

Douglas Kellner: Good afternoon everyone my name is Douglas Kellner and I call the meeting to order and I'm going to ask my fellow Commissioners to introduce themselves.

Peter Kosinski: I'm Peter Kosinski.

Gregory Peterson: Gregory Peterson.

Andy Spano: Andy Spano.

Douglas Kellner: And the staff in the room we'll start with Todd.

Todd Valentine: Todd Valentine.

Kim Galvin: Kim Galvin.

John Conklin: John Conklin.

Mark Goldhaber: Mark Goldhaber.

Tom Connolly: Tom Connolly.

Risa Sugarman: Risa Sugarman.

Brenden Lovullo: Brenden Lovullo.

Anna Svizzero: Anna Svizzero.

Brian Quail: Brian Quail.

Kathleen O'Keefe: Kathleen O'Keefe.

Bob Brehm: Bob Brehm.

Casey Seiler: Casey Seiler from the TU.

Bob Warren: Bob Warren Election Operations.

Josh Oppenheimer: Josh Oppenheimer, Greenburg, Turing

Jennifer Wilson: Jennifer Wilson League of Women Voters.

Aimee Allaud: Aimee Allaud League of Women Voters.

Bill Mahoney: Bill Mahoney, Politico.

Cezary Podkul: Cezary Podkul, Pro Publica

Douglas Kellner: Okay thank you and welcome to our guests. I will start with the approval of the minutes of the meeting of July 27th is there a motion?

Andy Spano: So moved.

Peter Kosinski: I'll second.

Douglas Kellner: Those in favor say aye.

Kellner, Spano, Kosinski & Peterson: Aye.

Douglas Kellner: Opposed? (None) And the Executive Minutes of June 10th, 2015 which should have been revised. Is there a motion?

Peter Kosinski: I'll move those.

Gregory Peterson: Second.

Douglas Kellner: Those in favor say aye.

Kellner, Spano, Kosinski & Peterson: Aye.

Douglas Kellner: Alright those minutes are approved. And a motion I guess included the Executive Minutes for July 27th, 2015 but maybe I should just...

Douglas Kellner: So we'll do that those in favor say aye?

Kellner, Spano, Kosinski & Peterson: Aye.

Douglas Kellner: Opposed? (None) Alright so we've approved the minutes and Executive Minutes. We'll go to Unit updates the Co-Executive Directors, Robert Brehm and Todd Valentine.

Bob Brehm: I think since our last meeting the number of items we have been working on I think one is we introduced today the new director of our Information Technology Services Mark Goldhaber. We've spent the last couple of weeks welcoming him and reviewing with him our IT issues. Certainly we have a long way to go to bring him up to speed but we welcome him. He's a welcome addition. We wish him well and we wish him that he stays here a long time.

Mark Goldhaber: Thank you.

Bob Brehm: A number of other items I, I think certainly we've been busy putting the agenda together and the work that it takes to do that and also the activity with regard to the independent petitioning filings here but it also generates a great deal of calls to all of us during that period of time. With regard to staff I think we've also had our last hire that we've been talking about. Julia has started as the clerk in the Compliance Unit. So we finally finished all of that work and I think from a contract point of view we asked you to vote a number of months ago for the value of the contract to finish the HP work on the NYSVoter project. And Todd and I were able to sign that contract this morning. It still is going to the Attorney General and Comptroller but we believe we've finally turned the corner and that there's a goal line in sight. Todd?

Todd Valentine: Yeah I mean the next big agenda that's coming up for us is in September is going to be the call letter for the budget which we assume is going to be a flash budget but we haven't seen that yet so I look forward to it and we'll have to face that as it comes. So that's the next big item for us.

Peter Kosinski: Yeah I have a question. We have to do a calendar for the Federal Primary next year is that correct? And we have to submit that to the court for approval is that correct?

Todd Valentine: Yeah right we have a draft calendar that we're circulating for uh, we usually circulate it to members of the Legislature for review of the date and if they intend on making any changes to the statute that is circulated to them which brings feedback and we anticipate that to come back to one of the next two meetings, you know after in September or October depending upon when...

Peter Kosinski: I just think that it should get done sooner as of later so candidates are on notice what they schedule is for the Primary next year. I think it would be fair to them. They should have, you know, adequate notice of what their time frames are for submitting petitions and doing all the things they have to do to qualify. So I would encourage you to get that done sooner rather than later because you also have to submit it to the judge for sign off which could take some time as well. So I would hope we'd get that by next meeting.

Bob Brehm: Good. Assuming we are in agreement as we were last time it went a lot faster in that methodology. We submitted it in November and I believe it was approved in December. But certainly if we can have the recommendation to you at the next meeting will be a little earlier but, you know.

Douglas Kellner: Anything else? Alright we'll ask for a report from our Counsels and the Compliance Unit. And I don't see Kim here.

Todd Valentine: She should be right back.

Douglas Kellner: Should we wait until Kim comes back and take Election Operations? Why don't we do Election Operations? Anna Svizzero.

Anna Svizzero: Thank you Commissioner. We have issued a Certificate of Vacancy for two Senate seats since we last met, Senate Districts 19 and 52. The Senate District 52 files here thus the Prima Facie Report for those petitions that we did receive for the independent filing period for that contest. We also had to amend the Supreme Court Vacancies List for the General Election owing to some retirements that were timely. We received two petitions for that State Senate Seat. We prepared the Prima Facie Report. We received two objections related to those filings which are also summarized on the report that you have later in your packet. Six sets of objections were received but only two sets of specifications were filed.

We've completed filing the data entry related to the State Committee and Judicial Delegate Alternate Delegate data from County Boards of Elections so we are preparing those official roll calls for those groups so that they can conduct business. We're holding out from completion the ones where there are primaries in those various contests around the state.

We continue to work with the Candidate Management System Upgrade affectionately referred to as CAPAS. We have begun dry run testing on the Clear Ballot Absentee System and the public component of that will be posted to our website. We haven't scheduled it yet. We will do that when we've completed the dry run testing and are ready for the run for record. And we'll let you know what date that is too in case you'd like to be here for that.

We did complete the draft of the 2016 Presidential Primary Calendar. That is in your packet and that has also been posted to our website and provided to the county boards.

We have been discussing the concept of permitting the use of multiple versions of voting system software here in the state. We don't have a resolution ready for you. We believe we have the framework, the concept that we'd like to proceed with by way of a recommendation. We're waiting for Brendan. He has been very involved in this getting information from other states. We had another conference call with OGS yesterday so we're just researching some background issues so that we can have the right context for a recommendation to come to you.

We have completed the security procedures that related to using COTS scanners that can't be hash checked in those various absentee systems or at least in one that we're anticipating.

Peter Kosinski: Anna can I interrupt you just for a minute?

Anna Svizzero: Yes.

Peter Kosinski: That last item you were talking about the multiple versions.

Anna Svizzero: Uh, huh.

Peter Kosinski: I have something in my packet today on this is that...

Anna Svizzero: That's not a resolution it was just the gist of the...

Peter Kosinski: It's from you though right?

Anna Svizzero: Pardon me?

Peter Kosinski: It's from you guys?

Anna Svizzero: Yes.

Peter Kosinski: So that is just for a discussion? You want to wait until later in the meeting or do you want to talk about it now or what?

Doug Kellner: Well I mean you're certainly welcome to ask questions but we did have it as a separate...

Peter Kosinski: Oh I see okay well we'll talk about it later. Okay that's fine.

Anna Svizzero: Yes that's fine. But it wasn't meant as a resolution. It was just meant to let you know how far along the road we were in that general discussion.

Peter Kosinski: Fair enough.

Anna Svizzero: We as I said we've completed the updated those security procedures for the hash checking and on those cot scanners they can't be hash checked. And we're confident that all of the security procedures that are in place will certainly protect those systems at the same level that all of our other systems are protected. We continue to work with OGS on SHOEBOS reimbursements. Are you familiar with the SHOEBOS Program?

Peter Kosinski: Maybe you could explain it to us Anna.

Anna Svizzero: SHOEBOS letters actually stand for something I can't recall of the top of my head what they are but when OGS decided to no longer process vouchers from county boards and when we first got our Federal HAVA money, county boards could make voting system purchases and other HAVA related purchases directly by a voucher through OGS and the money was drawn down from their HAVA Account. OGS at some point decided they weren't going to do that any more so the remaining money is still in a grant but it became money for which counties had to first expend local dollars and then

could submit for reimbursement. So, we invented that acronym in a program. We have contracts with all of the county boards that have remaining Federal Funds and we reimburse them for voting systems, anything related to the conduct of elections since we've met all of our HAVA obligations. So Central Accounts Systems, upgrading computers, Poll Site Information Systems those kinds of items are all allowable expenses as are the initial expenses poll site accessibility, training on the new systems, voter outreach programs and things like that. The only difference between how the money was spent in the first place and how it's spent now under this program is that counties actually have to spend their own money first. But the reimbursement is fairly quick, usually within thirty days unless OGS has questions or something else goes afoul with the voucher process. We do have some boards that don't have federal money left. We have a few boards that have a lot of federal money left. I think they're waiting for some, the next bright idea to come down the road that would help with election administration.

Peter Kosinski: So the federal money is allocated by county?

Anna Svizzero: Yes.

Peter Kosinski: But it doesn't actually go to the county...

Anna Svizzero: Right.

Peter Kosinski: until they expend money locally on...

Anna Svizzero: Yes.

Peter Kosinski: an eligible program...

Anna Svizzero: Uh, huh.

Peter Kosinski: and then the state gives them the money?

Anna Svizzero: Exactly they have to submit a voucher. They have to give us proof of payment, photographs of what they bought.

Peter Kosinski: So we're in charge of making sure it's an eligible expenditure?

Anna Svizzero: Yes.

Peter Kosinski: And then are the feds auditing that or something to make sure that we're doing our job of making...

Anna Svizzero: We've been through one of those so we're expecting another I'm not sure when but we certainly function under the...

Peter Kosinski: And how much money's left do you know total?

Anna Svizzero: Approximately eighteen million dollars in the SHOEBOX Fund. There is still separate money available in the grant programs that are run out of the NVRA Unit that John Conklin and Tom Connolly manage for accessibility and for training and outreach.

We also provided in your packet a request from E S and S for an upgrade that also is not for a vote, it's informational. We have provided that request to the county boards that are E S and S Customers and we're soliciting their feedback. And I believe the deadline for that feedback from those counties was the fifteenth of September.

Since this unit update was provided for the board packet, we have a couple of items that we want to share with you. Dominion has requested a new upgrade but it is not an upgrade to their software. It's a utility that they have developed that would aid county boards in their production of absentee ballots. Right now when you build an election it's a project and building an absentee ballot that can be counted by that system is a separate project. This utility would allow the counties to consolidate those efforts and it would save them a lot of time and energy in the pre-election timeframe which we know is fairly limited. So we did send that on to the counties that are using the absentee system that Dominion has again asking for their feedback. But we don't have it. I'd be happy to provide it but we did not have it in your packet because it missed the cutoff for the packet production.

And also since the production of this Unit Report E S and S is coming here tomorrow to demonstrate a new voting system. It's called Express Vote and it is their ADA device that compliments their voting system the DS 200. It's a replacement for the Automarks. It's similar along those lines but we haven't seen it yet. We've seen it at conferences but not been able to spend any time with the vendor or the, you know the persons from the company that have that knowledge and expertise.

Peter Kosinski: Let's go back a minute to the first thing you talked about the Dominion Utility.

Anna Svizzero: Uh, huh.

Peter Kosinski: Is that called an upgrade or just a change or?

Anna Svizzero: Well it won't be upgrading the software or anything. It's something that will interact with the software so we would do some functional testing but there's no source code review or anything like that.

Peter Kosinski: But does this go through the same process the upgrades to the software go through where we would approve testing of this. It would go through testing and then the counties would take it on the ones that want it. Is it that same process for this?

Anna Svizzero: Well the Central Count System and Dominion are under warranty so they would get it at no charge.

Peter Kosinski: They'd all get it?

Anna Svizzero: Right.

Peter Kosinski: Okay.

Anna Svizzero: We do think it needs a vote because it will interact with the software.

Peter Kosinski: But you're not ready for that today?

Anna Svizzero: No we again we missed providing even the information into the packet. But I can make it available if you want after the General Public Meeting.

Peter Kosinski: But do you anticipate this coming up at the next meeting?

Anna Svizzero: I would, I would.

Peter Kosinski: Okay.

Anna Svizzero: And the testing since it doesn't involve source code is really functional testing and, you know, that kind of internal work we'll review the test plan with NYSTEC as we always do. Um, yes, oh I'm sorry, oh yes it was. Where it interacts with the software it is approximately fifty lines of source code so we're not anticipating that that testing project would be very long. I think counties that wanted this for the General Election but Dominion submitted it so late there is no way to get it to them. You know, it was something that most of the counties indicated at the user groups of their meetings that they wanted but it's taken the vendor this long to get it before us. So it, it has its own path and there's nothing that we can do to really expedite that. But thankfully it doesn't have that very intensive testing that a full voting system upgrade would have.

The E S and S demo tomorrow, they will since they're coming here, will be also providing a demonstration for Brenden's benefit and anyone else who wants to come in. They are electronic poll books and they will also be going through the upgrade requests that they have with us so that we can be clear on what they are anticipating this upgrade to accomplish. And, you know, some question and answer format that other project. So, we're looking forward to having the vendor here to deal with all three of those issues.

And I don't think I have anything else. Do you?

Doug Kellner: Any other questions? Well thank you very much.

Anna Svizzero: Thank you.

Doug Kellner: So we'll go back to the report of the Counsel and Compliance Unit with Kim Galvin and Kathleen O'Keefe.

Kathleen O'Keefe: The Campaign Finance filings were due on August for the Primary due on August 10th, August 31st and the ten day post-primary one will be due on September 21st. The July Periodic Filing and Primary Reports are currently being reviewed. And the Legislative Over contribution Audit is well underway.

We have had trainings recently. The Compliance Seminar was provided on August 26th. It will again be provided on September 3rd. The Webinar is An Introduction to the Compliance Unit and outlines the top deficiencies and training issues and how to correct them.

We had a Regional Seminar for our 2015 series in Albany on August 19th. For 2015 we've had CLE's and seminars presented with many people in attendance around the state and we are continuing to see people log in and take those webinars online. The Board's Report on the 2014 Public Financing Pilot Program is posted on our website for anyone that's interested in taking a look at that.

We've had a number of requests for personal use, advisory opinions and other opinions which we will be discussing later in the meeting. We have regulations that have been proposed for our Hearing Officers to work with the Enforcement Unit and our contribution limit and Independent Expenditure Regulation will be up for a vote today, the final adoption for that.

As Bob mentioned we welcome Julia Watjen into our Compliance Unit as a Confidential Clerk. Bill and I recently went to a FEC Conference in Chicago. It was extremely valuable even moreso than I expected particularly with respect to how they do compliance. And given that we are a relatively new unit and that we're upgrading our software to try to deal with the compliance issues, they gave us a lot of good ideas. Bill and I haven't had a chance to talk about it that much. We did a little bit but it was very informative.

Our compliance specialists and one of our auditors attended a New York City Campaign Finance Board Training in New York to see how they are also handling their compliance work. The idea being that if we look at a few different models that maybe will help us in making policy decisions here. We also had some auditors attend an Advanced Excel Training. We're using Excel to do our compliance work given our limitations. So that was helpful. We are continuing to meet on the FIDAS upgrade. There are a couple of staff that are literally meeting with IT every day so there is an ongoing effort there with FIDAS just like there is with CAPAS.

Recently senior staff finalized a number of policy issues with IT regarding the computer upgrade of FIDAS. We do have one outstanding issue that came from that meeting and that was that any possible future use of electronic signatures, this needs more discussion. It's a pretty big policy change if we were to go down that road. So we did not reach any consensus on that particular issue.

The litigation for the Brennan Center is in the works. We have papers that are due this week and then responsive papers a couple of weeks later. We have had with respect to the Women's Equality Party, we have had rules were filed for that party and then subsequent additional paperwork was filed with respect to a meeting of the committee. And then there was a lawsuit that was actually commenced in Niagara County to challenge those rules. That case was dismissed and then just recently once this past Friday and then again yesterday the board has received two additional copies that purport to be Women Equality Party Rules. So, at this point, we have three sets of Women's Equality Party Rules and obviously these three sets raise questions for local boards and candidates regarding, what is actually the status of this party? Election Law Section 3-102(1) does provide that the State Board has the authority to issue instructions relating to the administration of the election process and it may be fruitful for the board to try to give candidates and local boards some direction with respect to this particular issue.

Andy Spano: Okay on this issue if we do nothing here or give no direction what happens?

Kathleen O'Keefe: I presume that the individual local county boards will come to their own conclusion which may end up being not a uniform conclusion.

Andy Spano: Okay.

Kathleen O'Keefe: with three sets out there.

Andy Spano: Minor chaos.

Kathleen O'Keefe: I think that's a reasonable description.

Douglas Kellner: And more significantly you have three different interim committees?

Kathleen O'Keefe: That's right, that's right with different presiding officers, different secretary and so forth.

Andy Spano: It's been my understanding...

Bob Brehm: Three different rule-making bodies.

Andy Spano: I mean it's been my understanding that one of the responsibilities of this Board is to give some direction to the local commissioners. And to take an issue like this

during an election and send it out there so that two commissioners in each county have to either vie against each other or with each other etcetera in terms of approving candidacies and so on wandering off with all those court cases, that we should give some direction from this Board.

Doug Kellner: Do we have a motion?

Andy Spano: Yes I do.

Doug Kellner: Okay.

Andy Spano: I'd like to move that the Board...

Gregory Peterson: Before we get into motions...

Andy Spano: Sure.

Gregory Peterson: Very honestly, um, I always like to do my homework and frankly at this juncture I haven't received anything on this, there are three sets of three different things going at the same time. I'd like to at least take a look at that before we put a motion on it. Or if you want to put a motion on it still I'd like to study that before we come to any kind of vote.

Andy Spano: What? Are you going to study in here?

Gregory Peterson: Fine I have no problem. I'll stay right here. But right now I have zero in my file so I didn't know this was going to be brought up otherwise...

Kim Galvin: No, really no this was not going to see motion on this issue.

Gregory Peterson: The bottom line is...

Andy Spano: I always like to...

