

Douglas Kellner: Good afternoon I'm Douglas Kellner Chair I'm calling the meeting to order. Introduce the other Commissioners here.

Peter Kosinski: Peter Kosinski.

Gregory Peterson: Gregory Peterson.

Andy Spano: Andy Spano.

Douglas Kellner: Alright and would the staff persons present introduce themselves please?

Bob Brehm: Bob Brehm.

Brian Quail: Brian Quail.

Brendan Lovello: Brendan Lovello.

Mark Goldhaber: Mark Goldhaber.

Risa Sugarman: Risa Sugarman.

John Conklin: John Conklin.

Kim Galvin: Kim Galvin.

Todd Valentine: Todd Valentine.

Bob Warren: Bob Warren.

Douglas Kellner: Thank you and now we ask our guests to identify themselves.

Bill Mahoney: Bill Mahoney with Politico

Jennifer Wilson: Jennifer Wilson League of Women Voters.

Douglas Kellner: Welcome to you. The first item of business on our agenda is approval of the minutes for December 15th which include the public minutes and the executive minutes for December 15th.

Andy Spano: So move it.

Douglas Kellner: All those in favor say aye.

Peter Kosinski: I'll second. I'm sorry I, I apologize. Alright I'll do both.

Douglas Kellner: Okay so the December 15th minutes are adopted. We have not yet adopted the Executive Minutes for November 17th and we will work on revising them. John I had one comment about the, a style comment for the Executive Minutes that I would suggest that we follow the New York Times style of not using last names without a title. So the Commissioner so and so or Ms. so and so as opposed to just using the last name I think it reads better and a little more formal. And...

Peter Kosinski: Do you want me to print those off again?

Douglas Kellner: But even, I understand that there was still drafting issues that were going back and forth and that did not get resolved because of the flood. And I guess that we'll, we'll turn to the Unit Reports and start with the Executive Directors.

Bob Brehm: Well it's been uh, the number of items that we've worked on since your last meeting I think in the last several days kind of was the major issues of course. Wednesday when the pipe burst on the eighth floor and the impact on the staff I have to say for the amount of damage that was done, OGS I think did a great job in having two meetings a day and keeping us informed of what the issues were and hearing from us what we needed to get back in as quickly as we could to clean the damage. Generally speaking from where we are holding this meeting to the corner of the building closest to the Hilton Hotel Parking Garage is the part that was mostly damaged. And that includes Compliance and Enforcement and it did knock out the biggest issue I think that caused us the delay getting back on the floor was it knocked out the fire detection and suppression for the whole floor. So the Fire Marshal was a little bit reluctant to allow them to turn on electricity until they had that detection system back up and running in case there was a spark that led to a fire. Certainly wasn't going to allow people to be on the floor without that working.

But, you know, we've identified a number of cubicles. People are all in some temporary location. Today is the first day we're back in the building and while it's not ideal, we're still working to determine how temporary it will be and what the best circumstances to get people at least able to get their records and do work and get back to normal as quickly as possible. But it certainly took an awful lot out of people. Everybody helped to get the word out so, you know, everybody knew not to come to Albany because they couldn't access the floor. In addition to that I think the normal routine work, we, you know other than the agenda items that are there that all of the units in the building worked together with us to put before you. Certainly we're into the Q and A of the Presidential Election Cycle. Todd and I did update the summary of what the difference between the two plans and posted that on the websites of that people who wanted to be delegates or at least have a better understanding how the process worked and have a document they could look at. All the calendars have been posted to the website for the Presidential, the Federal and the draft state and local for the whole year. So we continue to, we'll start to get those questions that people have about being a delegate, etc. or even from, you know the campaign side how do they become candidates in New York State? We start the Election Commissioners Conference today at 4 at the Hilton Hotel. It will end on Thursday morning so certainly we're all working to do a number of presentations. It just so happens that our presentations from the State Board coincide with the Governor calling that day to do his State of the State and his budget message. So we will be at the Election Commissioners because that's our slot to give the presentation. Other than that I think Todd if you have any other items to add to the list?

