

Douglas Kellner: Good afternoon. My name is Douglas Kellner, co-chair. With me is Peter Kosinski, Gregory Peterson and Andrew Spano our Commissioners. We will begin with the minutes, approval of the minutes of the last meeting. I understand that the Executive minutes were redone last night.

Bob Brehm: Just that one word you had asked.

Douglas Kellner: And the other changes that were advised. So this includes both sets of changes.

Peter Kosinski: Are we taking them separately or together?

Douglas Kellner: Why don't we take them together? Those in favor say aye.

(Chorus of ayes). Opposed? Alright. The minutes are approved. We will then turn to the unit updates. We'll start with Bob Brehm and Todd Valentine, the co-executive directors.

Bob Brehm: With the number of meetings that we've held mostly were we revised the budget process I guess is the good news. The bad news is it's the same rate as last year. One item that was helpful to us that would have made the legal ads we have to run this fall, the Executive Budget Proposal had transferred some money from our Technology fund to our NPS fund that should help us to pay for the legal ads for the two amendments that we know of so far.

Gregory Peterson: NPS fund is what?

Bob Brehm: Non-Personal Service. So it would fit into that. And depending on the wording of the legal ads and the translation of all the language, it could be substantial. So, at the present time we have the constitutional question whether or not we should have a convention and the second one is the forfeiture of a pension for certain state or public servants. Those are the two that are currently out there. We notified the Attorney General's Office early in January and February of the need for the Attorney General to opine what the form of the question and the abstract which would make it easy for the Attorney General this year because of the form of the question for the constitutional issue is in the constitution, so it's only the abstract they have to write but we still haven't heard from them. So once we get that, then John can actually get price estimates which are pretty much dependent on the number of words that we have to publish. So that's moving along. We did get some of the funds reappropriated from the technology and the IT department has been talking to us for about a year as to the help we needed to get in the building. They're pretty much all here, working very well with the IT department and a group of us that meet weekly to try and estimate when we will have the various upgrades done. I know when William first came he was thrown into the deep end. It was a busy election season and all the cyber security for the general election had been raised so we spent a lot of time on that, plus putting the team in place. He's interviewed a lot of people, put together a lot of staff and I can't say with certainty what date we'll be able to plug everything in but we are more certain than we've been in a long time that very soon we'll have it mapped out for you. So that's taken a lot

of time in that period of time. But the technology from this year's budget reappropriated the unexpended money, I think that will help us to finish the technology planning, pay the bills and to make up for that little bit of money they took out of the technology fund to put into the NPS to pay for the legal ads. So I think budget wise it's not great, it's not what we had asked for in the supplemental budget for the extra positions but it's something I think we can live with from a budget point of view.

The other is, yesterday we did the kick-off meeting with NYSTEC which is the group we've hired to help us to do some of the cyber risk assessment work. I think that's going to be helpful for us to at least put a plan in place and map what additional security measures, if any, we need to make sure that the voting systems, the voter registration systems and the election night reporting systems are secure and safe. So the first step is to do a risk assessment for both the state systems and the county board election systems, and then map out what future changes need to be done, whether it need to be in a direction, regulation or purchases. So I think that's very helpful that it's finally up and moving. You had voted in the past for authorization for the spending of the money and for the contracts and now they're actually meeting and we hope to have a major part of the assessment which will be the county boards of elections done first and we hope to role that out just before the June conference by the time we get the list of questions and the meetings with the counties. So that gives us an idea of when that is going to happen. Other than that, I think that covers the high level.

Todd Valentine: Yeah, and related to the conference we got the notice about the upcoming County Election Commissioner Association Conference June 20th through 23rd so we need to start. As always we are on the agenda for a variety of things. Usually the legal updates, they're going into their own petition cycle so they like to review that sort of process so we'll be planning on getting budgetary approvals and place for that and finalizing who's doing what at the agenda and who's actually going to go. Because, unfortunately, that also dovetails with the end of the legislative session so then election law bills tend to come out at the very end so that may take some of our time so we have to be mindful of that.

Douglas Kellner: Any questions? Thank you. Counsel's Kim Galvin and Brian Quail.

Brian Quail: Thank you. We have had a busy period since the last meeting of the Commissioners. Several of the items that are on the agenda today in terms of the three draft regulations obviously involve a lot of time and attention of the unit. The unit continues to be actively involved in 10 matters of litigation. We received 1 new lawsuit since the last meeting in relation to village nominating petitions and language that is contained on there, the potential for that language not to be constitutional. We had two very productive meetings with Enforcement Counsel and her staff with respect to a very important issue of identifying and dealing with dormant committees. The training unit of the Board's Compliance Unit will be in this year's training round on May 2nd and at this point, some very substantial revisions have been worked on for the handbook reflecting the substantial changes in the election law that occurred over the course of the last year with respect to IE's, treasurer removal and the instances of where the committee funds have to be dispensed within a certain period of time after the death of a candidate. So all of those revisions are nearly done and we are literally at the 99.9% mark on

that. The compliance reviews, obviously with the filings in January bringing in quite a slew of occupied, a lot of energy in the Compliance Unit bringing the total number of reviews up to 71,819 with 64,125 of them having been completed. The legislative Over Contribution audit is essentially finalized and will be in its final form imminently. Kim and I are very pleased to report that our annual report was provided to PIO along with our internal controls, a report as well. The Election Law Book, Kim is going to disclose what color it's going to be. It's going to be the big tell.

Kim Galvin: That's my favorite part of my job is picking that color.