Kathleen O'Keefe: ...of the rules.

Andy Spano: ...help the commissioners out because I would prefer having the same information for everybody. How much time would you need?

Greg Peterson: How long is it?

Kathleen O'Keefe: There are several pages for each set of rules and then there is also the subsequent filing that came after the one...

Greg Peterson: Well let me ask you a question. Very honestly you know not trying to air any kind of dirty laundry here but it seems that some people here know what's going on and other people here don't know what's going on. I kind of resent it frankly. I you know I, I, I'm not pointing the finger at anybody. All I'm saying is that when I hear from our staff they don't have anything...

Andy Spano: I assume that the Executive Director at the other side has gotten all of this stuff.

Greg Peterson: You mean the rules?

Andy Spano: Yeah.

Doug Kellner: Well we all have the rules.

Kathleen O'Keefe: Yeah everything has been shared with the staff.

(Everyone speaking at the same time)

Andy Spano: The motion is simple. The motion is simple that we take a look at all three and I'm going to suggest we pick one of these groups and make that our direction to the local boards.

Kim Galvin: What if none of them are valid anymore.

Andy Spano: Excuse me?

Kim Galvin: What if none of them are valid in our opinion.

Andy Spano: Then you vote no.

Peter Kosinski: It seems to me we need more than just, you know, the sort of verbal representation of what's going on. I don't know the facts either. I don't, I haven't seen these documents. I guess I would welcome some sort of legal analysis from the Counsel's Office if they want to give us that which would analyze these from a legal standpoint and give us some information as far as what the law requires and provides and then analyze maybe the rules themselves. But to be honest to sit here I kind of agree with Greg to sit here today right now and try to adhoc make a decision on this, it's a pretty important decision and I think seems I, I just don't think it's reasonable. I don't think it's realistic to do that.

Andy Spano: Commissioner I...

Greg Peterson: Let me just ask one question. Can we as a Board set a policy for a political party or are we going to decide amongst the ones that have submitted something

here whether one is valid or another is not valid? So let's get, you know, what the game plan is.

Andy Spano: Well, we, we have a situation here where we have received three particular rules from three particular parties. One party was submitted very early. It was adjudicated at some level already and all of a sudden we've got these two others. Now what it creates if we don't come to some sort of direction for the local government, it creates chaos among the electorate as this goes out. You can't ask fifty-seven counties to suddenly decide each one making up their own opinion. That's what's involved here. That's all I'm talking about.

Greg Peterson: Yeah but again these are picks one of the correct, one that is correct and another ones that's...

Andy Spano: Well I think there is some objection...

Greg Peterson: Are we going to set our own policy?

Andy Spano: I think that we should, we could give some direction to the local commissioners and that we should do that.

Greg Peterson: The only understanding that I have is that and again this is cursory, that from what has been submitted you need a, there are four state-wide candidates and they can actually, you know if they, if they all four state-wide candidates or three of the four state-wide candidates say these are the rules and those become the rules when you have two that's basically a no go. If you have zero that's also a no go. So I don't know what we had before so that's why I'd like to take a look at this before we, before we delve into it with motions.

Andy Spano: Yeah but you know there are things that we can take a closer look at and look at for a long time that wind us up into a situation we're talking about right now. It talks about people getting involved in making fifty-seven or fifty-eight if you consider the city of New York, fifty-eight decisions which could be as adverse to each other. So I, I think we should make the resolution, in fact I want to put a resolution on the board. If you don't like it you can vote against it.

Doug Kellner: Anna do you have the paperwork?

Anna Svizzero: No but I can get it for the Commissioner's review.

Doug Kellner: Would you get it and why, why don't we have Commissioner Spano make his motion so we'll get it before us and then we could move on some of the other issues on the agenda while Anna is getting all the paperwork here? Although I think everybody knows what the facts well I shouldn't assume that everybody knows.

Peter Kosinski: I don't know I mean I...

Kim Galvin: You shouldn't assume that anybody knows.

Doug Kellner: Well you've been reporting on it Kim so but alright we'll have Anna bring all that stuff so we can go through it step by step. So Commissioner Spano you want to make your motion?

Andy Spano: Sure I move that the Board treat the documents purportedly submitted by the Women's Equality Party on Friday, August 28th, 2015 on a Monday, August 31st, 2015 as invalid and directs the county boards to act accordingly.

Doug Kellner: Alright I'll second the motion. So that's what's before us. So that would inval...

Greg Peterson: The motion invalidates...

Doug Kellner: the last two filings.

Greg Peterson: Two of the three?

Doug Kellner: Two of the three the two latter...

Andy Spano: The one that came in the 28th and the one that came in the 31st. And basically we're leaving the one that came in first and had at least two of the four signatures on it.

Doug Kellner: Now...

Peter Kosinski: Well again I've got to be honest, it, it's, it's very difficult if not impossible for us to talk about this substantively since we just don't know enough here. And I mean you're making a motion which is your prerogative but to suggest that to come to the meeting and bring us the paperwork now and to anticipate...

Andy Spano: Well we...

Peter Kosinski: Commissioner let me just finish. And to anticipate that we can somehow come to a reasoned conclusion in this very tight time frame, I just don't think is reasonable. I don't think it's realistic. I don't think it's fair. I, I, I just you know I mean I'm happy to have the documents brought in and I'm happy to look at them but I just don't feel competent right now to make this decision about which rules may or may not be the valid rules or invalid rules. Um, I just, I just think it's not reasonable to have us, ask us to do this here today.

Andy Spano: When these rules came to this Board, okay? I immediately got them online because my Executive Director here got them and put them online so I could read them and I assume you got them too?

Doug Kellner: Sure.

Andy Spano: When it was adjudicated in Niagara was that Kathleen?

Kathleen O'Keefe: Yes, yep.

Andy Spano: And a decision came down. I got it in my email. I read it plus my Executive Director sent it to me. When the second one came in, I got it in the email again and I read it. I didn't, I didn't read all these things this morning and come up with this resolution.

Peter Kosinski: Commissioner I'm sure you didn't.

Andy Spano: And I'm sure you could have had the same privilege that I had of getting your...

Peter Kosinski: But commissioner the problem here is that we had no notice that this was going to be brought to today's meeting. It's not on the agenda. I had no notice that anything's going to be brought to us today to act on. Any information that I got which wasn't as detailed as yours, I read some of it for information purposes but I didn't read it that carefully because I was not aware that anything was going to be brought to me today to act on so I did not analyze it as carefully as apparently you have which I appreciate you did that. And I would like to do the same. I would like to have days to look at this material and to make a reasoned conclusion myself. So I think to be fair to us, the lack of notice of us having this on our agenda item today is the problem. I don't know what my conclusion would be. I might agree with you. I don't know but my problem is the process more than the substance. I don't know the substance that well.

Andy Spano: I think we're working under a time pressure okay that if we have to wait for everyone to analyze this and discuss it, or we have to wait for somebody to get this issue and bring it up and take it to court, that we're pushing it down the line and the elections are close by. So I think this is appropriate right now. You have the right to vote against this but I think it's an issue that should be brought up and put on the table right now.

Peter Kosinski: No I got that because you've done that. I certainly understand where you're coming from. I'm trying to explain to you where I'm coming from.

Andy Spano: I know I understand that, I understand that.

Peter Kosinski: So that's all.

Andy Spano: This is something I feel strongly about...

Peter Kosinski: I see that and...

Andy Spano: and there are other issues involved here that I feel strongly about.

Peter Kosinski: Fair enough.

Andy Spano: Having been involved in elections throughout my life...

Peter Kosinski: Fair enough.

Andy Spano: and looking at what I see going on here.

Peter Kosinski: Fair enough. Fair enough but again we have a process here at the Board which is...

Douglas Kellner: Would it be productive to take this up on Friday and do a meeting by telephone?

Peter Kosinski: I don't know. I mean to be honest with you I don't know maybe. I mean we could talk about that. I mean I'm certainly willing to look at whatever material is here and the Counsels can look at it and we can talk.

Douglas Kellner: I'm a little bit surprised at the suggestion that that the issues aren't pretty well defined in view of the numerous press reports and the circulation that this has gotten already. So if you are telling me that that a few days would make a difference then we could do that. But I suspect that that's not really the case that everybody knows what the issues are and that we just need to vote on it.

Peter Kosinski: Well that's, you know, that's not the case. I don't, I don't know why you would question, you know, what my position is. I think to say that I haven't had notice that this was coming to me today and that I haven't taken the time to look into it I don't think should be surprising necessarily. So, have I read some of the press accounts? Yes. Am I willing to act on press accounts? No. Do I need to see the documents involved and talk to our Counsel's about the law? Yes. I don't think that's unreasonable for me to ask for that time. So...

Douglas Kellner: So, I raise the question is it productive then to put this over to Friday?

Peter Kosinski: Well we can talk about that. I mean I'd have to look at what we've got and have time to look at it. We can talk about revisiting it at some point sure.

Douglas Kellner: Well Commissioner Spano it's up to you.

Andy Spano: I didn't decide to do this two days ago or three days ago. I decided recently and one of my advantages is that I look at these things certainly from a legal perspective as well as I can. But from other perspectives grow out of my experience. And my experience is that things have to be done at a certain time and have to be moved at a certain time in order for other things to happen. So I would like to move my motion.

Peter Kosinski: That's fair. Now my understanding is that anything that's related to this is related to this November's election? Is that what we're talking about? So it is September 1st and this potentially impacts things that would happen...

Andy Spano: Uh, huh.

Peter Kosinski: on the November ballot?

Andy Spano: Yeah but I think that, that, that...

Douglas Kellner: Certificates of nomination have to be filed um, what's the deadline?

Tom Connolly: September 15th.

Douglas Kellner: September 15th...

Peter Kosinski: September 15th? Alright.

Douglas Kellner: and the county boards all but one of the county, well the only contests that will get filed here are for the fifty-second Senate District...

Bob Brehm: Public Officer for the Supreme Court...

Douglas Kellner: and for the Supreme Court.

Bob Brehm: filed beyond the county for the city.

Douglas Kellner: All the rest of them will get filed at the county...

Peter Kosinski: Has anything been filed here for any of these...

Douglas Kellner: Not yet.

Peter Kosinski: parties?

Bob Brehm: Well Reform, we received a Supreme Court nominations one day last week I don't remember what day. And last, yesterday we got one version of the Women's Equality with a certificate for Niagara County and a new set of rules.

Peter Kosinski: For a local office?

Bob Brehm: Correct.

Douglas Kellner: And a new set of officers, and the difference...

Bob Brehm: Well yes a rule and a, and a governing body.

Douglas Kellner: The governing bodies have a more significant conflict because that's who has the authority to sign the certificates and...

Bob Brehm: We have three filings in general and each has a different governing body, a different logo, a different perspective.

Douglas Kellner: So, so Commissioner Spano's motion is to invalidate or disregard the two latter filings and to only recognize the first one.

Todd Valentine: We've never done that before.

Douglas Kellner: I don't believe we have either.

Peter Kosinski: I, I agree I mean having been here I don't recall us ever ruling on the validity of a party rule filing, this Board I mean ever taking a position on a party rule filing. I know the courts have ruled on it. Candidates who file a combination on, you know, from a certain party have you know litigated these issues which I think is appropriate. But I don't recall this Board ever taking a position regarding which set of party rules are legitimate. I think there are several...

Douglas Kellner: I think that is accurate.

Peter Kosinski: ...competing rules filed.

Douglas Kellner: By voting on it now we will put in motion a court procedure so that the courts can resolve this.

Peter Kosinski: Well and to be fair to that I don't think it takes a vote of this Board to get the court procedure, you know started. My, my guess is having, you know worked here that it's normally the nominating of a candidate that would trigger, you know, a court challenge to that particular nomination. And in that context the court would rule then, you know, whether that nomination was appropriately done by that party. And that would provide the forum where this issue could be played out and litigated. So I certainly don't think it would take a vote of this Board one way or the other to allow someone to go to court which is appropriate if that's, if the situation is as you describe it to decide and have a court determine which one of the rules is the legally filed rules if

any of them. I mean, you know, maybe someone would rule none of them are. I don't know but, you know, that's the form that would normally take place. And so, you know, to have this Board, this Board's ruling is not necessary is my point. To have it because I, I agree someone may want to do that. But I think that could be done without this Board having taken a position on this.

Andy Spano: Commissioner I disagree. It's as simple as that. I think this is important. I think it's important that we get it on the Board uh, to talk about it and to have this played out in order for this thing to be adjudicated appropriately whatever way that is. But in looking at these three submissions, it seems to me that the first one in my opinion is more legitimate than the others and I would like to have this motion on the Board. And also it's one that already has two signatures on it. The other ones have no signatures on it. It causes chaos down the line. We have pending certificates that are going to be coming in. We should be at least giving some overview to the people out there who uh, have to deal with this day to day in the local counties and give them some direction.

Peter Kosinski: No I understand what you're saying. I don't think I think this idea that it creates chaos is way overstating it. Again there is a forum if someone wants to challenge any one of these which is to go to court and have this done. I don't think chaos would ensue so I'm not concerned about that. Um, you know what this would do as I understand it is it would have the State Board weigh in on this issue but it would not resolve this issue because it would...

Andy Spano: No but it would give some, it would give some direction.

Peter Kosinski: But I'm still saying it, it wouldn't necessarily resolve the issue because it wouldn't prevent someone who disagrees with us from going into court anyways and saying well what the State Board did is wrong. Uh, just like they might go in on a local board making a decision on a filing made. Say Niagara County that apparently is getting a nomination here making a decision and someone challenging them on their ruling, so, you know the suggestion that us acting will avoid chaos I think way overstates it. I think that the idea...

Andy Spano: I have been through fifteen campaigns...

Peter Kosinski: that the State Board...

Andy Spano: a lot of them have been through chaos.

Peter Kosinski: That may be but I think the idea that the State Board...

Andy Spano: That's my opinion.

Peter Kosinski: acting here will somehow settle the issue I think is not correct either. I think it would just...

Andy Spano: Well then...

Peter Kosinski: it would just put on the record whatever our opinion may or may not be regarding the legitimacy of rules. So I'm just saying, you know I don't, I don't think I agree with you know your characterization of what this amounts to is but what I, you know, we can certainly look at these documents that I see have now been laid on the table and I'm happy to talk to our Counsels about the law and to try to get a sense of this but to me to do this today just isn't realistic for me and I don't think Commissioner Peterson feels comfortable either.

Gregory Peterson: No it certainly is not. I feel very uncomfortable with it. It's uh, because it is something that frankly I've read about in the paper uh, which is not exactly the way you want to get a hold of your information. There's somebody who gleans somebody uh, the highlights of it and I certainly under, I'm not an idiot I understand the basic underlying issues but had I known that this was going to be brought up and very frankly Andy, you know, you could have given me a phone call a couple of days ago and you told me just thinking about this happening, fine, you know, I would have been a lot more prepared than I am today sitting here with a motion in front of me which frankly I'm ready to table or ask for a table. I don't necessarily disagree with what you're saying but I'm saying give me an opportunity to take a look at this.

Andy Spano: I really understand that, I understand that. But I have gone through this because I did my homework a long time ago. I didn't do it this morning, okay? And I certainly wasn't prepared to do this, this morning. But after, I called Bob yesterday just to be honest with you and I said I'm just going through this and what do we do about something like this? That was my question to him. And he gave me a whole litany of things that could happen would happen and so on and so forth and I thought about it. And I said to me well you know I've got experience in all these campaigns. I've got experience with second parties, third parties trying to get people off the ballot etcetera. This smacks of something else and I don't like it. That's all. And I think it should be brought up and it should be brought up in this way and this is a good way to bring it up. Obviously it's of interest.

Gregory Peterson: Well it's of interest look I've been in thirteen campaigns as well literally and during those times there have been times where another party whether you want to call it invented or was created, let's put it that way uh, for which I was the beneficiary and that was challenging so it was a very local issue and that was the way it was decided on a local basis. So I, you know, I understand what you're saying and I certainly appreciate your sincerity in putting it before the Board. However, as I said I am not at this juncture prepared to vote on it and I would like to respectfully move that we table the item.

Andy Spano: And I appreciate, you know, what you're saying...

Peter Kosinski: I would second the motion to table.

Andy Spano: Well we can vote on that.

Douglas Kellner: Alright those in favor of tabling say aye.

Kosinski & Peterson: Aye.

Douglas Kellner: Opposed?

Kellner & Spano: No.

Douglas Kellner: So that fails. Um do you want to vote now...?

Andy Spano: I would like to move my motion.

Douglas Kellner: Alright so uh, the um, do you want to read the motion again that's before the uh...

Andy Spano: I move that the Board treat the documents purportedly submitted by the Women's Equality Party on Friday, August 28, 2015 and on Monday, August 31st, 2015 as invalid. And direct the county boards to act accordingly.

Douglas Kellner: Okay uh, so you've heard the resolution. Those in favor say aye.

Kellner & Spano: Aye.

Douglas Kellner: Opposed?

Peter Kosinski: Well I either want to go on record as opposing or abstaining whichever is more appropriate. I feel it's abstaining because I am not prepared to vote on your motion to be honest with you.

Andy Spano: Uh, huh.

Peter Kosinski: But I'm not sure under rules, Robert's Rules what's appropriate here so I'm either abstaining or opposing but I just want you to understand it's really abstaining in my view because I don't...

Andy Spano: I, I understand.

Peter Kosinski: I don't feel prepared to vote on your motion.

Douglas Kellner: So we're just going to...

Peter Kosinski: So I don't know how we want to characterize that. Well I just want people to understand what my position is. I mean I don't want no to think I was necessarily saying absolutely not. I just, I'm just not prepared certainly to act.

Douglas Kellner: So are, are you...

Peter Kosinski: So I'm voting either no or abstaining whichever is appropriate.

Douglas Kellner: I'm not sure we can write in the minutes that you vote either no or abstain.

Risa Sugarman: Abstain, abstain.

Peter Kosinski: It's okay I don't really care. I don't really care which way it's memorialized.

Kim Galvin: No you have to abstain.

Peter Kosinski: That's okay whichever way you think is appropriate to memorialize it.

Douglas Kellner: There's a, they're not, pardon?

Douglas Kellner: It takes three affirmative votes for commissioners to act.

Peter Kosinski: No I know.

Douglas Kellner: So we're going to list you as abstaining?

