

Commissioner Kellner: Good afternoon, everyone. My name is Douglas Kellner, co-chair I'm joined with Peter Kosinski co-chair, and Commissioner's Anthony Casale, and Andrew Spano is joining us online. Our first item of business is as the Board of Canvassers to amend the certification of election results for the November general election. We now have final results from the 23rd Assembly District. Were there other corrections that are also included in this?

Brendan Lovullo: No, just the officially certified results from the 23rd.

Commissioner Kellner: Okay. So is there any dissent? Those in favor of certification say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? Alright. So, we'll just do the paperwork right now. Okay, so that concludes the items for the Board of Canvassers. Now, we'll commence as the Commissioners of the State Board of Elections. First item is the approval of the minutes for December 15th and December 28th. Is there a motion?

Commissioner Kosinski: I have something I would like to bring up about it. I think it would be appropriate for our minutes to include the closed investigation list that is given to us by the Enforcement Counsel. I noticed today, giving us another list of just you know the numbers of each case that's closed. I think that'd be an appropriate part of our minutes, that would list out whatever he gives us at the meeting. Just these are the cases that he gave us to close. So, I'd like to have that included in the minutes from I guess December 15th, and then ongoing.

Kristen Zebrowski Stavisky: Okay, so then we'll hold off on these.

Commissioner Kosinski: If everyone's in agreement and I know I've put this out there before, if everyone is in agreement with that, could we put these off, add that and then vote on them next meeting, is that acceptable to the Commissioners?

Commissioner Kellner: I think that's okay.

Commissioner Spano: Yeah.

Commissioner Kosinski: Okay, thank you. We could approve the other minutes if you want because we didn't have anything from ah from Enforcement Counsel, so December 28th.

Commissioner Kellner: Alright, so the motion is to approve the minutes of December 28th. Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? Alright, and we're going to hold December 15th for our next meeting. Alright, so then we'll start with the unit updates. We'll hear from co-executive Director Kristen Zebrowski Stavisky, but I would turn to my republican colleagues and say, what is the status of the Todd Valentine vacancy right now?

Commissioner Kosinski: I think the status is it's a priority, and we obviously have two jobs, two positions here that have become vacant in the last couple of weeks on the republican side. They are both priorities because they're both high level positions, but other than that, I can't give you a specific date or a time.

Commissioner Kellner: And who is the acting co-executive Director?

Commissioner Kosinski: Well right now, Brendan Lovullo has been filling in for us to handle that part of the job, the day to day and he'll be point person here for the interim period.

Commissioner Kellner: Good. Okay.

Commissioner Kosinski: So, if anybody has any issues that they would like our side to see, Brendan would be the appropriate person to approach.

Commissioner Kellner: Great. And I kind of figured that out from the correspondence that...

Commissioner Kosinski: It's little bit of a team effort, Kevin and John are also picking up a little bit of the slack because we know there's some holes here, so they're trying to pick it up as well.

Commissioner Kellner: If we need a sign-off, then Brendan would be the one.

Commissioner Kosinski: I think Brendan would be your point guy for now.

Commissioner Kellner: Alright, that's great. So, then we'll turn to Kristen Zebrowski Stavisky.

Kristen Zebrowski Stavisky: Good morning, Commissioners. I'll first talk about online voter registration and automatic voter registration. As you know, the signed contract was approved by the Office of the Attorney General and was under review by the Office of the State Comptroller. We had provided additional information. We're working a final as the procurement, but we ask the Comptroller's office to pause, while we finalize the memorandum of understanding with the other state. That will enable our vendor to use the existing code. Now, that has taken much longer than obviously any of us would have liked, but we did last week have a very productive

meeting with the other state and expect to receive the final version of that memorandum by the end of January. In fact, they had done some revisions all of which were acceptable to us, and both Counsel were there. And in that form, they did put a start date of January XX, 2023, which to me was a very positive development, because obviously, we've been waiting on this for now over a year. But after that memorandum is in hand, we will iron out the final detail to secure the transfer of the code, and hopefully soon after that, the State Comptroller's office will finish their review, and we will bring a vendor finally on board for this project. In the meantime, we are working on an interim solution for an online voter registration in-house, and we are now meeting on that weekly to make that happen for May 2023.

Public Campaign Finance Board – while they're not meeting today, there have been some significant updates. We did receive our bids back. Originally, they were due on December 29th, but quite a few vendors asked us to extend because of the complexity, and they wanted to give us the best response they could. When that number moved from three to four, we thought its better for us to get the best submission that we could get. So, we did get five bids on January 11th. They are currently under review with the Office of General Services, and next Monday we will have a kick-off meeting with General Services where they will bring the bids and the evaluators and the advisors will receive those materials, and we will be able to start on that software solution. And as we've talked about in the past, that we're going to have one integrated system through that procurement. So, our candidate management our financial management, our public reporting, case management, and the financial reporting that our committees and candidates do, all be in one system. So, we continue to work on the requirements in-house to bring all of those in line, but we look forward to hopefully having a vendor on board on that, sometime end of May, June.

Space planning – we do believe construction is on track for the 5th floor. It's scheduled to be in early March. In the week prior to the project bid going out, we did agree to move our meetings with our design staff to monthly. We are working to get regular biweekly meetings back on the schedule because we have escalated certain concerns about organizing the move and coordinating with a furniture vendor, and things like that. We've continued to raise concerns related to adequate swing space. Including the fact that other floors in this building, when they were renovated, the entire floor moved out to an alternative space. At a minimum, we wanted to move 50% off, I think that we are committed to doing that, even though that will be very difficult for us, because we do not have swing space for 50% of this floor. But we did, we'll have to get creative because we don't want the construction to go into the Presidential year. So, we are very cognizant of making sure that we can offer the services that we need to offer to the public. They will continue on in a seamless way. It's possible the public may have to come in and do business downstairs, we do have space on the first floor, we can accommodate that.