Brian Quail: Is out imminently and should reflect all changes in the statute through the April budget process. The IE regulation that you adopted on a permanent basis at the last meeting will be published on the 26th and will be effective permanently so we'll move from the emergency category to the permanent category. The Election Law update which came out in April of last year is on target to be completed by the end of this month also and generally makes sort of its formal publication, though we do send it to the County Boards as soon as it's completed. We provide copies of it at the conference, the Election Commissioner's Conference in the summer. And one of the things I do want to point out is that, the March 10th, January periodic number of referrals in terms of nonfilers was 2,105 and that was sent over about the time of the last meeting on 3/10/17. As of this morning 1,947 of those nonfilers have not filed which is roughly 92.4% and that's it for me.

Kim Galvin: I don't have anything to add other than the last lawsuit that he talked about with village elections, there was a bill that passed both houses of the legislature that would alleviate our issue that hopefully the Governor will sign and take that lawsuit away. And I believe there was 2 HAVA complaint hearings since the last meeting perhaps that Nick and Bill took part in and I formulated drafts for.

Brian Quail: So we're up to how many in total?

Nick: There have been 7 determinations altogether or 6 determinations, one pending.

Kim Galvin: And I think that's all I had to add to Brian's report.

Douglas Kellner: One minor question, is there any reason we should not put the Election Law update online in the Election Law section of the website?

Brian Quail: I don't think there's any reason not to do that.

Kim Galvin: Before it's final?

Douglas Kellner: No, when it's final.

Kim Galvin: Oh yeah, when it's final, yeah we plan to do that.

Douglas Kellner: I don't think we've been doing that.

Bob Brehm: It's on the portal for the counties. I don't think it's on the website.

Kim Galvin: Oh okay.

Todd Valentine: Well we certainly can. I don't see any reason why as long as its screen readable and caveat says its not legal advice.

Douglas Kellner: Okay great, thank you. So next we have Election Operations Anna is not here so we'll have Brendon Lavelle.

Brendon Lovullo: Thank you. We've continued with the meetings with IT with CAPAS-FIDAS to certify the JD. There was an additional vacancy I think in the past 2 weeks or so. All the shoebox extensions have been sent out to the counties and recently Dominion submitted an application for the new scanner for their central count that we're going to be looking at as well. And short and sweet.

Douglas Kellner: Any questions? Alright then Public Information, John Conklin.

John Conklin: Thank you Commissioner. We've been somewhat busy since the last Board Meeting. We're always fielding inquiries regarding campaign finance filings, the two special elections there have been some questions. We completed 48 FOIL requests in May. Tom and I participated in a monthly ECA call in March. We participated in the Risk Assessment kick-off meeting yesterday also as Brian mentioned. The annual report is close to completion. I'm still waiting for one unit outstanding and if that comes in should probably be done by the next Board Meeting. We should probably have it ready for the next Board Meeting. Tom has circulated draft forms for the special ballot for emergency responders for comments within the agency here. He's also made information available to the counties and to the staff with regard to the Federal Voting Assistance Programs proposed changes to the federal postcard application and also the FOAB. On the website we've posted the legislative packet for 2017. The filings that we have received for the May 23rd special election in the 9th Assembly District, the Campaign Finance Seminar schedule. One thing that we did that should have probably been reported at the last Board Meeting, there were some changes to the absentee ballot application with regard to the language around Veterans Administration hospitals. There were some minor changes that the legislature put in effect last year that we've updated into the application so that's been posted online and that change was made to the form. It's very minor but just wanted to make everyone aware of that. Since the March Board Meeting, Greg and Patrick have visited the Genesee, Erie and Herkimer Boards for NYS Voter reviews and Greg also did an MVR training in New York City for Adult Protective Services on March 20th.

Douglas Kellner: Any questions? Alright Information Technology, Bill Cross.

Bill Cross: Good afternoon Commissioners. I'll start with the projects first in terms of the CAPAS-FIDAS. As I reported last month we've been successful in filling several of the opening

long outstanding including a project manager. We're still however in dire need for two additional developers. Work has been contingent on obtaining suballocation of funds back from ITS to fund those positions. ITS made it a requirement that we provide a project plan and a budget for that purposes before they would suballocate funds which we have done and have provided to them. We received follow up questions this week. So that's moving. I'm hopeful that will come through because those resources are really needed and one of our big remaining unknowns for the project. That said, we have been making significant progress. A lot of the feedback we received from the Board and the Steering Committee in terms of interface, and scrolling and things along those lines we've come up with solutions for it to basically eliminate a lot of that horizontal scrolling and the streamline interface, and particularly targeted so it's useful on small screens like tablets and phones and such. So that was a good amount of work but I think in the long run it will pay off and have it accessible as well. We also changed in terms of how we do some of the analysis for the project. With the new project manager on board we switched to doing something called User Cases which really outline who are the users of the application and what specifically they want to do and a path through the application and based on that do our development targeted to specific users and their roles and what they need to accomplish. We've gone through at least in terms of Candidate Management, and done that analysis for about 75% of that so its some significant progress there. Like I said, we still need developers to develop these pieces now that we have the analysis done and we're still trying to move forward on that front. We've also had some continued development in the EFS module and data conversion and IT has continued to work with Compliance to make some additional enhancements to the new case management piece of that with the system we had rolled out previously.