Gregory Peterson: Under normal circumstances I would probably vote no but I as I said I respect the fact that you put something before this Board and I know that from whence it cometh and on that basis, you know, I would have the opportunity to vote on it again so I will abstain rather than vote no.

Douglas Kellner: Alright so we're going to record this as two in favor and two abstaining and that it fails for the lack of three votes.

Peter Kosinski: Okay.

Douglas Kellner: Alright we're all agreed that that's how this is going to get recorded? Alright uh.

Kathleen O'Keefe: Um, I did have two more items Commissioner.

Anna Svizzero: Another Colombo.

Kathleen O'Keefe: Thanks Anna.

Kathleen O'Keefe: I do appreciate it. May I continue?

Douglas Kellner: Please.

Kathleen O'Keefe: A few meetings ago there was a discussion about whether the issue regarding whether a PAC can do independent expenditures and the Board had asked the staff to look at this issue. And I took a shot at doing that. I prepared a memo. I circulated it to my colleagues on the other side as well as to the commissioners, Commissioner Spano and Commissioner Kellner. I hope that Kim and Todd shared that memo with both of you. Essentially the way that I view this and I'm going to keep this short, the Board historically has interpreted the Election Law in two sections that in a small phrase says Committees that only make contributions and have built a construct around that. And when you look at the actual legal authority for treating something as a PAC, it's very, very sparse. We're all familiar with what a PAC is a Political Action Committee and when you combine that statute, that very sparse authority with respect to a PAC's functioning with the new Independent Expenditure Law which in fact makes it clear that a Political Committee is part of the definition of a person who can do an independent expenditure, it seems to indicate that any Political Committee could do an independent expenditure because PAC's are a type of Political Committee and we have authorized committees and unauthorized committees, multi-candidate committees and so forth. So, when you try to read these two statutes together, it appears to be that the Legislative intent was to allow Political Committees to do independent expenditures. So that's my conclusion in a nutshell. But then what actually occurs when you think of it in those terms is what if any are the next steps for the Board to consider doing in this area? Can PAC's just raise unlimited amounts of money and do unlimited amounts of independent expenditures when they were originally set up as a PAC or do they have to do something else now? What the Board has done just last year and this was in the Compliance Unit, we created an Independent Expenditure Committee and we've been telling folks that you have to pick which kind of committee you want to be that you can't be two. You can't be two types of committees. Well again, looking at the Legislation, it really seems to go more to the activity that's involved rather than what are you naming the committee. So if you're operating independently and you're not coordinating with candidates that the suggestion to me at least reading this statute is that you can do independent expenditures even if your committee is called something else. Now having said that the Board could determine to try to give some guidance to candidates, to public um committees, treasurers on how this actually will function. I mean it's not clear within our current way of handling our compliance reviews.

So, for instance, if you see somebody doing an independent expenditure currently and they haven't called themselves an independent expenditure committee, we would typically flag that and maybe that's not the policy that the Board wants to support. So, there are a couple of things that the Board could do with respect to transparency. I mean the U.S. Supreme Court has said independent expenditures are legal and they are a form of speech

and we have the option of promoting transparency but not the option of saying you can't do independent expenditures if, in fact, they really are independent.

So, the Board could obviously put in place some things that will promote transparency. The Board could and I'm just going to list very quickly the things that I think are options and I welcome anyone to add to this list. The Board could set a minimum threshold for claiming independent activity in a formal opinion or in regulations. The Board could identify activities that suggest coordination and some of the court cases have done that already and they're not uniform by the way. It's really all over the map in the case log both at the state and the federal level. The Board could identify what activity does not on its own constitute coordination. And a good example of that and I've done the research in this area, I have found no case at the federal or state level which says that making a contribution equals coordination. So I mean the Board could say certain things that it believes is not coordination which again that may provide some kind of assistance or direction. The Board could consider changing the "Independent Expenditure Committee" label that we're now using and say an Independent Expenditure only Committee. In other words, if a committee wanted to opt into just be doing independent expenditures, we could have a committee that does that. And in the federal context that's called a super PAC so that already exists at the federal level where they only do independent expenditures and don't make contributions in other things.

At the very least, given whatever direction the Board is going to provide on this issue, we should modify our handbook which is really giving bad instructions to folks because the law has changed significantly with the new law.

Bob Brehm: Outdated.

Kathleen O'Keefe: Outdated yes okay the handbook is outdated and we should instruct our staff on how they should answer questions at the Compliance Unit when people bring these issues up. So there really is a significant number of open questions in this area.

Peter Kosinski: Well my recollection is this issue arose because of the handbook having a provision in it that said a PAC cannot, it has to be one or the other.

Kathleen O'Keefe: Right.

Peter Kosinski: There was no authority for a Political Committee to identify itself as more than one type of committee whether it's a PAC or Candidate Committee or Independent or whatever. And there was a discussion and I think we came to the conclusion that the statute simply did not support that assertion in the handbook that committees were required to follow. So, it just didn't support the idea that you had to pick what kind of committee you were. In other words you could be two different types of committees theoretically if you're acting that way. And so I think what we were looking to was to change the handbook to remove that provision because we felt that was incorrect advice to our committees because there was nothing in law that supported this,

you have to choose one or the other. Theoretically at least if you were doing it appropriately you could be both. So I guess my first interest is getting that out of the handbook because I think it's not correct as the law reads. You know what we do beyond that I don't know. Do I think for example that an independent committee if they're going to act in that capacity has to identify itself as such to us? Yes I do. I think any independent committee out there that's going to start or any committee that's going to start acting as an independent committee has to file a form here that would identify itself as such so that we're on notice. Because as independent committees you have additional obligations under our law for filing, you have to file more often than other types of committees. So we need to know you've now decided you're an independent committee and that's going to trigger additional requirements on you. So I think at a minimum any committee whether it's a PAC or whoever that decides well I'm going to act as an independent committee now has to tell us that yes. So they'd have to, I believe, file another registration form doing that. Could they also continue as a PAC? I guess theoretically they could but in answer to I think one of your questions do I think they have to tell us they're going to be indep, yes I do. I think they at a minimum have to tell us that.

Bill McCann: Commissioner if I could just add a couple of things I think this more important context that we need to keep clear on that one huge thing was the change in the law certainly with the advent of the Independent Expenditure Law. But through the course of our litigation previous to that law there were several things that were in place that are no longer in place. So for instance, one of the things that led to this being two different committees for two different purposes was because we had to aggregate limits at the time that no longer exists and there are also the issue of whether or not there are limits that we're going into these entities that were independent expenditures that we didn't have before. And we were involved in several federal litigations that have to do with whether or not there was some significance in there being some difference between what we had considered a PAC under state law and an Independent Expenditures Committee. So, a lot of that in subsequent federal litigation has disappeared plus with the advent of our own statutory changes. So I think what we used to and also that became the basis of what was in the handbook of what our policies were prior to this. So it has morphed so I think the basis that was in the law before is not there anymore. So I want people to understand that there was a basis of what the Board's position was back before these changes occurred as to why we considered there to be a distinct difference between a committee that only made contributions and a committee that can potentially make independent expenditures whether it be unauthorized or otherwise. So I just see that as an important distinction to make.

Kathleen O'Keefe: I actually agree a hundred percent with what Bill just said and the case law is still really evolving. I mean we are in a place where, you know, we went to the FEC thing and they talk about coordination and it's all over the map. My concern really here more than anything else is that people I think at least one gentleman has been sentenced to two years in prison for coordinating. And in New York City we have the Campaign Finance Board that has fined people for coordinating. So, you know we have

some indication in the new Independent Expenditure Statute what coordination is. It's not that, it's not very different from the federal approach or the City Campaign Finance Board approach. I mean they have all three of them are more similar than they are different. And it just may be helpful with respect to the coordination issue for the Board to give some guidance. And maybe the way to do that, and obviously the staff could work on this, would be to try to address some regs doing some minimal guidelines. Coordination is so fact specific like a residence question that you can't cover everything in the regs. But it may be able to give some guidance to people. The FEC for instance does who paid for it, what's the content of the communication and what is the conduct? And so it's like a three prong analysis. And if the candidate paid for it, it's clearly coordinated. It's not an independent expenditure. So there are certain sort of shortcuts that we could potentially put in to regs that might give that kind of guidance. I think the coordination issue really is the big open issue.

Peter Kosinski: Well I agree with that, you know, I think that it is. I guess I just think we have made at least as I recall the decision on the handbook. I think we've all agreed that should be removed so there is no language in there that would indicate you have to choose. I think on the coordination issue I agree. I think that giving guidance would be helpful. I think, you know, it would be helpful to people out there who want to engage in this activity to have some guidance as to what is permissible and what's not cause I agree right now people are sort of functioning in a vacuum. And if we can come up with some sort of guidelines I think that would be helpful. So, you know if the staff wants to work on that I would be in favor of that. I don't know how you guys feel?

Douglas Kellner: I concur with everything you've said and I think we agree it's a mandate on the staff that they need to revise the handbook promptly. And as far as developing guidelines, I think we should work on that and perhaps we can revisit the issue of regulations. And I'll say more about regulations when we get to that on the agenda with the adoption of the Independent Expenditure Regulations. Kim?

Kim Galvin: Could I also just suggest for all those people who have handbooks that may not be watching this video that maybe we could prepare a document and post on the website under Campaign Finance Section to clarify the new position the Board has.

Doug Kellner: The sooner the better.

Bob Brehm: I mean just from our perspective I think Kim's comment we were hoping not to print a new handbook until the new software came out because it would quickly be outdated but certainly we want people to know...

Doug Kellner: To revise this right.

Bob Brehm: that they shouldn't follow what we already have.

Kathleen O'Keefe: Okay and there was one last thing I'm gonna just add Brian to summarize that. This is his thing. Thanks Brian.

Brian Quail: Thanks very much. On the Putnam Voter Registration there is a, potentially a policy set of considerations that the Board may want to consider with respect to what components of Voter Registration Records are made available publicly or should be made available publicly. There, to frame the issue in the broadest way, obviously Election Law Section 3-220 provides that Voter Registration Records and pretty much most documents that are maintained by the Board of Elections are public documents and will be available for inspection. And then it provides that certain elements will be redacted and not made available for public inspection including for example the Driver's License Number, Social Security Number and interestingly facsimile numbers are heavily protected by the statute. And then in 3-220 there is a subdivision (b) that says that and it sort of is dated back in the days when board's used to have a record of the actual Voter Registration Form they could provide photocopies of the actual Voter Registration Forms in a Register available for public inspection. And along came in 2009 the Appellate Division Second Department in a case called Solomon vs. Village of Kiryas Joel. And it was almost indicative that they arrived at this point but they read 3-220(b) or (2) rather as, as providing that the Board would only provide access to two copies but not actual copies of Voter Registration Records. And it was three steps removed in their analysis because the actual litigation was between the village and someone seeking these records that the village maintained. And this part of the holding begins with the words in any event. A short time later the Committee on Open Government weighed in and suggested that under the appropriate precedence of the Court of Appeals that Solomon would not be followed as it, as it, that would appear to be read. That it was in error essentially. So the issue more directly comes into focus with respect to the redaction of Voter Signatures on documents that Board of Elections might be providing. And obviously in this day and age there's a lot of sensitivity around signatures and I would point out that the Board actually has a regulation 6212.5 paragraph (f) under System Management with respect to the digitizing of signatures that we do not allow a Board of Elections to provide essentially a poll book which is where they take a digitized signature and they pair it with Voter Registration information and then provide that for purposes that are not Board of Elections purposes. So there's this protection on the digitized signature in the Board's Regulation.

But by the same token there are legitimate needs for persons to be able to access Voter Registration Documents which while they have the elements that have been defined by statute they would actually have access to the signature because the signature is very important as we know in so many transactions auditorily in particular people looking at signatures on petitions to do comparisons to see if there is any potential fraud. And also certainly with respect to absentee ballot applications and the ballots themselves, to try to discern whether or not the person is who they say they are. The statute, in fact, in respect to Voter Registration generally in voting provides that essentially under our statutory framework identity is all wrapped up in comparison of signatures even for the poll workers on Election Day. So, with these policy issues in mind there's at least one Board

of Elections which basically provides that they will not provide you with a copy of an original Voter Registration document without redacting in addition to the statutorily redacted pieces redacting also the signature. Now they will, you know to be perfectly clear what they will provide, they do allow this particular Board of Elections would allow someone to go to the Board and see the signatures at the Board and if there's a court order they would release the un-redacted Voter Registration Document.

So the broader policy issue for consideration is in light of the importance of Voter Registration Signatures in the whole process, should the Board visit this issue and make a determination as to what the availability of Voter Registration Signatures on photocopies of Voter Registration Records should be? That's a concise summary of the issue that we hope to get some guidance on.

Peter Kosinski: Thank you for that. Well yeah I guess I just have a couple, is there a recommendation here from the Legal Staff as to what the law requires. I, Brian I've got to be honest, you went through that I wasn't clear where you were on the legal requirements of the Board's to release signatures.

Brian Quail: Well now you've asked for my opinion Commissioner and I deeply appreciate that. My opinion is that under Section 3-220 that the Board is able to and must redact certain elements but that particularly in light of the fact that the Voter Registration Signature is so elementally important in the electoral process and the ability as the statute often or the case law often talks about for things like verity and fraud and that sort of thing that there isn't a sound basis for Boards to restrict access to signatures on photocopies of original documents and I believe that that comports with what the Board's Regulation 6212.5(f) talks about with respect to that not extending unto someone being able to walk into the Board and obtain a photocopy of a list of all of the Voter Registration Signatures in the entire county because there's a prohibition on reproducing it in that particular manner.

Peter Kosinski: I'm sorry Brian let me ask then why is there a prohibition on that?

Brian Quail: Well it's in 6212.5(f) and the context of that regulation as I understand it Commissioner is the Boards of Elections in producing poll books now instead of using the registers that were bound essentially with the original Voter Registration Records in there now capture the image of the signature and compare it to a name and can essentially take that signature and put it anywhere in producing a document. And so the concern of the Board as a policy matter I believe at the time the regulation was adopted was to say, now that we have separated this signature and created an electronic facsimile of it, we want to be able to regulate what happens to it in that form. Because it is so much more transmittable and usable and so there was a need to regulate in a different way.

Douglas Kellner: You can't FOIL the digital signatures...

Bob Brehm: Right.

Douglas Kellner: basically.

Kathleen O'Keefe: In the digital format just the original.

Douglas Kellner: In the digital format?

Kathleen O'Keefe: Right.

Brian Quail: Actually in any format that's created.

Peter Kosinski: And is that because that digital signature could then be misused more easily by someone who maybe wants to take that signature and attach it to a document that would in essence be a forgery because they took that signature, your signature and attached it to some other document. Is that the reason why that one is not foilable?

Kathleen O'Keefe: I think that...

Douglas Kellner: I mean you were Executive Director when this was adopted and I was a Commissioner also at that time um, and so there were all these factors. I think the biggest factor was that we should not allow digital signatures to be foilable because of the fact that somebody could just come in and get the entire signature database.

Peter Kosinski: Right.

Douglas Kellner: And for the potential misuse of those signatures. But the idea was really related to the scale of it as opposed to the theory that the signature should be treated like a Social Security Number as a private thing. Now my concern with this is that we, we do have an opinion from the Committee on Open Government. That photocopies of the, well basically what Brian Quail has recommended which is that photocopies of buff cards should be subject to FOIL with the statutory redactions not including signatures which are not among the statutory redactions. And I strongly endorse that policy as a uniform policy.

First of all, I think realistically that it protects the rights of insurgents to work on petition challenges in a way that's equal to the organization because we know that the organization is going to have access to the photocopies of these cards. And that it's not fair to insurgents that they not have the same access that the insiders have. And that if the Legislature wanted to prohibit photocopying of the signature then it would have added it in the list of redactions that are contained in the statute. And then I do think that it's important that we have a uniform policy. I know that one of the County Commissioners said Oh the Board has no jurisdiction and the State Board has no jurisdiction over this but, of course, that's untrue. That the Section 3-102 subdivisions 1 and 2 do give the State Board authority to set uniform policies and I think that this is an appropriate area where we should have a uniform policy.

Peter Kosinski: Can I just go back and Brian I have another question.

Douglas Kellner: Yeah.

Peter Kosinski: You cited a bill an Appellate Court decision.

Brian Quail: Yes.

Peter Kosinski: Are you saying that as I understood it that the Committee on Open Governments disagrees that they were in conflict? What Commissioner Kellner's referencing is Committee on Open Government's opinion is contrary to what the Appellate Court said was the law?

Brian Quail: Two things yes the, what the Committee on Open Government said is that there's controlling President of the Court of Appeals that seems to contradict what is in Solomon. But I would point out Commissioner is that the actual holding in Solomon because this was a dispute between the Village of Kiryas Joel and people who were seeking records form them. The part of the opinion where they get to talking about the nature of the records starts with this phrase "and in any event petitioner would not have been entitled to" and it goes on into a one sentence analysis. And I think that it was offhanded. And I think if the issue to be revisited by the same court that they would read the statute differently also. I don't think it was completely central, it was not central to the actual holding there. I would call it dicta. So I think there is some question as to how controlling and how strong the precedent actually is.

Douglas Kellner: And could I add one other thing which is that the county involved doesn't follow the court decision either. The county involved, the court decision basically says that uh, Voter Buff Cards are not subject to FOIL but are subject to in person inspection.

Brian Quail: Yes.

Douglas Kellner: The County involved says oh no we'll produce the Buff Cards in response to foil but we're going to redact the signature based on our own County Policy, we're redacting the signature.

Peter Kosinski: Well I understand myself some of the concerns with having signatures out there. I mean I think it is reflected in the regulation about the digitized signatures. I mean there is apparently a conflict here in a sense between us, you know, not allowing digitized signatures in mass but us allowing a digitized signature on a buff card. So, you know, we are all, we are ourselves somewhat at conflict...

Douglas Kellner: Well not a digitized a...

Peter Kosinski: an original signature.

Douglas Kellner: photocopy.

Peter Kosinski: I do think that we're in conflict somewhat too because I think the public policies are in conflict. I mean on one hand you're right. We have the idea the people need to see signatures to do legitimate petition challenges, challenge people at the poll sites whatever to prevent fraud which is a legitimate purpose. On the other hand people's privacy rights are an issue here. So, you know, my signature floating out there is also, you know an issue to me from a privacy standpoint and people misusing my signature. So I do think there's conflicting public policy issues that are at play here and I guess, you know, maybe they were trying to split the baby with trying to say well on one hand you can get the signature and on the other hand you can't get the signature. So I mean I understand what you're saying Commissioner and I think people do need access to these. I know...