Commissioner Casale: There's no more free space in this building that you know of?

Kristen Zebrowski Stavisky: We are told continually there's no other space. We are told continually that there is no other space in this building. We also do press back, because I do think maybe a larger review of the building might reveal, I think there's four agencies in this building, and maybe we could arrange it and consolidate it a little bit better, but we continue to raise this. I raised it last week with the second floor. I raised it up in General Services. And I believe General

Services will be getting back to us this week about those coordination issues, because for us, it's a matter of who, where will we store the library books, for example? Where will we store the furniture if it's ready before the floor is ready? So, I'm pretty sure those things happen with coordination. So, it's not up to just us, so we are being very clear that we will need help with that, and we expect to get the same assistance that other agencies in this building have gotten.

As we mentioned, the area on the first floor just above the lobby when you come in, and its next to our current administrative space, I think that most of the Commissioners have seen that space. So, we are going to get that space as swing space which is very good for us because it's already wired for us. It's also a much better space placement wise and will give us some storage room. We're just waiting for ITS to vacate the space, and that is contention on the wheelchair lift being repaired which was originally supposed to be done in December, hopefully it will now be done in February. But we are also following up on that. And that's all I have on space.

We continue to do our biweekly meeting schedule with the Division of Budget, General Services, space planning is a separate meeting. We continue to meet with Enforcement biweekly. Also with the Executive Branch, and we continue our monthly conference calls with the Election Commissioner's Association. We last met there on November 3rd before the election, and it was a good opportunity to talk about the absentee ballot court decision, reports, surveys that are due to us, I'm sure that Operations will talk about the annual survey, and we look forward to attending the conference this week, and our data present this Thursday. So, we will begin this afternoon at the Executive and Legislative Committees of the Election Commissioner's Association and then we've prepared a full day of training for them on Thursday. In addition, the Public Campaign Finance Board will conduct a Campaign Finance training on Friday morning for the county commissioners.

The Committee for Technology and Government – we continue working on phase 2 of our envisioning an elections future project. I think we mentioned last time we had an all-hands workshop on December 6th that was an excellent event, and this Friday, we'll continue that. We've taken together all the units, heads, and deputies, and we sort of made a digital transformation executive committee and that will begin meeting this Friday.

And as you know, in the Budget, we did look at all of these different projects and determined we needed to do an administrative restructuring. We put that in our budget narrative, and we are still waiting to hear from the Division of Budget. We have not heard back. We did have a few questions in the beginning, but we hope that our budget requests will be fulfilled, and we look forward to that process. That is all I have. If you have any questions, I'd be happy to deal with them.

Commissioner Kellner: Alright well, thanks very much. Alright, so let's go to Election Operations, Tom Connolly, and Brendan Lovullo.

Tom Connolly: Thank you, Commissioner. Generally, so we obviously have collected the information for the certification of the AD23 which the Board of Canvassers has now certified. We will get the necessary documents out to the Assembly and everyone else who gets a copy.

We have continued to collect a lot of our information, as Kristen mentioned, we do have a number of surveys and other documents that we request after every election, partially for litigation purposes, and partially just because we collect it. We did send out the annual fiscal survey, which is a very large amount of questions that are asked of counties every single year. It's a little bit more important on the every other year, because we won't complete the federal election administration and voting survey for this year, or for 2022, the first draft of data for us to submit to the federal government is February 1st. So, we're still trying to collect all the data from the counties so that we can review it, ask any questions, aggregate it, and then submit it in the template that they provide us. So, we will be following up with any of the counties that are outstanding on that information.

We will be working with internal units on the language for the affidavit envelop, which is a result of The Wrong Church Law, which will be later on in the agenda. We did have some technical staff go out and do acceptance testing in Livingston and Clinton Counties, and we have some slated for Seneca, Niagara, Chautauqua, and Orange in the next month.

Commissioner Kellner: What systems were they installing?

Tom Connolly: So Clear Ballot was in Livingston, Clinton was a bunch of, about 30 new Dominion scanners.

Commissioner Kellner: When you say Clear Ballot, is that for their poll sites or central scanner?

Tom Connolly: Central count scanner. That's the only one that's currently certified for using in this state. For the ones that are slated in the next month, Seneca is also a Clear Ballot Central Count System, Niagara, Chautauqua, and Orange are all Dominion scanners.

We have requested the current and projected vacancies from the Office of Court Administration for us, we need to prepare the certification of offices to be filled in the General Election that we provide out for the counties. For us this year being an odd year, mainly that'll just consist of the Supreme County vacancies that are anticipated. So, we have not received that information back from them, but as soon as we do, we will then provide it out to the counties.

With regard to the voting systems under review, Dominion functional testing just recently begun. We do have a public demonstration that is scheduled for that system to take place here at the State Board on February 7th, at 10:00 a.m. That information is up on our website. There's also a little bit of additional information up with a link to a document that provides the different components that are being shown at that demonstration. And just as we've done with past demonstrations, we will record that, and also post it to our YouTube account. So, anyone who is unable to make it, can always watch it after the fact.

Clear Ballot has been for some time two-fold. So, there is 2.2.5 which is a change to the Central Count software. Our testing partners are still over-viewing the actual code changes that were made because it's a very small change to determine the scope and the approach of testing for that. And then once that's all signed off on by our federal testing lab and also NYSTEK, we

would then figure out the path to go forward, in actually doing that testing. The Clear Vote 2.4 is the poll site system, larger voting system. That testing approach and scope is finalized. Testing plans are being finalized and the functional testing for that system is scheduled to begin in March. ES&S, the test plans are expected to be finalized by our testing lab SLI, although test case development has already been happening, and that functional testing is also slated to begin in March. Hart: there is a resolution on the agenda for later on, we did provide some information that we worked with Hart to determine more information that should be made publicly available. We did have a couple of inquiries from citizens who had asked for that information, we provided them with additional information last week.

