

Douglas Kellner: We're on? Thank you. Good afternoon everyone. I'm Douglas Kellner, Co-Chair of the State Board. On my left is Peter Kosinski, Co-Chair, and Commissioners Peterson and Spano are here. We'll call the meeting to order. The first item on the agenda is the approval of the minutes for February 23rd. We have both the regular minutes and the minutes of our Executive Session. Commissioner Kosinski you were mentioning an issue on this, would you like to explain this?

Peter Kosinski: Well just noting that when I compare the public minutes of the meeting which referenced the Executive Session and then I compare that to the Executive Session minutes themselves which are separate, that the sequence of numbers, the way those two, those two don't match up in the way they're represented, the number, the case numbering system, so I was just trying to understand I guess why that was and then how we kept track that the votes reflected in the public minutes can be correlated with the Executive Committee minutes.

Robert Brehm: We did not want because of the nature of the cases to allow persons to perhaps be able to figure out what's going on. Not so much the public that we're dealing with cases but at the specific targets or persons involved in the matter so where the knowledge of the number might help them to figure out that something is taking place. So we've sequentially numbered in the public side of the minutes how many actions we've taken and what the specific votes were on the actions, which is what the public needs to know in the Executive minutes we more specifically identify the cases and then in the minutes that we actually keep the record of where we have the attachments, we've just correlate which one is numbered one, two, three, four, five, so that a person could be able to track in the actually copy of the minutes that are in the minutes book. So that's what we've been doing so as not to give up, you know if someone were to get a letter and see that they were Case Number X and somehow we noticed that we took action on X and perhaps it's a subpoena, we didn't want people to know that something is coming, you know, we don't hide the records or something. So we've always just since we've started this process, we've just sequentially numbered them in the public side so as to try and give some clarity to the public that we took action but not necessarily to anybody who's a target.

Peter Kosinski: But then there is a way internally to correlate the public record with the Executive Session's records so we can match those two up.

Brian Quail: Absolutely, yes.

Douglas Kellner: Thank you for pointing that out. Is there a motion to approve both the regular minutes and the executive minutes?

Gregory Peterson: So moved.

Douglas Kellner: Thank you, and those in favor say Aye.

Gregory Peterson: Aye.

Douglas Kellner: Opposed? The minutes are adopted for February 23rd. We also have the minutes for March 24th. Same motion.

Gregory Peterson: So moved.

Douglas Kellner: Those in favor of the March 24th minutes say Aye.

Gregory Peterson: Aye.

Douglas Kellner: Opposed? Those minutes are adopted. So we'll turn to our Unit Updates. We'll start with the Co-Executive Directors Robert Brehm and Todd Valentine.

Robert Brehm: A couple items that were of note since our last full meeting, not the short one we held, but on March 7th, we the State Board had certified the vacancy in Assembly District 33 due to the death of Assembly women Barbara Clark. That's a District that is contained within Queens County so certainly that would be a vacancy that began before April 1, in case a special is called we did out part that was required. The other major issue that took a great deal of time was certainly the negotiation discussions on the adoption of the state budget. We received the amount of money we had submitted, no additions, more importantly, there were no other initiatives adopted at this time that impact on elections so we have no other things we have to do within a short period of time. We certainly monitor the next step of passing bills. Certainly there were a number of issues related to getting ready for the Presidential Primary. We had a conference call with the County Boards of Elections. Our monthly call was on March 17th, so we have those regularly scheduled. Our next call should be the week of the Primary but we moved it to a week later just because everybody would be busy with the April 19th Primary. Certainly we remind people that next week will really start a very busy month for April for the State Board because next week is the filing of Federal Petitions for Congress, the United States Senate, and then the week after that is the Primary. We will need to be prepared and meeting with our staff for the election night reporting because President is a little bit different for us on how we display it and get the data and the special elections at the same time, but we believe we're prepared for that for election night results. Certainly we'll need to collect the data. There's a reminder that we don't pick winners and the delegates to the National Convention; we just aggregate that totals and certify that they're the numbers and then we have a responsibility, we give those reports to the respective state party leaders for them to take the next step and actually apportioning the delegates. So we will need to work between Todd and I and the various contacts to collect that data by their deadlines and get that information out as quickly as we can so that they can do the next round of delegate work that is required. I think a big issues that has been a lot of time, was the voter registration deadline and the numerous phone calls that we receive as to is it an open state, is it a closed state, and what are they're respective deadlines to the extent that people are listening, it is a closed. New York has been a closed state for primaries, which means that we only have a Democrat

Primary for Presidential Delegates and a Republican Primary for Presidential Delegates. The only persons enrolled in those parties are eligible to vote at the Presidential Primary. If you're in those four areas that have a special election, those individuals, all voters can go for those four special elections. But the deadline to register for someone for the first time was March 25th, but more importantly the deadline to change enrollment was last October 9th, so it was twenty-five days before the last general election. We did include that fact in our press release we sent out as their deadline to register in October, but there are a lot of phone calls from people that think that they have always been in one of the two parties and/or had filed to change their enrollment in time, so we've been trying to communicate to them what the deadlines are and to look up where they think that they've done sometime timely and the computer file just doesn't reflect it yet. So that's been a great deal of time for just about everybody in the building.

Andy Spano: You're getting more of those requests this year than any other year?

Robert Brehm: You always get more requests before a Presidential in general. New York is not a state that has often been in place though for a Presidential Primary. Usually by the time they get to the New York Primary, you know one side or the other has already decided, so we go through the motions of the Primary, but we believe that it still will be open by the time it gets to April 19th to New York, so there seems to be more interest. I hear it was one of the pieces of advice we gave to all the counties in March when we had the call, you really need to look at what you're ordering and for your consumables and your staffing levels for this Primary. If you look at four years ago or even eight years ago from a Presidential Primary and you use those numbers alone, you might not have enough, so you really have to give some consideration, especially in the area of Affidavit Ballots. If people think they're enrolled in a party and show up and their name is not in the book, you will need to have enough supplies to deal with those individuals if they claim to be enrolled in a party, so we have both did that at the March call, we sent a follow-up e-mail just reinforcing that they should really give some consideration and I know the counties are because we're hearing the calls trying to figure out what the appropriate numbers and certainly they can make adjustments as they get closer to election day so as not to run out.

Peter Kosinski: Now Robert, I read a couple of articles that DMV was having some issues with the voter registrations coming through their system.

Robert Brehm: DMV had an issue, mostly capacity as they described it to us. They were getting such a large number of people attempting to use the system that it had created a backlog. DMV had communicated that to the County Boards of Elections the week of the registration cutoff, that Tuesday, and they sent a follow-up e-mail on Wednesday that they, because they thought that they would have it resolved and it wasn't resolved as of Wednesday and they resolved it as of, they claimed, Thursday morning. On Friday, which was the 25th of March, I'm told that we had received a few phone calls from people claiming that there was a tickler across the DMV site that said it was due to capacity, it was slow, and I know Tom Connolly had reached out to DMV, I think as late

as almost a quarter to six on Friday night, and they said it was working fine, but at some point after that, I think the system was shutdown so they had some capacity issues and had some forms that were sent to them that were not the normal process because people were filing things and to the extent DMV knew what counties those forms belonged and transmitted those forms to the counties so the counties could determine whatever level of detail was missing or, you know, DMV can't determine whether they're complete or not; only the County Board can do that so they had to get the documents to the County Board to do their follow-up.

Peter Kosinski: Is this the first time we've seen that kind of issue with them on a deadline, that couldn't handle the volume or?

Robert Brehm: You know, I don't know that we've had a good postmortem yet, you know when I came in on Thursday morning, must have been on the 24th, when it wasn't resolved yet, I had sent an e-mail to DMV just simply saying we better schedule a call today to find out what's going on because all of that work, up to that point, DMV was transmitting twice a week what ever volume came in. Twice a week they would upload those documents to the County Boards of Elections and since Tuesday we didn't resolve, Wednesday didn't resolve, the deadline was coming, Thursday morning I sent the e-mail and said, you know it's 9:15, we haven't heard anything, we better have a call today to find out what is the plan, and as I was sending that e-mail, they were sending me a response that they solved it and did we still need a phone call? I said I would still like to know what is going on. What was the issue and they said it was a capacity issue and we've solved it by uploading daily as opposed to twice a week and that should solve it. And my response to them, well it better because this is the Primary but as we get closer to the October deadline, it will be even bigger. So if you're having a capacity issue today and this is your plan, you better know that it's going to deal with the capacity because it's only going to go up as we go further on, and they said they thought it would solve it. I don't believe they've solved it.

Kim Galvin: Now what we see is a lot of the voters that try to register through the DMV site, the applications are incomplete. The County Boards are sending them back out for additional information and they're screaming at us and the County Boards saying while I did it through DMV, so my understanding is there's eight hundred or so from that Friday that may have difficulties out in the counties so it's not a huge number in comparison, but it was the last day to file and it will be, it's probably a minimal blip compared to the actual registration for the Fall.

Robert Brehm: Many of those eight hundred still came with some of the data elements like the Client ID number that you could match up to the record, many didn't include a Client ID number, and then there's various levels of completeness that people communicated, some as simple as an e-mail.

Kim Galvin: It's my understanding that DMV, and I don't know if Bob was aware of this or not, I became aware of it very late in the game, that was actually putting

instructions to the voter on what to write with their application when they sent it to the County Boards to make it a more valid application even though it was missing some stuff without consulting us or talking to us on the issue.. So it was problematic.

Peter Kosinski: So did you schedule a meeting with DMV or not yet? So what's the plan?

Robert Brehm: We haven't yet because they had transmitted the material, but once we got past the deadline, we need to do a follow-up with them because for the next deadline is going to be a big issue.

Kim Galvin: Yep.

Robert Brehm: And certainly as Kim had said, however DMV dealt with the problem on Friday night, we became aware of it after the fact and then the matter was the best under the statute is you have to get that communication to the County Board because only they can do the necessary follow-up with the voter. I think there were a number of individuals where DMV only had an e-mail address, nothing more, and my understanding DMV was following up with the people they only had an e-mail address that the system was up and running and they needed to reengage the system because there was, there was an e-mail, I don't know what county it belongs in kind of a situation.

Robert Brehm: I understand that there were ninety-five hundred that they did process on Friday.

Robert Brehm: The normal DMV way.

Kim Galvin: Is the number eight hundred? That's the number I had.

Robert Brehm: It's eight hundred and ...

Andy Spano: That's eight hundred who actually got on, did something and were late?

Robert Brehm: No, those where, whatever e-mail communication came to them by midnight, because under this statute whatever an NVRA agency receives up to the close of that day, the last day to register, the agency has to transmit that information to the County Boards of Election so that it arrives by the Wednesday, twenty days before the election deadline. So whatever they had that they could identify belonged into a particular county, it had to transmit and they did.

Andy Spano: That doesn't include anyone who is going to say they tried to get on, didn't get on.

Kim Galvin: That's right.

Robert Brehm: Exactly.

Andy Spano: In the nature of the campaigns that are coming in, whatever the consequences are tonight, that could be a big problem.

Douglas Kellner: Yes

Kim Galvin: Another reason for those extra Affidavit Ballots.

Peter Kosinski: Well, I guess that at this point there is really nothing we can do about what happened last Friday or two Fridays ago, but I do think you're right going forward, we need to make sure this doesn't happen again when another deadline looms, which it will. I mean I guess we have a couple of deadlines looming, right? We have the Congressional Primary deadline, we have the September deadline, we have the November deadline, so there are going to be three more deadlines for voter registration in our state this year and I would hope DMV would not have this happen again. So I don't know what you can do to ensure that but I think we should do what we can.

Douglas Kellner: True. Historically the October registration deadline for the Presidential election is always a multiple of the highest volume.

Robert Brehm: Absolutely.

Kim Galvin: So if there is any indication from the number of calls we received from the Primary which were just an extraordinary, I mean everybody in the building was telling people voter registration deadline or you missed it which they weren't happy about but if that's any factor to consider moving into the general, it's going to be astronomical.

Robert Brehm: We had about three thousand forms also on Friday afternoon, the deadline brought to us to almost at 4:15, that needed to get timestamp, sorted and overnight sent to the County Boards of Election, so every available person in the building...

Douglas Kellner: That's three thousand but in November.

Robert Brehm: Oh, it's more.

Douglas Kellner: A few years ago we were talking...

Robert Brehm: Oh, we had twenty thousand a day, some of those emailed.

Kim Galvin: Bin after bin after bin.

Robert Brehm: The mail truck just backed up to the building four years ago so we're expecting.

Douglas Kellner: So that's the message that has to get to DMV.

Robert Brehm: Yes

Douglas Kellner: Anything else?

Robert Brehm: No, unless Todd has more.

Todd Valentine: No, that's it.

Douglas Kellner: Alright then, we'll turn to the Counsels Kim Galvin and Brian Quail.