Douglas Kellner: Should we set a policy?

Peter Kosinski: I mean I'm okay saying I think people need access to these because I think you're right in order to do a challenge if you want to challenge a signature to not have access to the signature...

Andy Spano: Well I think you have access to the signature if you go into the...

Douglas Kellner: You have to go in person.

Peter Kosinski: But I can't get a copy of it and then bring that copy to the hearing and say here's the two signatures...

Douglas Kellner: Without a subpoena.

Peter Kosinski: yeah, you know so it does compromise my ability to challenge the signatures which I can see the problem there.

Douglas Kellner: And I guess my biggest concern over that is that the insiders don't have that disability.

Peter Kosinski: Well clearly there needs I mean there's a fairness issue here too. You're saying that I mean clearly if one side gets it the other side needs to get it. I mean you can't say you get them and you don't. Either everybody gets them or nobody gets them. So I totally agree with that. You give them to everybody or nobody. I have no problem with that at all. But I am a little conflicted, I admit, between you know my rights as a challenger versus your rights as a citizen to keep your signatures private so you're not having your signature out there being misused.

Andy Spano: I give my signature to gas station attendants.

Peter Kosinski: I know you do... because you're a very trusting person. I respect that but that's all. So listen I don't know you want to have a...

Douglas Kellner: Well I mean and I, I...

Peter Kosinski: obviously the agency to...

Douglas Kellner: Yes but I think we ought to have a motion on this and maybe we should draft it up for our next meeting.

Peter Kosinski: That's fine I mean I'm okay with some sort of policy if the agency wants to have one and if you can come up with something.

Douglas Kellner: Well alright I'll make a motion now...

John Conklin: Well if I could just interject for one second?

Peter Kosinski: Sure.

John Conklin: The email that was sent out from the Committee on Open Government offered two opinions or two letters that they had sent out in response to similar requests previously. That's the way the Committee on Open Government generally works. Here's what we've written on this before and one letter said quoted the statute that said these are the things in the Voter Registration Record that are public records as Brian pointed out in 3-220. And the other letter said that these are the things that are public records and then noted the regulation that says the County Boards can exclude signatures in the regulations. So I'm not exactly sure where the Committee on Open Government was saying to us with those two letters that make the notation of the exception.

The other thing is what our policy is. At the State Board if you FOIL a Voter Registration Record, you don't get an un-adulterated copy of the signature. You get a signature with a watermark over it so that anybody trying attempting to use that signature can't because it's somewhat obfuscated by the water mark.

Peter Kosinski: Well that might be part of the policy. I don't, I mean that's something that a man...

Bob Brehm: I think the point of why we probably did that...

Peter Kosinski: could practice...

Bob Brehm: ...is we have no source material in the building. You know even from the electronic system that we have the counties that did away with did full document

imaging, they have the image of the document. We never see the document unless we ask the county for the document. We only see the electronic data that and the electronic signature which gets back into, you know, the rules that were established early on when, when I first started in 91' which was do we digitized books. Get rid of those big old heavy books that had all the original doc, Buff Cards and then you sign the back of your Buff Card at every election. So when we did away with those, that's the regulation that speaks to, you know, I produce a poll book. I could produce a poll book. Could anybody walk in and force me to produce a poll book and you're entitled to it? I think the reg says no. But we don't have the original documents but we do, we have a watermark that's on the NYSVoter lookup screen. If anybody asks us for it that's what we give them. When people FOIL us we have a public FOIL line which already redacts out from a lookout point of view so if we show it to people, they're not seeing the items that the statute says should be redacted your client ID the last four digits of your Social Security Number. So that's just to make sure we don't get into trouble giving away something that we shouldn't give away. Well we use the watermark in our document but, you know, we don't have any original. At the County level they have the original image and the people come in and say I want to see the original image. I think we're at the 3-220 section as opposed to if they say the other common thing people will come to Boards and say give me a voter dump which seems the vernacular what is the computer data that you put into the document. I want to see the doc, I don't want to see your application. Give me a Voter dump some county and that's where it's the digital like our NYSVoter system or their county Voter Registration Software.

Andy Spano: I was also a County Clerk at one time and if you belong to the County Clerk's Office, every mortgage, every deed, every judgment has a signature on it. It's digitized, it's imaged and you can see it at any time. In fact, I can see it remotely for most of the counties...

Douglas Kellner: It's online for most of them.

Kim Galvin: Alright.

Bob Brehm: Yeah.

Andy Spano: So I mean I don't see what the problem is here.

Kim Galvin: I agree.

Douglas Kellner: Okay well can we ask the staff Brian I think has done a great job on this and maybe Brian if you could just write a draft resolution and to circulate and I'd say you know maybe we could do it in two steps. One is to circulate it among the staff to see if there's sort of a concensus on a resolution. And then if there is, to circulate it among the counties and let them comment on it. And if there are multiple versions, then we could circulate the multiple versions. You know I would say like maybe, pardon?

Kim Galvin: I don't think there will be.

Douglas Kellner: Great well I'm just hoping that, you know, we'd set a deadline of like two weeks to circulate something to the counties and if there's not agreement then maybe we should circulate multiple resolutions and so we can get comments from if the counties what to comment on it.

Peter Kosinski: Okay.

Douglas Kellner: I think that's the best way if we're going to set uniform policies, we should at least talk to the counties before we do it. Alright, well that's uh, helpful thank you for that discussion. I guess next on our agenda is the report from uh, the Public Information, John Conklin.

John Conklin: Thank you, thank you Commissioner. I'll be short since we're still in the unit update section of the agenda. We've been busy. Lots of questions about local ballots and campaign finance disclosure filings. Some questions about next year's Presidential Primary have started. We had fifty-eight FOILS in July and fifty-one in August. Tom and I participated on the ECA monthly call for August. We continue to participate in the meetings on the NYSVoter Refresh and CAPAS/FIDAS projects. For the website we posted the 2016 Presidential Primary Political Calendar and as Kathleen already mentioned the Statutory Report on the 2014 Public Financing Pilot Program. So Tom you want to talk about absentee ballots a little bit?

Tom Connolly: Uh, yeah the only thing I would just add because I was crossing out everything as you mentioned them was that we had made sure that the counties that had primaries made sure Military Voters who were eligible for primaries they got their ballots out by August 9th and we'll be doing the same for the General Election with the deadline for a 32-day deadline for a Military Voters is October 2nd. So we'll be working with counties to make sure they get all of their ballots up online to the secured ballot system that we have that allows the Military Voters to access the ballots and also to mail out any of those ballots that they have requested by mail.

Douglas Kellner: Well thank you. Next we welcome Mark Goldhaber to give his first report for the Information Technology Unit.

Mark Goldhaber: Thank you Commissioner this is my ninth day working here and I have to say it's been fascinating to see how things work here. The CAPAS/FIDAS redesign is still on target for the end of 2016. We're moving ahead with that. The NYSVoter Refresh now that we have the signature on the amendment and hopefully we will have the OGS and other signatures taken care of quickly, we're trying to get that moving at a faster pace. I am hoping to get that to go live before the forty-five day period for the April primary. Um, I will be meeting with the contractors a number of times to try to refresh the governance over the project now that there is management level here to take more control and not just rely on the contractors to do what they were doing. To

help make sure that there are no issues with the rollout of that system, we're working to rollout the upgrades to the secured network connections to the counties prior to that go live. We are finalizing our planned system architecture and hardware, software configurations. We'll select some pilot counties to test out the new connectivity and then rollout to the rest of the state. We'll also test with vendors. We'll roll it out at a pace that will allow for sufficient support of each county upgrades so that it's not okay here you go, good luck. You know, we're going to make sure that we hand hold everybody to make sure that they come up with no issues there. Some general notes on where I'm looking to go here since our IT Staff has got a lot more work than they can handle on a regular basis, I'm looking to begin leveraging services provided by enterprise ITS to lower the burden on our staff. Uh, for example Desktop support, mobile support, software that's all the service that's provided to all the rest of the state. That's something that doesn't affect our need to have separate data storage or any other security. It will just affect the support of the desktop environment so that that's a safe way to bring in stuff that we don't need to do.

Also once the new systems roll out, I have a goal to begin smaller more frequent updates to the system so that it will allow better change control and more general control over the workflow. We can have any requested additional functionality grouped into an appropriate scheduled release and then that way rather than having a thirty year old system that can only be replaced, we'll be making regular updates maybe a couple of times a year to add functionality and to make sure that the system stays up to date. And that's what I have.

Douglas Kellner: Alright well thank you. And I guess for my own part my priority is to see that the CAPAS/FIDAS upgrades gets done in time and so in nine days we haven't slipped any congratulations. Alright uh, we turn to Enforcement Counsel Risa Sugarman.

Risa Sugarman: Good afternoon Commissioners. Today is September 1st it's the year anniversary of the Enforcement Division. Last year September 1st was Labor Day so we actually started on September 2nd but um, the first year of the Division has been very busy staffing and bringing on board IT information and programs. As I've reported before, we've brought on an amicus program which is a data manager program. As I reported last time, we have gotten approval for the hiring of our auditor and I believe she starts September 10th. So we will again be at full staff. We have opened one hundred and some from September 1st through July 31st, I haven't gotten the August numbers yet, opened one hundred and twenty-nine files for inquiry and investigation. The last time I believe you asked about the Commissioner Kellner asked about the judgment collections from September 1st through December 31st the numbers were thirty-five thousand thirteen dollars and sixty-four cents. And for the total year the collections on judgments were from September 1 through August 31st for fifty-thousand three hundred and one dollars and ninety-eight cents. And that was from twenty-nine unique committees for a total of eighty-three judgments.

We have closed officially with the complainant and with the Board eight cases and referred seven. We are continuing to work on those investigations and continue to work with the, um, we've had our meeting with Bill and Mark in terms of CAPAS/FIDAS and um, have discussions with what their new approach can be with the division and continue to work with them.

Douglas Kellner: Any questions? Thank you very much.

Risa Sugarman: Yes sir.

Douglas Kellner: And turning to the Agenda. The first item is the Resolution to adopt the amendment to Part 6214.0 of our Regulations 7 Campaign Contribution limits. I believe this is mandated by statute that we revise the limits to adjust for the cost of living and this is simply that administrative adjustment. Any comment? Those in favor say aye.

Kellner, Spano, Kosinski & Peterson: Aye.

Douglas Kellner: Opposed? (None) So that is adopted. Next is the formal adoption of the Independent Expenditure Regulations which is Part 6200.10. Could someone just summarize what the changes are because it says that we're repealing the old Regulations and replacing them?

Kathleen O'Keefe: The old Regulations were in place before the new statute so really when the statute was enacted we had to revisit that just to reflect what the current statute says. I can't, I can't give you details you know information on the before and the after but clearly the new ones had to reflect the statute and that's what they do.

Bob Brehm: The 2014 Statute. We still have work to do for the 2015...

Kathleen O'Keefe: For the 15 right.

Bob Brehm: which we talked about at the last meeting.

Douglas Kellner: Is there a motion?

Peter Kosinski: Could I say...

Douglas Kellner: Go ahead.

Peter Kosinski: I mean I...

Douglas Kellner: it sits before us it's moved and seconded.

Peter Kosinski: I would like to um, just get a clarification on a couple of things and I would ask if staff could help me. There's two areas where the Regs provide criteria that

are to be used for making determinations. And I was trying to get clear how these factors are to be used. And let me just specifically point to in the Regulations under definitions it has the term advocates for or against. So, in the Regulations if an entity advocates for or against a clearly identified candidate, then it becomes an Independent Committee, Political Committee for purposes of this section. And in that section it may, it has five different criteria that are to be used when making that determination. And what I was trying to...

Douglas Kellner: Commissioner just so we're all following in the same place you're talking about 6200.10 (b) (1a), I, I...

Peter Kosinski: Two right yes that is what I'm talking about.

Douglas Kellner: Okay, alright.

Peter Kosinski: Yes and then go on from there and then so it says for purposes of this Regulation advocates for or against means in the absence of explicit words of advocacy for or against a candidate or ballot proposal through the use of images, photos or language. And then it goes on and basically recites the statute. Then it goes on for purposes of determining whether or not a communication advocates for or against a candidate, the following factors shall be considered. Then it lists five factors. And what I was trying to clear in my own mind is how those factors are to be used. In other words are those, if I do A which is identifies a particular candidate by name or other means such as party affiliation or distinctive features of a candidate platform, is that a factor that is indicating I am advocating for or against or that I'm not? So, I'm looking to just clarify A through E is that factor a factor that weighs for find, for that finding or against that finding?

Bill McCann: Well sure, I think, well first off, I just want to take a preliminary step. The reason why we dropped or proposed these five items is because the statute was silent. It created a new standard. Before we were simply a "Buckley" or express advocacy state. The original statute created two types of advocacy, expressed advocacy whenever it took place and then clearly advocating for or against a clearly identified candidate. But they didn't define what advocating for was or against...

Peter Kosinski: Uh, huh.

Bill McCann: So we tried to come up with factors that would go towards what you could deem it to be so. But I think that the clarification comes in line 18 where it says, however, even if some of the above factors are founded the indication must still be considered in context before arriving at any conclusion. Those five items they're not either for or against I think the concept we had as the staff was that we would look at these factors and determine in taking each of them together or in combination thereof to say if you want to determine if this communication was advocating for or against what kind of...

Peter Kosinski: Well, well, well hang on a minute Bill. Let me just, let's go over these just for a second in my own mind cause I, I think to be fair to people they should understand how these are to be read and let me just give you a sense from me. Okay? A, whether it identifies a particular candidate by name or other means such as party affiliation, I would take that, that if it does that, that that is evidence that it is advocating for or against. Do you think, is that a fair reading of A? So, if the communication identifies a particular candidate by name or other means that would then weigh in favor of a finding that that communication is advocating for or against that candidate. Is that a fair way to read that?

Bill McCann: I don't know that I would necessarily because again someone could have something that might identify a candidate uh, through their biography for instance but let's say it was during the Legislative Session and someone therefore took and ad out where it had to go with an incumbent's position on something. In the past, we may call that specifically issue advocacy of some kind because it wasn't in the context of an election. So I don't know I think, I can just speak for myself, we had anticipated there would kind of be a blending of these things, not necessarily that one or the other would make it automatically.

Peter Kosinski: Well I don't mean automatic Bill. Well I'm just, I'm just trying to understand that if I in my communication identify a particular candidate by name, is it fair for me to presume that that is going to weigh in favor of you making a finding that I'm advocating for or against that candidate?

Douglas Kellner: Commissioner I think it has to be tied to b as well.

Peter Kosinski: Okay it does? Okay.

Douglas Kellner: So...

Peter Kosinski: So by doing A and B?

Douglas Kellner: If you do A and B now you're tying a candidate's name to approval or disapproval of what that candidate is uh, position or actions.

Peter Kosinski: Fair enough.

Bill McCann: And I think that you really need the two.

Peter Kosinski: Okay that's fair enough. I, I'm not saying any, I'm not trying to say any one factor is enough.

Bill McCann: For instance let's say you had a circumstance where the ad just picked an ad itself. There was a major issue on a candidates platform even if it didn't say they were

a candidate but they said whatever the big issue of the day was, potentially I think you could argue that, that in and of itself might make it advocating for or against.

Kathleen O'Keefe: Right.

Douglas Kellner: I agree.

Bill McCann: So again...

Douglas Kellner: I agree with that.

Bill McCann: So the quirk is also that even at the federal level these concepts have morphed between because at the federal level, Independent Expenditure has to be express advocacy to be considered an independent expenditure. It had been that you had to clearly identify candidates. You know they had what they, at the Federal level there was this concept of Electionary Communications and they defined them as in a very specific way. And if you met the threshold for an Electionary Communication it would then determine whether or not you had to have some form of disclosure. They morphed then to independent expenditures at the federal level are strictly express advocacy. Our statute actually has gone beyond that federal hybrid because now we have three kinds of standards: We have the express advocacy no matter what it is, we have a clearly identified candidate that's advocating for or against and then you have this strict clearly identified candidate standard. So it, it's again I don't know as the concepts are evolving that again our staff when we developed these, we tried to come up with some things that you would look at either individually or in their totality to kind of get some guidance in something that had not been defined at all by the...

Peter Kosinski: That's fair enough. But what I'm trying to get at, and let me just take this another step because let's look at C, look at C, look at C with me. Whether it is part of an ongoing series by the group on the same issue and the series is not tied to an election. I'm reading that if that's the case as evidence that that's not advocating for or against candidates. Is that a fair way to read that one?

Bill McCann: Yes.

Peter Kosinski: Okay I'm going to take E let's jump to E for a minute. Whether the timing identified are related to a non-electoral event such as what you said Bill, a piece of legislation that is evidence it's not, right? Is that the way to read it? Okay.

Kathleen O'Keefe: Well that, no if I could just interject?

Peter Kosinski: Okay go ahead, sure.

Kathleen O'Keefe: And Bill made the point and he's absolutely right about that, that there's a third category now. This, these Regs go to the 2014 Law which didn't have the third category.

Peter Kosinski: Uh, huh.

Kathleen O'Keefe: So similar to what Bill's saying you have an Express Advocacy and the, you have this functional equivalent um, term which is the clearly, clearly advocating. It's not quite, you're not actually saying support, oppose but you're getting really close to that. But then, in 2015 the third piece was added which could real, I think it could be and I don't know if Bill agrees with this described as issue ads. But they're very close to the election...

Peter Kosinski: Right.

Kathleen O'Keefe: and within sixty days or thirty days of the Primary and they are suggesting um, references to clearly identified candidates. So it's references to, so now it's even moved further away from the federal model. What I think is going on here and it was a challenge to do this obviously because the law was new and the Board wanted to do Regs. They were trying to indicate the types of things that might not have met number 2, yeah might not meet number 2 but do meet number 3 and I think E may fall into that issue advocacy category because it goes with the timing. In other words if you've identified the candidate and it's not an electoral event, it's an issue ad, vote for Joe Blow because he supports that ASPCA. Right? But it's with, I'm sorry uh, send letters in support of the ASPCA and this bill then you have the bill number and it's within that sixty or thirty days and there's some kind of indication, you know when you got the Bill number and either the sponsors name or something that would really make people realize oh this is that candidate. So you've referenced something about the candidate but maybe not the candidate's name, and that third prong is trying to capture that. Now under, before the ...