Also, since we're on a voting system topic, regulations, so there are the federal voting petition guidelines the VVSG the Voluntary Voting System Guidelines which are promulgated by the Election Systems Commission, as part of their path and their HAVA. State recently adopted version 2.0. We use the 2005 version, 1.0 in our regs. The 2.0 they recently certified, actually our testing lab, there's only one of two federal testing labs, to start testing to the new requirements. By their own timeline that sets a one-year timer, so that from the date of when they certify the first testing lab to test version 2.0, that will then become the kind of law of the land for those special federal testing labs. So, we have about a year, and we're going to be working with NYSTEK to take a look at our regulations and determine if anything needs to be changed in order to kind of harmonize with the new 2.0 regulations under federal level. So that will be a little bit more of an involved process, and we will bring something to you later this year as far as any changes that might be necessary for that.

Not much on the E-poll book front, but there will be probably next month, as we kind of get into our habit of soliciting and again there were revisions to the E-poll book systems twice a year from the vendors. We usually try to do it as early as possible, but not later than 90 days before the next expected election, so that we have enough time to do our review. Hopefully if it gets approved, and then the counties have enough time to implement that out amongst their fleet of poll books.

Under technology projects, we have been working as Kristen mentioned, we've been working with other units and stakeholders with regard to online voter registration implementation. We've been working with IT and some of the counties that are currently migrating their voter registration systems, to ensure that that process is a smooth one, where possible. We also received a demonstration from Tenex of their voter registration system, so they are looking to go through the process of having their system approved. It hasn't been formally evaluated yet, but they did come and provide a demo to a number of staff members here at the Board.

Commissioner Kellner: That's a system they would sell to the counties, not to the whole state?

Tom Connolly: Correct. Tenex is just one of the existing E-poll book vendors. Obviously, aside from the Legacy systems, Next Vote was the only new voter registration system that I think has been approved. Tenex is seeking to have their system approved as is, Know!nk which is another one of the E-poll book vendors. But they're at different parts in the process.

We did have a meeting with IT about finalizing the existing voter registration system in compliance with security requirements. As part of our change of regulations of state board's oversight into voter registration systems, we did promulgate the requirements in three different categories; communications and functional security, communications and functional largely were already in play for all the systems that were being used by the counties, and security was the one real main new introduction to the process. So, all of the existing vendors were given a year to come into compliance with those security requirements. So, that's still trying to be worked out so that all the existing systems are fully compliant. Any new system has to be fully compliant from the get-go.

And then, lastly, we're just working with OGS on some remaining items that are needed to move forward with our new independent testing authority contract. Basically, that's just our contract to use one of the federal testing labs for when we do voting system certification testing. Brendan, anything else?

Brendan Lovullo: That's good, thank you.

Commissioner Kellner: Okay, well thank you very much. So, now we'll hear the Counsel's report from Brian Quail and Kevin Murphy.

Brian Quail: Thank you very much, Commissioners, and good afternoon. In the case category, pleased to report the Reinhold case in Indiana Federal District Court was dismissed against the two Commissioners of the State Board of Elections who were named in that case. Surprise, surprise. In another following surprise, the United State Supreme Court denied all motion practice in the Stora case which brings to end the final ballot access litigation for 2022. And in the League of Women Voters case, while it's not formally ended, the legislature by virtue of the Governor's signature adopted a 10-day voter registration as the deadline in New York, so that should moot that case, really isn't anything left there. But the formalities have not caught up with the reality as yet. As far as Upstate Jobs, the NAACP line warming case and Hernandez, there are no significant changes in status in those cases, either motions or pending implementation of the remedy is occurring or plea appeal, an appeal is pending.

Compliance Unit has been very busy planning its activities for the year including preparing calendar for approximately 20 trainings related to Campaign Finance Compliance substantively and EFS filing system. Just recently they concluded three Winding Down the Campaign webinars which was mentioned in another report. They will be holding a PCFB premier at the conclusion of the Election Commissioner's Conference tomorrow, excuse me Friday. And presently, we're within a day or two of making a deficiency referral to the Chief Enforcement Counsel for approximately 185 deficiencies. And in the...

Commissioner Kellner: That's like a record low number.

Brian Quail: They've been running relatively low lately. That's an entire quarter's worth and it is well.

Commissioner Casale: Deficiencies in terms of the most recent reporting, or overall?

Brian Quail: There is a difference between a failure to file delinquency, and a deficiency. The deficiency is when the report has actually been reviewed and there is some problem with the report. That's what that is. That's not a failure to file.

Commissioner Casale: Deficiency in referrals because they have not corrected the deficiencies?

Brian Quail: Correct. So, they...

Commissioner Casale: These people are all contacted and don't respond?

Brian Quail: Yes. So, they would have received written correspondence, oftentimes e-mails, oftentimes both.

Commissioner Casale: Do you know that they have received this request? Is it a case where you can't reach these people?

Brian Quail: That is not usually the scenario that we find, no. There are occasionally those issues, and those are flagged and staff whenever for example, an e-mail comes back undeliverable or, if a letter comes back in the mail, or something like that, they take steps to try to find them.

Commissioner Casale: So, every time they try to contact them and, in most cases, it's failure to respond?

Brian Quail: Yes, and it is still relatively speaking a small number, 185 is pretty good. So, that is getting ready to go over to the Enforcement Unit. There is a lot of background information that goes with the list.

Commissioner Kosinski: Actually Brian, in that context, do you know how many deficiency letters were sent?

Brian Quail: I don't know off the top of my head. Happy to provide that to you.

Commissioner Kosinski: Just curious what the percentage is, you said 185 are left, it'd be interesting to see how many were sent with the response.

Brian Quail: Many multiples of that number. Overwhelmingly there is compliance when a deficiency is noted to a committee.

And the unit has reviewed 205,701, has received 205,701...

Commissioner Kellner: You know excuse me, but when there is a deficiency, I guess when it gets to the point of a referral to the Enforcement Counsel, does the public report of that committee show that there was a deficiency letter issued?