Brian Quail: Thank you Commissioner. First we do as was mentioned, we have four special elections looming on April 19th, so there is a filing calendar that has been advanced for that and I would just note that the cut off for the eleven day pre-special filing was yesterday and it's due on the 8th. We received filings for the special election thirty-two day pre-special on, that were due on March 18th, and we have sent a very, very small delinquent, non-filing list to enforcement, and as far as compliance reviews are concerned, they are obviously ongoing and referral lists of approximately nine hundred deficient filings was referred to enforcement. We have a number of trainings that are coming up including two for political clubs. One in Nassau County on April 6th, which is tomorrow, and one in Manhattan on April 7th. On our website we've finalized the 2016 Regional Seminar Schedule and those will include both CLE and CPE credit courses. The training unit in conjunction with counsel has completed substantive aspects of the handbook revision and are in the process of literally dotting the I's and crossing the T's on the document, and also the unit is in process of preparing a filer update which will be sent at the end of April to all filers with an update on upcoming events, the training schedule, and filing deadlines. The staffs, particularly on the compliance side are heavily engaged in the FIDAS redesign effort. There are biweekly meetings with the IT staff and that work has proceeded. One of the aspects of that work is a case management system in light of our conversations at the last Board Meeting, I believe that additional efforts have been made to incorporate a collection of relevant statistics in terms of being able to better track the movement of a particular report from deficient to actually compliant. The total caseload that's been received in the compliance unit has been around fifty thousand one hundred and twenty-eight and every time a new report is filed even if it is a replacement from, well I'm not going to say a replacement, even if it is a report that's being filed to correct a deficiency, it's logged as an additional report. So it's been a little bit difficult to get an exact handle on the movement from deficient to compliant but our staff did endeavor to come up with a rough analysis of what it looks like by looking at the total number of deficiencies that ultimately have been referred which does not include obviously people who are actually helping themselves with us to come into compliance or who have come in to compliance and their estimate is around 88% of people who have had a deficiency ultimately corrected. I'm at about 12% end up in a referral status and obviously even after that point some if not many of those will ultimately or do ultimately

come into compliance. But in terms of making the statistical analysis more robust, we are working on that and it is a mountain of data that they've collected since the beginning of the unit given the fifty thousand plus.

Peter Kosinski: Brian, let me just understand something. So you're saying that 88% of those who are flagged as deficient come into compliance within the 30-day window that we give them to come into compliance.

Brian Quail: The analysis that was done Commissioner, I do not believe is as robust as to be able to, for me to be able to report to you that the durational element to that.

Kim Galvin: I think that often time it is more than 30-days pending.

Peter Kosinski: But ultimately, 88% of those flagged as non-compliant become compliant before they are referred to enforcement.

Kim Galvin: That's right. They answer relatively quickly and begin the process and start their amendments. A good faith effort

Peter Kosinski: Good faith effort. So how many of the total filers are identified as deficient?

Brian Quail: Well, at this point we have moved over nine hundred deficient reports.

Peter Kosinski: So what is the percentage of those who file that are deficient?

Brian Quail: Oh, at the point of filing?

Peter Kosinski: Yes.

Brian Quail: I don't...

Peter Kosinski: Is that nine hundred of fifty thousand?

Brian Quail: Well, no it's a much larger number at the point of filing.

Kim Galvin: You can't because some of those nine hundred are committees that have multiple deficiency letters, so some have three or four letters that they've received that have been, so they're not nine hundred individual committees.

Brian Quail: That is correct.

Peter Kosinski: So I guess what I would be interested in knowing is how many of our filers are flagged as deficient in the first, you know, initially, what percentage and then

what you've done, is what percentage of those that are flagged as deficient come into compliance.

Kim Galvin: In talking to the staff, I think I can add to Brian that because it was just a mass on Excel spreadsheets, and that's why we're working towards an easier way for them to handle that. We are working towards that from the last meeting to try and get you those numbers, but it's a herculean task when you just have Excel spreadsheets and trying to figure it all out.

Risa Sugarman: Go ahead.

Brian Quail: Which is why because of your inquiry they were in the process of preparing business rules for the case management system, the importance of collecting the statistics as things are actually unfolding was made clear and has worked its way into the project design as well, so that we can give more robust accounting for the movement of committees status.

Douglas Kellner: And then I'm also very interested in the statistics after the case is referred to enforcement, in other words, how many of those committees come into compliance after the referral to enforcement and, you know, how many of those committees remain out of compliance after some period of time, after referral to enforcement, whether it's six months or a year or five years.

Risa Sugarman: Just another point, the numbers of the nine hundred, I think that they reflect cases that were referred before Brian and Kim and I met to discuss the Dominimus and the more, I don't want to say serious, because all of the issues are serious, but the Dominimus and the non-Dominimus issues that we've discussed. So you have some that would be training letters as opposed to deficiencies that were referred among those nine hundred. When we talk about January of the 2016 Periodic on I think you'll get a better idea of the more serious deficiencies that you see in the committees because we have a different guideline or we talked about a different guidelines that the compliance units will be using to determine whether or not to send training letters or deficiency letters.

Brian Quail: I agree with that assessment. With respect to litigation, we've had a couple of decisions that have come done. The *Sloan v. Michel* case, the case was dismissed and we also received a decision.

Douglas Kellner: You should give a sentence on what the case was about.

Brian Quail: It was a, it's difficult to assess this case in one sentence even though there was a sixteen page decision.

Douglas Kellner: It challenged the constitutionality of the formation of the State Board and the New York City Board Elections.

Brian Quail: And had various theories of relief and it was dismissed and that is a very good thing. The limited liability company decision *Brennan Center v. the State Board of Elections* also came out at the trial court level and it was dismissed. We have quite a bit of additional new litigation activity this month. The *Korman v. the New York State Board of Elections* case dealing the eligibility of Ted Cruz to be on the ballot was dismissed on procedural grounds at the trial level and that was upheld at the Appellant Division level and appeal to Court of Appeal was also denied. There's a pending case in the Eastern District Federal Court in New York, *Fisher v. Cruz* that poses a similar theory of ineligibility of Senator Cruz to be on the ballot and that case is pending. We also have a case that was filed, *Ball v. New York State Board of Elections*, with relation to the eligibility in the methods of candidate selection in the 65th special election assembly district, special election I should say. That case is pending. And also we have a case that was filed on March 11th, *Davis v. The New York State Board of Elections*, with respect to the appropriateness of the constitutional convention independent nominating petitions not specifically allowing people to be identified as unaffiliated, and that rounds out the litigation, unless I missed anything.

Douglas Kellner: Okay, anything else Kim?

Kim Galvin: No, just to mention the various meetings. We've had a lot of meeting with, internally with Brian and I and Bill, and sometimes our other staff members, to discuss certain issues that Commissioner Kellner had brought up regarding the specific questions about the clubs. One of Risa's staff joined us for the last one. I think we're near to finalizing our positions on that. And I think it's other than the phones ringing and the voters being very unhappy, it's been a productive time for the unit since the last Board meeting. You have anything else to add?

Douglas Kellner: Thank you. We'll turn to the Election Operations. Anna is sick today so we'll ask Brendan.

Brendan Lovullo: Just a few things. We did the recertification of the Presidential Ballot after Jeb Bush and Marco Rubio submitted to drop off. We're continuing with the ESS Phase 2 upgrade, Dominion upgrade. I think Bob mentioned the petitions for the congressional start week. We're working with the IT for election night reporting, getting all the files and everything from the counties, and their vote rights, their voting system, submit an application and their information should be here the week of the 18th, and then we're just continuing to work with the counties for the primary.

Peter Kosinski: I just have a question about that special meeting we had a week or so ago with the upgrade to the New York City. I just want to know, are they going forward with that or are they committed to implementing that for the April primary? And they're the only Board in the State that's doing that?

Brendon Lovullo: Yes. They're the only one that is using that upgraded system.

Douglas Kellner: Alright, thank you. Alright, public information, John Conklin.

John Conklin: Thank you Commissioner. We did actually get a Unit Report in. I don't want to go over all that stuff, I'm sure you've read it. I'll just add the additional item that on April 1st we posted the new enrollments to the Website for the counties, the Assembly District, Senate District, Congressional District, and Election District. There were approximately three hundred forty-one thousand new registrations overall since November 1st of last year, but ultimately between the up and down, cancellations and deceased, etc., there wasn't really a significant change in the enrollment that much. That's really all I have.

Douglas Kellner: I'm interested in what's happening on the interstate voter registration project.

John Conklin: Tom and I have to send it out to the counties for the matching. He has a filter that he applies to it before we send it out to increase the ability to do the matching for the counties, which we are in the process of doing.

Douglas Kellner: Okay.

Peter Kosinski: Are we doing election night reporting?

John Conklin: Yes.

Peter Kosinski: For the April primary?

John Conklin: Yes.

Peter Kosinski: So on our Website there will be election results from around the State for the two primaries?

John Conklin: Correct.

Peter Kosinski: And the specials?

John Conklin: Correct.

Douglas Kellner: We're required by law to do that now.

Robert Brehm: It's interesting when I started in 2006 as the Deputy PIO, when we had that old system that relied on the Associated Press, it was not very efficient. We were happy to have some number and now the Associated Press is linking to our site so it's working well and it provides a great deal of data. We get a lot of hits from people to the site, so it really, I mean this is really a little bit more complicated because of the nature of these two races as compared to because they run really, we have twenty-seven

Congressional level primaries in order to figure out the allocation of delegates as opposed to just a state number. It used to matter as a state number when the Republican party was a winner take all state and then we didn't really need the granular level of details which just makes it a little bit more interesting when we have to be able to provide the twenty-seven congressional.

Todd Valentine: There's a state total compare, there's a state total function for both parties.

Robert Brehm: So everybody can always see it.

Todd Valentine: Secondary allocation of delegates based upon statewide totals, so they have to do CD level and then there will be a total at the bottom. But yes, you should have that election night.

Peter Kosinski: Now, hours for the primary?

Robert Brehm: Depends. It is different.

Peter Kosinski: Now do we have any specials that interrupt that all or are they all in?

Robert Brehm: All the specials are in 6 to 9, Nassau County has the Senate District, and New York City has the three Assembly Districts. They are already 6AM to 9PM. So there are no hour differences for that but those counties that open at noon will open at noon, which I say largely the upstate counties except for Erie, depending on where you say is upstate. Ulster is in the upstate area, below that is not, for this part of the conversation.

Douglas Kellner: From Information Technology, Mark Goldhaber.

Mark Goldhaber: Thank you, I was actually planning to open with election night reporting. We have been working to get that set. It's been a little bit tricky with the combination of the different way that we have to report the Presidential combined with different ways that certain special elections are being held, but we believe we've got that all under control and we're all set to roll for April 19th, so we're good to go with that. The NYSVoter Project we are in the process of rolling out the new secure network connection to the counties. They've all either shipped out or are being prepared to being shipped out as soon as they get back to us with the address that they want it mailed to. We're running into some difficulties with counties getting back to us to schedule the implementation of the devices. We're working on following up with them to make sure that we can get all the devices rolled out prior to the primary so that if everything else goes as planned, we can cut the NYSVoter System over to the new infrastructure the weekend following the primary, which will give us about two and a half weeks before the contractor, the contract with the contractor is up to iron out any difficulties that happened once that cutover is made. So right now based on our meeting this morning, they're

projecting completion with about a weeks cushion. We'll see how things go between now and then. We're going to be keeping a close watch on that but right now our, we seem to be on target to cutover the weekend following the primary and they'll be able to exit as completed on May 11th, assuming that all goes well. In addition...

Peter Kosinski: Let's take the other side to that. Let's say it doesn't go well. Let's say you don't meet that time frame and the contract expires.

Mark Goldhaber: Yes, we are working on contingencies for that. I don't necessarily know how we're going to handle that yet. I've been discussing with Bob and Todd, you know, we've got to make the date, if we don't make the date, do we have any options? I don't know that we have an answer to that at this point but we're going to continue to talk about what we can possibly do if they don't make the date. We're going through knowledge transfer as we get closer to the date so that hopefully our staff will be taking on a number of these functions and if things are not resolved, our staff may be able to resolve that, but there will be a discussion following the engagement as to how the engagement has gone and any possible actions that may result from that, but we will deal with that after the effort is being put into, getting it on time so as to not remove attention from getting the job done.

Robert Brehm: I think one of the major issue was the preliminary testing that was done and the support we brought in to make sure we tested it in production and that it passed the test and we've also tested it when we've tried on the live side replication, and those also passed. So the only issue that we've had recently, as you know when we started this statewide voter registration list, the state paid for the interface with the counties, the box, and that was the device that we are updating and each one is configured to the firewall for every county as to the IP Addresses for those counties, get those out to the counties and plug those in. Once those are plugged in and we have support to get the boxes, deliver the boxes, have onsite support, if we need to be in a county because they don't have anybody in their county that can plug it in and also to work back with our team to make sure that the final switch has happened. So that's just to replace the box. Once all the boxes are replaced, it's a matter of just turning the switch of the data. Certainly if the tests that we've done that succeeded testing it get a different result, I guess we'll have to deal with that, but we did test it thoroughly.

Mark Goldhaber: We have tested through the development, the quality assurance, and user acceptance test levels already, the production environment is 80% complete. They hope to finish that up this week and begin testing on that next week, and then really it's just a case of following the cutover the weekend after the primary. We say, okay, you're pointing here now instead of pointing here and you're using the new hardware, let us know if you have an issue. It should be relatively seamless for the counties once we actually do the cutover. I hope to have the transition plan from the contractor by close of business today, at which point we will review it, make sure that everything is set, and then communicate to the counties that this is how things are going to happen over the weekend. This is when you're going to lose connectivity to us, this is when we're going

to be taking care of all this, this is when you'll come back online, and then this is what you should see, and then assuming that things go as they've tested out, we should be able to run smoothly on the Monday morning when we come back up..