Peter Kosinski: That prong was done just after this was written so this was not written with that in mind.

Kathleen O'Keefe: I agree and I think that's why Bill's answer...

Peter Kosinski: So this will have to be changed to reflect the new statute. I understand that, but just trying to understand these and the context in which they were written, which was prior to what you were talking about that sixty day window, where any mention is evidence, you know no matter what you say about the candidate, just referencing it is sufficient. I'm trying to understand how to read these. My reading just so you know, I read A, B and D as giving evidence that you are advocating for or against, I'm reading C and E as indications you're not advocating.

Douglas Kellner: I agree with that.

Peter Kosinski: I'm just trying to clarify this for people because it's not clear from these how to use these five criteria. I'm using three as evidence for and two as evidence against, but the Reg does not clarify that, and I think it should by the way. I think when we redo these, I think there should be some clarification on how to read these criteria so people know this criteria is evidence for, this is criteria evidence against.

Kathleen O'Keefe: I think you put your finger exactly on it and with the new third prong, I think C & E may have ...

Peter Kosinski: Fair enough, well then we would have to incorporate that. Now this also, and just to not get carried away but, this also goes to the other section of Five, this is within the Reg. I'm done with that unless somebody else has something, but there's another provision under, it's I guess B-5, it's B-5, Membership Organizations and again you have crafted this time you've got seven criteria that are to be used when determining whether or not a group is what's called a membership organization and determining that and then again, you've got these criteria and I again think some of the criteria are evidence for a finding of if it's a membership organization but then some are finding that it's not a membership organization and again I think these criteria should be labeled in some way so that people understand this is how we're going to use this criteria. So like A, I'm not even sure how to read these myself. I think A is evidence that it is a membership organization. Now for example, I think G probably is evidence that it's not a membership organization. But again, I'm not even sure exactly how to read these but it would be helpful I think to the public more than to me to have these labeled in some way so that people know how to use them when they're reading these so that they have notice of how this agency is going to use them when we're analyzing these types of committees or these types of activities. Okay, so those two I think should be, so I think when we redo the Regs, if we're going to redo them anyways that would be helpful.

Kathleen O'Keefe: Right, thank you.

Peter Kosinski: That said I move the adoption of these, because I'm okay with them as they are but I think.

Douglas Kellner: Helpful comments, thank you Commissioner. Those in favor say Aye?

Kellner, Spano, Kosinski & Peterson: Aye

Douglas Kellner: Opposed? (None) The Regulations are adopted. Can we talk about the timeline on when we will have the draft of the next Regulations with respect, the updated Regulations with respect to independent expenditures? Who has actually been tasked with working on that draft?

Kathleen O'Keefe: We were waiting to adopt these and then move forward, so this is the first conversation about that.

Douglas Kellner: What would be the anticipated schedule that we should be looking for a draft?

Bill McCann: Well, I think that, for me anyway, I think the issue is going to be how expansive the Regulations are on some of the ancillary but related issues meaning coordination, etcetera so it depends on whether or not we can reach consensus on some of those as Kathleen intimated we were just at the FEC Conference, there are marked disagreements as to what are valid factors to determine coordination. I know there are models that we can certainly look at whether it's the Feds or the NYC CFB but that to me that's going to be the lynchpin. Certainly modifying the regulations to add the new third prong when it comes to, you know that clearly identified candidate prior to a primary general election, that's just a mere modification. There are a couple of other small things that were done on this statute. The big issue is going to simply be, and we've had this before in relation to other contexts, what would the Board determine on coordinations.

Peter Kosinski: Excuse me? I mean, if I could make a suggestion, I agree with you, I think that the coordination issue is the biggest issue and probably the most difficult. I would suggest you do the changes that are relatively simple based upon the change and not wait for the whole thing because I don't think it's helpful to necessarily wait. I do think the coordination thing should be worked on but I hate to hold everything up because I do think that's going to be a tough one to come to a consensus on, frankly. So I hate to hold everything up just for that. That's what I would do, but that's just my...

Bob Brehm: So statutorily first and...

Peter Kosinski: Well the ones that are pretty straight forward based on the statutory change that Kathleen was outlining...

Kim Galvin: And, work on coordination...

Peter Kosinski: I would definitely work on that but I hate to hold everything up...

Kathleen O'Keefe: I agree with, I think we may be closer on coordination than we think only because if we keep it minimal, in other words, it is so fact specific you can't cover everything, we know that. But if we can give more guidelines than examples that may be the way and that's what the Feds do.

Peter Kosinski: Okay. Alright, well if you can do it, fine, but...

Douglas Kellner: Alright so it is fair to ask for a report on the status of the drafting of these regulations for the next meeting?

Bill McCann: Sure.

Kim Galvin: Well, if it's tomorrow.

Bill McCann: Or Friday.

Bob Brehm: It probably will be a quick report.

Douglas Kellner: Alright, then the next item of business is the Resolution with respect to engaging five individuals to serve as Hearing Officers. I'll just read the uh: Therefore be it resolved that the State Board of Elections approves the following individuals to serve as Hearing Officers: Gregory Allen, Tracia Callender, Steven Giunta, Amy Kendall, and Sharon Miller, and that they would serve for a term that expires September 30th, 2017. So moved and seconded, is there any discussion on the Resolution? Those in favor say Aye?

Kellner, Spano, Kosinski & Peterson: Aye

Douglas Kellner: Those opposed, Nay? (None) So it carries unanimously and we now have Hearing Officers. Alright next is the Staff Report with respect to the 2015 Independent Petitions. We have both the Prima Facie Report and the ruling on Specs. Those in favor of adopting this Staff Report say Aye?

Kellner, Spano, Kosinski & Peterson: Aye.

Douglas Kellner: Opposed? (None) Alright, so the Staff Report is adopted and um...

Anna Svizzero: Can I just say not to delay anything, but is everyone clear that this delegate position was a month old? We put it in here as a miscellaneous issue. It was filed in Westchester in July on a timely basis but they didn't realize it until almost a month later that it belonged here. Westchester also invalidated the Petition, sent the letter and said it was over designated and they were off the ballot but then realized the Petition belonged here so we needed to deal with it even though it's very late and the candidates already know that they're no longer candidates. So that's what that meant.

Douglas Kellner: We have formally ratified that action. Alright, then we have four pending requests for Board opinions pursuant to the new ethics law. The oldest is the opinion on Rent. I personally recused myself from that matter but, so I won't be voting on it but at least can we ask Counsels to report on the status of that?

Kathleen O'Keefe: Well, there was a request with respect to a candidate that was renting a campaign office from a building that he owns with a partner. We had come to an understanding on the basic position of whether or not it could be done. Where we are at this point, is that the, myself and Brian, believe that we should address the rental issue narrowly and then if there is any questions about fair market value which are not raised by way in this request for an opinion, there's no facts raised with respect to fair market value, that we think we shouldn't digress off into issues that are not actually essential to

the advisory opinion that's requested. As a way to try to reach a consensus on this, we have proposed that the Board consider adopting a formal opinion on fair market value. My understanding is that historically here at the Board, and correct me if I'm wrong on this, Advisory Opinions are ones that are given when somebody requests an opinion and formal opinions are opinions that the Board on their own, on its own may decide to issue so that it can give clarity to folks. So what we have done is rather than include a fair market value analysis in the Rental Opinion, we propose a Formal Opinion that would be separate and would address fair market value and then would be helpful in other cases where fair market value may be an issue.

Douglas Kellner: Alright, is there...

Andy Spano: Can, are you going to....

Douglas Kellner: Is there a draft to be voted on?

Bill McCann: No. Well we have, this really wasn't consensus of staff on the issue of how expansive our opinion should be and that we just got the draft on the formal opinion so staff hasn't revised. We can certainly bring it back to the next meeting. I'm not prepared to recommend my Commissioners today vote on it.

Andy Spano: You know, can, can I make a statement. I think it would be important since every time we get a request for an opinion that deals with a set of facts that may be unique to that particular candidate, that particular person, and we should answer that narrowly based on the question that's asked. But we should establish a Board Policy that we will give a person a uh, Board Opinion separately so that it's available on the general question such as fair market value for everything that comes up when we feel we should do that. That should be a policy so we answer everything narrowly and then if we want to expand on it we issue a Formal Opinion.

Peter Kosinski: Yeah I mean, I don't have a problem with that, I think just to get back to Kathleen's point for a minute, I think the difference this Board has used between a Formal Opinion and an Advisory Opinion, is the Advisory Opinions were typically interpretations of 14-130 Personal Use. Formal Opinions were opinions on other topics. So typically that was the difference between whether it was called a Formal Opinion or an Advisory Opinion. But they are both opinions of the Board so they both have the imprimatur of the Board. The Advisory Opinion just typically limited itself to these personal use issues. And I know that the Personal Use Statute has changed significantly in this State just in the last few months which I'm sure is prompting a number of requests for interpretations of it so people can have guides and I agree we should be providing that guidance because that's why we're here and they deserve it. So, you know how you guys bifurcate that, whether you need to, you know, take out, I think the more guidance the better. I do agree with that principle because I think it's important for us to give guidance to members of the Legislature or other candidates about personal use as best we can. So I think if we can, you know, craft an opinion that answers that specific question, but we

can also be helpful by, you know, identifying other issues related to it that we can also provide an opinion on so there's broader guidance to this and it's not limited to that individual but it gives other individuals guidance as well when they're trying to make decisions on what they can do. I think that's the direction we should try to go in.

Douglas Kellner: So are we agreed that the work on a fair market value opinion that will be, that will address that issue...

Peter Kosinski: Yeah I'm okay with that, I mean I don't know this opinion that well, exactly what the ramifications of it are, but I'm certainly okay with providing a broader type opinion out there on fair market value, if that's the relevant issue here...

Gregory Peterson: I think more importantly too, I'm sorry...

Douglas Kellner: Go ahead.

Gregory Peterson: I think quite importantly the time is always, I think, of the essence, when an opinion is requested on a specific set of facts. When you're in an elected office or aspiring to an elected office and you're running, you know, you want an opinion, you want it right away rather than make it a political football. So bottom line is, hey, am I doing the right thing, am I doing the wrong thing, and what do you say? We should be able to do that pretty quickly and have a quick turnaround rather than to let the thing wander out and God knows what into the media and so forth where it gets blown out of proportion, and then we've lost really the essence of what was being asked. So, if we can, I don't know how we do that in the sense of, you know, something comes in how fast can we turn it around and have this Board agree on it...

Douglas Kellner: The rent opinion is the oldest one that is before us now.

Kathleen O'Keefe: Yes it is.

Douglas Kellner: As I say, I'm not going to vote on it, but are the three of you ready to vote on it now?

Peter Kosinski: Well, I haven't actually seen it. I haven't actually, I mean this is another.

Andy Spano: Which one?

Peter Kosinski: I've only got one opinion in my packet is that fair, that's, that's what I have. I have one opinion that was included in my packet and the topic of it is "Use of Campaign Funds for Purchase of Services from a Marketing Firm in which the Candidate has a forty-five percent ownership".

Kathleen O'Keefe: Yes and Commissioner, if I could point something out...

Peter Kosinski: I'm prepared to vote on this.

Kathleen O'Keefe: If I can point something out and the one, I have three points but Commissioner Peterson's already made one. The timing issue, the Rent Opinion is the oldest one, and it was actually requested right after the statute was enacted. The other thing is that with respect to doing it in a broader sense to give guidance to other people, the Legislature and the Governor decided that these opinions would provide a defense in not just criminal matters but civil matter, administrative matters in a very broad way. So there really is no incentive for somebody who had an opinion that the Board may have previously issued to rely on that opinion when you really want the protection that you are going to get when you ask for your own personal opinion.

So in that sense, I don't think a broad opinion is going to be as helpful to people as them getting their own opinion. And then my last point is, in the fair market value opinion, and I don't want to get ahead of it, but I just need to maybe draw your attention to this, the marketing opinion could equally have a lengthy digression on fair market value in there and on a principled level, I think that's inappropriate. There are no facts supporting a fair market value in this opinion just like there is none in the rental opinion. And so, if in fact, the rental opinion is, you know, the argument is going to be made by my colleagues that they, that should have a long fair market value opinion, then this opinion deserves the same treatment.

I personally think that's incorrect. I think we should address the question that's before the Board rather than put that extra verbiage in there that is not raised in the factual scenario presented. And I think that both instances, both with the rent and the fair market, and the marketing request could benefit from the formal opinion that or advisory opinion, whatever the Board wants to call it, on fair market value. So I think there's an issue here of treating these requests equitably and not deciding what's going to go into the body of the opinion based on who's actually requested the opinion.

Peter Kosinski: Okay, fair enough.

Bob Brehm: With regard to the packet itself, I know we did spend some time last week on this topic specifically, and just to be clear from my perspective, we've always made clear our intention to discuss and potentially vote on all of these items. There was some discussion as to which one, there's no doubt the one that we can, that we all agree on, which was the marketing one, but certainly, pardon me?

Kim Galvin: No, I think that point was well taken. It does deserve a fair market value analysis just like the other one does.

Bob Brehm: I think so in the light that we knew we don't have consensus on the other ones, we still said we're prepared to perhaps vote on them today. This was no surprise. I brought extra copies in case they weren't necessarily shared. But with that being said it's

not our goal to not, what works toward this so that's why we did. I know it was late, I think it was Friday, we offered a suggestive compromise and I know we haven't had a chance to read them and get the comment back. But it was just another approach to try and come to, some other way to, you know, see if we can meet, obtain an accommodation or an agreement.

Andy Spano: There's a danger when you answer a candidate and you add extraneous words and so on to your opinion. They can be taken out of context, they could be used by other people, and the press and other places, and we shouldn't be using them. That's why I suggested that we separate them. We separate the additional comments we want to make about things like fair market value from the opinion we give the candidate or the office holder, that's all.

Peter Kosinski: Fair enough. You know, all I'm saying is that I'm prepared to vote on this opinion because it's in my packet and I have looked at this one. This is the one I was anticipating acting on today and I'm prepared to do so. These other opinions, I mean I think the goal has always been to have the staff come to a consensus before it comes to the Board for consideration.

Douglas Kellner: Commissioner, let's be blunt about what's going on here. The staff had the versions of the opinions that we drafted for all four of the requests that uh, Mr. Brehm was told that the Republican Staff would only agree to the Marketing Opinion but did not agree to the other opinions. So I think it's pretty facetious for you to publicly suggest that you didn't have the other drafts. If you didn't have them, it's because the Republican Staff refused to give them to you. And we made it very clear that we wanted all of these items before the Commissioners so that we could discuss them and be prepared to vote on them today.

Peter Kosinski: Well, I'm prepared to discuss whatever you want. I just am prepared to act on this one. But if you want to discuss other topics, I'm happy to discuss them.

Kathleen O'Keefe: The statute has, contains a mandate that when people ask for an opinion the Board shall provide one and if we get to a place, and I know I've done a bunch of work and so has Brian on drafting these opinions, and when we get to place where the staff cannot agree and yet the person that's made the request is entitled to an opinion, I don't see any other alternative but that the issues be brought to the Commissioners. So I have just raised my concern with respect to the Marketing Opinion and the Rental Opinion and the original language in the Rental Opinion that I drafted nobody was in disagreement with that. The issue, the disagreement is the extra...

Kim Galvin: Actually, actually our first draft on our opinion contained much of the fair market value language and we compromised and took it out and just made a reference to the fair market value as was the corporate subsidiary opinion that we had all agreed to that you then subsequently amended and changed.

Kathleen O'Keefe: But we're going to discuss that Kim.

Kim Galvin: On both sides here we've had agreements and then we've for whatever reason in the creating of the drafts, the opinions have changed.

Kathleen O'Keefe: The Rental Opinion contained a reference to one subdivision in the Personal Use Statute. My colleagues wanted a different subdivision referenced in there and what we proposed and that they adopted, was that we put both, reference to both, because it's a slightly different wrinkle. The two subdivisions describe something a little bit different but both of them together I think provided some clarity. So we were willing to work with that.

Subsequently, this additional fair market value language was put in. So I am here to the Commissioners with what is basically a stalemate among the staff. I want to reiterate my opinion and that is that the fair market value analysis should not be in either opinion. And I'd like the Commissioners to give me some indication about whether or not they agree with that because that is really where the logjam is.

Peter Kosinski: Well, I honestly don't know that I know enough about this to give an opinion. I don't think I've even seen the request that came in with exactly what they want as...

Douglas Kellner: Commissioner, does this mean that we should be dealing with you and Commissioner Peterson and not working through staff?

Peter Kosinski: No, No, No, I think we should work through staff, I think we always have.

Douglas Kellner: I think it's horrible that you haven't seen the requests then and that staff is negotiating as if they speak for the Commissioners when the Commissioners haven't seen it.

Gregory Peterson: Commissioner with all due respect, you know, and I think we're getting a little bit far afield here, maybe a little bit too personal. But the bottom line is this, you know, we do, I have great confidence in our staff on both sides of the aisle and we rely upon, we rely upon them to work things out. If one part of the staff says this is what we think and it goes across the aisle and they don't agree and it comes back, you know, I'm not going to be the referee. What I would like them to do is to just be able to sit down and come to us with what they feel is a reasonable course of action and in which case, we'll vote on it, just like this one here today, we'll vote on it. That's the end result. If the others are being held up, if the others are being held up very honestly because somebody is being obstinate, that's a whole different ballgame but if there's an honest difference of opinion between the staff and they haven't come to a conclusion, well you know what then we'll have to wait until they do come to one unless we have to intervene and say, Hey wait a second somebody's off base here. And I don't think frankly it has anything to do with Republican versus Democrat. I think what it is, is a difference of

opinion on various issues. Because I don't think these things affect, you know, in the political world, everything affects people in politics; however, from what I can see of what has been presented here, it's basically, hey, do we want to expand something or don't we want to expand something, and then if there's a honest difference of opinion on that well then you know what, I can respect that. But I can also somewhere along the line make a decision on my own.

Andy Spano: But at some point we have to come to some decision.