Brian Quail: No.

Commissioner Kellner: How hard would it be to set up the software so that when we make that referral to Enforcement Counsel, anyone who goes to that committee would see that a referral has been made?

Brian Quail: I don't know, that is not something that we have looked at to date.

Commissioner Kellner: Is that something? I mean I guess the point is, reporters go through this stuff, and they don't know that we've identified something that's missing from the report.

Commissioner Kosinski: Yea, no, that's fair. I would just want if we do that...

Commissioner Kellner: would have to be due process.

Commissioner Kosinski: ...well I just also want to be sure that if they do correct it, then that flag is taken off their filing, so it's noted they did come into compliance if we're going to do that, that's all. That's fine.

Brian Quail: We can get back to you on that inquiry, Commissioner, Commissioners actually, and we will do so.

Commissioner Kellner: And the nonfilers too, I guess that we keep talking about the nonfiler list and now we're going to start to impose fines for nonfiling once the new regulations are published.

Brian Quail: The regulations that passed at the last meeting will allow the Chief Enforcement Counsel to more expeditiously pursue failures to file by bringing court actions. Regulation last month does not allow direct imposition out...

Commissioner Kellner: right, the way

Brian Quail: PCFB does.

Commissioner Kellner: Right. Ok. Alright, again, it would be useful for the public to be able to access that information. Okay, I'm sorry.

Brian Quail: No problem. The unit's received 205,710 filings since inception. And the number requiring review right now is somewhere in the neighborhood right around 13,000. So, we are working on that backlog and that includes a significant number of filings that have just come in in the last few days. Today is actually going to the holiday and the weekend, the deadline to file the January periodic. So, we are receiving a lot of filings right now.

And that is it for me. Kevin, do you have anything?

Kevin Murphy: No thank you.

Commissioner Kellner: Thank you. So, it's an interesting segway into report for Enforcement Counsel, Michael Johnson.

Michael Johnson: [cough] Don't mind me. We've completed several cases we've closed. We are gearing up actually for the nonfiler list that we will get from compliance. We started putting things in place, in terms of our mailings, making certain we have all of our postage lined up, stationary, and all that type of stuff. I've imposed sort of a black out period when people can't take vacations or anything because we have an all-hands on deck kind of process to get the letters out. So, that's pretty much what we are gearing up for right now. Within a few days, we should actually be getting our calendar to compliance, and probably to you guys as well, in terms of when our e-mails go out, when the letters go out, those steps. So, you guys should have that soon.

Commissioner Casale: So, the nonfilers are current nonfilers? Or what if an organization or entity has filed, and didn't file for a while, and started filing again, what classification are they?

Brian Quail: So generally speaking, the nonfiling list is generated for each of the reports that are due. And it's generally segmented that way. At various times, we have produced aggregate lists that include everybody who hasn't filed since the beginning of time, or various other different date and time parameters as needed. And because of the three strikes, you pay a lot more rule, I know the Chief Enforcement Counsel has at various times looked at who are triple offenders for particular elections and things like that. But generally speaking, the list is produced for each filing that's due.

Michael Johnson: And that's pretty much what we do, once we handle this crop of nonfilers who didn't make the January filing, we can then look back and say, okay who's missed three or more filings? And then, they come under our radar.

Commissioner Kellner: Anything else?

Commissioner Kosinski: Yeah, I have something else. The December 15th meeting, if you recall, Commissioner Casale and I specifically brought up an issue that we were serious about relating to a complaint that was filed here, and the report that you gave us, kind of leaked to the newspapers about. And we spoke about it briefly at that meeting and you really showed no interest, I guess on your part to look into how that leak occurred. And we wondered, I guess, if you had thought about that anymore, whether you were still not interested, or interested. We think it's a major issue. We think it needs to be looked into, and I wanted to raise it with you again, to see if there was any interest on your part as it affects your department specifically, this leak that occurred to the media on this issue.

Michael Johnson: Let me just sort of backtrack, and what I wanted to say the last time, and what I will say now, you keep referring to a leak, all of the paper articles that I have seen, and I think Commissioner Casale might have alluded to, they all pretty much verbatim said what the complaint said. Now, it's very possible that the person who sent the complaint, forwarded it to newspapers.

Commissioner Kosinski: Well let me just quote from a newspaper article then, and maybe you can react to that. This is from the New York Times. This is on October 27th. “And in recent days Mr. Johnson asked the Board to grant him broad subpoena authority to compel cooperation from the campaign and the groups, save our state agency together.” So, specifically, this article is saying that Mr. Johnson asked the Board of Elections to grant him broad subpoena authority to compel cooperation. This is something that only this board would know. This is not something the complainant would have known, other than it being told to the complainant maybe, maybe that was it, I don’t know.

Michael Johnson: I don’t know.

Commissioner Kosinski: But I’m just saying, there is a leak in the fence that information that is internal at this board and held confidential, allegedly, was given to someone, who then gave it to the New York Times. That is not something the complainant would have known without this Board having told them.

Michael Johnson: I didn’t ask you, because if you can recall, we never had a meeting, for whatever reason you weren’t there. So, I didn’t get a chance to ask you anything.

Commissioner Kosinski: Well, I guess maybe it was the report that you gave to this division, that they’re referring to, as far as you’re asking. So, there wasn’t a meeting, your right, but I’m guessing, I don’t know I haven’t talked to the reporter if that’s what they’re referring to, but this again, certainly indicates to me that someone outside this agency knew what was going on, or what would have happened at that meeting, had the meeting occurred, with an internal document of this Board being leaked someone, or maybe not the document itself, but the information within it being leaked, so that there was a newspaper article two days after that meeting.

Michael Johnson: We didn’t have the meeting. You keep saying that.