Robert Brehm: From a county point, whenever we do routine testing and a switchover, the counties system continues to function its messaging back to us to get the updates, so if counties are working over that weekend to look up their affidavits or whatever, their systems will still function, the messages will queue up as if we had done a routine maintenance that happened quarterly.

Gregory Peterson: How labor intensive is that for the counties?

Robert Brehm: Should be...

Mark Goldhaber: Basically it will queue up the transactions and they just won't get a response until the system comes back online. When it comes back online, the transactions will flow through and they'll get the response.

Robert Brehm: The plugging in of the box or once we, once we convert, they should, it should be seamless. The plugging in of the box, the questions that we ask the counties and it depends on size and availability; do you have persons in your county that are familiar with Sysco, with the various computers? Depending on the response from the counties, we either, we have a person in place with experience that can be in every county, but if they don't have to be there because there's somebody on the scene, we won't have to use them. But our plan includes if we had to have a person in every county to help plug the box in because they didn't have an IT person with that skill set. So we're trying to be a belt and suspender for the county.

Peter Kosinski: Bob, when you say we, are you talking about a staff person here or one of the people that isn't....

Robert Brehm: It's a subcontractor.

Peter Kosinski: You would call the contractor and they would send a person out.

Robert Brehm: It's a subcontractor to be able to be there in a...

Peter Kosinski: So if this contract runs out, you're talking about...

Mark Goldhaber: This is a different subcontractor that's working on the county boxes.

Peter Kosinski: But if this contract runs out before this switchover occurs and you run into problems, then you're trying to figure out, from what you're describing a backup plan to using the subcontractor?

Mark Goldhaber: Well, the subcontractor, the goal is to get all those boxes rolled out as long as the counties get back to us, we should be able to do that and if it takes an extra couple of days, as long as we get it done by that weekend, we'll be okay. When the boxes get rolled out, it will allow them to communicate to both the existing system and the future system. They won't have to do anything further connectivity-wise on their end. The issues would come either if we don't get the new box rolled out to the county prior to the cutover because then when we come back up, they would not be able to get to the new system or if when we cutover, there's a problem with the new system. If it's an issue with rolling the box out to them, then our subcontractor there will continue to get that resolved. If the issue is with the new system itself, that's the main contractor and that is the contract that runs out May 11th that we are considering what alternatives we have if they're not able to resolve it before the end of that contract.

Robert Brehm: But one, the contract is deliverable-based so they will need to deliver and then we'll have to look if we have to go out to emergency procurement, for whatever reason, we'll have to take that path for that component, but I think the complicated is we were just setting the box up, the new box for the new system alone, but the complexity is it has to be designed to support the old switchover and if we're not ready, we use the existing NYSVoter System that we have and we have a little bit of time because the, I mean, the reason why we went down this path in the first place is it was all Microsoft hardware, software that in June we're beyond the support level that Microsoft has to that version, so there's a small period of time where not being supported for the routine patches that you get from Microsoft now, which happens, I don't see it but I'm told many times a week, so we have a little bit of time if we need it to turn it on if for some other reason something happens. The existing system we don't have to turn over by that date but if all else, if we can that we should. But we've attempted to do this in a way that is as seamless to the counties as possible because not every county has the IT support that knows this; the bigger counties do.

Kim Galvin: And the cutover is a week after the primary?

Mark Goldhaber: The week following the primary. So we would take the system Friday night and come back up theoretically Sunday night. I haven't seen the proposed schedule yet. Once I have the proposed schedule then we can communicate that to everybody. That would give us approximately two and a half, three and a half weeks before the May 11th departure of the contractor.

Kim Galvin: Well from a county perspective, that's like an extraordinarily busy time, I would think.

Robert Brehm: Yes

Peter Kosinski: Are they still counting ballots, absentees, affidavits? I mean is this a good time for them to be transferring to a new system?

Robert Brehm: Well, the box is the transfer. The system is, there's no functional difference on this system and so...

Douglas Kellner: How are you sure that this system isn't going to go down?

Robert Brehm: That is the biggest issue from those tasked.

Douglas Kellner: Because they're going to be processing affidavit ballots.

Mark Goldhaber: If the new system is not ready to go operational over the weekend, then we're not going to pull the trigger. Basically, the new system...

Douglas Kellner: Mark, but the point is that if you think it's operational and it isn't...

Mark Goldhaber: Then we go fail back to the old system.

Douglas Kellner: But you have to be absolutely sure that you're in that position.

Mark Goldhaber: Yes.

Douglas Kellner: We don't want the possibility that the counties will not be able to process affidavit ballots during that time.

Mark Goldhaber: We understand that. Basically, what's going to happen is that the old system we're going to stop connectivity to that system, we are then going to take the data base, convert it to the data base format for the new system, import it, and then bring up the new system and test it to make sure that it's functioning and if it's functioning then we go live. Basically, the system is going to be ready to go and be tested out and the only thing that we would have to do for the conversion is to actually convert the data base from the old format to the new format, which due to the size of the data base, will take quite sometime. So if the new system doesn't work when we test it, then we say, okay, we're going to re-enable access to the old system because it hasn't been changed and they just go up against the old system.

Peter Kosinski: Mark, when you said you're testing it to the new, is that a county-by-county test? It's not really a statewide test? Each county has to be separately tested because of this unique characteristic of each county system.

Mark Goldhaber: We are testing the connectivity from each county to the new system prior to the cutover. When we put the new box up, we say, okay, do you have connectivity to the new network? Can you see the new network servers? Is that all working. So before we're done with that box cutover, before we stop working with them and say okay, you're ready, we make sure that they will have connectivity to the new system. So what we will do is we will test internally, is all the processing happening the way that it should happen? Once we're satisfied with that, we open up to the counties

and say, okay, test your transactions and make sure that you don't have any problem. If you have a problem, let us know and we'll fail back.

Peter Kosinski: You're talking about this testing though, what I'm trying to understand. Is it county-by-county you do this test, so is it just one test for the statewide.

Mark Goldhaber: The function of the system itself is consistent statewide. It's the same transaction whether it's coming from Albany or Oneida or Richmond or Erie, it's all the same processing. The only issue that would be different from county to county is their connection into the new network. So we test the connection into the new network before we say okay the new box is up and running appropriately.

Robert Brehm: So with our system being a bottom-up system, the counties always can see their system and when they make any change to their system, it sends a communication through the box to the statewide system. So if the communication method is, you know, how it sends the message and receives the message, is similar. If say if we're doing it over the weekend, if a county continues to work to do their processing of affidavits or look up over the weekend, whatever queuing up that they, if they make any changes over the weekend, that will queue up a message that needs to come to us. So as soon as we convert over or not, we can always see that what communications are pending and that they're actually coming and going, and we can monitor the two way communication to see if it's working and to see that it's not working.

Kim Galvin: So I hate to be the nay-sayer, but when the cutover is made, let's say 80% of the counties, you've looked and they're communicating with one another and 80% of the counties are fine, is there a chance that ever though you've seen connectivity because they did something at the other end, those counties are not going to be shut out of the new system?

Mark Goldhaber: What we'll have to do to see is who is working and who is not working. Based on what we see, we'll have to make a determination, is there sufficient...

Kim Galvin: So can you see enough to know that they're 100% ready to go or just that they're talking to one another and they haven't screwed up some programming thing at the other end.

Mark Goldhaber: They should not need to make any programming changes at the other end. They should be able to just, when we say, okay, we're on the new system, then their box will communicate to the new system. Again, I have to see the final instructions regarding the cutover, but I believe that they will not have anything that they will need to do. I will have more information on that by close of business.

Robert Brehm: The biggest problem and not that, the biggest problem we're having is the box with the IP addresses for the configurations of the county, with that set up and

plug in and testing because if somebody at the county level has something different, that's where we need the hands on support to make sure that we're pointed things in the right direction and whenever we go, and that's a case where there's no commonality of, well I guess New York City maybe, but you know, if there were thirteen counties that use the same vendor, you know, for the voter registration system, the box is not set up the same way for thirteen counties, because it's the IP Addresses the way that county has configured the firewall, etc., that's the biggest test that we need to do to get it right. Not that the other part isn't a very big part of it but that itself if it doesn't test means we're never getting to the cutover anyway because it has to be out there, it has to be working, it has to be plugged it, we have to be able to know that it's working under the system we have now before we even get to a switchover. That's the biggest hardware hurdle that we have to get over in connectivity hurdle. If we don't get that part done, there is no conversion over yet because it too.

Todd Valentine: All that is being done beforehand. That's being done now. All that will be done well before we turn it over. The database has been tested to operate now so remember there's two parts to this. The counties talk to us and again they always have all of they're stuff locally or all the data is preserved. There's no question about that. You know, again with any project of this magnitude, is there, is it a 100%? It should be. I mean all of our planning indicates that it is. All our testing indicates that it is. But could something go wrong? Yes, possibly, but again that's where the failsafe comes in that all the data is preserved. They can continue to do their work and do their research as necessary.

Kim Galvin: But they don't get answers.

Todd Valentine: No.

Brian Quail: They have everything they need.

Brian Quail: Speaking in for my former existence as an Election Commissioner, the connectivity with the NYSVoter database gets the record to the NYSVoter database and it gets back to your check sum that allows you to know that the voter was verified, and the consequence might be that if I wanted to print a poll book, I would have a problem. But in the context of where we're at in the election cycle, routinely communication with NYSVoter would occasionally go down in my county. We would have to turn off the server, turn it back on again kind of thing. It should not affect as Co-Executive Director Valentine said, any of the operational elements required to access the counties own data and to verify the eligibility of affidavit ballots, they should not prevent any county that wanted too although most won't, because they'll queue them up, the affidavits that they're going to add to the rolls, usually that part is done at the end, you determine eligibility yes or no to count, and then you usually queue up the affidavits and you actually enter them into the system at the end. But even if they did enter them on a rolling basis, those would simply queue up to get into the state data and they would appear immediately in the counties local database. So I ...

Douglas Kellner: So Commissioner, I think we have the staff on record now.

Andy Spano: I have never seen any system this complex and not have some problem.

Peter Kosinski: Right.

Andy Spano: I mean even Microsoft when they issue something has many problems.

Peter Kosinski: I guess what we're probably questioning the most is the timing of this, you know, doing this so quickly after this primary. We don't want to risk having a system failure impact the counties being able to finish their counting of the primary and the special elections. That's all, so since you've targeted this so close to the special and the primary, we're just I think just concerned that if you do have a glitch, we don't want it to impact, I mean Brian based on your explanation, I'm going to take some comfort thinking that if we have a glitch, the county is going to continue to....

Mark Goldhaber: We came up with a date in consultation with Bob and Todd to avoid any serious impact. We held off until after the primary because we didn't want to interfere with poll book printing and since afterwards, the counties that are doing work locally and it's just feeding data up to us to update our data base afterwards that we could do it as soon as possible after the primary to allow as much time for us to clean up any potential problems before the contractor leaves, if possible. But it should not affect the counties doing the work locally, just their updating of our databases.

Andy Spano: When you switch over and 98% of the system works and we have 2 counties that don't work, when you switch back, you can switch back to just those counties or you have to switch the whole system back?

Mark Goldhaber: If we switch back then we would have to go and upload all those changes to the new database and we will probably have to extract the entire database which would overwrite any changes to the new data base, so it would be much more complex to fail back a couple of counties than to just go to those counties and say, okay what do we have to do to get this working now? So if we have two counties that are not working out of 62, I would be very happy with that and we can go and, I mean obviously I wanted it to go with 62 working perfectly in an ideal world that's going to happen, we can't guarantee that. If its just two we can certain handle that and go and do whatever we need to do to make sure that they are then working as quickly as possible. That's going to be our first priority once we get the system back up and running is everybody working okay? If not, what do we have to do to get everybody working okay?

Andy Spano: What's your threshold for switching back?

Mark Goldhaber: We've not determined that yet. But that would not be deciding that unilaterally, I will decide that in conjunction with Bob and Todd. They will move likely

drive and it will probably be situational as well depending on which two counties might be the outlier and what their volume of transactions are likely to be. So it will be in consultation with Bob and Todd on Monday morning, okay these are working, these are not working. Do we stay like this do we fail back?

Robert Brehm: I think from our experience we have seen and we monitor, our staff monitors where I can see every county and when we can't we call the county to find out why we can't see you on the other end anymore. And in the majority of those cases it some IT person at the local level has decided that they have a new something and they set it up and they tinker with the system and we're no longer, because they've redone the firewall or the IP addresses. So that's usually the work we have to do in order to reconnect so that we can continue to send messages. So they do that as part of the ongoing job now. That's usually the biggest time when we can't see something and on occasion, it's the box itself. For whatever reason, it fails, we have to get them a new box. The majority of the cases and one that was most recently had several weeks is an IT person worked on the system, changed it and left. Nobody knew the access codes. And it took us 3 weeks by the time we could straighten that county out again. Now luckily for us it was at a time of year that we knew we were coming close up to the deadline and we tried everything to find out where that county person went who had the secret code, didn't tell anybody before they left but they literally did it on Tuesday and left on Wednesday and it took us 3 weeks to straight it out. So that's usually our problem. My threshold is very low, they all have to work.