Gregory Peterson: Absolutely Commissioner, you're absolutely right. Yes, I agree and if the staff can't come to it, you know, as far as, if the four of us can sit down and have, I have no problem with it at all.

Andy Spano: Why don't you and I get together and take a look at?

Gregory Peterson: I have no problem with that, none at all. I'm been in the game I've been in an elected office for twenty-six years...

Andy Spano: Yeah I know I respect that.

Gregory Peterson: Believe me, I understand it.

Douglas Kellner: Alright I'm hampered in this discussion because I've recused myself in the first one which is the oldest one.

Gregory Peterson: I've taken advantage of that by the way. I thought it was a pretty good card I could play.

Kathleen O'Keefe: Perhaps the answer is given in the discussion to put off all the opinions until the next meeting and let us try to come up with some uniform...

Gregory Peterson: But why don't we vote on the one that we have here, I don't have no problem with that.

Peter Kosinski: We can put them off, I mean, you know, if that's, if that's what you want to do, we can put them off until they're all ready if that's the best way to go but I do agree they should be done. I don't disagree with that but I also feel like as a Commissioner I await for the staff to come to us with a, an agreed upon consensus.

Douglas Kellner: Yeah but if they don't agree...

Peter Kosinski: Well, that happens.

Douglas Kellner: and then it is incumbent on the staff to present both sides to the Commissioners so the Commissioners can make a difference, but not for the

Commissioners to turnaround and say, Oh the staff hasn't told me anything about it so I'm not going to vote on it today.

Peter Kosinski: Well, that's not fair, now I did not say they hadn't told me anything about it but I can't say I know enough to make a reasoned decision and I also rely on the packet to be the determinate of what's put before us today to vote on. This one was a...

Douglas Kellner: Now this is where I take issue and this is because of this discussion that goes on between the Co-Executive Directors in setting the Agenda and where we are told that items are not going to go on the Agenda because the Republican Commissioners are not prepared to vote on them. And we say, look, if a Commissioner wants to put an item on the Agenda, it's going to go on the Agenda and this battle goes on back and forth and even this Agenda that came out today is a compromise because it doesn't, because uh, Mr. Valentine refused to list the pending opinions on the Agenda and I was insistent that the opinions be listed because these people are entitled to have rulings on them. And if the staff is not going to reach agreement on a particular one, then each side, the Republicans and the Democrats should present their text to the Commissioners and the Commissioners should make a difference, a decision. But to simply say we refuse to put it on the Agenda, we're not going to talk about it, to me is completely unacceptable.

Alright now with that said, on the rent matter is there text to be voted on or is that going to get laid over to the next meeting?

Peter Kosinski: That's not the rent one, that's this...

Douglas Kellner: The rent one is the oldest one.

Bob Brehm: Questions I think you two said you were going to work on them, I don't know.

Douglas Kellner: All I want to know is are we going to vote on it now or is it going to be laid over to the next meeting.

Andy Spano: I am very happy to make a motion on this particular that you, you have not read it. Do you have a copy?

Peter Kosinski: Well I don't have it in front of me.

Andy Spano: Well how about the other ones, have the other ones so they can take a look at it? Because I have it here, these are, these are the two drafts one, two. This is the narrow draft, this is the lengthy draft.

Bob Brehm: Oh I didn't I, I here's our version if you have another here?

Andy Spano: And If you look at the uh...

Douglas Kellner: Don't say our, it's somebody's version, is this Kathleen's version? Is this...

Bob Brehm: I have a Kathleen's version and I have the version that Kim shared on the...

Kim Galvin: Me?

Bob Brehm: I'm sorry, Kim shared on 8/20, which is I have one this, this is the one Kim shared on 8/20, I think ours is dated 8/19, but you can't see them on there because there are no dates.

Andy Spano: Do they have both of them?

Bob Brehm: I, I who doesn't have one? This is what I have.

Peter Kosinski: I don't know what I have.

Andy Spano: This is the narrow draft.

Peter Kosinski: What's the topic? So you're saying there's four pending...

Kathleen O'Keefe: There are four pending opinions...

Peter Kosinski: opinions.

Kathleen O'Keefe: and this one, this particular one is a Rent, opinion about rental payments for a campaign headquarters. There's a narrow draft...

Andy Spano: Here's the, here's the expanded draft you may have that.

Kathleen O'Keefe: And there's a more expanded draft.

Andy Spano: Do you have it Greg?

Gregory Peterson: No I don't.

Kathleen O'Keefe: And what is in red is the additional language in the expanded draft.

Bob Brehm: That's the narrow one, I have to go get another copy. Can you get me another copy?

(Multiple conversations)

Peter Kosinski: So, so...

Andy Spano: So here's my point.

Peter Kosinski: What's your point?

Andy Spano: This one seems to cover everything that the individual has asked for in terms of an opinion we were very direct. This one has additional language which you can see in red. I'll read one of them here. However, as the rental agreement is between the campaign and the partnership, the payment should be made to the partnership and not directly to the mortgage company so as to properly reflect the arrangement and true beneficiary of the payment. Well, there are, that doesn't seem illegal, that doesn't seem anything, that's a comment that can be used as looking at it as a negative thing. And I don't think it belongs in here.

Bob Brehm: That's what we have to get to Peter. They went to get another copy, Sorry.

Andy Spano: Then there's a whole bunch of issues here that relate to the fair marketing value, fair market value. If we are going to talk about...

Douglas Kellner: We are waiting for copies. Should we put the rent at the bottom of the list then go through the rest of them? What?

Andy Spano: And if you look at the marketing opinion it's very consistent with this opinion.

Bob Brehm: The version that you have I've only got one with me.

Douglas Kellner: Alright, I'm going to put the rent at the end, because I can't participate in the rent one and I think we'll move a little faster if we put that at the end. So the Marketing is the next one. And that they reached agree, that, that was...

Peter Kosinski: That's the one that was in the packet?

Bob Brehm: That's the one that was in the packet.

Peter Kosinski: Alright, then I am prepared to vote on the Marketing Opinion one, this one here?

Gregory Peterson: Yes.

Peter Kosinski: The one that was in the packet.

Douglas Kellner: Alright, those in favor, say Aye?

Kellner, Spano, Kosinski & Peterson: Aye

Douglas Kellner: Opposed? Alright now the next one is on the Subsidiary Corporations and do you have the drafts?

Bob Brehm: I passed that, it says Subsidiary on the draft that I passed down?

Douglas Kellner: Now this is one frankly where we should just face the fact that we're probably not going to reach agreement on it because it's similar to the LLC loophole...

Peter Kosinski: Well this is the one that and this one I know I had a discussion about with staff that as I understood it was basically asking a question that had already been answered by this Board in a prior opinion, and that I didn't understand. My comment was I didn't understand why we were doing yet another opinion on a topic that we had already opined on forty years ago, and why we were revisiting an opinion that had already been out and agreed to at this agency forty-years ago.

Douglas Kellner: Alright and there are two reasons. One is that we have a new statute now that asks for an opinion and we're required to provide them that opinion. And, second, is that it appears that the opinion that the Board adopted in a 3-1 vote years ago was erroneous and that it doesn't comport with the actual statutory language. And indeed, when the Brennan Center brought their lawsuit with respect to the LLCs they attached the transcript of the Assembly Debate and I might add that that debate took place during the last year that the Republicans were in the majority in the Assembly so it was Republicans both in the Senate and the Assembly that drafted or controlled the drafting of that language. And in the debate before the Assembly, it was made very clear that if a subsidiary corporation was being funded by the parent, then the parent was the true contributor and that the limit should not apply separately.

So, in view of that legislative history and the actual statutory language and the fact that we are required to respond to the request for an opinion, I think it's appropriate for us to correct the record and adopt the legislative, adopt as the Board's policy what had originally been debated in the Assembly in 1974.

Peter Kosinski: Okay.

Douglas Kellner: Alright and so for that purpose, I will move that we adopt the draft opinion that has been circulated.

Peter Kosinski: Okay, I'm going to speak to that for a minute then. So I think you're right Commissioner, I think this is similar to I guess what we talked about four months ago in the LLC context where this agency put out an opinion, I think that was twenty years ago, this is forty years ago, on the very topic presented in the question. That opinion has been out there and relied upon. There's been no change in statute that would require a different view of what the law requires and or require this Board to revisit the issue. As I said back in April when we visited that, I think it's up to the State Legislature

to determine what the contribution limits are in this State. I think that's a Legislative prerogative. It is not the prerogative of this agency. I think that the statute that the Legislature has set out a very comprehensive statutory scheme for contribution limits in this State, taking all different considerations into place. That, that's where this should be, that's where these decisions should be made they should not be made at this agency. If there is no legal basis to revisit this issue in the sense that there's been no change in statute that would warrant a revisiting of this issue and I don't see any reason to even issue an opinion in this case because I think the way to handle it is to refer this individual to the opinion that was issued forty years ago, that that would provide them with the guidance that this agency has put out for the last forty years on this topic, that no separate opinion, we don't have to do an opinion on the same issue over and over and over again. That when it's an on-point question, you can just refer them to the opinion that currently exists to resolve the issue and that's the way this should be handled. So I do not think there's any need for a new opinion. I don't think it's warranted. I think again if people want to change the contribution limit scheme in this State, the State Legislature is the place to do that and not this agency.

Douglas Kellner: Alright, there's a motion before the Commissioners that's been made and seconded. Those in favor say Aye?

Kellner & Spano: Aye.

Douglas Kellner: Opposed?

Kosinski & Peterson: Nay.

Douglas Kellner: Alright, so it fails by a 2-2 vote. Now, is there any other motion in terms of how to deal with the request that we, that the Commissioners received pursuant to the new statute?

Bob Brehm: I think I'm the...

Douglas Kellner: Or is the proposal just to tell them that the Commissioners are deadlocked on this issue and...

Bob Brehm: Oh you mean on how to answer the question? I'm sorry.

Douglas Kellner: how to answer the communication?

Peter Kosinski: I'm sorry what are we talking about?

Bob Brehm: I think it was, why don't we say to the person who asked the question...

Andy Spano: The one we just turned down.

Peter Kosinski: Oh, well I would refer them to the opinion that's already out there. There is an opinion on this topic that we've already issued and that should that's the one that currently is in existence and continues to be.

Douglas Kellner: Well except I'm not prepared to vote to do that either.

Peter Kosinski: Well, but that is a fact.

Douglas Kellner: If you're going to make it as a motion, you can make it as a motion again and vote.

Peter Kosinski: Well, I'm not sure I want to make it as a motion, I just want to say what I believe is a fact which is...

Andy Spano: But see the thing is that we believe that it's a violation of statute.

Peter Kosinski: I totally understand that Commissioner. I'm just saying that I think the fact of the matter is there's an opinion on the books. As I said it's already been issued by this agency. That is a fact. So how you want to handle it is up to you as far as telling this person that.

Douglas Kellner: Well I suggest that the staff send a letter to them telling them that the Commissioners are deadlocked and...

Peter Kosinski: I mean I understand that you may not agree with opinions this agency has issued and I can tell you there probably are issues or opinions this Board has issued that I don't agree with. But I am not prepared to say to people they don't exist, that they don't currently apply. They do whether I agree with them or not they exist, this agency has adopted them in a formal and appropriate way and they are the guidance this issue has issued to the public, and I think for the agency, you know, for you to deny that isn't, isn't really fair because I could probably go through opinions we've issued and say, you know, I don't agree with this one either, let's change that, but I don't think that's the way we should be acting.

Douglas Kellner: I suspect that is how you act though.

Peter Kosinski: I think what we should be doing is going with, you know, this agency has acted on these opinions, they've analyzed the law, and they've come to a conclusion, and that's the current state of the law as it should be. And they interpreted the statute and if the State Legislature disagrees, then they can change the law which they have done I might add in the past. They have done that and that's their prerogative and continues to be.

Andy Spano: We disagree. I mean we have, we have I think attorneys here that give us what we think are very valid opinions and we would be remiss if we didn't take their advice in this particular case.

Peter Kosinski: Okay.

Andy Spano: And I'm sure you're getting opinions from your side too so and you can give yourself an opinion. You know, I worry about liability also with cases like this. Now it's on the table, you said it's illegal, and now we're going to vote against it? I mean, it doesn't make any sense especially if it has some sort of facts on the candidate or something. After we, after we put it on the table, and now we don't give them an opinion. Can we go? You guys are.... Can we vote for a declaratory judgment and just give this to the lawyer? On our dime.

Douglas Kellner: Alright, I think...

Peter Kosinski: I think it's not that hard. I think it's relatively easy. I think this one as I said doesn't even require an opinion because there already is one, so I don't it's really not that difficult. You don't even have to draft an opinion. You can just say, we have an opinion and here it is. That makes it even easier.

Douglas Kellner: Alright well.

Andy Spano: Even the Supreme Court changes its mind.

Peter Kosinski: That's their prerogative.

Andy Spano: So this is ours.

Peter Kosinski: I don't think it is.

Andy Spano: We're above it?

Peter Kosinski: We are a bureaucratic administrative agency. We're not the courts, we're not the courts and we're not the legislature.

Douglas Kellner: Alright the uh, my resolution fails, there's been no other motion that appears to be adoptable, so we'll move on to the next item which is...

Andy Spano: Are we going to revisit the other one or are we just going to go past that?

Douglas Kellner: Alright we did Marketing, we did Corporate Subsidiaries the next one was on travel.

Bob Brehm: I think from...

Douglas Kellner: What's the issue on this draft?

Bob Brehm: I think the issue on travel is it kind of got caught up in some of the general conversation but I'll summarize it. We have a request for an opinion on travel and my understanding of the proposal for the discussion is we've offered a draft to the new request for a travel opinion and the counterproposal is since we've just done one for the Trade Commission to Cuba, that we don't do a new one, we tell people to follow the old one. That raises as a policy I think that's up to you how you want to handle it. I think our, I think I've summarized that but I think generally, and I'm not the lawyer so I look at this, this section I believe requires a vote of the four Commissioners and I don't know if we have a say either Todd or I or Counsel review this request for an opinion and they say I think this is closely Cuban Trade Mission, follow that one without somehow you voting on that. So I think you have to vote on something whether it's in the form of an additional opinion to that question or a letter saying go follow that previous opinion. I think we need you to, I think from my perspective, I think you still have to vote on something in order to get that coverage. So how do you want us to handle this?

Andy Spano: What is the, what is the question being asked for this one?

Kathleen O'Keefe: In this particular request there are two legislators who want to travel to Europe. Part of their travel plans are official, part of them are personal. They are looking to get some guidance on how they need, how they can appropriately use their campaign money for their official business related to their office. That's it in a nutshell.

Douglas Kellner: Is there a draft that has been circulated?

Bob Brehm: Yes it's a, I wrote it, well technically. Here's the travel and I know I sent the whole packet out but this is the travel the one that we've put out. And I think the response is should we do any opinion or should we just do a letter?

Andy Spano: Do you think that the response, do you think that the response we gave in the other one is consistent with the response we want to give on this one?

Kathleen O'Keefe: It is consistent but the facts are not exactly the same because the other opinion did not state that there were any personal activities going on, private activities.

Andy Spano: Right.

Kathleen O'Keefe: So in this situation we have people, office holders that are saying...

Douglas Kellner: Go ahead.

Kathleen O'Keefe: some of our activities are personal, private activities.

Kim Galvin: But they have acknowledged that they would pay personally for the personal activities so it just leaves the campaign money for the official duties.

Bob Brehm: One of those needs to be passed down to Commissioner Peterson. I know you two already have them. He needs to get one.

Douglas Kellner: This is it Andy.

Bob Brehm: I'm just trying to get a copy down to Commissioner...

Kim Galvin: I think Bob said it right. It's a bigger issue, are we every, I mean and this is not even a contentious point, it just needs to be clarified. Are we going to issue individual opinions presumably that no one else can rely on them except for that individual or when we have an identical issue, like the one we issued a month ago, can we just say see that one and be done with it?

Douglas Kellner: No but the one is that they're not exactly identical and second is that in order for the applicant to rely it has to be voted on by the Commissioners.

Kim Galvin: So then the answer is it won't be a body of work that people can rely on. It will be specific to only Commissioner Kellner, for example.

Douglas Kellner: Well, I think it becomes a body of work even if it's repetitious, just like a court decision. Obviously if somebody brings a court case and they foreclose, the judge, you know, is still going to have to decide each case that comes before the judge.

Peter Kosinski: Yeah, I think, I think the goal here has got to be to give guidance to people on one hand, but I think you've got to write them in a way that it does give guidance to those out there who are not asking for opinions but are seeking some idea of how to proceed under the new statute, the new Personal Use Statue because it is brand new and I understand people are uncertain of how it's going to be administered. So I think the goal should be to write these in a way that gives some guidance to people that aren't asking for the opinion.

On the other hand, I understand the need for the opinion because the statute does provide that if you get an opinion from this Board it does provide some safe harbor to you, that that opinion will protect you in a sense if someone says you did something wrong. You can say well no the State Board said I acted appropriately. If I don't ask for an opinion, however, but I have a body of work that it does sort of give general guidance, it does give people some idea of how to proceed so they aren't asking you on every single little thing they're trying to do. So I think the goal should be both. I think right now it's so new, I tend to agree that issuing opinions is probably the right way to go because it's new and it gives us an opportunity to not only advise that person what they should be doing but also to, you know, provide generalized...

Douglas Kellner: Uh, huh.

Peter Kosinski: so I think that should be the goal, so I think that's to me, that's the issue of how to craft these opinions that goes to this one, that goes to the other one you're talking about, the fair market value one, it goes to that one as well, as to okay, I understand your set of facts and I'll try to answer them, but in doing so I want to try to help other people as well and how can we do that so that it's not so fact-specific that other people can't get anything out of it.

Douglas Kellner: Alright.

Gregory Peterson: I think in this instance though that we're at that juncture, I'm thinking that certainly we can issue an opinion today on this and it's a little bit different from the Cuban situation so as far as I'm concerned, I think it's an appropriate opinion that somebody can rely upon and if there's some, some future question that is pretty close to that, this can also be utilized at that juncture.

Douglas Kellner: Right but that we should still have, it should still be in writing and it should be presented to the Commissioners for a vote by the Commissioners. Each time somebody requests for an opinion of the Commissioners, there should be a writing and it should be submitted to the Commissioners. And one of the questions will be is it, if it's exactly the same as something already presented, then the writing presented to the Commissioners could cite the prior opinion but most of the time it will be simpler to just answer the question than to cite the Commissioners prior opinion.