For NYS Voter, much of our effort this month has gone into, as reported last month we went through an assessment phase with the vendors to look at all our infrastructure both here and at the data centers and some of the work that was done by prior vendors. They did a significant deep dive into that and identified several, I'll call them deficiencies, in terms of what was originally planned for the project vs. what was actually implemented or how it was implemented correctly vs. incorrectly. And we've since developed action plans to address each of those issues. It does require some significant reconfiguration and some new equipment to do that and supplement what was not implemented before. We've assembled a bill of materials for new equipment and software and have a resolution before the Board for some of those costs implementing that. That said, the overall project for NYS Voter is somewhat behind from what was originally expected, the refresh was supposed to be done some time ago prior to long before my arrival. That said, we're still significant under budget on the original projected cost which is good even with the additional requirements of cyber security that have been more prevalent in recent future which we're trying to work into both CAPAS-FIDAS and NYS Voter.

The military overseas voter's application, we've also begun development in house for that. It's currently hosted externally. One of the conditions of renewing that contract was that we would redevelop it in-house and become self-sufficient and we've started that effort and that's moving along well. We're on track for that.

Cyber security, we continue to make significant improvements to existing systems. As I said, we did several short-term things just prior to election, some of the longer-term things we're now addressing. One of the things in particular I mentioned we're working a lot of that into existing projects that weren't originally planned for. We're also researching third party monitoring. We have a lot of equipment that gives us a lot of information in terms of like intrusion detection and things along those lines, and keeping on top of that kind of volume of data is a significant burden. We're looking at some third party monitoring solutions for that they'll review and sometimes in an automated way and look for certain patterns and just provide us with information back in terms of here's what's actionable. Here's what we see. And they pull together information they see from several other sources that are useful. So there's several vendors that perform that service and we're looking into some of those to improve security but also reduce the resources it takes in-house to do that.

Bob mentioned we contracted with NYSTEC to do Election Risks Assessment. We're beginning first with the counties with a questionnaire at least for the first part of it. Based on the results of that we'll move likely having some follow up with that. Also included in that scope is a risk assessment for BOE, our systems. We're scheduling that last as a confirmation of the new infrastructure that we're building out now to reassure that it's done to certain standards rather than analyzing what we currently have in place. And that is schedule through I think December, January timeframe.

Website analytics, I've included in the report pretty much normal traffic there based following the general election. And that's what I have.

Douglas Kellner: Thank you any questions? Risa Sugarman.

Risa Sugarman: Good afternoon Commissioners. As Brian said, we had 2 meetings with my staff and Kim and Brian and Bob and Marie to discuss not only the dormant committees but other issues that both of our divisions work on. We also talked about the new handbook and we asked if we could review it and Brian said that would be no problem. So I anticipate that we'll be given a copy of the handbook so that we could look at it. On April 4th, I drove out to Batavia and I met with the Region 6 Commissioners. I had a very nice meeting with them. I wanted to talk to them about what I do and what they do and how we could work together to bring more committees into compliance and how we can work together to do that. So it was a very good meeting. They learned a little bit about what I do and what my division does and how we could work together. So, it was a long drive in the rain but I thought it was a good meeting and I would like to meet with all of the divisions if they're listening and they would like to invite me to one of their meetings, but I think that it would be beneficial for all of the committees across the state and all the Commissioners if we could work together to get all the committees into compliance.

We continue to work on our investigations and I will get John my report before the next meeting so you'll have your report by the May meeting. Thank you.

Douglas Kellner: Any questions? Alright. Next item is to turn to old business and we're...

Kim Galvin: Could I just add one more thing. Anybody within the sound of my voice that is supposed to file a financial disclosure form that hasn't received an e-mail from JACOP yet please see me unless you're in the Enforcement Division I don't do them but anybody here that can hear me within the agency. I had a little trouble with Mr. Cross but I think we straightened it out.

Bill Cross: I'm ethical now.

Kim Galvin: Okay.

Douglas Kellner: Alright so first matter for old business was to continue the discussion on automated audits. There's nothing new on our side. Do you have any comments?

Peter Kosinski: Well I think we should continue to try to resolve this, I totally agree. I guess I just have a comment that as I understand the proposed rule or regulation from your side is that we need to have different vendors serving county for purposes of their sync based machines vs. their audit machine. Is that a fair...

Douglas Kellner: No, I don't think so.

Peter Kosinski: Okay so tell me the...

Douglas Kellner: The statute requires that the audit be done with independent software.

Peter Kosinski: Fair enough. So what does that mean?

Douglas Kellner: So that means that you can't use the same election management system for the audit as you used for the original voting machine. It's not vendor specific. If the vendor has an independent software it can be...

Peter Kosinski: So the same vendor could produce two different softwares and one could be used for precinct and one could be used for auditing?

Douglas Kellner: Correct.

Peter Kosinski: Alright. So I guess my next question, I think this all turns on this whole independent aspect to the system. So I guess I have a question about, let's say the county were to decide to engage in this and they were to go out and purchase another software to do the auditing, at the Board the programming is done for purposes of precinct based machines and then the audit machine. Do different actors have to be involved in the development or the aspect of servicing that software at the Board?

Douglas Kellner: Our regulation doesn't require it but that's...

Peter Kosinski: I mean does that compromise the independence then of the audit system vis-a-vie the presynched system?

Douglas Kellner: Perhaps.

Peter Kosinski: I mean I don't notice that issue being addressed in the proposal so I'm wondering if it should be. If it has to be, how that would work?

Douglas Kellner: It isn't addressed in the proposal but certainly I would be happy to review any language if you want to.

Peter Kosinski: I guess the question really is, I'm not looking at language, I'm looking at the concept. Is that something that would be necessary to ensure the independence of the audit system?