Mark Goldhaber: Our timeline will probably include on Friday before we start the process making sure that we can see all the counties and all the devices look to be working appropriately and then after we make the change over, before we tell everybody that we're live, checking again to make sure that we can see all the counties. And if we can see all the counties from the new network, then we figure we're okay to roll forward and then we tell everybody, okay we're up and running. So we're going to work this all out as part of the cutover process so that we can do this with as little disruption as possible for everybody's work. So from that final at Commissioner Kosinski's request, we put together a more detailed update on the status of the CAPAS FIDAS project. I'm not going to go through the entire report. However I will point out that as Brian had mentioned, we are working on updating the compliance system. We're working with all the staff. The current excel spreadsheet based system which is a large risk, we are going to try to bring up the first portion of that prior to the rest of the CAPAS FIDAS system so that they can get away from the spreadsheets and have better functionality and better tracking and less possibility of one person overwriting somebody else's changes and then that will be a subset of the functionality to give them what they have now and the expedited case management functionality will come when the new CAPAS FIDAS system rolls out with the new database. So we are doing that in an expedited fashion so that Compliance can have a more robust system so that Kim, Brian, Bill, Cheryl, Bob and everybody and their staff can get to the data they need. It will make it easier for them to sign out reviews and so forth and they will have that prior to the CAPAS FIDAS system as a whole. That's I believe module #5 within the report. So, I believe that you did

review on the latest design and that things seemed to be what you're expecting to see and we should be able to give you the functionality you need right away. So other than that, if there are any questions on the CAPAS FIDAS status I'd be happy to answer them.

Peter Kosinski: Yeah, I just have and I think I raised it before and it's not really a question I guess and I appreciate what you've provided, I just try and understand. So, my concern or not a concern but goal I could say is in the new system for people who are using the system filers should be simpler than what it is currently is. I think our system now is based on an old paper system that was created prior to computers where we had multiple schedules which we required each filer to use and to breakdown their transactions into which in my experience has led to people putting things on the wrong schedule because they didn't understand which schedule worked for what purpose, and I have felt those numerous schedules aren't needed. There's basically two transactions; money in and money out. And that's the way this should be structured. I know you have different types of money in and different types of money out but the basic premise is its money in, money out and then you can identify wherein there what the of money that is or where it came from but it shouldn't have to put it on a different scheduled. Let me just finish Mark. And we don't put it on a different schedule because there's no need for that anymore because you can break it down through a computer program if you want to pick out all your corporate donors or all your partnership you can do that by designing the system that way rather than having it on separate schedules. That's number 1.

Number 2 is to have it more user friendly to those who are searching the system. Right now if you're trying to search our system of campaign contributions or filers, it's very difficult in my view because you do not have a user friendly type of search engine. I think what people are used to now is the Google type of searching where I put in 3 letters and they give them then a list of potential options to meet those and I go from there as opposed to what we have now which is I use it, you have to pretty much put in the exactly the person's name or the corporate name and if the filer files it differently from the way you put it in, it doesn't come up and the same corporation or the same person gives to two campaigns but the two campaigns report it differently, it won't come up in a single search. Very difficult to see. So I felt we needed to get away from that. We need to have a more user friendly, so those are my two goals or two of my goals and I'm just trying to make sure we're working towards those goals as we develop this system.

Mark Goldhaber: I can address both of those. While there is a need to store it on the backend schedule wise for various reasons, the data entry is going to be transaction based and then on the back end we will figure out which schedule it goes into. Now when the treasurer goes to submit or if they go to review, they can go in and review and they will see the transactions put into the various schedules. But when they're doing the data entry they just type in the transaction and we will determine what schedule it goes into.

Peter Kosinski: Why do we have schedules at all Mark? Let me just understand this. Why do we have schedules at all?

Mark Goldhaber: We were presented that as a requirement by the staff.

Peter Kosinski: If I'm a corporate donor and I give money to the campaign and the campaign puts down \$4000 from corporate donor ABC and next to that donor I guess they put a C because it's a corporation and it goes into the system that way and it's under that campaign and it's listed that way and then I want to find it as a searcher, I can put in that corporate name and it will come up to me. Why does it have to be on a separate schedule within the system? Why can't I just do a total list of donors to that campaign, date, name, type and then if I want to see who those are, I do a search based on either a date field, a name field, a type field, an amount field, I mean there's separate fields within that document, and all the persons, corporate whatever that fit that field come up. Why does it have to be stored in a separate and maybe I'm asking the wrong person Mark.

Douglas Kellner: I want to endorse those questions though. Those are the right questions that should be asked to make the system as usable as possible.

Peter Kosinski: What's driving this need to have it stored on a separate schedule?

Andy Spano: I don't know why that would happen.

Peter Kosinski: I don't either that's what I'm trying to understand.

Andy Spano: If you code each one and aggregate the codes.

Brian Quail: There are a couple of things I'd like to offer. One is that certainly from the perspective of the person entering the transaction when they are looking at the system and they put the transaction in, they will I think that first part of your comment Commissioner is captured by the course that things are on right now. And also I believe the second part is as well in terms of if you're desirous of extracting information that combines factors of time and type and amount, you're going to be able to do that. But the actual report itself when you're looking at what a campaign has actually done over a discrete period of time within the filing period, I would argue that disclosure is actually advanced by a way of organizing the data. So that, for example, during the 27th day period this is the amount of corporate money that's come in and you can see that.

Andy Spano: Why doesn't the computer do the organizing?

Brian Quail: You can. You have the ability to get whatever you want.

Douglas Kellner: I interpret Commissioner Kosinski's question from the point of view as a treasurer who is filing, why can't he just take his bank account statement and go through each item on the bank statement which is either an in or an out and say what that item is?

Cheryl Couser: If I may, the whole system will be transaction based. The way you described. You go through your checkbook and we do have an entity you can pick it as a corporation or a partnership and individual and it goes out on the list as you enter. You just go across its data entry and then you have your list. That list you can make that a CSV file and see all the money in it.

Douglas Kellner: A what file?

Cheryl Couser: I'm sorry a CSV and I'm not tech savvy.

Mark Goldhaber: Common Separated Variable, its something that's easily imported into excel.

Cheryl Couser: So you can have a report by all your contributions in, all your money in. You have a report. But we also did maintain the old legacy report if you want to look at it the way treasurers are used to, they print it and they are used to it, they keep it for their records, schedule A, B. We drop it on the schedule. They do not have to really know Schedule A, B or C. It's good if they're aware, but they don't have to know it. They just have to know this is a contribution in, I'm typing it, I'm categorizing it, and it's in.

Brian Quail: And it's a dropdown based system. so for example if I, this is not a great example to use but I'll use it, Brian Quail, Incorporated is giving money, they would type in Brian Quail Incorporated, they would type in the address and there's a dropdown where they'd identify the type of entity I am. And it is important I think to gather that piece of information from the treasurer because not every entity's identity is going to be clear from its name. So they do need to pay attention to what kind of entity it is. And then the system knows that corporate contributes get aggregated on a particular schedule so it will put it there but from the perspective of the person who is entering the data, it is absolutely designed to be transactionally based.

Robert Brehm: And the reports are just the reports so that people can see what they want. So if you want to see everything you can see everything. If we're doing a particular, if you want to see some of it, the existing report structure was left in there as opposed to taken away which is the schedule level report.

Andy Spano: But what I don't understand I'm just getting confused. So if I go in and you ask me for a date or a period of dates and I want to look up all corporate LLC or whatever it is and maybe there's another category, I hit the button and I get them all right? What else do I need?

Robert Brehm: And you should be able to. Right now the only way we know it's a corporate is they go and type it on a schedule that's called corporate.

Andy Spano: But why can't they just put a code next to their name?

Robert Brehm: That's what we're doing now to create the data. The types of reports we want to make available to people to see is a variable that we can put new reports. The question is, do we take away the old reports? So since people have used those old reports to see it also. I mean you can see that if I put in 12 checks today, some corporate, some individual, some family member and instead of having to hop around from scheduled to scheduled, I think from your point is I just have 12 checks I'm going to put them in whatever order they appear and I'm going to click the button. Normally I would have to go to the separate schedules so I'd take these 3 or these 2 or these 4 and click on a different schedule and that's where they make a mistake. They might put it on the wrong schedule because they forgot. Here its one check after the other, the date it goes in with step one. The search is based on the data because every data element has the parts that you're describing. Its how many different reports do we make available? Do you just want one report which is those 12 checks and next you would have that little code if you wanted to see this is an individual contribution, a family member contribution, a corporate. But the question is, do we want to take away the other existing types of where they could also see well how many of these were corporate?

Peter Kosinski: Well no, of course not Bob, we want and I do at least want to have that search available to me so I can find all the corporate contributors on a certain day or to a certain candidate or whatever. Or I want to look at all individual, again, it's we do now it's just not on the separate forms. To me part of the goal is to get rid of the forms which I think are confusing and lead to mistakes and aren't easily, are only known within the little world of elections. I mean most people don't understand except maybe treasurers. But if I'm a searcher. I'm trying to look at this from outside where I'm a person trying to find information who doesn't work in this world regularly, how am I going to search? It's got to be friendly to those people. Of course, you need to be able to search under corporate, under partnership, under individual different categories but what I'm trying to understand what's this idea of keeping these schedules as part of that? That's all. I just don't get the need for a schedule dedicated to corporations anymore, or in kind contributions anymore.

Robert Brehm: I think they're more sure of a preexisting sorter.

Bill McCann: Well there's two aspects of this that has been discussed. The first aspect is the treasurer as the end user providing the information and how they do that. The system as its being developed is leaps and bounds better than the old system. as Bob mentioned for instance if I was going to create my individual contributor schedule I'd have to go to schedule A, have to be in it, create it, separately from my B, my C, my D, etc. The new system is, if I want to put in this transaction and it happens to be an individual contributor, I'm going to code it as such. If the next thing in my checkbook is an expense I'm going to code it as such. Every transaction as the treasurer, I don't have to bounce around, I just create it.

Andy Spano: Yeah, but what's the purpose to have these individual documents then? You can make your own documents.

Bill McCann: And we can certainly report back because I candidly don't know the answer as to whether or not I can hit a button that says, amalgamate all of what would historically be on all the contribution schedules or all the expense schedules. I honestly don't know the answer to that question but certainly to develop that I wouldn't think that would be a big rift. So certainly we can have a report that provides that. But so firstly, the search ability there's two functions we have to remember from the statute that was provided. From the Commissioner's concern, certainly we want the functionality to be more robust because as he's highlighted the search ability now is very dictatorial in the sense that you're hostage to what the treasurer puts into the system. So certainly the new system has to be able to make some accommodations relative to that so that the search ability and more importantly, the results that you get provide you with the information that you want. But the other aspect of dates so certainly if I want to say, who gave this particular candidate or contributions of a certain type over a period of time, the system currently has that although the search ability mechanism is difficult to use. So the new system will address that. But the other fact we have to keep in mind also is that there are statutorily mandates as to what information needs to be provided within a specific report during that specific timeframe. Those date parameters are what we call our period reports or our primary reports or our general election reports, or our special election reports. Those are statutorily mandated timeframes that have to contain all the transactions in and out during that specified time period. How I then choose to manipulate that data later for whatever purpose I might have to determine whether I'm looking at an election cycle. For instance to apply contribution limits or to see if a corporation has exceeded their limit, etc. the system will certainly accommodate that. I can't answer today whether or not the system will allow me to say amalgamate all those contributions during a specific report so I have A, B, C. Historically it would have been A, B, C, D and E all the one string. We can certainly report back on that. But I do think from my own personal standpoint is I think that the historical aspect of reports that people looking at corporate contributors or in kind contributions or expenditures of certain types, I think the reporting mechanism does provide that.

Peter Kosinski: Maybe what I'm looking for because I'm not sure I understand exactly what you're saying is that Mark is there a timeframe in which there will be a prototype that we can look at that will be available internally for people to review to see if it does provide the kind of information and the kind of search mechanisms that we're looking for?

Mark Goldhaber: We are at various points in different modules of this. We've got a lot of sample screens in here. There are some screens in here for contributions. There's one for viewing and submitting disclosure reports. As we continue the proof of concept and the development there will be more screens available and at some point we will be functional enough that we can do testing of various functions. We can test it internally before we go out to have the various users do usability testing as well as we plan to do.

Peter Kosinski: I guess what I want to avoid is having us get so far down the road with

the development before we can see how it works that if we see something we don't like its too late to change it. So I'm trying to figure out how we can see it in a timely manner before it's too that stage so we can say maybe, Mark this isn't really what we wanted. We want this capability instead of this or in addition to this, and you'll still be able to accommodate that.

Mark Goldhaber: As each model goes through proof of concept, excuse me as each module goes through proof of concept we are working with staff to confirm that this is what they are giving us as what they want in the business rules. Certainly we can make sure that it goes to you as well as we go through each proof of concept stage before we go in to complete the development. But to date, we've been sharing each group of concept with staff so we could even take the business rules as presented and share those as well I guess so that you can see what business rules have been presented to us as far as how the system should work to make sure that you don't have any concerns with any of that as well.