Todd Valentine: You know and part of that Bob mentioned that we'll also see the Budget Presentation will come out that same day so we'll know exactly what our budget is at that point. And we're expecting a zero year budget so shouldn't see any surprises but we'll see when it finally comes out. And you know just the one thing that we like to do with any disaster is after we finish getting through this and the rehabilitation for the affected areas is to look what we can do better. The one thing certainly that I can say that we can do better at it and this has never happened in twenty years, we've never actually had to call all the staff and tell them not to do something cause we never close. This is the first time we've ever had to do that and it worked but, you know, it was hey tell a friend was a very informal network. There were Facebook postings. There was a lot of that going on and within units. We didn't have, we didn't have any formal process which we should, you know. Normally it's not something we, we've never had to do that but I suppose we have to put that into our emergency plans. It's just not something we had ever anticipated. Evacuating yes, fire all that stuff, evacuation everything went smooth but then well how do you tell people to come back like I don't know I don't have all our home phone numbers. They're all I don't know how accurate they are. I mean they're emergency contacts and all but it's not necessarily home phone so and they were in the building, so we'll work on that in the future.

Douglas Kellner: Alright any questions? We'll move to Counsel and Compliance Unit, Kim Galvin and Brian Quail.

Brian Quail: Thank you Commissioner first the periodic for January 15th, 2016 obviously that deadline approaching on Friday and the staff notwithstanding the flood is making all the necessary preparations so the state will receive that in those influx of filings and handle them accordingly. The Campaign Finance Disclosure Reports that have been filed, Compliance reviews are continuing and ongoing. Obviously lost a little bit of productivity as a result of the three days of downtime but will be picking that up. There is a CLE training associated with the Commissioner's Workshop that is I believe on Thursday at 9AM at the Hilton. And I think that registrations are still available for that if people want to go to our website and sign up for that.

Also the Unit participated in and continue to participate in FIDAS redesign meetings with ITU and that project is advancing. With respect to key focuses of the unit over the course of the last month a substantial amount of staff time was spent coming to reviewing and coming to consensus in many instances on a Legislative Program which is later on the agenda. Some more detail there will come out during that discussion. Also a phase one as I would call it of the IE Regulation. A considerable amount of time and effort was placed into preparing that for the Commissioners and preparing the, which has not yet been circulated of the annual case law update that we do which last year came out in early February. Substantial progress has been made on preparing that document. And on December 16th there were oral arguments in the Brendan Center LLC case in Greene County and the two side of the Board's position were represented there and there were subsequent filings that occurred. And it's expected per the judge that a decision in that case will be very soon. And did I miss anything Kim?

Kim Galvin: Not that I can tell.

Douglas Kellner: Could you tell us what the status is of revising the manual and also setting up the training sessions for Political clubs?

Brian Quail: Yes there has been a staff level discussion both as to curriculum for a club training and actually a draft power point presentation has been produced by Cheryl Causer and we're readying that for sharing with our colleagues. But there are important policy questions that, you know we are discussing as we speak about how to deal with some of these questions and there's a necessity to have in my opinion anyway a conversation with the Enforcement Council to make sure that any advice that we give is advice that people can rely on and if there's ambiguity we need to be able to identify those ambiguities to the extent there are policy questions that need to come to the Board for resolution that may be an outgrowth of that process as well. But that is occurring.

Douglas Kellner: Good thank you. Election Operations Brendan Lovullo.

Brendan Lovullo: We have later on the ES&S phase two upgrade that we're doing. We've also been getting ready for Commissioner training. The staff will be doing training on EMS with all the Commissioners and staff that will be coming in over the next couple of days. Staff is also collecting and preparing the annual report and all the submissions. We're only missing a few from some of the counties so far. Working on the utility we talked about last time and I think that's about it.

Douglas Kellner: Any other questions? Alright Public Information John Conklin?

John Conklin: Thank you Commissioner. Public Information has been busy with questions about the Presidential Primary for registration deadlines. Brian mentioned the next campaign finance filing deadline which is January 15th. There were 47 FOIL requests during the month of December. Tom and I continue to participate in the NYSVoter Refresh and CAPAS FIDAS ongoing meetings. For the website we've posted the Presidential Primary Ballot Access Requirements and the General Election Results that were approved at the last meeting. Do you have anything to add Tom?

Tom Connolly: I think the only things I would add is just that obviously we've been working somewhat on some of the conference presentations with different Units and their information and we actually got a request this morning from one county board since they're going to be in the area with a conference if they could get some NYSVoter Training for their new staff. So Patrick and Greg are going to be providing that to them on Thursday afternoon.