Douglas Kellner: Well you have to identify the risk. If you have the same people programming the machines and who are programming the audit, is there a risk that if those persons were bad actors that they would be able to successfully cover up the compromise of the system? So, I'm not sure of the answer to that. But that's the risk that you would have to identify and see if you're actually addressing that risk in the audit.

Peter Kosinski: So, are you suggesting that it would need to be something that's part of the regulation or it would be done at the county level? They would do their own risk assessment of that at the county level and then they would make the determination?

Douglas Kellner: I think that's something we should be addressing, the risk assessment.

Peter Kosinski: Okay, well I think we need to look at that. It seems to me that is not addressed here and as I talked about this to people about the independent aspect of this audit system, I'm trying to understand what constitutes independence? How far we have to go to ensure true independence of these systems? So the insurance of the different software would be that the same software is not auditing itself. I assume that's the point...

Douglas Kellner: Right that's the point.

Peter Kosinski: of having different software. So if a vendor developed different software from their precinct base machine that would be okay because its different software that would be auditing even though it's the same vendor?

Douglas Kellner: Right.

Peter Kosinski: So then I guess it's whether the independence then has to occur in the programming of the software. And I guess, I mean that's one aspect, I don't know if there are any other steps in the process of creating a ballot and then auditing a ballot that would also have to be addressed as far as independence. I think when you're doing a hand count, the advantage I

guess is that even if the same actors, you have other actors there. I mean the transparency of that is different because you'll have people in the room.

Douglas Kellner: You're looking at the original.

Peter Kosinski: I mean you may have the same election inspectors doing the counting but you have other actors watching it so there's a transparency that I think people are comfortable with. You won't have that when you do an automated audit. So the independence has to occur outside of a transparency really, and occur in another way.

Douglas Kellner: Correct precisely.

Peter Kosinski: So it's a question of how much and what form does that take?

Douglas Kellner: Right.

Peter Kosinski: So it seems to me before we adopt anything we need to address this personnel issue on a programming level.

Douglas Kellner: Fair enough. Brendan is this something that you and Bob Warren and the rest of your team can take a look at?

Brendan Lovullo: Sure.

Douglas Kellner: And report back to us. Because I think that's the key. The key I mean the purpose of the audit is to make sure that the vote was accurately counted and...

Gregory Peterson: That there's little or no opportunity for anybody to do anything that would be untoward.

Douglas Kellner: Right.

Peter Kosinski: And then the purpose of the continued hand count maybe you could just address that.

Douglas Kellner: Well, even if you use an automated tool you still have to check that the automated tool is functioning properly. And the statistics show that you only need to check a very small number of the ballots against the audited ballot, but you still need to do some check to make sure that the audit is functioning properly.

Peter Kosinski: Okay. Now in this context...

Gregory Peterson: Bottom line we agree conceptually so I think now it's the kind of putting together the final touches to this so that again we ensure transparency and accuracy.

Douglas Kellner: Great. So Brendan we'll turn to you and the folks in the Elections Operations to just work through the issues that we've talked about today and come back with another draft.

Alright, then we'll turn to new business. The first is the proposed publication for comment of the amendment to part 6201 on the Fair Campaign Code. So this is just to publish it for public comment. Does anybody want to discuss this?

Peter Kosinski: I know we got some comments from Risa, I don't know if she wants to discuss those here. I just got them this morning.

Risa Sugarman: Yeah, I had given some comments on Monday. It seems to me that, I may be wrong, that the amendments seek to place the 1984, Opinion #1 of 1984 into the regulations. I don't agree and I don't think that this is what should be done with the regulations. I think that the regulations that set out the Fair Campaign Code in section 6210.1 subdivision C which specifically prohibits the deliberate misrepresentation of the contents or results of a poll relating to any candidate's election by allowing a candidate to publish or, a candidate obviously is free to publish any part of the results of a poll that he or she commissions but to allow a candidate to only then post with the Board those results of the poll if in fact there are other results of the poll that are contrary to the published results. So that's for example, if the poll says that my candidacy shows that I am ahead by 50 or 60% in opposition to my opponent and yet other questions show that the respondents say that in fact there are other results of the poll that in fact show that I am not leading and I am in fact closer either closer than 50/50 or 40/60 and I don't publish those or I don't release those to the press and the press don't publish those and therefore I only file with the Board of Elections the results that I released to the press. I mean I hate to use what we have here in the press now of fake news but that's what the results of the poll that are released to the press is. It's fake news. They're releasing only the good parts of the poll and then you're filing with the Board of Elections only that which is released. So the public never gets to know what the entire poll says and it misleads the public to believe that the poll results for the candidacy shows that that individual candidate is in fact ahead when the complete poll shows that the candidate, when more information is provided to the respondents of the poll is in fact either tied or not leading at all. And I think that if you allow by regulation to allow a candidate to post with the Board of Elections only that which was released to the press and which is misleading the public, you are allowing the candidate to continue that misinformation to the public. I don't think that that's what the Board should be doing and I don't think that that's what the Fair Campaign Code was designed to do. I don't think that the language, I don't think that that's what Opinion #1 of 1984 was designed to do. I don't think that that's what it meant when it said only that information that was released to the press was needed to be filed. I don't think that that's what the Board had in mind when that question was answered in the series of questions that were asked and the resulting information was given. I think that if you allow that to be done, its not a Fair Campaign Code, its allowing, again, the candidate can support the fake news that was released by the candidate in the poll information that was released.

Andrew Spano: Can I ask you a question?

Risa Sugarman: Of course.

Andrew Spano: I tend to agree with you by the way. What would you suggest? Would you suggest what you presented the last time we had this poll issue looking through the entire poll and picking out all the questions, give a fair look at negative and positive?