Gregory Peterson: There are two sides to the disclosure coin and obviously full disclosure is paramount as far as we are concerned. One side I think which we have just gone through is the identity of those entities which support a particular candidate. So you push a button and say such and such corporations and they are all whatever manufacturers and you say, that goes to this particular candidate or whatever. So we're able to discern certain things and it would be obviously a lot easier for a treasurer to hit a button and say corporation A, corporation B. Then you flip the coin over and say where'd the money go? And where the money goes obviously that also I assume is within the discretion of the treasurer. The treasurer looks at it and goes car rental. Is that used for the campaign or he just puts that car rental and that's what pops over here. Food was that food for staff or was that food for party, was that an in kind contribution? So is that part of it simplified as far as the treasurer is concerned, number 1. And number 2, does that make it any easier for anybody looking number 1 or number 2, for us will we see oh wait a second, is this something that has to go to Enforcement because, this is his kid's car here that's the wrong rental. Or did it go to his campaign manager so that the campaign manager can make various stops for him? I don't know how that gets discerned or if there's anymore exposure let's say to the public which it should be for that be entered?

Mark Goldhaber: Well I don't know how much control we have over what they actually type in. They can type in a company name or they can type in food. I don't know that that's necessarily an edit that we got in the business rules. One thing that we do have and this goes to Commissioner Kosinski's second request is that we'll have a type ahead function so basically as you start typing, those entries that match what you're typing will pop up so if you say use the same car rental company 5 times, if you start typing ahead Enterprise it's going to pop up any auto fields and that way it is the same entry every time you put it in and you're going to have a lot fewer variations where are you spending the money or who the contribution is from. If you say okay I got this from XYZ company, you type in XYZ it's going to fill in the rest of the name of the company

and that way its going to be consistent every time you put it in rather than having to spell it differently 3 times and you have to come up with a whole bunch of different searches to get every possible permutation of that name. I don't believe that we have that from individual campaign to each individual campaign. I believe that the main check is within the campaign. Because otherwise the database search will be too large and it will take too long to come up with an answer but at least within the campaign it will be consistent. So I don't know if...

Andy Spano: How about the addresses, are they going to come up also?

Mark Goldhaber: If you select a name that you've typed in before, it will fill all fields from that name as long as you don't have 3 different addresses for the same name. If you have 3 different addresses for the same name then we'll have to make sure that you get the one that you're looking for. But assuming that everybody's got one address, if you select XYZ company it will fill the address for XYZ company. So I don't know if that answers the question or not and whether or not that addresses your second question about the Google type search.

Peter Kosinski: It does to some degree absolutely. But again, I guess for me it would help to see something. I admit it's hard for me to talk about it in the abstract except in very general terms which I've done. But to get down to the nitty-gritty it would be helpful to see something. But as long as we're headed towards that general direction.

Mark Goldhaber: And we can certainly look to set up some sort of demo of the proof of concepts. I have to check to see how much of the system is demo ready now. But certainly we can look to set up some sort of demonstration that okay this is what we've got so far, what are your thoughts or questions? We've been doing that with the internal staff again, as each proof of concept goes through but we can certainly do it for the Commissioners as well.

Peter Kosinski: Well I'd be interested in that. You can do that and the sooner the better for me.

Andy Spano: But you have deadlines on some of this stuff. You have a lot of work to do to get this running right. You're going to have problems with it and so on. A lot of this stuff doesn't really have to be done right now but the capability of the system accepting changes to make sure this happens is really critical.

Mark Goldhaber: And that's why we've set the goal of having regular updates to the system so that we can fine tune and if there's a piece of functionality that is not ready for the initial release and can wait for a later release or if we decide that something is not really meeting some of these needs and we need to modify it, we'll have scheduled releases that we can say, okay our next scheduled release is in 4 months and we will try to have it ready for that release or we'll have it ready for the following release so that that way its not 20 years down the road and we haven't really updated the system since then.

I'm hoping to have approximately 2 releases a year depending on what we're actually trying to get in there and that will also accommodate if we have to make any backend modifications to the system as well. And in all cases we will work with our users to make sure that we're providing the functionality that they're actually looking for and what do we need to change, both our internal uses and our external users?

Bill McCann: I also want to point out that even some of the features that we've had difficulties in the past that we've anticipated. For instance legislature has been talking about creating additional reports. Now whether that comes to fruition or not may be seen but certainly this new system will allow us to plug in new reports without any interruption or problems, we have to educate the public etc. but the old system would have been very difficult to change or add additional reports when we created them. The new system will not have that difficulty. Those are the kinds of things we're trying to take from historical knowledge and apply to the new system to try and anticipate some deficiencies that are lacking that we had in the old one.

Mark Goldhaber: By using new technology we are trying to make this as flexible and extensible as possible so that if we say, hey we need a brand new function, we can add that in without really hurting what we've already got in there. Its just, okay, we're going to add this module. Or we just have to change this one module or this function within this module so that that way it's easier to modify it to meet any changing needs or any changing desires. Hey it would be better to do it this way than this way, whatever, we'll have it modified on an ongoing basis so that we can accommodate whatever changes people may want.

Douglas Kellner: Okay, so we'll have the report for the Enforcement Unit. Risa Sugarman.

Risa Sugarman: Good afternoon Commissioners. I would first like to just mention as to the, you have on the agenda discussion of political clubs and Kim mentioned the conversations the meeting that was conducted with Brian and Kim and Carla DeMarco attended. Several months ago I mentioned that Enforcement was doing an initiative about political clubs and we've been quite successful with the committees, the clubs that we've contacted. They have been very amenable to becoming registered, and those who are registered and have not been in compliance have come into compliance. If you'd like to know the clubs that we're dealing with, Seaford Republican Club has come into complete compliance. They have a new treasurer. They sent us binders. They filed all of their prior reports and have come into complete compliance. East Side Democratic Club, Jim Awls, Thomas Jefferson, The Lexington Democratic Club and the Village Independence Democrats have all agreed to come into compliance. These are all clubs that previously either had been registered and not complying or had not been registered. These clubs had been mentioned in the Citizen's Union Report and they were contacted by Enforcement. We've had discussions with them. They've all been very cooperative and they've all agreed to come into compliance to register and to file. We've asked them to file the last 3 years of their contributions and expenditures, and they are in the process

of doing that. So it's been a successful initiative for Enforcement and we hope to continue that. And we really haven't had any pushback from the committees that we've contacted. We've been working with Mark on the CAPAS FIDAS initiative. I would thank Brian who shared with us the business rules from compliance so we were able to do that as well, one rule. So we were able to model the business rules for Enforcement to help design what Enforcement would like to see in the new process. And last executive session we talked about some statistics and the Commissioners asked that I mention those in public session so I will do that. In 2015 Enforcement opened 113 cases, so far in 2016, I've opened 27 cases. Judgments that have been collected for the short period of 2014, collected \$4,178.76. And in 2015 we collected \$76,239.89. Most of these or probably all of them are committees that have been or treasurers who have found that they have liens and want to either sell properties or refinance and so have come forward and have cleared up their prior judgments. Referrals in 2014 we had 2 cases referred to prosecutorial agencies; one has been closed, one is still open. In 2015 we had 9 cases referred; one is closed; one resulted in an arrest and 7 are open. And subpoenas in 2014 Commissioners granted authority on 6 cases of those 6 cases 2 referrals resulted. And in 2015 19 subpoenas were applied and of those 8 cases resulted in referrals. That's it.

Douglas Kellner: Anything else? Well thank you very much. So now we turn to the old business portion of our agenda and the first item is the report on the Freedom of Information Law requests for voter registration records. Brian do you want to quickly summarize where we stand right now?

Brian Quail: Absolutely Commissioner. This issue does go back some time and a few months ago the Board authorized sending out a proposed guidance document to county Boards of Elections for comments. We sent that out. We received some comments back and immediately prior to the last meeting I shared with staff a proposed document that reflected revisions based on comments and at this point that's where we're at.

Douglas Kellner: So the question is if there are any additional comments or whether we're ready to sort of confirm this as Board policy?

Peter Kosinski: I don't have any specific comments. I'd like, I didn't know this was on for action. I guess we're still talking. I'm trying to understand our role in this process maybe. I think its still to me unclear since this is a FOIL issue.

Douglas Kellner: Well to create some uniform guidance.

Peter Kosinski: So is the proposal here to put these out as guidelines to our counties to follow when dealing with FOIL requests?

Douglas Kellner: Correct and to set our own policy on how we respond to county inquiries on what they can and can't do. And to resolve uniformity. In other words to have a single policy. I don't have a problem putting this over. One of my suggestions is that in part F on requests for voter lists, I certainly agree with everything that's in part F

which is that we should make it clear that the statutory provision that, in the portion of the statute dealing with the statewide voter registration database, its very explicit that that data may not be used for nonelection purposes. In other words a commercial list vendor is not allowed to FOIL our voter registration list and use that voter registration list for assembling a commercial mailing list. A vendor who is doing it for candidates for election is allowed to do that. The statute, the other places in the law do not repeat that prohibition even though I think it's pretty clear that the legislature intended that that was applied to county voter registration data as well as state voter registration data because there's no reason. It's the same data. So we have made it clear here that that rule applies to everybody. Bu I suggest that we also add in a sentence that says what we already do and what many counties already do which is that the county board should ask the applicant to confirm that they understand the rule and that they are not using the data for nonelection purposes.

Andy Spano: It says, may require a person requesting list of names to have written certification that this person will not use.

Douglas Kellner: So I'm suggesting that we recommend that they actually ask for that.

Peter Kosinski: You're saying where it says they may require, they should require?

Douglas Kellner: We recommend.

Peter Kosinski: We recommend that the person.

Douglas Kellner: I mean, we already require it here right?

Robert Brehm: It's on our application.

Douglas Kellner: Okay so that's my only comment on that.

John Conklin: Just one of the distinctions in terms of that elections purpose issue. You're right at the state level any time we get an inquiry that doesn't fit the elections purpose and we're fairly broad in that definition. We deny it. But typically I will direct them back to the counties because they don't have that prohibition. So people are looking to serve people for a divorce action or some sort of court action or something like that, well that doesn't fit my definition of an election's purpose. They still have the ability to go back to a local board and ask for a search for that person for those purposes and courts constantly direct lawyers to do that and ask the BOE for that information.

Douglas Kellner: Well John I'm not sure I agree with your interpretation. If they ask for a list, then the list has to be for election purposes. But if they're making an individual inquiry, I don't believe that that's appropriate grounds to deny a FOIL and I guess my point is that I want the same standard for the counties as for the state. In other words, we should have a uniform policy on this. I don't think the legislature intended that there be a

different result. I think that their intention was that the data would be protected in the same way whether the data is in the statewide database or whether the data is in the county registration terminal. But if somebody's looking to find out if an individual person is registered or where that person's address is, I think that's a legitimate request as opposed even though it may not be for an election purpose that's different than a list.

John Conklin: Well that is a change from what we've been doing.

Douglas Kellner: Well I think we should look at it and talk about it then.

Peter Kosinski: I think we should look at it. So you think we treat a request for an individual record different from a list? Here and local right?

Douglas Kellner: I think the same standards should apply to the data whether the data is in the county computer or whether it's in the state computer.

Andy Spano: Well right now if someone asked you for an individual name, you would not give it to them?

John Conklin: If it comes from a law firm or if they tell me up front I'm in the middle of a divorce action and I'm seeking the other spouse, then my answer is, the statute says anything derived from the statewide voter database has to be used for an elections purpose. My answer to that is well, your divorce action is not.

Andy Spano: Right but we're talking about lists here.

Peter Kosinski: I think that's a legitimate question that we should resolve, yes.

Douglas Kellner: Well the most common thing is that landlords use the voter registration records in nonprimary residence cases downstate where you have the rent stabilization law allows a landlord not to review a lease unless it's their primary residence. So there's an awful lot of inquiries based on that. But I don't think it makes any sense to interpret the statute to say that the very same data coming out of the county computer has a different rule than the data that comes out of the state computer. It's all the same data. It's kind of silly to say well we won't give it to you but if you ask for it from the county they will. If it's actually prohibited, than the county shouldn't be giving it out either.

Andy Spano: There's an implication here in confidential registration records for victims of domestic violence. That implies that you would be able to ask for a name. If you're going to take one name and make it confidential, you could be asked for another name. Otherwise no need to be confidential about it. Because the board has the name right now whether it's domestic violence or not. They're just not giving it to anybody.

Robert Brehm: Well if a Supreme Court has ordered that it be kept as confidential, then we would not release that. But when we designed, in my previous life and when I was Deputy PIO when we made that form, it allows an individual to request data, check the box I'm requesting for an election related purpose and then it's as much information that allows them to sub looking for a person or groups of things. I think in general the availability of data on a one on one as opposed to giving you 11 million voters or 30,000 voters is usually the bigger list. But if it's a one on, we'll have to look at that and see.

Douglas Kellner: That's sort of the policy that we've been recommending for the signature portion of the voter registration records. So we're saying that we're not going to give up the electronic record of the signature, and we're not going to allow people to get a list of electronic signatures, but somebody can get a hard copy of a single registration record that has a signature on it.

Todd Valentine: And when we release that it does have a watermark so it's not something that can be copied. And there is a distinction between the statutes did distinguish between the state level availability information when they added that provision and kept the county level provision. We could speculate as to why. It's not as clear in the record but...

Douglas Kellner: Todd I don't think that there was any suggestion that they meant to keep it as a different requirement.