Peter Kosinski: Well I think, I think this is so new that you're inevitably going to be issuing opinions now. There may come a time where we've issued so many opinions that we feel like well we've already opined on this and you really don't need any more guidance. I don't think we've reached that yet. I mean this is new, so I would think for the time being, if you get a request on a 14-130 question, Personal Use, you should be preparing something for us because I think right now we need to be giving out more, not less, guidance, and maybe somewhere down the road we can cut back on that because we've given out enough that people feel comfortable they know what to do.

Bob Brehm: That's why I think on this when we've learned philosophically of our different opinion we just it's new how do you want us to handle it? But...

Gregory Peterson: If they need an answer right away, we tell them to take a look at the Cuban opinion that we did. If not, then let's tell them we can come back with a draft that, you know, that we can...

Douglas Kellner: Well, I'm moving the adoption of this draft.

Peter Kosinski: Commissioner, I'm just not comfortable voting on things I haven't reviewed.

Douglas Kellner: Yeah well, why haven't you reviewed it?

Peter Kosinski: Because I didn't know it was on the Board Agenda.

Douglas Kellner: Well I put it on the Agenda a week ago.

Peter Kosinski: I didn't see it.

Douglas Kellner: I know and I'm telling you that I am very upset that you tolerate having your staff censor this material to be presented to you because I made it very clear that I would be presenting this for a vote by the Commissioners and if I have to talk to you directly, then that's what we have to do.

Peter Kosinski: Feel free to call me, feel free to call me anytime. Happy to talk anytime.

Douglas Kellner: But I think it's outrageous that, that Mr....

Gregory Peterson: Alright, okay, why don't we vote on it? You want this voted on?

Douglas Kellner: I want this voted on, yes.

Gregory Peterson: Calm down, we'll vote on it.

(Multiple conversations)

Greg Peterson: That was good timing.

Douglas Kellner: Um, do we um...

Bob Brehm: Here's the other three copies.

Douglas Kellner: Should, should we proceed without Commissioner Spano or should we wait for him? Okay.

Bob Brehm: I would wait for him.

Peter Kosinski: It's under the heading, when you got to go, you got to go.

Douglas Kellner: It looks like I need to make my travel arrangements. So maybe why don't we take a...

Peter Kosinski: take a five minute break.

Douglas Kellner: Thank you.

Peter Kosinski: Five minute break? Okay.

(Multiple Conversations)

Douglas Kellner: Alright. We're on tape. Alright, so we call the meeting back to order. We were on my motion to adopt the response to the question of two public officials regarding opinions on the use of campaign funds for travel expenses for a trip to Europe. Is there any further discussion?

Peter Kosinski: Yeah I'm just going to discuss this briefly. I do not disagree necessarily with the opinions, you know, but my issue is that I did not have time to really, you know, read them and look at the competing opinions, which I know there are some at least on one of these, to make a reasoned decision on which way to go.

I would request that we put them off to the next meeting so I can do that because I think to be fair to us, we should have that opportunity. I can tell you that if that happens, we would be prepared. I would be prepared to vote at the next meeting on these opinions but if you feel insistent to do them today, I am not prepared to vote on them because of my not having seen a final version that I feel I can digest and vote on. So that's my position but I understand you have to do what you have to do, so I don't know where Mr. Peterson is on this, if you want to go ahead.

Douglas Kellner: Alright uh...

Andy Spano: I make the motion that we adopt this.

Douglas Kellner: Right we it's already before us. Those in favor say Aye?

Kellner & Spano: Aye

Gregory Peterson: You know as a public official I know sometimes how important it is to get these opinions and get them quickly because a lot of things rely, candidates and public officials are relying upon them so I am prepared to vote Aye on this.

Peter Kosinski: I'm just going to abstain. I don't want to have a no vote because I don't disagree with them because I haven't had a chance to read them but I would abstain.

Douglas Kellner: Alright, that's fine and um, three in favor and one abstention. And the other one was the rent issue which I said I wasn't going to vote on. If you're not going to vote on it, then there aren't two people to vote.

Peter Kosinski: Okay.

Douglas Kellner: So that's got to be put over for the next one.

Andy Spano: What is the adjudication method? If they don't agree we come back here and we're in the same boat?

Peter Kosinski: I will be prepared to vote by next meeting. I will look at the different, I will look at the different versions myself and I will be prepared.

Douglas Kellner: And, and Commissioner, is it my job to personally send you the proposals now because your staff isn't doing it?

Peter Kosinski: No, I think I have them. I think I have them right here. I think they were provided to me as I understand it, they're both here.

Douglas Kellner: And in the future, is there an understanding that when we say that we're going to move something that your staff is going to send it to you or do we have to make sure that we send it to you?

Peter Kosinski: Well, I think the issue should be whether a document is included in the Board Packet for adoption, not whether it's been sent to me but rather it's been sent to me as part of a Board Packet so I know it is part of the Board...

Douglas Kellner: Do you understand that Mr. Valentine takes the position that unless he agrees it doesn't go in the Board Packet?

Peter Kosinski: I know there has to be a consensus about what's going in the Board Packet based upon internal discussions and internal agreements...

Douglas Kellner: See, see my view is that if I as a Commissioner want to make a motion to the Commissioners...

Peter Kosinski: Sure.

Douglas Kellner: to make a motion to the Commissioners; I don't need Mr. Valentine to approve it.

Peter Kosinski: I'm well aware of that and you've proven that several times already. You've made several motions without Mr. Valentine's approval.

Douglas Kellner: But then Mr. Valentine should put that in the packet and not say that he's going to refuse to distribute it because he hasn't agreed to it.

Peter Kosinski: Well, that's a different discussion. I really think the issue to me is whether or not issues that are before the Board are before the Board in an agreed upon manner or whether they're just being brought up as a point of discussion, and they have

not been agreed upon by the staff at least for a formal proposal to the Board. I totally agree with you Commissioner; any Commissioner certainly has the right to bring up anything they want to at a meeting. I respect that and I know you've practiced that because I have been here when that in fact has occurred just in my four brief meetings here at the Board. So I understand that totally. But there's a difference to me between that and having something before me that I know the staff has considered, has looked at, has investigated, has researched and has brought to us as a consensus, here's something for Board action. Those are two different things. That's all.

Douglas Kellner: We will act accordingly with that understanding.

Andy Spano: I think that if a Commissioner suggests, suggests, if a Commissioner wants something on the agenda and says I want something on the agenda, it goes on the agenda period.

Douglas Kellner: That's my position as well and obviously we have to when we do that we cannot work through Mr. Valentine to do that, that we have to directly notify the Commissioners because they're using that as a dodge for not acting on the proposals...

Peter Kosinski: Well to be fair, I don't want to totally throw this off. I, that what I just stated to you is my position, okay? I'm not going to say it's Mr. Valentine's position necessarily alone, it may be his, but it's also mine, that items on the Agenda are items that have been agreed to at the staff level and are put on the Agenda as an agreed to item for Board action. If there is a separate issue that a Commissioner wants to bring to a meeting, feel free, but it doesn't necessarily...

Andy Spano: I don't know that I'm necessarily going to do it at the meeting, but if somebody is going to say to me I am blindsided, I never, I didn't know you were going to bring this up.

Peter Kosinski: You can let me know that you're going to bring something up Commissioner, if you'd like.

Andy Spano: Well why not just put it on the Agenda?

Peter Kosinski: Because that infers that there has been agreement at the staff level on that topic and that is not the case. So if you want to bring something up, feel free, I totally understand that, and if you want to notice me ahead of time so I'm aware of it, that's great. But I think it's...

Douglas Kellner: I, I think that staff doesn't agree because this isn't, historically this has been a one way street where we make proposals and when we, I mean the Democratic Staff, works on a matter and makes proposals and provides a written draft and the Republican Staff says we don't agree and then says we refuse to put it on the Agenda, that it is, first of all that if we want to put it on the Agenda it goes on the Agenda. And if

the Republican Staff has other proposals or wants to give a negative report on what we propose, that's fine, but they should not veto it going on the Agenda by saying we're not going to just, we're just not going to put it on the Agenda. I understand you're going to continue to work on the way that you're going to work and we will work on that basis now that, that when your staff refuses to put something on the Agenda, we have to directly tell you about it and we'll send you the paperwork on it. But what we won't have as a tolerance is for the Commissioners to say, oh we've never seen this before or we haven't had time to look at it when in fact it was circulated and Mr. Valentine has refused to provide you with that information. It's just not acceptable.

Gregory Peterson: I've been here I guess probably yes what seven years? Kim is that right? How old is your dog?

Kim Galvin: Six and a half...

Gregory Peterson: Yeah six and a half years and in that period of time despite of whatever the press has written and rewritten and so forth and especially in recent times about the Board being not able to function and, you know, it's 50% Republican and it's 50% Democratic, and it's a formula for disaster and so forth, in that six and a half years or lets say in that six years, six years, I don't think we have basically disagreed on very much at all and if you, it probably maybe 2 – 3%, something like that, where we've had went loggerheads and we voted 2-2 and something didn't go.

Part of the success of that has been our staffs and again I will compliment both sides of staff. Our staffs have worked hard to try to come up with something that's agreeable to present to us as an Agenda. And there is a reason for that. And the reason for that is to kind of de-politicize what is happening at Board Meetings. So what happens is we get an Agenda that we can sit here and digest in a civil manner, till we get to certain conclusions and do the job to which we have been appointed.

Now, if you want to flip that and say, well you know any Commissioner can do anything they want, but yes, I agree with that, and that's perfectly all right. However, it also leads to when you get away from a Formal Agenda, what it leads to is politicizing the various agency that we don't want to politicize. Because what happens then? If I'm embarrassed because I don't have something that was not on the Agenda maybe because staff hasn't agreed back and forth, then you know and something comes up, I get sandbagged & I look like an idiot, saying, well, gee I don't know, I didn't really know what was happening here. I'm sorry and I can't vote, you're making me look like a jerk. Well, you know what, that's a two-way street and if you want to play that game what will happen in the future is, and I'm an adult and I've been in politics a long time, I'll figure out a couple of things and I'll sandbag you. And all of a sudden it's not on the Agenda, and the day before I can send you something, by the way Doug and Andy, I have something I want to put on here and you say, holy cow, what's he doing that for? Well what I'm doing that for is to embarrass you and that's not my point. It hasn't been my point for six and a half years and I don't want to make it my point for however long I last here. So,

you know, a written Agenda, a formal Agenda does have a purpose and, you know, and it has to be done. Does that mean a couple of times you go, oh shoot, why the hell didn't they put that on. Don't blame poor Valentine for that. There may be reasons for that and you know, again, we should think back to the way things have been up to this juncture and I don't think we should go radically changing the way we've operated because it has worked. It has worked well and it's worked in a very, very bipartisan or even non-political fashion, to get the job done which is what? To make sure people can vote. To make sure the voting process is appropriate and we do that, we don't do that in a vacuum of course, but we certainly do it, we try to do the right thing by everybody. Now I'll get off my soapbox, thank you.

Andy Spano: You can be political by what you put on the Agenda and what you leave off the Agenda.

Gregory Peterson: True.

Andy Spano: And I wasn't implying that I want to just throw something on the Agenda. If I want to put it on the Agenda then I would say, I would like something on the Agenda. I would probably tell them a week or two weeks in advance. I'd probably ask Bob to send whatever out to everybody so everyone had it. I mean, that's all I'm talking about.

Douglas Kellner: Commissioner, the big difference to me is this is the first time you've looked me in the eye and said I can't vote on this because I haven't seen it before. And, and when I made it very clear that I was going to bring it up and that I wanted it in the packet and I wanted it distributed, for then the Commissioners to tell me, oh we're still not going to vote on it because we haven't seen it, it is not really acceptable, and whether it's true that the Commissioners never got the materials...

Gregory Peterson: No but you saw me I was flipping through these pages to see what you were talking about. I didn't have it here. It's not in my packet.

Douglas Kellner: I understand and that was done purposefully and inappropriately in my view, because we made it very clear that this would be a subject for the meeting and that we were going to do this, and so to the extent that you're miffed at what I've done is I've played out exactly the scenario that your troops put in motion by refusing to provide those. And it is embarrassing for both of us that we have to do this because I wish we could work as a bipartisan agency and at least understand the disagreements. So, on the issue of the Subsidiary Corporations it was something that Commissioner Spano and I made clear we had to have a vote on this and that we were going to do it. And your staff said no we don't want to vote on it because it's revisiting an old opinion of the Board and we said well we're going to do it anyway, and we're going to revisit it. And instead of just saying okay, that's how it is, that we each have to do what we have to do, instead all these other issues got folded into it and I think it's a shame.

Gregory Peterson: Well again, I really feel that the Agenda is an important thing to get done and there's a reason for it.

Douglas Kellner: Alright, now uh, so we don't have a vote, we don't have enough Commissioners who are able to vote on the Rent issue so that's going to get put over to the next meeting. So the next issue on our Agenda is discussion on multiple versions of Voting System Software.

Greg Peterson: A neutral matter, very good.

(Multiple conversations)

Anna Svizzero: We actually don't need a vote on this. We just want to take...

Douglas Kellner: But it's still a matter of some contention I...

Anna Svizzero: Yes.

Peter Kosinski: Could be, could be.

Anna Svizzero: Now we just wanted to give you the gist of where we were in light of the comments that the four Commissioners have made at previous Board Meetings. We are continuing to discuss this issue in-house, discuss it with the vendors. We had one conference call last week with one vendor and hopefully since the other one will be here tomorrow, we can have that conversation tomorrow.

We're working with OGS to document interpretations of the existing contract and the provisions in it to be sure that we're on solid ground when we do come to you with a recommendation. So this is really just a summary of the maybe three meetings that we've had in the agency, with six or seven of us at the table, to get to this point and it was really just to enlighten you on where we're at and see if there was any other direction you had or any concerns that you had for this initial premise. And we hope to have a resolution once we get these other issues nailed down. We'll work with Kim and Kathleen to draft a resolution that reflects hopefully what everyone has in mind and what we understand to be true in the contract language itself.

Peter Kosinski: I have two comments on the document you put in here. In your third, fourth paragraph, you say that counties which purchase software from our maintenance must implement the most current SBOE certified version. Is that a must so if I'm a county that has a maintenance contract with Dominion and Dominion comes in with a software upgrade, must I do it?

Anna Svizzero: Our goal in taking that position in this conversation was that we would try to limit the number of versions so that the number of versions that were out there were manageable. They would all be certified versions unless the Board opted to decertify

some version. So if everyone was getting the software and was part of their maintenance program, we didn't really see a reason that they wouldn't use it so that would keep the bulk of the State at a single version all operating in the same way. And the differential between the group that had maintenance and didn't would be where the different versions were, because clearly Boards could have maintenance now and get an upgrade and decide not to get maintenance next year and there would be an upgrade and they wouldn't have it. So now we would have a baseline version of certified software, the certified software everybody got and everybody in between who may have dropped off the scale at different points. We were just trying to manage and be as consistent as possible in an over as broad a range as possible.

Peter Kosinski: Can we mandate that county take an upgrade?

Douglas Kellner: Yes.

Anna Svizzero: Well, that's what we've been doing so far.

Douglas Kellner: We can, can we agree with it?

Peter Kosinski: Yeah, I mean if the County says...

Douglas Kellner: Commissioner I should start out by saying I don't like this draft.

Peter Kosinski: Oh, you don't? Okay.

Douglas Kellner: And I have told Anna that I don't like the spirit of the draft. That um, while much of what it says is accurate...

Peter Kosinski: Uh, huh.

Douglas Kellner: it tends to emphasize the sort of a preference for having the County buy software maintenance...

Peter Kosinski: Uh, huh.

Douglas Kellner: which I think is um, we have leaned more heavily on that direction than I would prefer and if I were a county, I would be questioning it. Now some counties get real value in their software maintenance agreements especially New York City which has a desire for a number of different add-ons and utilities, and has maintenance issues so that it makes good sense for them to come up with an agreement with their vendor on continuing the software.

For most counties, what they really need is answering questions when they can't make their systems work because they haven't been properly trained and instructed on the systems. And yes, it's a benefit to the counties to be able to get those questions answered

and that's probably the primary benefit that they get out of the Dominion Software Maintenance Contract. Dominion also has a few improvements that are hardly necessary for a Board's operation but that are folded into that software maintenance. One of the issues that Kathleen is working on is to determine whether in fact it's a true statement, that if the law is amended the software maintenance contract requires the vendor to upgrade the software to meet the statutory change. In fact I believe that that is purely voluntary on the part of the vendor, that the contract doesn't require it that the vendor may very well do that in order to service a client but that the vendor is under no obligation to make that upgrade. And the counties ought to know that, that it ought to be a true statement instead of leading them to believe that by buying the maintenance that they're in effect getting insurance against a state law change.

All of these things, by at least leaving out there the suggestion that counties have the option of not buying the software maintenance, I think is having the salutary effect of dampening down the charges that the vendors are offering to counties to keep the software maintenance because they know it's not a sure thing that the county is not locked into buying their services. And so I think it's a good thing that a number of counties have not signed onto the software maintenance. And this draft here I think suggests the opposite, that it's a bad thing that the counties aren't getting the upgrades.

I do think that as a policy we should still continue what we've already discussed which is that if the State Legislature is going to change the law so that the software needs to be changed that they ought to pay for it and not require the counties to pay for it. And I understand the point that Anna's making is well if forty counties are paying for the upgrade and there are twenty-two counties that aren't paying for it, is it fair that the twenty-two counties get a state subsidy when the others have been paying for it though this "insurance". And I guess what I'm saying is they're not really buying this insurance because the contract doesn't really require the vendor to make the upgrade. Alright, I think there are a lot of issues on this and I apologize if I'm talking too long on...

Peter Kosinski: No, no, no, that's okay. I mean the other issue I had was related to that but go ahead.

Andy Spano: This, this I just want to say that this, this uh, smacks of an unfunded mandate and we really shouldn't be sending those down to the governments.

Peter Kosinski: No, I agree. I think we would like if they, if they mandated change does arrive by a statutory change, I think we are prepared to ask for the State to fund that, but I think we can't rely on that, that's all. I guess my other question was related to this was, do we have any sense of how many versions of this software is a maximum number that could be put out there and still be viable out in our State?