Risa Sugarman: I think that if a candidate releases a poll to the press, the entire poll should be published. I think that if the candidate is going to release information to the press, I think the public and certainly the opponent has the right to see the entire poll. I think that a candidate can't pick and choose what information they want or obviously, they can pick and choose what information they want to the press. I don't think that they should be allowed under the Board of Elections Fair Campaign Code when the code specifically prohibits the deliberate misrepresentation of the contents or results of a poll relating to the candidate's election. That the Board should say that we will further that misrepresentation to just file with the Board that limited amount of information.

Peter Kosinski: So you're referencing the opinion from '84 as far as what you're talking issue with. I think that opinion was trying to get at a situation where a poll may cover several different aspects of a campaign. It may for example cover several different candidates. There may be a poll done that covers Gubernatorial candidate, a Senate candidate, an Assembly candidate, all kinds of candidates and it may end up in a situation say the Assembly candidate in the context of that poll says to the press, "We just ran a poll and I'm way ahead by 50 points" and so our opinion then says, well then you have to release the questions in that poll which support what you've just said to the press. So I think what the Opinion was trying to say was, you don't have to release the whole poll. You don't have to tell what the questions were about the Governor or about the congressman or about the senator, but you have to release the poll results relating to your race because you've said that you're candidacy is 50% ahead, then we want those poll results to support that. So in that context, the Opinion was getting at the whole poll doesn't have to be released but that portion that relates to you that supports your contention that you're ahead by 50 points has to be released.

Risa Sugarman: But when we go back to what happened in the hearing and the Jones poll that's not what happened here.

Peter Kosinski: That may be but I think that's a different subject. So I think to say there's no situation or in all context where a release of a poll is made the whole poll has to be released I think is overstating. Because I don't think its appropriate in the situation I said.

Risa Sugarman: Okay I can see that situation.

Peter Kosinski: So I think this regulation is intended to get at having polls released that allow the public to know whether or not the contention made by that candidate is backed up by the poll results. I think the example you gave there would be a requirement for release of information that may go against what the candidate say.

Risa Sugarman: But I don't believe the language that's in the regulation deals with that situation. Because preparatory questions may not deal with the questions that deal with the candidacy of that in the situation that you give. Because if the questions that are, for example, if you're given more information about the particular candidate and that causes those who are responding to the poll to change their responses, then that might not be preparatory in the language that is dealt with here. Because its more information that's given about the candidate that causes the respondents to change their minds. So if you're asking about, "How do you feel about Risa Sugarman running against somebody else?" And the answer is 60/40. Then you say, "Well what if you find out AB and C about Sugarman and DE and F about her opponent?" And then that tightens the race. And then you find out XY and Z about Sugarman and LMNOP about her opponent? And then that switches the percentages of the race. Now those aren't preparatory questions about what's released about Sugarman 60 and her opponent 40 so that's not dealt with here but that changes...

Peter Kosinski: I don't agree with you because I think it says to the extent the results of such questions were disclosed. The questions you're enumerating all relate to whether or not Sugarman is ahead 60/40. So to me all of those questions would have to be released. And some questions, as you're suggesting, if you delineate more specifically on the candidate's qualifications, those numbers may change. Well then that I think would be covered because they're still going to...

Risa Sugarman: All I can do is go by experience of what happened.

Peter Kosinski: Well I think each case stands on its own though. I don't think you can take one example and try to extrapolate out that that's the rule. I think every fact pattern is a little bit different and we have to analyze each poll and each release as it arrives and look at the release and then compare it to the poll and make a judgment call of whether the release matches the questions in the poll as far as percentages, numbers and how the poll was represented in the public release. The preparatory issue was gotten to because I think there's an understanding that in a poll context sometimes the answers to a poll in one question can be influenced by questions leading up to that question.

Risa Sugarman: I agree with you.

Peter Kosinski: It was an effort to say, well you've sort of influenced the result of question 40 by questions 30 through 40 so you need to release those as well. But if 40, 41, 42, 43, 44 all relate to your popularity then I would argue those all should be released because those are all to the extent the results of the questions disclosed. Well you disclosed you're ahead 60/40, well all 4 of those questions relate to whether you're ahead 60/40. So I don't agree with you that this rule would not require release of those. I think what the Opinion was trying to do though was it was trying to in a real world situation polls are not the small discrete type of questions that are sometimes released to the public and its not necessarily fair to other candidates who are in the poll, but one candidate released and, 'Oh my god, all my stuff is out there too.'

Risa Sugarman: I would agree with you in that description, that that entire poll should not be released. However I think that the definitions that we got preparatory meant before, and that's what we heard over and over again by one of the candidates. So that in the description now the language I think the language can be rewritten to say what we're both discussing should resolve the issue. But I don't think its here now and I think to make it fair it should say that any descriptive questions or questions in response to the particular candidates should be released and should be filed. I mean I think that that's what, I think that the language and again I can only speak from experience of what happened in, now I have other issues, I did say that I don't believe that the statute allows Counsel's Office as opposed to whoever the Chief Enforcement Counsel because of 3-1041B I believe gave the authority to the Chief Enforcement Counsel to do all investigations.

Douglas Kellner: That doesn't change that.

Andrew Spano: Stay on where we were before.

Risa Sugarman: Okay and that.