Commissioner Kosinski: I got it Michael, but there was a meeting scheduled and you had a report that went to that meeting. So, there was information that was provided to the Commissioners for the meeting that didn’t occur, granted, but I’m assuming that that’s the reference that this newspaper reporter is making. And that still indicates to me that there is a leak in the sense that an internal document that was given to the Commission, at least the contents or information that was in that document was leaked to a newspaper reporter without the authority of this board. And your lack of concern about that concerns me because I think it’s an issue as I said to you at the last meeting. This happened once before here. There was an IG investigation, a full blown looking into it, and it was a major deal. This time it seems to be something you just want to ignore. And I don’t quite understand why. Now, let me say one more thing about this, which also troubles me, before we get too far down the road is that going back to how that actually occurred as I recall, and the dates I looked at, was that complaint was received in here on the 17th of October. You had a report prepared by the 20th of October for the 25th meeting, two weeks before an election. That’s what that referred to, was an issue that was going to affect potentially the election that was being held two weeks after that Board Meeting. So, this was a very time sensitive issue that you had the time, now I’ve got complaints on today’s agenda that

you're closing that arrived here much after October 17th of 2022, and yet you found it necessary to take a complaint that was filed here on October 17th and get it to us for a meeting on October 25th when there's stuff before us today which was filed October 7th, I've got others, July 25th. You've got stuff that came in well before that, that you're just getting to today. So, again, this complaint was rushed in a sense, that it was taken out of order, which is another concern you know I have, about the order you're taking these complaints in. So, it seems to me that you're selectively taking complaints that you want to do immediately, and leaving old complaints to be done later and that to me raises another set of concerns about what is the process for determining when a complaint is brought to this Board, or when a complaint is dealt with by your office, are they taken in chronological order, are they taken in some order so that we're not being selective enforcement? I'm going to do this one today because I deemed it more important than what I got a month ago or two months ago, how is that process working? Cause that one seemed to happen very quickly, notwithstanding there was an election coming up that it might have impacted. And it just doesn't seem right, and then it gets leaked to the press 2 days later. All of this taken together is very troubling to me. Very troubling about how this was...

Michael Johnson: let me just point out

Commissioner Kosinski: no, let me just finish, that you took this out of order and then it got leaked to the press. Those two things put together just raise serious issues with me.

Michael Johnson: Nothing was leaked Peter, at least not from anyone in my unit or me, and as far as I'm concerned, the fact that we didn't have a meeting, anyone who understands how things work here, rules and regulations, could immediately surmise, well, if the Commissioners don't show, it affects the investigation, depending on what the Chief Enforcement Counsel wants to do.

Commissioner Kosinski: I have no idea what you're saying. The fact is that on October 27th, two days after...

Commissioner Kellner: the point is by cancelling the meeting on short notice, you generated the press inquiry into putting together the pieces on why the meeting was cancelled.

Michael Johnson: Exactly.

Commissioner Kosinski: Listen, in recent days, Mr. Johnson asked the Board of Elections to grant him broad subpoena authority. How would the press know that unless someone here told them? How else would they know that? That's the question I have. It appears to me its obvious from that newspaper report that they knew what was going on here. Someone had to tell them. That implies a leak to me. I don't know how you can say it doesn't. I don't know how they can put something together like that without any knowledge from somebody here. It just doesn't make any other sense. Very troubling to me. I don't understand the lack of interest in this by others including maybe my fellow Democratic Commissioners here about how we handle complaints in this office. Whether they're taken in order or not. Whether we're going to do things two weeks before an election that may affect an election, as we know most Enforcement

agencies have a rule that they don't take things up that soon before an election for the obvious reasons it may impact the election in a way, and also the leak. So, there's several issues here that I think are very concerning of this Board, of your office, of how we function in this enforcement area. And I think they need to be addressed, and I think it's very unfortunate to me and to this State, you specifically and no one else has shown any interest here, as let's look into this. Let's see how this happened, and what was going on.

Michael Johnson: I have nothing else.

Commissioner Kosinski: You have nothing else? So, I guess there's just no interest here in looking into this matter, which I think is a very serious matter. When law enforcement agencies are being used to potentially impact the outcome of elections, two weeks before an election, I think that's a matter that should be brought to the attention of people that take this seriously. I don't know why this agency isn't taking this seriously. We had an election two weeks later. I don't recall ever bringing anything to us on a complaint or a matter before the Enforcement Unit that would impact an election that close to an election, very troubling to me. Then it results in a leak to the press.

Commissioner Kellner: Actually, you did it the year before, two years before with the Finance or Fair Campaign compliant hearing that Risa did, and where the republican commissioners insisted that it be done prior to the election with a whole lot of objections.

Commissioner Kosinski: Well, Fair Campaign actions are different from Enforcement actions. They're a civil matter.

Commissioner Kellner: They are different but, but you know what comes around goes around.

Commissioner Kosinski: Well, if that's your view that you think you whacked us on this, cause you guys got something to jam our candidate on, good for you, I guess, but I think it's outrageous.

Commissioner Kellner: I think the point is if you had shown up at the meeting and the confidentiality probably, that it was your actions that prompted the press.

Commissioner Casale: Cancellation of a meeting does not generate a press inquiry unless the press is aware of the subject matter. Meetings are opened and cancelled all the time. A lot of meetings have been cancelled. No one had any knowledge...

Commissioner Kellner: People ask, 'why was the meeting cancelled'.

Commissioner Casale: Who asked why, and when did they ask, who asked and when?

John Conklin: Those articles were from before the meeting.

Commissioner Kosinski: No, this was after the meeting. This was October 25th, it was after the meeting. Well, I wanted to bring it up again and Commissioner Casale...

Commissioner Kellner: You brought it up and it's fine.

Commissioner Kosinski: No, I know, and no, it's not fine though Commissioner, it's a problem. It's a problem and to say, 'it's just fine let's just ignore it' is ridiculous to me. This is a big issue. We had a leak about an enforcement matter two weeks before an election and nobody cares. I don't believe it; I just don't believe it. It's unbelievable to me that nobody cares. If this was your candidate...