Todd Valentine: I'm not saying there's any suggestion, there's just the fact that there is a distinction in the statute. I don't know that we know what the reason was.

Douglas Kellner: When you say distinction, I think it could be better worded as to saying an omission in the statute or its not clear in the statute that, In other words they put all these prohibitions on the use of the state data without addressing the county data even though it's the same data.

Peter Kosinski: No, I see that. I'm not sure why they did either to be honest. I mean I think it's fair to presume that they meant to have the same standards but I honestly don't know either.

Douglas Kellner: But I think we need to decide this.

Peter Kosinski: Yeah, I see that. Well I guess we do or we don't. I mean to be fair about it, we have to do with our data what we think is right. I realize we can't really force a county to follow a certain rule I don't think in this arena, the FOIL law.

Douglas Kellner: Well except we have staff people telling counties what to do.

Peter Kosinski: No, I understand that, I mean what we may advise...

Douglas Kellner: the uniform agreement on...

Peter Kosinski: Fair enough. I'm just saying we do have some limitations on our power here to impose our requirements or what we follow on to county boards, but that said, I don't disagree we should have some sort of a guidance from this Board as to what we think the law is.

Brian Quail: One of the, if I may Commissioners, had an opportunity to find a difference in the language with respect to the statewide voter registration database and the general issue mostly in Article 5 but also in 3220 dealing with signatures. And those regulations and those issues are a little older because they came about in 1990 when we started digitizing signatures. So there was a bunch of amendments to the statute in that timeframe and when the statewide voter registration database came on, the language that the legislature choose to protect the data in the database is a little different. It says that in 3102 §5 the information contained in the statewide voter registration list shall not be used for nonelection purposes. So it's broader than just the signature or the language applicable for them and it doesn't have the caveat of lists.

Peter Kosinski: I see so that would go towards arguing that even a single person's name should not be given out if its done for commercial purpose.

Brian Quail: For a nonelection purpose.

Douglas Kellner: Our county boards, the information is in the statewide voter registration database so does the county have the right to give it out if the statute prohibits it?

Brian Quail: Because the legal fiction there is that they are two different things. And in reality the statute really does say that they are to be mirror images. The whole discussion that the Commissioners had earlier about the connectivity between the county systems and the state system talks about maintaining the singularity of that data. That each county has a subset from the data of the statewide voter registration database. But they have it contained as a separate batch so they can do certain things to it and then it communicates back up to the main list.

Douglas Kellner: So if the data is in the statewide voter registration database from that language in the statute, the county would not be allowed to give it out and violated that...

Brian Quail: Unless we are applying the notion that the county data really is separate. Otherwise, the construct of having one rules for counties and one rule for the state doesn't make sense and I think it doesn't make sense and I think that's why F is in the proposal so that we are saying universally that if the information is going to be used for nonelection related purposes regardless of whether or not it's a list, that it should not be given out.

Peter Kosinski: So the way it's phrased now it says Freedom of Information Request for lists of voters is not quite correct? You're saying it more than lists. It says information request for voter. So that list issue is not limited to lists, it's any request for...

Brian Quail: Yes

Douglas Kellner: What's the section?

Brian Quail: The section is 3103 5.

Andy Spano: I think it's pretty casual to get a single name throughout this whole state when you go to the Board of Elections and look at the address, that's pretty standard.

Kim Galvin: Don't the counties though have some sealed registrations or confidential ones that aren't in our list? So they aren't the same lists.

Robert Brehm: Well confidential because we have to find a way to get on there.

Kim Galvin: There are different lists. I'd hate to give out somebody's name...

Douglas Kellner: shall not be used for nonelection purposes. But it doesn't apply. Why do you say it applies only to the state? It says the information contained in the statewide voter registration list shall not be used for nonelection purposes. So if the information is in the statewide list, why would that not apply to the county?

Todd Valentine: Because the provision you're reading are, earlier in the provisions are only applicable to the state board of elections.

Douglas Kellner: That's not true. That's just not true Todd. It's in the section on the state board.

Todd Valentine: Right a section that only applies to the state.

Douglas Kellner: No it's the statewide voter registration database and that section imposes obligations on the counties as well as the state. It says the counties have to provide the data to the state.

Peter Kosinski: We need to look at this. So there's two issues I guess; 1) does it only apply to lists. I think we need to resolve that. Secondly, do the rules apply to us also apply to the counties as far as release of this information?

Andy Spano: As it comes to that we may want to recommend some legislation to fix this thing.

Peter Kosinski: We may but in the interim I think we need to resolve what the current law requires.

Douglas Kellner: Alright so we'll keep this on the agenda for the next meeting. Next is the Independent Expenditure Regulations.

Todd Valentine: You want it back when there's a report back, on the agenda.

Douglas Kellner: No I want it on the agenda.

Peter Kosinski: We'd like to get it resolved.

Brian Quail: Update on the Independent Expenditure Regulations. We have live the consensus version of the Independent Expenditure Regulations as of April 27th. It was published on March 9th and those would be available for the Commissioners to adopt if they so choose after April 27th so it will be timely for the May meeting. By way of just refreshing everyone's recollection, the element that was removed from the consensus i.e. regs, dealt with defining what coordination is. There was a, for lack of a, well an accurate description; there was a democratic draft that essentially articulated a series of factors that were instructive to the individuals who were conducting IEs that would suggest that there is coordination. That draft was out there for a little while and our republican colleagues considered that and have offered a draft that endeavors to also define coordination and borrows, you will be able to articulate your concept perhaps better than I, but borrows rather heavily from the FEC model and includes a series of, includes a test to apply and also certain safe harbors. There is a great deal of commonality between the two documents in terms of the types of things that are relevant considerations. There is a different analytical paradigm between the two drafts and there's complexity in the issues and there are a lot of, still a lot of work to be done to bridge them but it has been a very productive joint exercise in moving the process along. But it is slow moving. From my own assessment, I would say that the two drafts are very thoughtful and so the task now is to reconcile two thoughtful drafts. And with the Commissioner's instructions being obviously very important in that process.

Peter Kosinski: Have you received any comments on the draft regs that are out there?

Brian Quail: I asked about that this morning. We have had no comments on the draft regs that are out there.

Bill McCann: I spoke with a couple of people on the phone who had just general questions about them...

Peter Kosinski: But nobody's written in?

Bill McCann: But I suggested that if they had specific points they could certainly submit written comments but we have not received them.

Robert Brehm: If you follow, the deadline is Saturday April 23rd for comments and goes to Monday the 25th.

Douglas Kellner: We talked about in “a democratic draft” and “republican draft” are those drafts public? Have they been circulated outside the office at this point?

Brian Quail: The Democratic draft and the Republican draft has been circulated to individuals outside the office that I have sent them to. I don’t know where others may have sent them. They’re not posted on our website or public.

Douglas Kellner: No but I mean if somebody’s listening now whose interested in this, if they just send an e-mail. I mean does either side consider their draft confidential at this point?

Todd Valentine: Yeah, it’s still a work in progress. I mean I’d had to try to draft that public forum as that might inhibit availability. I mean I don’t think we’re ready to share that at this point. We’ve shared it internally.

Douglas Kellner: Our draft has been relatively widely circulated. That’s why I’m asking. Because a lot of people had seen our draft and it’s relatively public and I’m inquiring whether we can, how you feel about circulating your draft so people can compare them and comment on them.

Peter Kosinski: I guess my goal was to get a draft from the agency that we could circulate, that’s my goal. So once the staff is able to come up with a draft that they agree on, then I think that should be shared even if it’s informally. I don’t necessarily think it has to go just through the public process but it could be done. But I think there should be a draft coming out of this agency for people to see that can then comment. And as I said, I have no problem with that before the formal comment period goes but it just seems more helpful to me to have one draft. I don’t know how close they actually are.

Andy Spano: Its just information that he can use when he discussed it that’s all. It’s not a big deal.

Peter Kosinski: You know to be honest with you, I don’t see this really as a partisan issue so much. I think this is an effort to provide guidance to everybody that wants to engage in independent expenditures in the state and that’s happening I think regardless of political parties. So I don’t personally see this as a partisan type of issue because everybody’s doing what they’re doing. But I think as an agency our goal should be to try to give some guidance.

Douglas Kellner: Well I’d like to continue trying to work together so that we can reach an agreed text. Alright so if there are no further comments on that, so we’ll roll that over for the next meeting as well under old business.

Robert Brehm: Theoretically and depending on when we, we would be able if we receive no comments on just the statutory technical changes to bring that for a vote at the next meeting because it would be beyond the comment period. If we got no comments.

Douglas Kellner: Right we're still committed to continue the discussion.

Peter Kosinski: Well I don't want to hold up the ones that are out there.

Douglas Kellner: Agreed. So next is good news that we have gotten approval from the Division of the Budget to appoint Brian Quail as co-counsel. So there is a resolution that was in the packet and my only question, thank you very much. Bob can you explain the last phrase on this resolution? Why is it with the start date to be determined as opposed to today?

Robert Brehm: Well it could be today. It's just the standard language we've had on the last 3 and I copied the standard language from the last 3.

Douglas Kellner: Well I want to delete that.

Robert Brehm: Well we could put a period after April 5, 2016.

Douglas Kellner: Okay alright. So as amended, those in favor of the resolution say aye.

[Chorus of ayes]. Opposed? Congratulations Brian. Alright next is the discussion related to political clubs and I thank Brian for his efforts on writing up a draft in response to the six questions that I had written up. I don't know how people want to proceed in this discussion. I guess my point is that I think that once again our agency should give clear policy direction to the political clubs, the local political clubs and their volunteer treasurers on when they need to file. When they need to register and file. And what needs to be filed. I am frankly a little troubled over the slides that were put together for tomorrow's seminar because I think they're too complicated and they don't address the questions that club treasurers are going to have. And I think

Kim Galvin: Just to make it clear I didn't think they were for tomorrow seminar. I thought that was a rough draft that we were seeing.

Douglas Kellner: This? So what are you going to present at tomorrow's seminar?

Kim Galvin: Well I'm not going. But is that an approved draft?

Bill McCann: Well the areas where there was not necessarily agreement and consensus we had flagged and then there would be a discussion of where that was.

Douglas Kellner: But the seminar is tomorrow.

Bill McCann: I understand that.

Douglas Kellner: So.

Kim Galvin: Like for example, there's asterisks in there that I just was talking to Bill before the meeting started and I said there's no definition of what the asterisks mean and he said, no.

Douglas Kellner: Right. So why are we doing this tomorrow when we haven't had the discussion yet and everybody's on the same page as to what's going to be in the presentation?

Brian Quail: I think, again, Bill and I have met, Kim and I have spoken, the training unit prepared this. It was definitely my understanding that we were going to use it and that it is largely abstract. It largely follows the contours of the statute and we had a...

Douglas Kellner: But that's a joke because that's the problem, is that the statute is so complicated that a volunteer treasurer cannot figure out what the rules are.

Brian Quail: The main takeaway from the discussions that were had is that the key for a political club to understand is that if they're engaging in activities that are in connection with an election then they are a political committee. And that once you are a political committee you have.

Douglas Kellner: Yeah, but that's not the right words again. I'm sorry to give you a hard time over this but the word is expenditure or contribution in connection with an election. But that's alright go ahead. I'm sorry but to me I'm very frustrated because what the Compliance Unit does and in the literature that we hand out, it doesn't tell a club in simple plain language what the rules are. And I realize the problem is that the rules are not in simple plain language. The legislature is carved out very complicated scheme and that there are lots of gray areas. But we have to turn the gray areas into instructions to volunteer treasurers on what to do. And I'm very unhappy with how this does it because I don't think this reflects what's in the memo in terms of translating it into instructions to the political clubs. Fundamental problem is, does a club have to file or not? Alright so I think that's a straightforward question that was the first question.

Bill McCann: That's not the fundamental question. The fundamental question is, are you a political committee regardless of what you call yourself based upon your activity and I think you have consensus amongst the staff that the analysis is first and foremost am I a political committee? If so, then I have to register to file. And so the issue of a club as a type of political committee potentially is the devil in the detail of what your activity is. As you parched the definition of a political club, therein lies the rub as to in connection with an election.

Douglas Kellner: I think you've got to start right out with the question for the club and you don't have to file if you don't make an expenditure in connection with an election. Do we agree?

Kim Galvin: Right and the next logical question is, what does in connection with an election mean?

Douglas Kellner: Right. If not, are you a political committee and then repeating the statutory definition? I think you start with do you make expenditures in connection. And the other side of this is, and its something we're going to talk about later on when we get to some of the Enforcement cases is that the Compliance Unit needs to help explain to clubs what it is they need to do not to file, as well as what they do to file.

Kim Galvin: Not to trigger the filing department.

Douglas Kellner: Correct. Or, if they triggered it, how to get out from under it.

Kim Galvin: If they inadvertently triggered it.

Douglas Kellner: Well whether it was inadvertently or not, although I think the one we're talking about this afternoon is just as likely as inadvertent as advertent. But what I'm trying to do is this particular outline I don't think is going to be helpful to the routine treasurer who shows up. Yes the election lawyers who come to it might be able to figure this out, but it doesn't tell the treasurer who's not a lawyer how to deal with this. And in fact it just gives the same kind of gobbly gook that's in our manual that doesn't help the clubs and which is why a lot of clubs are not in compliance because it doesn't give the bright lines. Is this something we should talk about or should we go through the memo and...