Bob Brehm: Well I think we should respond to that one but I also want to respond to her first part too. I mean on the first part I think it's a mischaracterization that the proposed reg which was only proposed to get comments at this point. Its not an emergency adoption of anything is to try and put order to last fall's process which was not as orderly as we would like. The Commissioners made clear that the '84 Opinion still stands and I agree with the comments of Commissioner Kosinski, the words of the Opinion in total deal with both preparatory questions but also questions or parts of the poll that reflect on the question or facts whatever they were released to the press. I think its consistent with what the people involved in that poll of last Fall said to us repeatedly even though it was just said a few moments ago, I disagree with because we did release only parts of that poll, we didn't see all of it but the parts that we did release, some of it really wasn't, I mean its hard to release that which you don't see to know whether or not its truly part of the opinion. We tried to set up a process that was orderly, that provided due process but quickly so that we could get to the information timely before the election was over which is the purpose of trying to put some order to this. Certainly, transparency, our goal is to have order in a neutral party so to speak to be able to review this material to get to that very kind of question, the dialogue that's been back and forth. Does what was released to the press have anything to do with whether its an 80 question survey or a 10 question survey? And how much of it really needs to be released? It all depends on what was said and what's in the poll. So the purpose of the regulation is not to take away any investigatory rights. I think that's the second part of the question. But the purpose was to make it an orderly process, a quicker process that person's filing complaints have some real organization as to what are the process that will be followed, we're not making it up as we go. So certainly, as we put it out for comments, we may have to make amendments. So the purpose of it was not to make it less transparent, its purpose was to provide as much transparency as we can to get the answers out before election is over.

Andrew Spano: That may be but I just heard the Commissioner and Risa saying the same exact thing of what they want in the poll. Now if the only problem is now each one is interpreting

what's written, why don't we just write something that says that? I mean that's very simple. Cause you're saying the same thing.

Peter Kosinski: That could be. I think it says it but if we need clarification I'm okay with that.

Andrew Spano: My point Commissioner is, so what? She doesn't understand it that way. Maybe I don't, maybe she doesn't. Let's just make it clearer that's all.

Douglas Kellner: I think that's fine. I think that at this point we're just putting it out for public comment so we should put it out for public comment, Risa can write up the language that she thinks ought to go in there so that we have that actual language and we'll look at it and we'll also get comments from both the press and the political community on what they think is appropriate on how we should deal with this.

Peter Kosinski: Yeah, I don't think there's anything in here that really changes the current rules. I think this is meant to really memorialize the Opinion that was put out in '84 and the statute and regulation as it currently exists. So I don't think this changes anything.

Douglas Kellner: And to clarify that the hearing officer is not the same as the investigator.

Peter Kosinski: Right.

Risa Sugarman: My question is, if you change the language does it have to go out again for public comment? And if it does, why don't we.

Douglas Kellner: It's shorter comment and we'll do better by getting comments and then making a revision than to just delay it until well I think...

Peter Kosinski: I mean I'm okay with putting it out, getting public comments. If we need to make changes we'll make changes. And if we need to put it out again we do I mean I don't think we're adverse to that. That's sort of my feeling.

Bob Brehm: If you look at when our next Board Meeting maybe, most of the comment period probably will be over about the time of the next Board Meeting and we could at least have the benefit of comments. If we have to go back out its another 30 days, unless there's a poll that comes out in relation to the special elections, I think we have a little bit of time before we get to the September primary...

Peter Kosinski: Well we have a process in place right now if we need to use it. It's not like nothing exists so we could use the current process. It's not perfect but it's something. This is certainly meant to improve it and I think it does. So I think we should put it out, elicit comments from everybody that wants to comment and then take another look at it after those comments come in and make adjustments as necessary.

Andrew Spano: We have a situation in place. Now that we've had this discussion where we all understand what this means, when we look at the situation that's in place while we're waiting for this, we can operate under the framework we understand.

Bob Brehm: I think maybe Mr. Quail can comment on the second part because I think it's an important point. Where Risa had mentioned the 3104 section, I think there's a little bit of difference that doesn't really remove any investigatory but this is a slightly different process which still has that component, can have that component.

Brian Quail: The effort in making the revision was to have the adjudicatory function go to the hearing officers and they have been performing that adjudicatory function under 6218 with respect to other matters that have come up and through 3104 and it sort of changes this process into more of a process where the complainant is in the driver's seat with respect to their complaint and making the case as to the propriety of the release as opposed to the respondent. The language in the regulation that permits the Board to act on its own and to conduct an investigation is left and in that context where the regulation says the State Board of Elections, that clearly still means the Enforcement Counsel. It's the adjudicatory portion only that shifted. And certainly, as the comment period unfolds, if there's specific issues where we may have missed some piece of nuance with respect to that, then we can bring that back to the Commissioners and address it too at the end of the comment period.

Risa Sugarman: And my only other question is whether SAPA would apply to these hearings so that the time periods would be required to be within SAPA which would be the issues of the reasonableness under the hearings. And I know that the truncated time periods for those filed within 30 days of the election would require that, but there are certain things that are required under SAPA which would be evidence necessary and the confidentiality which is what happens with, in the Jones matter, the request and requirement by the Board and in the regulation to keep the poll confidential should it be turned over to a hearing officer. If its done under SAPA, that might be an issue. It was certainly an issue for me conducting the hearing because the Commissioners wanted the poll to be confidential. It short of had to be a hybrid of that because if it was actually SAPA hearing, the poll would have had to be marked as a piece of evidence and the complainant in this situation would have been entitled to a copy of the full poll. So that's just another consideration for the period of time that the public comment. So that's another issue just to consider. The confidentiality and the SAPA requirements of the evidence.