Commissioner Kellner: Well you care

Commissioner Kosinski: Yeah, I think I'm the only one. You don't care, Mike Johnson doesn't care. I guess nobody cares.

Commissioner Kellner: I guess my point is, you kind of brought this on by cancelling the meeting.

Commissioner Kosinski: Oh, stop it, Commissioner.

Commissioner Kellner: No, really, I'm being very serious.

Commissioner Kosinski: Oh, for God's sake, stop it.

Commissioner Casale: That's ridiculous. I do want to raise...

Commissioner Kellner: You're entitled to voice your views on this, and I do share some concerns that there ought to be transparency on how matters are prioritized by the Enforcement Counsel and...

Commissioner Casale: How would you go about providing transparency?

Commissioner Kellner: I think the statute is broken.

Commissioner Kosinski: Well, what I would ask first of all...

Commissioner Kellner: And I have proposed so many different versions of this and the only thing I've gotten traction on is our regulation on nonfilers.

Commissioner Casale: You're suggesting that all complaints should be public.

Commissioner Kellner: I think the whole structure of the operation is...

Commissioner Kosinski: well, I agree with what's going on here. I agree with that after what's gone on here. I would suggest that if people file complaints with the Enforcement Counsel, they may want to share a copy with the Commissioners, so we know that the Enforcement Counsel has a complaint made and maybe we can follow up to see what happens to it.

Commissioner Kellner: A lot of people do that. Certainly Jay Jacobs did that in the case that you're concerned about, and that's what started the press.

Commissioner Kosinski: Well, maybe that started it, but that does not mean that they should have known what this board was looking at.

Commissioner Casale: What's stopping the complainants from making their complaint public?

Commissioner Kellner: Right, and that's exactly what Jay Jacobs did.

Commissioner Casale: Is that a fault in the statute, or are you okay with that?

Commissioner Kellner: That people make their complaints public? I think that's appropriate. And that's one of the big factors that generated the press in this instance because its very clear that the State Democratic Chairman was pushing publicity on this complaint.

Commissioner Kosinski: No, I know he was, but with this office, should not be compliant in that. And our office was compliant in that. We supported that apparently by leaking something we were doing confidentially. So, we allowed the complainant to take the complaint and then have it backfilled with the Board of Elections is looking into that basically was the story. Well, that's a much bigger deal than just a complainant filed a complaint, isn't it? And now we're going to give that kind of information out? I don't think we've ever done that before. I don't recall that in the context of a complaint. We said, "Oh, yeah, we're looking into that." We never did that. We said, we don't comment on that. I've seen the Enforcement Counsel's office say when they're asked, "We don't comment on that" I think that's appropriate. But apparently, this time somebody did comment on it. Yeah, we did ask for subpoenas, really, and that's okay. I don't get it, I don't get it, but I guess that's the way it is. Well, it's good to know but I really think if this was fair, we'd have somebody looking into this right now, and finding out what happened like we did last time. And you remember last time Commissioner, because you were here when we had a full blown IG investigation, called people in, did interviews, everybody had to come in and do it, got our computers to see who did what. I mean it was a big deal, and now we've got nothing, it's amazing. It's amazing to me how 3, 4 years after that, the same thing happens, nobody cares, nobody cares. You know what it is? It's who's doing it and who's doing it to who? And that to me is selective compliance. And that to me has been an issue with me right from the beginning. You can't have it this way. You either do them all, or you don't do any of them, your choice. But you can't pick and choose, and that's what we're doing. And that's just wrong, and that's why we're here as Commissioners. We're here to have a fair overview. I get it, that the Democrats control the state, I got it. You have the AG, you have the IG, you have Mike Johnson, you have everybody, and you can do whatever you want, we can't do a thing about it. Yeah, we're the minority right now. The Republicans have very little say in this town. This stuff should not go on and its outrageous that it's gone on. And we are trying to protect people from this kind

of selective enforcement that I see going on in this agency and I'm not going to just sit here and let it happen without saying something. So, there you have it. Now, you guys do what you want because you can, because we can't do anything. We don't have majority in the house, the legislature anymore, I get it, you guys can do whatever you want, and here you go, nice job, nice job.

Commissioner Kellner: But you're welcome to speak about it.

Commissioner Kosinski: And I'm happy to do that, unfortunately I guess that's all I get.

Commissioner Casale: Going forward, there ought to at least be an understanding that no political party, no political party, no political leader should be able to weaponize the Board of Elections. The bipartisan nature of the Board of Elections was established in the statute in 73 or 4 for a purpose; to make it bipartisan. Quite frankly, I'm old enough to remember when the Republican controlled everything, and while a lot of people like it, it wasn't really that fair either. Just because it was all under one person. So, we've got a bipartisan board it should be a bipartisan approach and we should be doing it on a bipartisan basis. We shouldn't weaponize, we shouldn't be putting our Enforcement Counsel in precarious positions.

Commissioner Kellner: I think we all agree with that principal. Anything else?

Commissioner Kosinski: Nope, I don't have anything else. Maybe someone out there listening would want to look into this, if there's anybody out there that's interested in this stuff and has that kind of power, I don't know who that is off hand, but I wish somebody would take it up and look into it, because I think it needs to be done, and there needs to be a full accounting. And that's that, I'll be done.

Commissioner Kellner: Alright, we'll turn to our report from Public Information, John Conklin, and Jennifer Wilson.

John Conklin: Thank you, Commissioner. The Public Information Office has been relatively quiet since last Board Meeting. A fair number of questions about the January periodic as Brian mentioned, and a lot of questions about Mr. Santos. So, the unit processed 86 FOILS in December, 73 were for voter registration records, three for election records, three for campaign finance records, and seven for miscellaneous records. We issued one press release on Todd and Kim's retirement. We continue to have biweekly meetings with IT and Compliance on the public reporting website and pushing out our face there. We are also participating in biweekly meetings for implementing online voter registration and automatic voter registration. The monthly ECA calls as Kristen mentioned. We worked on the draft for the 2023 political calendar. One last thing is we're still working on is trying to find a print vendor for voter registration forms. We're continuing to struggle with that. As you know, nobody responded to our last RFP, so, we're working on a stop gap solution for a smaller order and redrafting, reissuing the RFP, costs and availability of paper have become difficult due to supply chain problems.