Kim Galvin: I really, and I'm not saying this because Brian and I have discussed it but when I was provided with a copy of that on Friday, I thought that was in conjunction to continually discuss and finish our resolution of the questions that you asked.

Douglas Kellner: Well I got it this morning but you're doing these darn training sessions and I've been saying since November, you can't do the training until we agree on what the rules are.

Gregory Peterson: I think certain basics can be put forward. But I think it's a slippery slope and the general public I don't think understands there's a separation obviously between a club and a committee or political organization. And the history behind most of these clubs is they were formed by people with a like minded philosophy, ABC, Democratic or Republican club and they met socially and they had their dinner dances, raised some money for their organization so they could pay the rent put out a little bit of a spread and so forth and left it at that. Now, is it a friendly group? Yes, to a particular candidate of that similar philosophy. Yes. So if they invite that person in fine, meet Joe

and Sam and Beth and so forth and make a little speech and leave. Alright. Have they participated in their political organization? Well, no. Have they spent any money? Well count the coffee that they put out. The candidate they provided a forum but that's the limit of it. If they haven't contributed to a candidate do they fall within, what would come within our purview? So as soon as you start saying, well yes they provided coffee slippery slope down you go and you have to go through the whole gobblydook of reporting the coffee and other nickel that you spent on sending out invitations or a flyer to all of your club members to say, oh Johnny and Susie had a baby, blah, blah, blah and by the way Joe Gazotzki is gonna come in and he's going to talk to you next month. Have they crossed the line? So when you start talking about this, it's obviously not simple. We'd like to uncomplicate it by coming down with certain edicts shall we say from this Board and say, hey wait a second, lets not get crazy here. Yes, if you're going to be a live political organization and contribute to a candidate put up his posters, maybe spend some money for him, then you have crossed a line. Of if you're just going to be basically a social group, we have candidates come in, come out and so forth, everybody is hi, bye, it's a very nice thing for the community. Maybe that's not what we're talking about. So I'm just throwing this out because if there's been discussion, I believe that probably the staff has had the same type of discussion amongst themselves and they come down it boils down to certain edicts its not an easy process.

Bill McCann: Well if I could speak to that specifically. I understand the Commissioner's concern certainly. I think we were faced with a couple of actual or factual circumstances. 1) That we had anticipated that there would be actually full blown answers as best we could for these seminars long before the seminars occurred. But they were scheduled and people registered for it, etc. So our goal was in putting together the slides realizing that there are asterisks because there is not necessarily consensus. So the point staff had agreed was that we would wave the flag so to speak to raise these issues as best we could so the audience that was coming to the seminars and a lot of the information that we're going to provide is general information that we would provide to any participant to one of our seminars relative to campaign finance. So while I agree that in certain regards there's not necessarily a bright line on some of these things, the staff felt comfortable enough to say since were up against these 2 trainings at least we could provide people with some, if you will wave the flag, which we do think would be helpful to treasurers to say, these are the types of issues that are raised to determine whether or not you're a political committee or not. So it was the practical aspects of having these trainings. They are here and people have registered them. What can we provide them that at least gives them some modicum of information. I agree ultimately those should be changed but at least for this junction, we felt that under the circumstances that's what we'd have to provide.

Brian Quail: If I may, I actually think that it is far less an issue of where there's a lack of consensus and rather where there's an overlay of complexity. Because what you're always trying to do is you're trying to get the yes or no answers and what's very frustrating when you actually do get into the weeds on these club issues is the answer is so often, it depends. And it does depend because we're so very fact specific in terms of

how much of the particular kind of behavior are you doing such that it rises to the level of having monetary value and thus actually becoming an expenditure or contribution in relation to an election. Is it making a contribution? Does it make you into a political committee? But if you collect money to make a contribution it does make you a political committee. So on the baseline what kinds of information that 95% of what clubs need to know, I think there's consensus. And a clear one actually. And then when you start to get into the issues that divide the remaining 5% the tough questions where people have to make judgment calls to whether they have to file or not, what I think we're very prepared to do is take this initial step and be able to give an outline to people of what the nuances are. If you come to this training and you want to know how to file with the State Board of Elections, there is a certainty you should walk away with everything you need to know. If you come to these trainings and your question is, am I doing activity in relation to an election or expenditure, contributions related to an election such that I have to file? The overwhelming majority of those questions are going to be answered easily by the nature of what the entities are actually doing. Then there's going to be a subset where the questions are much more complicated. And I think part of the Commissioner's concern is that we aimed for the more complicated as opposed to the simpler in the materials that we gave. And we can rectify that out loud and we can change what the presentation actually looks like to make sure that the people who come and I think we're up to about 40, get a very accurate view of where there is consensus. And on the clear stuff that captures 95% of the people there is, it's really only when you start getting into people who are on the cutting edge where there isn't. And for the most part the asterisks in my view represent where there's a question of complexity more so than a lack of consensus.

Douglas Kellner: Yes. I mean I could start, the general presentation that we put together at counties is already too complicated, but this one just sort of repeats that again. Instead of answering the questions that club treasurers have which is why they were coming to these seminars and why we want these seminars. So it is not a simple straightforward how to what to do. And I would completely rewrite this thing between now and tomorrow even though I know it's a big job but I think that this does a disservice to the people who are coming to do it this way. I'm not saying that there's anything inaccurate in it, it's just not what the club treasurers are looking for in my view and I think I have a pretty good grounding of that because I was at a lot of the meetings where people were saying that they wanted this kind of training. Can we go back to Brian's draft which is what's really on the agenda. Is this something that everybody's reviewed at this point or do we need time to go through this? I mean at some point I'd like to figure out how we're going to use this and whether we all agree on it.

Kim Galvin: Well I don't believe we agree on it yet but like Brian has said, we went on the individual questions. We sat in a room. We tried to figure it out but we would get into the detail in connection with an election or things like that, it really isn't a fact dependent situational answer in certain circumstances. So we were struggling with explaining those things in the clear English that we know that people need to understand it. So I didn't think that our conversations had ended. I thought they were continuing.

Douglas Kellner: Now should they continue here with the 4 Commissioners or is this something that has to get put over again until we get a republican draft?

Bill McCann: I would put it over.

Kim Galvin: I don't think it's a republican draft, we're working off your draft.

Douglas Kellner: Well except I don't see any work. I just see we're not ready. We got your draft but we don't have any comments on what we need to do to polish it up even though we're sitting down with people and trying to give them policy tomorrow.

Brian Quail: Commission, with respect to 95% of the issues that people need, the easy answers we absolutely agree on. It is only when we are getting into the deep weeds that we have...

Douglas Kellner: Yeah but nobody is telling me what it is that we don't agree on. I know the comments I've given you on it where there are actually 2 sections where I think that we have that I would...

Kim Galvin: One of the problems that we encountered...

Douglas Kellner: The question is, I don't see a process for getting this done and it's a little frustrating because people work on it but there's never anything definitive as to what we don't agree on.

Kim Galvin: The last meeting that we had I thought was very productive and one of the issues that we have is when you pull in all the old opinions from this Board and try to reconcile them with the answers that we're giving, it makes it a far more complicated task. Do we still agree with this opinion? Do we have to rewrite that opinion?

Douglas Kellner: I think that's a good process.

Bill McCann: No, that's what we're doing. We've had several discussions, not only, and also the training people are included in this as well because we're trying to formulate these slides. But I simply think that the presentation for tomorrow and I agree that it can certainly be improved but it was simply that when those were scheduled and people have registered for them and we need to provide something, we came up with what we thought would at least provide the mechanism to highlight things that we had agreement on and where there wasn't necessarily consensus as of yet, we can highlight those issues to the people and certainly when we finalize or hone that document then we could provide that.

Douglas Kellner: But let me say that I don't think this addresses, this particular set of slides addresses the concerns of the volunteer lay people who are volunteering to be club treasurers on how to do their job. It's just too complicated and convoluted. It's not straightforward. Alright, can we get to the substantive questions then? So the first

question was, is a club required to file if it never receives or expends any money in connection with an election? We're all in agreement that the answer to that is no.

Kim Galvin: Just so you know our Commissioners have not been briefed of that at all. We don't even have our notes here as to what we discussed. We had no idea this was going to, we just met last week. I mean I understand you've been pushing the issue.

Douglas Kellner: Alright we'll put it over then. I'm very disappointed but we'll put it over because we try to work on these things and I can't get...

Kim Galvin: Well if there's been some indication that we in good faith haven't tried to work on it I don't think that's a fair assessment, and also, to the Commissioner's point of view...

Douglas Kellner: You didn't give it to your commissioners? I mean I'm shocked.

Kim Galvin: The other issue is, I think this is a critical point is that we understand that whatever we come up with we don't enforce it so that's why we solicited the input from the Enforcement Unit.

Douglas Kellner: So why are we doing these training sessions before we get this pinned down?

Brian Quail: Commissioner, on the one hand the issue seems to be a concern about over specifying.

Douglas Kellner: I raised this in November by the way I mean this is not anything new. Its 6 months since I raised this.

Brian Quail: And on the answers to the 6 questions I think that the actual top line answer there is consensus on the staff level. Some of the analysis in the weeds there isn't. On the one hand the express concern about the presentation is that it's too complicated. On the top line level we're all in the same place. There isn't complexity about if the overwhelming majority of political committees that are printing campaign literature or something like that the advice is easy to give and presumably the people who are in that tier are going to have no issues walking away from this knowing exactly what they need to do and that they are captured. The only time that we would get into not providing the people who would be attending what they need is when their issues are very complicated and we aimed to try as much as possible to elucidate those things and you are the policy makers and we need to be responsive to addressing your concerns and will. I think the sin is that we aimed not at the level of abstraction that you wanted us to be at.

Douglas Kellner: Well as I say, I asked 6 questions in November and asked for policy on them and actually they were initially addressed to Risa but Risa is saying that it's not her job to answer those questions.

Risa Sugarman: Well I think when I say that Commissioner, I think that it's the Commissioner's responsibility to set policy and I think that you agreed with that. And Carla DeMarco was at the meeting and I think there was conversation about these questions. I don't know that we agreed, Carla agreed nor do I after discussions with her about what happened in answers to all of Brian's responses I don't know that this is the place to have that conversation. Because I don't think that that conversation is completed. I think that I can give an input of certain things but its not my, I don't mean to be disrespectful to you. When someone asks me to participate and that's why I had my attorney there so that she could be part of that discussion. But certainly you're the mechanism that sets policy. But we did not agree with some of Brian's answers and I think that that conversation needs to, if you want our input as to why that conversation needs to continue.

Peter Kosinski: Well for my purposes, I think it's important that we provide guidance to the clubs as well as other political committees. I'll admit...

Risa Sugarman: I didn't get a copy of that power point so I...

Peter Kosinski: I'll admit I'm not as familiar with the political clubs. I think it's largely New York City, I think Nassau has a lot of clubs. Its upstate I don't think these clubs exist in any meaningful way. I'm not familiar with them being from upstate I'm not really that familiar with them. But, that said, I do think our goal needs to be to provide guidance to whoever is engaged in these kind of activities whether they have to file or not, that's critical. So we need to get there however we do. So I do support that concept and we need to do that. I think the training is a good idea but I think at the training we need to give them as much guidance as we can as to whether or not they are required to file.

Douglas Kellner: And how not to, how to avoid the requirement to file if they don't want to file. In other words to say you can do this but the second you go one step over. And part of this is because what we have been telling the clubs has been fairly standardized at least in New York City I think that the people like myself, I used to be the law chairman of the party in Manhattan until 1992 and we told the clubs if you don't pay for printing petitions and you don't print literature, those are the two most common expenses, expenditures on behalf in connection with an election. If you pay to print petitions or you pay to print literature, then you've triggered the filing requirements and you have to file. So, from a party point of view we turn around and tell them, if you don't want to file don't do either of those things and make sure that a political committee separate from the club pays for the petitions and pays for the...

Bill McCann: Well you raise a good point there as a secondary point which is having 2 separate entities. I've had conversations with people where they say, I have my club. We get together the first Tuesday of the month. We collect \$20 a year, we have a lunch. Our candidates will come in just to talk but anytime we spend money to give a

contribution to the little league or some church or something like that, we want to engage in political activity, meaning buying ads in the paper or buying tickets to events, we have a Victory Fund or some other fund and that's the political committee that then registers and files. We certainly can agree to those kinds of things. Where I think it gets more complicated is its too simplistic to say that I'm talking about petitions or campaign materials because when you literally look at the definition of a political committee and this is part of the discussions that Brian and I have had and also with Carla is when you parse out the definition of a political committee which includes political club and then goes into the four things specifically that make you a political committee, its not simply candidate activity. Supporter opposition of a political party or principal. What does that mean? To me if I engage in a certain activity in support or opposition of a political party or principal that can...

Douglas Kellner: Bill this is why I wanted this answered and I'm dissatisfied with your answer because it doesn't deal with 141021.

Bill McCann: 141021 is putting the cart before the horse.