Brian Quail: And I think in general, the provisions of this regulation are compliant with Article 30 SAPA in terms of the procedure requirements they tend to be fairly broad. They do certainly require reasonableness and there are some very specific things that SAPA requires that are not spelled out in this regulation where if SAPA applies, you simply do what SAPA says. So it works but with respect to confidentiality, its certainly an issue that we can look at but generally speaking when there's a source of law that provides a superseding provision for something to be confidential and you have something that makes it confidential than you can follow it. What we lack presently is that in the current regulation its not particularly well spelled out. We do have some vague language about providing something that should be kept confidential, this spells it out in further detail. And I think when you overlay this procedure with SAPA requirements that

we won't find there to be inherent conflicts but certainly there are specific examples we may be happy to take a look at those.

Risa Sugarman: Its just an issue that I resolve the keep the poll confidential because that's what the Commissioners wanted. Its just an issue that I raise.

Douglas Kellner: It's one of the reasons for revising the regulation was because we need to explicitly provide for confidentiality which wasn't provided previously. But I think we should publish it and review comments and this is only a draft for public comment at this point.

Peter Kosinski: I would move to put it out for public comment.

Douglas Kellner: Alright, those in favor say aye.

(Chorus of ayes). Opposed? Alright the next one also to publish for public comment are revisions to part 6216 relating to the HAVA complaint procedure. And does anybody want to speak to that?

Bob Brehm: I think in general the purpose having done several of these is to try and facilitate persons with disability wishing to file a complaint to remove some of the, streamline the process. Some of the steps along the way.

Douglas Kellner: Alright so are we ready to vote?

Peter Kosinski: I move.

Douglas Kellner: Those in favor say aye.

(Chorus of ayes). Opposed.

Peter Kosinski: Again, this is just for public comment right?

Douglas Kellner: Right. Alright and then the third is a resolution to put out for public comment proposed changes to part 6200. This addition to the regulation is being proposed because of a statute that was just adopted by the legislature that provides a procedure for removing campaign committee treasurer and the Board would update its regulations to conform to the new statute.

Peter Kosinski: I noticed Risa had some comments on this too.

Risa Sugarman: Yes, I just had a couple of questions about the wording. Under the multi one you're talking about designation by a multi candidate committee it says that the making a joint designation, I didn't understand what that meant. Whether it was what joint meant, whether it was unanimous, does it mean unanimous of all of the candidates? I don't know what the definition of joint means.

Brian Quail: What I would point out is that what the sentence says is that a treasurer removal committee for a political committee authorized by more than one candidate. So that's a typical multi candidate committee. The treasurer removal of committee for a political committee authorized by more than one candidate is designated when all candidates authorizing such committee make a joint designation. So the joint designation is sort of modified by the all candidates who authorize the committee making the designation.

Risa Sugarman: So that does mean unanimous?

Brian Quail: Yep it would be unanimous at the time. And then what the regulation attempts to provide for or carve out is that if the multi candidate committee designates an additional candidate after the treasurer removal committee has been created, the additional candidate's authorization of the multi candidate committee would not void the treasurer removal committee that's in place when that happens. So the committee does not need to redo the treasurer designation at that time.

Risa Sugarman: So that's what the second clause means?

Brian Quail: That's what the provided however clause means.

Risa Sugarman: The removal of subsequent, okay so that means if there are additional candidates...

Kim Galvin: I think it essentially means that if a committee removes, let's say the treasurer goes and complains to one, they can't then authorize a new one in addition.

Risa Sugarman: I think you just said different things. You just said different things.

Kim Galvin: No, no, no if one of the same candidates.

Risa Sugarman: No you just said different things.

Brian Quail: If the candidate, if the committee is authorized by additional candidates that additional candidate being authorized wouldn't void a removal of a treasurer that had already occurred and it was written differently and then it changed to the current. But that's the objective.

Risa Sugarman: So you start out with 3 candidates and now you have 5. The 2 additional candidates can't, doesn't void the removal of the treasurer. But that's not what you just said.

Kim Galvin: Well that's what I meant.

Brian Quail: Now we're on the same page.

Kim Galvin: You can't do an end run around the committee.

Douglas Kellner: But the key thing is what the text of the regulation says and not what people say here.

Risa Sugarman: So the removal of a treasurer by such committee shall not be cancelled by the subsequent authorization of that treasurer by one or more other candidates.

Peter Kosinski: I think the question is who's that treasurer? Who is that?

Kim Galvin: The one removed.

Peter Kosinski: The one removed or the one substituting? When you say that treasurer, of that treasurer. So that means that the removed treasurer is authorized by the new candidate, that treasurer doesn't get back in.

Kim Galvin: Right.

Peter Kosinski: Is that what you're trying to say? Fair enough.

Andrew Spano: This is me, I'm a candidate, I can't just go, "you're fired?"

Peter Kosinski: There's really no process right now under law to do that, no.

Bob Brehm: And if you don't elect a 3 person committee you still can't do that.

Peter Kosinski: Yeah, treasurers can actually refuse the candidate and there's really no mechanism in law to force them out that's why this...

Kim Galvin: Many times they've gone rogue and you can't get them to quit.

Andrew Spano: I never had that problem.

Kim Galvin: Or turn over the votes for anything.

Peter Kosinski: So we'll need to address that you're right.

Risa Sugarman: Okay and just the third paragraph, a copy of the writing removing and/or appointing a treasurer shall be provided by the treasurer to the removed treasurer. And then in the middle of the paragraph it says or actually the second to last sentence on the page, the removal notice shall. I mean you don't mention that removal notice, is that the copy of the writing, the removal notice?