For the website, we've posted the agenda and related documents for today's meeting. We posted the webcast and associated materials for the December 15th and 28th meetings. We posted the updated certified results SD50 and Prop 1, and the public notice for the Dominion demo that was mentioned, on February 7th. NYESS voter review visits have resumed. Last week Mike and Cassie to Rockland County. Jen, do you want to talk about grants?

Jennifer Wilson: Yeah, I have one more website thing, Commissioner per your request, we moved out the voting testing to a different page and put the last two recordings on there. It looks a little bit neater now. Once we have the new website it will look even better, but we're trying to make it more obvious per your request. And then one other thing on the voter registration form, we sent a letter to the US Election Assistance Commission requesting that they amend the national voter registration form that lists our deadline on there as the old deadline. We even requested that they change it to the 10 day and then also make two corrections to the New York State part.

On grants, with the end of the year, our staff undertook a project to send notices to all of the counties on their remaining grant funds for all nine of their grants to see if we could exhaust the rest of those funds before the end of the claim period. So, they did a great job reaching out to all of them, a lot of the counties didn't even know that they had funds left. So, they were very excited to find out that they had some money to spend. They were also contacted by the Office of the State Comptroller to review our 2021 audit of our HAVA cybersecurity grant. In 2021, we had an audit. They are just revisiting to make sure that we have complied with their recommendations. Their recommendation was basically, keep up the good work, and I think we've kept up the good work. So, we're hoping that that will go smoothly and then we can close that audit out and not have to worry about that anymore.

We submitted our annual report to our cybersecurity, HAVA shoebox and HAVA poll site improvement and education grants. And then we have a few grants that are going to be expiring in April of 2023, our Tier grant which is our technology and innovations, and elections resources grant which is for equipment and all different kind of technological things, and then our postage grant, which is a new grant unfortunately, it's going to be expiring in April as well, so again, we're just trying to make sure that the counties can spend those if they're able to. If not, we'll be requesting those be reappropriated in the budget. Since unfortunately, with a lot of the supply chain issues, it was difficult for them to actually spend those down, so we're hoping that we will get those funds reappropriated and they will be able to spend them.

Commissioner Casale: Jenn, what's the timetable on the new website?

Jennifer Walsh: So, we're hoping to have it before the Presidential primary for next year. It may take a little long just because we're kind of almost wait listed at this point. I mean I think Mike Haber will probably speak more to it...

Commissioner Casale: oh, I'm sorry

Jennifer Walsh: Oh, no, no not at all, but yeah, we were hoping to have it before the Presidential primary to have it fully complete but we're hoping we can do it faster because we did the PCFB one faster than anticipated.

Michael Haber: And I think that was a very valuable almost prototype for us. We did not to preview my report, but we did have a formal kick off with the ITS webservices we were just at earlier this month. So, we are on their schedule and we're actively meeting with them on this.

Commissioner Casale: So, we're at their beck and call.

(Everyone laughing and talking)

Kristen Zebrowski Stavisky: I think they're doing a partial review right now of our site which is fairly intense.

Commissioner Kellner: Were you finished Jennifer?

Jennifer Walsh: Yes, I was, yes. Thank you.

Commissioner Kellner: Well then, we'll turn to Michael Haber for Information Technology.

Michael Haber: Alright, thank you, Commissioners. As we're talking about the website, I'll just say we have been very actively working with them with the ITS webservices group. As I mentioned, the formal kick off was earlier this month. There have been several follow up meetings on specific topics that are part of that architectural review.

And parallel we've also been working with a third-party vendor on improvements to display historical information on our site as well. We're optimistic this should streamline the process making updates to website, improving functionality and searchability.

It is also worth mentioning, in terms of the website, that the absentee ballot request portal is up and running for the upcoming special elections in Suffolk and Tompkins County. We continue to provide validation support to those county boards who are migrating their voter registration systems from one vendor to another. As was mentioned earlier, there are some new systems on the horizon that we will be participating in reviews for potential approval.

Co-Exec provided a very thorough update on the status of the online voter registration and automatic voter registration project and contract. INS was also mentioned. We had begun the internal development of an interim solution to ensure online voter registration is available by May of this year. Holding regular technical meetings as well as meeting with other business units and reviewing user screens that we have circulated.

This is the January filing deadline. Our CAPAS FIDAS team has been actively providing support to users in that regard. And as mentioned, continues to work with PIO and compliance on updates to the public reporting site. We also continue to work with the Public Campaign Finance

initiative. As was mentioned, bids were received from vendors in response to the RFP that was previously released, and IT will be taking a leading role in evaluating those responses. At the same time, we are also participating with PCFB system in leading discussions with external stakeholders who will be interfacing with that PCFB system.

In terms of cybersecurity, preparations are continuing as we move forward with renewing several security services internally as well as cybersecurity monitoring that we provide to the county boards. And we are working with the Office of General Services on reprocurring those services. And we also continue actively working on the Inter Elections Infrastructure project with SUNY Center for Technology and Government. Several related informational videos are in development for county board staff.

And lastly, I'll just say, in terms of the website that as was expected, our views and unique users were much lower in December compared to the lead up to November's general election. We had something like 1.7 million page views in November, and we had 109,000 page views in December. So, people are far less interested in us when it's December and not November. So, that concludes my report.

Commissioner Kellner: Okay. Thank you. Alright, so there's no old business on our agenda, so we'll start with our new business. The first is resolution 2301 to approve the changes to the Voter Registration form.