Douglas Kellner: Okay but you see this is the fundamental question that the 4 of us have to resolve is what is the trigger? And we've got to get an agreement on this. But you're going, Risa told the Democratic District Leader in November was it, that she was going to hold off enforcing these until these policy questions got together. She said that we would have training sessions in the spring. So we got locked into this training session. I've been beating up on people to say we need to get this answered before we do the training sessions which is what Risa had promised them as well. And now we're doing the training sessions without answering the questions. And Bill, bless you every word you have said is true in the statute but that's exactly why I wanted to get this simplified into black and white that we can tell lay treasurers what the rules are and not make them read a legal treatise and get into all of these gray areas. We just need to say, if you do X you have to file but if you don't do X you don't have to file. And just answer the question. Not with a whole esoteric repetition of a very complex dense statute but in plain English.

Peter Kosinski: This gets more complex too as we talk about it Bill in the sense that if I am a committee for a club whose giving money to the little league or to some community organization, if I become a political committee I can't do that anymore. Because I can't use my money like that anymore. So it's really not as simple as saying, oops I've crossed the line and now I have to file with the State Board of Elections because now all those other activities that I was engaged in was like community events. I'm not longer going to be engaged in because by becoming a political committee I've limited the use of my money.

Bill McCann: Well let's look at that for instance. The number 14130 before it gets into the permutations about what you can't do specifically with a lot of caveats says you can spend you money for any legal purpose. Once someone determines is related to the

holding of office for instance or supporting a political party or principal and what they want to do relative to that that's a justification that they have to make. So assuming it's a lawful person, even therein in this 20 seconds there was a disagreement potentially as to whether or not giving money to a little league would be permissible...

Peter Kosinski: That's not my point. My point is that I think we all agree that if you become a political committee you have further limited the use of the money that you have. We can talk about what the limitations are but I think we can agree it does provide limitations. So by crossing the line, I've not only triggered a filing requirement with us but I've also now also limited what I can do with my money.

Bill McCann: Alright but I'm saying that if you look up the definition of political committee I'm simply saying that before you even get to the carve outs about making contributions only and political questions, etc. that the beginning portion which defines a series of things that could potentially be a political committee is far more than candidate activity and I agree with the Commissioner that this in connection with election is the critical phraseology but I would also point out that making a political committee where it goes into political parties or principles whatever that might mean, is clearly equally important within that definition that when I get to supporting candidates who are running for public or party office, etc. etc. etc. So I think that to look at it just from the standpoint of a candidate is too myopic. I think the definition is, because some people might take the view in our conversations when we talked about it, some people could take the view that in support of a political party or principal is a fairly broad construct and that any activity to do, to wave the flag and be a rah rah for your party, whatever that might be would be enough to trigger the definition of being a political committee because all, if you take the premise that all of your activity in support of a party is to get to the end zone which is to get your candidates elected and to get more people to register to vote for your party. So for instance am I having a generic voter registration drive or am I having a partisan voter registration drive? Those are all critical issues and I'm not sure that, I agree with you the goal should be to tell people here's this laundry list of yeses and no's but to me and staff has had this, even with the Commissioner's we've had some of these conversations. I've certainly talked to you in the past about clubs and how this all works together. But certainly that dialogue when we looked at your question, because your questions, I agree your questions are simpler but to me they raise far more questions than the answer. Because for instance is it one thing or if I take all little nips so to speak from all the different categories and put them together is that enough to put me over the line to make me a political committee? So, to say, there's certain things I think we can agree to say, this would make you a political committee. But then when you get into the weeds which is the devil's in the details, is it a little of this and this and this, and all of a sudden I have a nice pasta sauce, I don't know is that a political committee? To me it's not as simple as people want to make it out to be. I don't think it is.

Douglas Kellner: But they need answers.

Bill McCann: There's no question about that. And that's the ultimate goal. Certainly we all agree that our goal is to provide them with that.

Brian Quail: Now one of the ironies in your comment Bill is that notwithstanding the fact that there is a disagreement about how the second carve out and the definition of a political committee relates to the listing of the entities up above and the kinds of activities that they engage in, your question very clearly put into focus though that you would not have a political committee with a filing obligation but for the language in 14102 that requires reporting on the part of entities that receive or expend any money in connection with an election. Which means that the universally applicable definition is, expends any money in connection with an election, its just that sometimes supporting the political party right if there is receiving and expending money in connection with an election what becomes in connection with an election because you're advancing the party. So if I'm saying vote Democratic, and you're pressing that notion it can relate to an election. But you have to, we've never as an agency had a political committee, in other words an entity that meets the definition of 14101 and did not have a filing obligation. Its one in the same. Yet the language that creates the filing obligation is as simple receives or expends any money in connection with an election. So they must be reconciled or we've been wrong since the beginning.

Douglas Kellner: Brian for 40 years we have been telling people, telling the clubs that if they don't spend money in connection with an election, they don't have to file.

Brian Quail: And that is correct.

Douglas Kellner: Okay. Alright. The good government groups like Citizens Union in particular argue that when the definition in 14101 a political committee was amended to clarify that a political committee included a club that that meant that all of the entities that call themselves the John Doe Democratic club or the Harriet Rowe Republican club were required to file just because they're democratic clubs or republican clubs. And we have been, we meaning the Board of Elections insiders whether it be the actual people working here or the people out in the field who are organizing the parties have been telling people that as long as they don't spend money in connection with an election, that they don't have to file. And the two most common expenditures in connection with an election are printing petitions and printing literature not to say that there aren't other ways to spend money in connection with an election.

Risa Sugarman: I think you have to include the Internet now because that's what makes it complicated.

Douglas Kellner: Well in fact I'm not sure I agree with Brian's draft on that issue but yeah we have to come to agreement on it. And whatever the rule is, it needs to be clear in simple plain language that a 10th grader can understand because you can't expect every treasurer to be a lawyer or that the club should have to pay lawyers in order to come into

compliance. So alright. I mean I could go on with these 6 questions but I think it's not productive to do this now and not fair to the two of you.

Gregory Peterson: What would you suggest as a means to define this and actually come up with what you'd call a simple, I'm all for it if it's simple.

Douglas Kellner: Well I thought the facts did that but if you haven't had a chance to read this yet then its premature. I mean I asked 6 common questions and Brian has written out answers to them and I agree that the answers have gray areas. But of course they're not necessarily gray if we say this is what the rule should be. So maybe that's the next thing is just to do this another month.

Andy Spano: Doug we get questions not only from candidates but from city elected officials asking us if they can spend money on X, Y and Z. We didn't define anything. They're asking us because they can't find anything else and we give them an opinion. Why can't we do that with clubs? Why can't we have your 98% where everyone knows pretty much what that is and when they come across something that you really can't define it's up to them to ask us a question or do it and suffer the consequences? That's pretty simple.

Peter Kosinski: Well maybe we can. I don't know.

Douglas Kellner: Alright well let's lay this over.

Gregory Peterson: I'd like to see the answers on those. Not right now but I do want copies of that. Because I am familiar especially on Long Island we have a lot of clubs but what a lot of them have done over time when they realize whoops we have to report, what they said was, okay the club can hold a dinner dance. The club can hold a party and so forth and that's all social. However what they call Committeemen's Counsel which you have people in the EDs who actually do the work the Committeemen's Counsel yes they would expend moneys, they would do the petitions and so forth, that group and that's where the actual funding came into and where the funding went out from. So we really wound up with 2 different organizations within the same area.

Douglas Kellner: Not everybody here agrees with that.

Robert Brehm: And those are authorized subcommittees of the accounting committee because they're in your rules too.

Gregory Peterson: The Committeemen's Counsels are, the clubs technically are not. But they've all been swept up into everything because there's a lot of confusion, they don't know what the hell they are doing. And simple people go, oh, I don't know and all of a sudden they've got themselves in hot water.

Douglas Kellner: We're going to talk about this in Executive Session with one example of the problems that we need to address with this. Alright so we'll put that over. Alright. So the last is resolution that Commissioner Spano and I have drafted to create a formal opinion of the Board of Elections. We're revising our prior opinion. Okay. So it's clear that this draft was prompted in response to one of the issues raised in the recent court decision. And the purpose of this was for Commissioner Spano and I to actually put on paper precisely what we believe the Board policy should be to revise the opinion of January 30, 1996 that created the LLC loophole. So we've presented the text of the opinion and it is our position that this opinion more correctly interprets the election law and that provides a proper procedure for reporting contributions by Limited Liability Companies as well as applying the contribution limits to Limited Liability Companies. So on that basis I move the resolution.

Andy Spano: I second it.

Peter Kosinski: I guess my comment is first of all this as you know, as we all know this has been a subject of litigation. It continues to be that. I think it's inappropriate for us to be visiting this issue while it's currently in courts and is being litigated. That's my first comment. My second one is that I think I made clear a year ago what my opinion is on this topic. I really have nothing to add to that and there's nothing here that changes my view on that so its my view that this should not be taken up today because of the ongoing litigation but secondarily, nothing's changed to change my opinion about it.

Andy Spano: It's only being litigated because we had a 2/2 vote. If we had voted for it it wouldn't be litigated right now. And all logical defies the fact that you think, this is my opinion that you think it should be in the legislature. This opinion came down from us first that's why it sits there. And part of that I think a substantial part of that was that the federal government had the same opinion at the time. Subsequent to that they looked into it more carefully. The Federal Election Commission has decided that it should be treated either as a partnership or a corporation depending on what their tax status is. And I think that's a logical conclusion. The original people who put this together did not consider what the situation is in terms of giving to a campaign. This was an issue of commerce setting up a hybrid organization. When it got to the Board here it was a hybrid organization, they had no rules. They looked at it, they looked at the Federal Election Commission and they said, oh but they did this, we'll do that and a couple of other things that were involved. Now we come down to this and we have new information. The new information is that the feds are considering the LLC which is a product of state legislation and saying that they should be taxed on whatever they report to the IRS. And so we have new information. Secondly, and this personal experience, when you're running for office it's a great boom to candidate. You go out there and you look for guys with LLCs because they can contribute a lot of money. Now they could be legitimate LLCs where each LLC is doing business or what it looks like in recent years is people go out and create LLCs that really have no business acumen or no business at all and that the reason for it is to contribute to campaigns. You've got two major candidates running just in this presidential election on both sides of the isle making this one of their major issues, not

the LLCs but money in campaigns. And I think that we have a responsibility because we took it before, it should be ours to say it belongs to the legislature is coping out on our issue. To say it's in the courts, the courts are dealing with the fact that we voted. And they're trying to get, whoever is litigating, whoever is the complaint person on this, I'm not a lawyer is saying that we shouldn't have done that. They want to just have someone else in this particular case the courts. Now you've got the practical matter. I think it's logical that we should do this okay. I don't agree with you that it should go to the legislature. We did it first, we can undo it and that's it. It will save the state a lot of money. We'll save individuals a lot of money. It will save a lot of aggravation of all the people who are dealing with this issue when all we need is either you or you to vote for this and it will be all over. And what will that do? It will just make all the elections fairer. That's it. That's the down side. My opinion.

Douglas Kellner: Anything else?

Peter Kosinski: No really, again I would just point to the judgment that's been rendered by Judge Fisher. I think the judge fairly considered all the factors here. I think she fairly represented what I said at the last meeting and I really have nothing more to add to that. I don't feel it's appropriate for us to be voting today on this because it is in the court system.

Douglas Kellner: Well indeed that's one of the reasons we've made the resolution is because Judge Fisher suggested that one of the impediments was that we could not actually set forth a new proposed opinion to change the last opinion so now we're actually preparing. We have prepared the written text of the opinion which we think more appropriately interprets the statutory provisions. Alright well if there's nothing else we can

Gregory Peterson: I might also add though that Enforcement has been looking into those alleged shell LLCs as they come up. So that's any part of any kind of loophole, so-called loophole I think is being plugged. Anybody that's forming an LLC specifically to evade the law and the limits, will be punished.

Douglas Kellner: Alright. So we'll call for the ayes and nays. I vote aye.

Andy Spano: I vote aye.

Gregory Peterson: Nay

Peter Kosinski: Nay

Douglas Kellner: Alright. So it fails by a vote of 2 to 2. I think that completes the public session. I will make a motion to go into Executive Session to consider Enforcement cases and also a personnel matter for the Commissioners.

Peter Kosinski: Do you want to announce the next meeting?

Douglas Kellner: Alright before we do that we'll talk about the...

Peter Kosinski: we have a next meeting date already?

Douglas Kellner: We had agreed on the 3rd. It's not the best date for me but May 3rd. We should discuss if nobody's asked you yet we can talk about it later.

Robert Brehm: We have to meet by May 5th in order to certify the federal candidates for that Thursday May 5th. So if any of the other days work.

Peter Kosinski: What are you suggesting Doug?

Douglas Kellner: May 2 or May 4? But if it's not convenient, I will have stick with.

Peter Kosinski: Do you want time to look at it before we decide?

Douglas Kellner: We don't have to do this right now.

Robert Brehm: And then the only other issue is when after that you'd like to meet the only other calendar that we need a meeting by is August 8th. So it's whatever.

Peter Kosinski: Can we do this in May? Can we talk about the next meeting in May?

Douglas Kellner: Yeah, some time in June.

Peter Kosinski: It's hard to do it that far ahead.

Douglas Kellner: Alright so I make a motion to go into Executive Session for Enforcement cases and the Personnel matter.

Peter Kosinski: I'll second that.

Douglas Kellner: Okay those in favor say aye.

[Chorus of ayes]. Alright we're in recess.