Brian Quail: Yes. And so what paragraph, I'll call it paragraph, I'll call it section, what section 3 here does is it requires that a writing be provided to the removed treasurer that sort of outlines the obligations that that individual has upon being removed and then upon after setting out what

all those are, it says, "The removal notice shall state the requirements of this paragraph clearly and concisely provided on form prescribed by the State Board." So it is referring to the same document. And it currently says, "The removal notice" it could be changed to read, "Such notification" or "Such writing" if there was concern about it being ambiguous. But the only thing that's being talked about here in this section on responsibilities of removed treasurer in terms of making sure that the removed treasurer gets this notice, is the context that it's the removal notice.

Douglas Kellner: Well maybe the point is you should use the same words throughout to describe this.

Risa Sugarman: Right or just use a...

Douglas Kellner: So call it a removal notice at the beginning.

Peter Kosinski: Again, can we put this out and make these changes? I would move that we get these out and then we'll make those changes as needed during the comment period. So I'd make that motion.

Douglas Kellner: Alright, those in favor say aye.

(Chorus of ayes). Unanimously adopted. And we have a resolution 1703 which provides for the appointment of 3 additional hearing officers.

Risa Sugarman: No, reappointment.

Douglas Kellner: Oh reappointment of the 3, okay. Alright those in favor say aye.

(Chorus of ayes). And I think Bob you mentioned that we're also looking to...

Bob Brehm: Well we had 5, one moved onto something else, we were down to 4 and they're appointed for a 2-year term. When staff reached out, the 4th one thought it was something he needed to move onto something else, so we're down to 3. We can function with 3 but I think we going to still reach out and try and go back up to 5 in case we need them ever. If we lose one of the 3 we're down to 2 and I just think, we're good for now and we'll probably come back to you after that effort if we identify additional people. It's a continuing effort.

Peter Kosinski: So what are they used for right now? What do we use them for, these hearing officers? We use them for HAVA complaints, is that all? And your enforcement area as well.

Douglas Kellner: So last year there were 11 enforcement hearing applications and 3 of them were withdrawn. So there were 8 proceedings altogether.

Peter Kosinski: So you use them for your hearings, you use them for HAVA...

Bob Brehm: Not HAVA, we propose to use them for the poll.

Peter Kosinski: Oh you don't use them for HAVA, I'm sorry. You do the HAVA hearing. I'm sorry. So we only use them right now for...

Kim Galvin: Compliance.

Peter Kosinski: Compliance hearings...

Risa Sugarman: Enforcement.

Peter Kosinski: Enforcement hearings.

Douglas Kellner: So we can get by on 3 and...

Peter Kosinski: And we're going to expand it arguably.

Bob Brehm: Whenever we get a spinning the wheel one of the process is a conflict. So who knows what is going to come up? There may be a conflict. Its good to have a pool to pick from. 3 is good.

Douglas Kellner: Alright so resolution 17-03 was adopted unanimously. And the next is 17-04 which is the resolution authorizing expenditure of the sum not to exceed \$650,000 from the State Operations HAVA fund for the payment of the costs associated with the NYS Voter Research Project which is Refresh Project which Mr. Cross talked about before. Alright, those in favor say aye.

(Chorus of ayes). Opposed? Alright. Before we go into Executive Session, now I have only personnel, there's no enforcement right?

Peter Kosinski: Correct.

Douglas Kellner: And you guys really want that in Executive Session?

Bob Brehm: Its up to you. You did it in Executive last time so...

Douglas Kellner: Well it's really up to...

Bob Brehm: I have a draft that I gave you.

Douglas Kellner: Alright the resolution is to authorize the co-executive directors to receive the 2017 Uniform State Agency Management Confidential Salary Adjustments. I mean if we want to discuss it we can go...

Gregory Peterson: So moved.

Andrew Spano: Second.

Douglas Kellner: Alright those in favor say aye.

(Chorus of ayes). Opposed? Alright so we don't have any executive session agenda. We should talk about our next meeting. My thought was May 31st or June 1st.

Bob Brehm: That's a Wednesday or a Thursday.

Kim Galvin: Is Memorial Day that Monday?

Douglas Kellner: Correct.

Peter Kosinski: June 1st is better for me.

Andrew Spano: June 1st.

Gregory Peterson: Yeah okay.

Douglas Kellner: Alright.

Bob Brehm: Just on your clocks maybe for the next meeting, we need to meet, the only one we need to do is approximately July 31st to August 4th in case there are any petition determinations with this year's filings we can certify. We also have to certify the questions for the constitutional, you know the publications. So that's what we have to do.

Gregory Peterson: So what are we doing then?

Bob Brehm: We need to meet July 31st to August 4th. August 4th is Friday.

Gregory Peterson: So that week we need to.

Douglas Kellner: So maybe Wednesday the 2nd.

Peter Kosinski: You're suggesting what? The 2nd?

Gregory Peterson: August 2nd is a Wednesday that's fine.

Andrew Spano: And its August what?

Peter Kosinski: 2nd.

Douglas Kellner: So we're talking about meeting June 1st and August 2nd.

Bob Brehm: if you need to do any more but the August one is the one we have to do.

Peter Kosinski: I'm sorry when is the conference again?

Todd Valentine: June 20th to the 23rd in Lake Placid.

Gregory Peterson: So we have June 1st and the next one is August 2nd, got it.

Douglas Kellner: Alright. We could meet later in June if you want. Alright so those in favor of adjourning say aye.

(Chorus of ayes). We stand adjourned.