Commissioner Kosinski: Could you quickly explain what that change is?

Commissioner Kellner: Tom?

Tom Connolly: Basically, there was just one paragraph that was changed to reflect the deadline for receipt to be moved to the 10-day based on the new law. The new paragraph reads: "This form must be received no later than 10-days before the election you want to vote in. Your county will notify you that you were registered to vote."

Kristen Zebrowski Stavisky: It's up on the top, in the instructions.

(All talking)

Commissioner Kellner: Thank you. Alright, so those in favor say aye.

All: Aye.

Commissioner Kellner: Opposed? Alright, so Commissioner Spano voted aye.

Commissioner Spano: Yes.

Commissioner Kellner: Adopted unanimously. Alright, then we turn to resolution 23-02, the affidavit ballot envelope revision and same issue, right?

Tom Connolly: Actually, the affidavit envelop issue was a result of the Wrong Church Law. So, basically under section B which provides the reasons why a voter would be casting that affidavit ballot, we changed the language of the first excuse to remove the phrase *in this district* in two spots and then we also added some additional language to the end to the voter about the validity of their ballot based on their circumstance. So, the new reason states, "I have been informed by the inspectors that my registration record is not available to them, however, I have duly registered to vote from the address given above, and I remain a duly qualified voter. If you check this box, please ask the inspectors to review the address given above to ensure that you are at the correct poll site. If not, only votes for contests in which you are eligible to cast a vote may be canvassed, provided you were in the correct county and at a site designated for your assigned assembly district."

Commissioner Casale: That's instructional, the last part. The first part is an affirmation, and the rest is instructions.

Tom Connolly: Right.

Commissioner Kosinski: I guess I just have a question on that last sentence why it said, if not only votes for contests in which you are eligible to cast a vote may be canvassed. It made may be canvassed, maybe. So, you may not canvass those...

Tom Connolly: There could be other reasons why the ballot would not be canvassed.

Commissioner Casale: They're handed this form, they fill this form out, what about the envelope itself?

Tom Connolly: This is normally on the envelope itself.

(All talking at once)

Kristen Zebrowski Stavisky: This is the envelope. Large like an 8 ½...

Tom Connolly: And a number of boards will let you to do English on one side, Spanish on the other.

Commissioner Kellner: Alright, those in favor say aye?

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? It is adopted unanimously. Our next is resolution 23-03 which is the certification of the Hart Intercivic Verity 2.7 voting system. I had asked that this be laid aside at the last meeting. All of the issues that I raised then have been addressed successfully, that Hart has withdrawn their confidentiality designations on many of the technical documents that they submitted in support of the certification application, and the report had been made available to people who have asked for it.

Commissioner Casale: I move the adoption of the resolution.

Commissioner Spano: Second!

Commissioner Kellner: Okay. One other point that I wanted to make was that in the technical documentation, Hart included documentation that they submit for related systems in other states, that it included their bar code and coded package, and I just ask that our resolution make it clear that the system that they're submitting in New York has not used those codes and that will reassure some of the people who are concerned about that. Okay, so I'll call for a vote on this now. Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? Alright, so that's been approved. And then our last resolution 23-04 is the amendment to regulation 6214 which we're required to do every year. Is this, ah John or Kevin.

Brian Quail: Actually I'd be happy to.

Commissioner Kellner: Oh go ahead, Brian.

Brian Quail: So, this is the periodic increase in campaign contribution limits that are set to be adjusted as a result of changes in the CPI. Many of the limits that we previously adjusted for inflationary increases no longer qualify for those inflationary adjustments, owing to the amendments to the Election Law that implemented the Public Campaign Finance system, a number of contribution limits were lowered, and the CPI adjustments ended. But the CPI adjustment is still required for contributions to party committees, so this revised version of the regulation simply reflects that increase. The CPI from December from the last time we did this 4 years ago to now, reflected an 18.1% increase which is reflected in the drafting language.

Commissioner Casale: 18%?

Brian Quail: 18.1%.

Commissioner Casale: Is that divided inflation?

Commissioner Kellner: Couldn't help yourself, huh? (Laughing).

Brian Quail: I think only 6% of it was from the last. So, that's it.

Commissioner Kosinski: I'll move it.

Commissioner Kellner: Alright, those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? Alright it's adopted unanimously. That concludes the regular business on the agenda. Does anyone have anything for Executive Session? Do we want to discuss our next meeting date?

(Shuffling papers, can't hear – talking)

Commissioner Kosinski: Yea, maybe we can put it off.

Commissioner Casale: We have a good amount of communication.

Commissioner Kellner: And you know the two of you can schedule a public announcement, we don't have to have all four commissioners...

Commissioner Casale: My only concern administratively is, if we name someone and that person is on the payroll of another board...

Commissioner Kosinski: Yeah.

Commissioner Casale: Okay.

Commissioner Kellner: But you may want to schedule a public meeting to formally make that announcement just to comply with the Open Meetings Law. But the law is pretty clear that this appointment belongs to the Republican Commissioners.

Commissioner Kosinski: Yup, thank you.

Kristen Zebrowski Stavisky: Last year we did not meet in February. We met I think in the beginning of March.

(Everyone talking)

Commissioner Kosinski: Does the PCFB have a need to meet?

Kristen Zebrowski Stavisky: I don't think so, but I'll double check.

Commissioner Kellner: I think we were talking about March for them.

Commissioner Kosinski: I would like to coordinate with them too next time if we can.

Kristen Zebrowski Stavisky: They had nothing here.

Commissioner Kosinski: Yeah, I know that, but next time we could coordinate.

Commissioner Kellner: Alright, well Commissioner Spano, thank you for joining us. Do you have anything to say?

Commissioner Spano: Did we just agree on a date?

Commissioner Kellner: No.

Commissioner Spano: Okay. Take Care.

Commissioner Kosinski: We'll work it out. I move we adjourn.

Commissioner Kellner: Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: We stand adjourned.