Douglas Kellner: Could I address this and say from a legal point of view, the issue is whether we certify a version and whether we decertify a version. Alright, so there's no limit in the statute as to how many versions can be certified. The statute gives us the

authority to decertify a version if we have a reason to do it. So to me it's really an adhoc question each time as we certify a new version, do we decertify the old version? And the same is true with the scanners. Dominion has a new central scanning system on the market, you know, central scanning for absentee and provisional ballots. Well when we approved that new scanning system, do we decertify the old Dominion System that several counties still use because they didn't want to buy the new one? Well the answer is does the old one still work and does it, you know, meet the statutory criteria for as a useable voting system? And it strikes me you do that each time and not try to set a rule in advance...

Peter Kosinski: Well I didn't, I mean is there an issue vis-à-vis a vendor as to how many different systems they can service in this state or does it matter? Can, if they have fourteen different Dominion versions out there amongst the counties, would that be okay? Could they still service them?

Douglas Kellner: Nationwide I suspect that Dominion has several dozen versions that they're servicing, you know that are slightly different in the states and jurisdictions and I don't see why that's even a big issue.

Bob Warren: Well, they would only service most likely the one that is under maintenance which would be the current version. Now if some counties as you said do not want to take that current version but they're paying maintenance, the vendor would still fix or change whenever a request came in for that version but most likely what they would do is if a county requested a, they hadn't been taking the versions but they are paying their maintenance and they request some kind of a change, they would probably put it in the most current version and have that county take that most current version. So the county would always get what they want but they would probably always put it in the most current version and then let the county upgrade to that version.

Brendan Lovullo: The other versions they would upgrade for a price and maintain for a price based on whenever that time occurs.

Male: (unclear)

Bob Warren: What Commissioner Kosinski is saying is how many will they support if they're paying maintenance? They would support them all.

Peter Kosinski: No, not even if they're just paying maintenance but just generally, I mean...

Bob Warren: But if they weren't paying maintenance, they wouldn't care about that version. I think that if the county isn't paying maintenance they're not servicing it.

Peter Kosinski: Well don't they have to service it though if there is a problem with it and the county that doesn't have maintenance calls Dominion and says, hey we have a problem, we don't have maintenance, but you need to come down and help us...

Bob Warren: If the county wants to pay for it, sure, yeah, yeah.

Peter Kosinski: I mean there may come a time where for some reason even though I'm not on a maintenance contract, I need...

Douglas Kellner: Not for software.

Peter Kosinski: Maintenance. No?

Douglas Kellner: You need maintenance for hardware.

Peter Kosinski: Right.

Douglas Kellner: But for software we have...

Peter Kosinski: Never.

Douglas Kellner: It's a fixed version. It's locked in our vault and...

Bob Warren: So what if something changes, it's only if something changes.

Anna Svizzero: If they have a question about how the software, I'm sorry, if they had a question about how that software works...

Peter Kosinski: Yeah.

Anna Svizzero: they could call and ask that question. They would pay an hourly rate for whatever that support is, but Commissioner Kellner is right, the software is certified. You can't call up and say, oh I need this and they will send you a patch like you can with Microsoft.

Peter Kosinski: No, it's only if you have issues. If you have issues you need them to help you right out.

Anna Svizzero: In the contracts there are hourly fees for...

Douglas Kellner: So these are training issues, maintenance is probably the wrong word for it because for maintenance we're thinking of the guy who runs around with a mop and cleans up, you know that something gets dusty and it has to be wiped clean. That's not the issue with software. Software is a fixed set of instructions and the only issues with software are somebody doesn't know how it works and one has a question. How do I

make it do this or make it do that? But they're not changing the software, they're not cleaning up the software, they're not monit, you know, it's a fixed thing.

Anna Svizzero: And we field a lot of those questions for county boards. They know they can call here and anyone of the team, Bob Warren's team will walk them through anything that they have. They're not paying the vendor for that. We were happy to provide that service for however many versions there are. We're not afraid of the workload or anything like that. We're just concerned that if there was a global way to have some uniformity across the state, then those that are on a maintenance program would all be running the same version. As Brenden found out, and you can certainly speak for yourself, but in other states they are running single versions but they allow, since I told you you can talk for yourself, I don't know why I'm still talking. That, that other states require their counties or jurisdictions to purchase the license agreement is on an annual basis and the software is built into that. So they all run the same version but they're all getting that because that's the license agreement. We have a perpetual license for the software once the county boards bought it. It's ours and we've tried to divorce ourselves from the vendor in that way that was a deliberate effort.

Douglas Kellner: A major advance, I mean I, I was pushing this as this is the old antitrust lawyer in me coming out, that New York operates very differently from a lot of these other states because we have refused to be captive by a single vendor who can dictate monopoly prices to us. And so the perpetual license is one of those features that I'm very proud of and I tell other people in other states and they go, how did you ever get the vendor to do that? And I said because we had them bidding against each other and they knew they wouldn't get the business unless they agreed to do that. And so other states lock in these jurisdictions who basically the vendors want the ideal situation for the vendor is to get the local jurisdiction to have to pay by the vote and actually a lot of them will do it by the eligible voter, not who actually turns out, and in some ways we have features of that. For example vendors will charge based on the number of ballots they print even though the marginal cost of printing the ballots is very small once they've actually done the ballot layout.

Alright, I'm getting into a whole lecture on voting system economics but seems to me that we benefit by keeping those economic issues in light and most other states are the captive of vendors and are paying disproportionately higher prices for election administration than New York does because of it.

Bob Brehm: I have one item when it comes to the issue we come to the recommendation that the state pay there were state statutory changes and that is if we allow many versions of software, are we likewise recommending that if the state passes a law and now there's a mandate that each of those versions meet the statute, and or do we simply go to one version that we're willing to pay for because certainly the cost goes up if I have to change six things rather than one thing if that's the proposal. So...

Douglas Kellner: It's all hypothetical.

Bob Brehm: It is hypothetical, but if we're going down the road to make the policy recommendation they all will say to us am I paying, what am I paying for? What are you proposing we pay for? And I know I, I'm sharing with you that I haven't shared with others, but my own thinking is if the state has limited resources, do we say to these six counties that somehow dropped out along the way, we're going to be responsible for all of them or do we go with the most enhanced and say the state paid for it, you should get it. I don't know the answer to it but I still throw it out from a perspective what is our policy? If we think the policy should be we should pay for all of them then we've at least had the discussion and we that's what we asked for. But I just throw out, I don't know...

Douglas Kellner: Well, at that time, wouldn't you make an analysis when the legislature is confronted with wanting to make a change to the voting system that will require certification of new software or maybe even new hardware, all I'm saying is is that the cost of that ought to be factored into the legislation and the State ought to, you know, we ought to recommend because we can't make them do anything. But we ought to recommend that the Legislature factor in the cost of any software or hardware modifications at the time they make that decision and not do it as a non-funded mandate.

Bob Brehm: There are two parts to that. And I answer when anybody calls me but it's cost and time because it's hard when they say this law will go into effect, you know, in sixty days but the technology is going to take us a year to put it in place. So I would add that to the...

Douglas Kellner: Indeed with instant-runoff voting, I've been telling, you know, people in New York City that it's already too late to do it for the 2017 election now because the City couldn't get certification of the system in time for that election. So I agree that that's a factor.

Bob Brehm: I was just throwing it on the table.

Douglas Kellner: And, and the vendor, you know, and at least in the discussions with them, they know that the cost of doing instant-runoff voting, if the City should decide to take that way as a way of addressing the runoff election, is to, is roughly three-quarters of a million dollars to do the software. But of course they save twenty million dollars in not having to do the runoffs.

Anna Svizzero: I just have a comment on the decertification. If you do decertify a version you have to make sure you're not decertifying a version that somebody who didn't buy maintenance is at.

Douglas Kellner: Why?

Anna Svizzero: Well, where does that county get the money on the drop of a dime...

Douglas Kellner: They'll have to buy a new version that...

Anna Svizzero: But again, these are our concern. Our conversation was that there isn't a real way for counties to budget for that kind of expense when it just arises from an upgrade that comes to this Board. It's something that we wanted to be cognizant of and let them know where the fiscal impacts are of these kinds of upgrades and decisions when indeed they do happen.

Peter Kosinski: Why would we decertify a system?

Anna Svizzero: Up until now any upgrade that happened automatically replaced and we never really used the words decertified, but anything that changed in that whole five year or even now, the last upgrades that we had.

Douglas Kellner: We never actually decertified it.

Anna Svizzero: No, we just replaced what we sent you the upgrade and you put it on your system, whatever the magic words are and that was the end of the conversation. There was no decertification of the previous version so it was kind of assumed by everyone that that's what was expected and that's what happened but we never used that language and this Board never voted to decertify something. We just had new software that replaced what you were using.

So we just needed to be cognizant of that issue that we didn't accidentally harm a county board and you know, and still at the top of our list for the last three years has been that maybe the state should pay for all of it, but we haven't been able to reach consensus in getting that concept in the side letter that you know Todd had mentioned, we get the call letter for budget and it's a flat budget but you are allowed to submit a side letter. We haven't really talked about all the issues that would make...

Bob Brehm: Not in a long time.

Anna Svizzero: Yeah.

Bob Brehm: I don't care what we call it, but they won't be...

Anna Svizzero: Exactly, you know that's another conversation that you could all consider, but again as you pointed out, where that goes when it comes to money is not anything that we can deliver on or bank on. Pardon the pun.

Bob Brehm: I'm gonna guess the only time we would decertify would be a very big reason that we would have all talked to a lot of people...

Kim Galvin: No, I mean if there's a statutory change or a court order change...

Bob Brehm: Those are the easiest to figure right. And I think Kim handled...

Kim Galvin: And the jurisdiction that doesn't have it you decertify it.

Bob Brehm: I, I think the only time that we ever got around to telling people a deadline to do something was probably that court case that Kim handled where we had to tell the court it would be done by a certain.

Kim Galvin: **We all know ballot**, we all know ballot usability has been on the top of everybody's list. I can foresee it coming in the next couple of years. You're going to have a county out there with a version in the middle. Um, the cost is going to be three hundred and fifty thousand dollars, they're not going to have it, it's not going to be compliant with the law, we're going to have to vote to decertify it and what's that county do? It's easily foreseeable.

Anna Svizzero: And when those bills come out of the Legislature, the line that says Fiscal Impact always says none because to the State it is none.

Kim Galvin: And it will take effect immediately.

Anna Svizzero: Exactly.

Bob Brehm: Or to be determined.

Peter Kosinski: Well somebody should call the Legislature and inform them that it's not none. I mean can you give them a number, can you anticipate what the number will be for these changes that are anticipated?

Anna Svizzero: I think if we knew what the changes were, we could talk to the vendors and say what's it going to cost to do this? We did that with the screen changes with Dominion and ES&S.

Kim Galvin: Nine million dollars.

Anna Svizzero: Yeah.

Peter Kosinski: Fair enough. Well you should, you know, make that known definitely.

Greg Peterson: Good luck.

Anna Svizzero: Well thank you all for your input. We'll take all that back to the drawing table.

Douglas Kellner: Alright now we do have a resolution with respect to the upgrade of Dominion Voting Systems Version 4.9.10. The Resolution is before us in motion.

Greg Peterson: So moved.

Douglas Kellner: Second? Alright.

Peter Kosinski: Can we, I'm sorry, can we just get a little bit of what are these changes so we all understand what the changes are. Is this, this is this?

Anna Svizzero: Yes.

Peter Kosinski: It's in there right? So as I read it there were no changes that would in any way impact a voter or that would any way impact the counting of votes.

Doug Kellner: No correct.

Peter Kosinski: Is that fair to say it's all really administratively related changes as I read it and so I just want it understood that this has nothing to do with how people vote or how votes are counted. These are upgrades strictly on an administrative level?

Bob Warren: One is just a battery indicator on the scanner and the other two are for the tape that prints out at the end of the night those are the only two changes.

Peter Kosinski: So the ED stuff is separated appropriately.

Bob Warren: Right.

Peter Kosinski: Okay, I'll move that.

Bob Warren: And this is under warranty.

Douglas Kellner: My question is why are we voting on this Resolution?

Anna Svizzero: This is the other half of their proposed upgrade. They had had both upgrades in one proposal. Some of it was central account related and you moved that at the last meeting.

Douglas Kellner: So, so the question though is from a legal point of view, what would happen if we didn't vote on this Resolution?

Bob Warren: We couldn't begin testing. This is to begin testing.

Douglas Kellner: But are we required to vote to begin testing?

Anna Svizzero: You have to approve the upgrades.

Bob Warren: You have to approve the changes.

Bob Brehm: This is the process because we wanted to be, we didn't want to, we wanted to, our change management is we say go do it before they drop this on us as opposed to um, again I, I think of the case we had...

Peter Kosinski: My feeling is we don't want to, we don't want to author, we don't want them testing until we have agreed that these changes are okay assuming the testing goes through.

Douglas Kellner: And that's what we're doing.

Peter Kosinski: So, I don't think it would be fair to test it and then say after the test well it all passed but we don't like these changes, we're not going to let you do them.

Bob Brehm: You can do three of them, but not four of them, how do you do that?

Douglas Kellner: Alright, are we ready to vote?

Peter Kosinski: Yep.

Douglas Kellner: Those in favor say Aye?

Kellner, Spano, Kosinski & Peterson: Aye.

Douglas Kellner: Opposed? (None) Now before we go into Executive Session, can we talk about the date for our next meeting?

Peter Kosinski: Sure.

Douglas Kellner: And um, you know you and I are on...

Peter Kosinski: Are we are we at odds?

Douglas Kellner: Well we're not at odds but uh, but uh, we're...

Peter Kosinski: I have some dates.

Douglas Kellner: And so do I.

Peter Kosinski: Okay.

Douglas Kellner: And um...

Peter Kosinski: Is there any, is there any common ground? I want to work with you.

Douglas Kellner: I think we're probably going to have to do a phone meeting.

Peter Kosinski: Okay, okay.

Bob Brehm: Well we need, we need to certify the ballot on September 28th. I will anticipate that we will have some new party issues maybe and perhaps we won't have all of the Supreme Court issues, but certainly we would whatever we need to certify the ballot, I think we should if you're not available on the 28th, we should try and do it in person at a Webinar on the 28th if we could only to deal with those simple issues that we need.

Peter Kosinski: I can't do the 28th.

Douglas Kellner: And I, I can't do the uh...

Bob Brehm: But then we could do a meeting later to do any other issues.

Douglas Kellner: I can't do the rest of that week.

Peter Kosinski: Okay, next week?

Douglas Kellner: And the earliest date that I would be available is the 6th...

Peter Kosinski: So how's that then?

Douglas Kellner: But that's too late for them.

Peter Kosinski: That's too late for certification.

Anna Svizzero: Right.

Bob Brehm: We're too late for certification so how do we handle certification issues...

Peter Kosinski: Well, can you just do certification on the 28th and then pull everything else over to the...

Douglas Kellner: If that's alright with you? But I mean are you available for that full meeting?

Peter Kosinski: No but you three guys can do the certifications. I don't think I can do that even but I'll be here for the 6th. So if you guys could just do the certification on the 28th.

Douglas Kellner: If you don't mind?

Peter Kosinski: No you have to, you have to like I said I...

Gregory Peterson: The 25th is a Friday. Can we do that or no?

Bob Brehm: He can't do either of those. I think you're gone.

Peter Kosinski: Yea I'll be out of the country.

Douglas Kellner: Do you prefer the 25th? The 25th is better for me than the 28th.

Douglas Kellner: Or we can do it by phone?

Tom Connolly: It will just be on that one issue of certification.

Bob Brehm: Whatever the ballot access issues and then all these other kinds of Agenda issues would be whenever you set the next meeting. And there will be more validations probably.

Gregory Peterson: The 28th is fine with me, I can do that, yeah.

Andy Spano: The 28th?

Gregory Peterson: You said you can't be there the 28th?

Peter Kosinski: No, but you guys would do a...

Andy Spano: Just the three of us?

Peter Kosinski: Yeah, yeah I understand.

Bob Brehm: So we will do something on the 28th.

Peter Kosinski: And then something on the 6th.

Male: And then what would be the real meeting?

Peter Kosinski: The 6th of October is the other question.

Peter Kosinski: It's the next week.

Douglas Kellner: And the 8th was the...

Douglas Kellner: The 8th would be better.

Peter Kosinski: The 8th is okay with me too. How about the 8th?

Greg Peterson: That's Thursday, if I can. I'll be away.

Peter Kosinski: You can't do the 8th?

Peter Kosinski: He can't do the 8th.

Gregory Peterson: The 6th works for you?

Peter Kosinski: That's fine.

Douglas Kellner: Alright let's do the 6th.

Andy Spano: The 6th is actually good for me too.

Andy Spano: It's a regular meeting here?

Peter Kosinski: Yes, that would be in person here at the Board Room.

Bob Brehm: The 28th and in person

Douglas Kellner: Is the 7th available to you? I know I'm negotiating...

Peter Kosinski: Against yourself.

Douglas Kellner: The 7th would be better than the 6th for me, but if you're not available on the 7th, I'll do the 6th.

Andy Spano: The 7th is bad for me.

Bob Brehm: Alright, I guess we're on the 6th at noon in person and the 28th we will set up a Webinar just to do the ballot access items that we have. We will get back to the three of you as to what time with the Board whether you can dial in or not. We can even pick a time if you want now? Looking at the calendar...

Gregory Peterson e: Let's do it right now.

Tom Connolly: Noon is fine.

Bob Brehm: Noon on the 28th?

Andy Spano: And noon on the 6th, right?

Bob Brehm: Right.

Bob Brehm: That works.

Douglas Kellner: Alright and the old business items to the Agenda on the 6th are the policy on the FOIL voter registration records, the report on the independent expenditure regulation revisions, the rent opinion and the fair market value opinion. Alright, so with that behind us, we'll have a motion to go into Executive Session to deal with enforcement issues.

Greg Peterson: So moved.

Peter Kosinski: Second.

Douglas Kellner: All in favor say Aye:

Kellner, Spano, Kosinski & Peterson: Aye.

Douglas Kellner: Opposed? (None)

Tom Connolly: Could we just have a couple of minutes to breakdown the equipment?

Douglas Kellner: Yes.