to man that part of it. And they are going to start, the results filed in the beginning we don't expect to the much there, but if there's technical problems, we want to find those out as early as we can in the night. So, if we don't have a lot of results at 10:00 that's fine, but if we, as we go through the night, we don't want to find out about technical problems at midnight so that's what we're looking to do. So, we're asking each County Board to send us that first file at 10:00 and then at least a file by their end of the night. So those are, and anywhere in between that we'll get updates.

**Douglas Kellner:** Good luck. It'll be a good dry run for the 2014 election.

**Dave Loomis:** And that's how we're looking at it.

**Robert Brehm:** And not to over promise that people are looking for, we focused this years' efforts solely on the Constitutional Amendments as just to put in place the communication between the State Board and the County Board to get us the data, what format is the data in? The more complicated next steps are candidates like Supreme Court and elsewhere. And that's our focus. Learn in this process that we've got the connectivity, what other standard file formats? Are we really dealing with 62 different ways of doing something, or maybe 5 different ways of doing something? And that's been a learning process for all of us and that by the summer, excuse me, by the winter conference which is mid January, is to take the next step conversation with the County Boards, because we both need to do things to get ready for next years' elections so we can actually get candidate results for statewide offices and that will available...

**Douglas Kellner:** So we're not doing the 8 judicial district elections that we have jurisdiction over?

**Robert Brehm:** Not this year. By the time we got this up and running, there's the connectivity issues and the process issues that were big. So we wanted to do something this year and the Constitutional Amendments were something that was easy enough for the Counties and us to at least get numbers and how they link the candidates so that we can get the electronic data is important and it's the next step. So we're really looking to, all the data is coming to us this year so that Dave's effort will be to get it and then the next steps are what did we learn in this process we can do better? And how can we standardize, and how do we then do the candidate matching? It's a lot of work to get to this point and we didn't want this election to go by without doing a test. This is the test and really we know it's the foot in the door and it's an important test, but we have a long way to go to get to the candidate side. And it's mostly because really you have a lot of

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different coding methods that every County does is different, how that data then adds together.

**Todd Valentine:** It's the aggregation of the multiple file formats that becomes problematic that we are just not able to surmount. I mean we'll get the data and then we'll use that as a test and it will help us develop that, but since counties do use, there are a variety of systems that they use to aggregate their election night results, it's presented a challenge to us to try to do an aggregation on our end.

**Robert Brehm:** Six contents yes or no was a good test. But where you put, how you put the multiple for candidates to go from County to County and every County puts them differently is hard.

**Douglas Kellner:** And we will still post the judicial contest results later, like a day or two after the election? Wednesday or Thursday?

**Robert Brehm:** We've never posted the judicial ones until they were final before.

**Douglas Kellner:** I know but now we have a statute that says we're required to.

**Robert Brehm:** Well, we'll have the data, it just will be, we can work on that.

**Douglas Kellner:** Well I think you need to take a look at that, but you know we do have jurisdiction over those 8 judicial districts and we should, even if we can't get the instant election night reporting down for those 8 judicial contests, we should still be receiving the aggregate election night numbers from the Counties and even if we have to do it the old way with an XL spreadsheet

**Anna Svizzero:** I'd like to get all the judicial online because New York City is exempt from our process but that's another goal.

**Douglas Kellner:** Anna I'm sure you do know the reason they're exempt.

**Anna Svizzero:** I understand.

**Douglas Kellner:** It's because it doesn't cross, the election law specifically gives New York City jurisdiction over those four judicial districts

**Todd Valentine:** Well they're still obligated under the statute themselves to post them.

**Douglas Kellner:** Yes, but we have the responsibility for the other 8 districts and we'll I'm glad I raised it because I think somebody needs to be assigned to get the election night returns from the Counties and post them even though they're not final.

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**Robert Brehm:** No, they are coming to us, it's we just have to get them into the size that we can...

**Douglas Kellner:** Right. Well I guess my point is that there is now a law that requires us to post the election night returns and so staff needs to just address that, that's all.

Alright, well so I think that concludes the regular agenda. We have a tentative meeting date set for December 12<sup>th</sup>.

**Evelyn Aquila:** Can I say something about December 12<sup>th</sup>? December 12<sup>th</sup> shall be my last meeting. I've retired from the Board as of, I know, I know, but you know somebody asked me, one of my older grandchildren, "What made you decide to retire"? And I said you know there's an old cowboy song, "You have to know when to hold them and know when to fold them" and this is my time to fold. And I have macular degeneration in this eye and it makes it difficult reading, so therefore I'm getting treated for it. You know the doctor says, "Oh he's going to cure it" and this and that. But I'd rather do the right thing than do the wrong thing. I love coming. I respect everyone that I've met here and become friends with over the years and I've seen the Board get better and better and better under the leadership of you gentleman and specially I've gotta say my guy you know. And so, I shall see you on the 12<sup>th</sup> with the help of God and then after that I shall read about you.

**Jim Walsh:** I hope not.

**Evelyn Aquila:** With the help of God good things, only good things.

**Douglas Kellner:** Well we'll miss you.

**Evelyn Aquila:** Thank you very much. I hope they replace me with a woman.

**Jim Walsh:** I'm sure we all have a lot to say and I'll save it until your Christmas gift in December but you've added a lot of balance and a lot of credibility to our group here.

**Evelyn Aquila:** Oh thank you.

**Jim Walsh:** So don't give it away, you've given a lot to this organization.

**Evelyn Aquila:** Thank you.

**Douglas Kellner:** Alright. Well with that I move that we go into Executive Session to discuss litigation matters and investigations. .

**Jim Walsh:** Second

**Douglas Kellner:** Those in favor say aye

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Chorus of ayes

**Douglas Kellner:** Opposed? And

**Robert Brehm:** And for the people watching at home, we do not expect to take action afterwards.