Douglas Kellner: Anything else? Alright Information Technology Mark Goldhaber.

Mark Goldhaber: Thank you Commissioner. We have been scrambling to get everything back up and running following the flood. I found out about the flood as I got off a plane in Florida so I was working with my team remotely as best as possible and they did an amazing job in getting everything diagnosed and up and working and temporary setups for everybody that has been displaced in my absence and they did a great job. Following a meeting last week we got some better definition on what needs to be worked out to get approval to move forward. Some of the CAPAS FIDAS designs so we have a number of meetings scheduled next week to try to get that moving forward. The work with the county VPN's is now underway. We had a couple of bumps that have been resolved. We now are looking to have the initial test rollouts. If all goes smoothly at the end of this month and we're hoping to get them all rolled out within a month after the initial first three configurations go out. We will be working with each of

the counties because in the current design there will be something that we have to do at the time that the new device goes in so on their end they'll replace their device and then we'll take care of something on our end and we will work with them to make sure that it's working properly. So we will have this secure connection to the counties hopefully completed by the end of February.

Douglas Kellner: And that's part of the NYSVoter?

Mark Goldhaber: That's the part of the NYSVoter infrastructure refresh, correct. We've finished ironing out...

Douglas Kellner: So, so sorry, why do you get involved in a county? VPN is virtual private network?

Mark Goldhaber: Yes we provide the equipment for the secure connection between their site and our site and so because we provide the device to them, we have to make sure that it's configured properly to secure the connection between the two sites. So the old device that we currently have out with the counties is obsolete and needs to be replaced and there's currently a known vulnerability with it so we're working as quickly as possible to get these new devices out there so we can better secure the connections between the counties and our site. We've ironed out some of the other speed bumps with the NYSVoter Project. We think that all of the staffing issues with the contractor should be resolved. They have a new network person that's starting this week and with luck we are going to be able to get everything done before the end of the contract. If not I'm working with them on contingencies because I want them to be on the hook for anything that does not get done by the time that they said it was going to get done. And just to build off of what Todd said, we do need to work on improving the business continuity plan, not just, you know in terms of notifying everybody but in terms of having a set plan rather than okay stuff is broken, how are we going to resolve this? We want to, well we have a plan but we need to tighten it up to make sure that the stuff that wasn't addressed that we discovered this weekend is addressed in the plan. That's all I've got.

Douglas Kellner: Any questions? Alright and Enforcement Risa Sugarman.

Risa Sugarman: Good morning Commissioners. As we've discussed with Bob and a little bit with Brian, my Division was the most part of the, the biggest part of the office that was, had an impact from the flood, my entire staff is now displaced into the library of the Board of Elections and I thank the Board for allowing us to invade their space and allowing us to use that location. So Wednesday, Thursday and Friday took all of the time to first Wednesday to make sure that we were able to move our files and we were able to do that while the rain was coming down in the office. We came upstairs, I had some staff come upstairs and we moved our file cabinets away. So our files, our paperwork were fine. We didn't have any damage in that. Our floors are damaged. The rugs in my particular office and along the windows have been pulled up. It hasn't been decided yet what's going to happen whether they're just going to replace those or remove and replace the entire carpet. Commissioner Kosinski has seen it. I invite the rest of you, I'll take you for a tour if you'd like to see the office space. Our printer, our fax machine and our shredder are all damaged and will have to be replaced. So we, I was able over the weekend to work remotely, did some work but we have been delayed for the three days we were, I was working on my stats that has been a little delayed. But we are continuing now and really that's all I have to report our work has been a little mixed up in the last couple of days but we're still getting phone calls

and we're still working and hopefully we'll be back in our space shortly. We won't have ceiling tiles and maybe we'll have some hit or miss carpet tiles but hopefully we'll be back and we are operational but hopefully we'll be back in our space in a little while.

Douglas Kellner: Okay any questions? Alright then we move to old business. Update on the Freedom of Information Law Voter Registration Records.

Brian Quail: This is an issue where in the interest of having uniformity approach to handling requests for copies of Voter Registration Information given some of the statutory provisions that are out there, the Board informally authorized circulating a draft policy or directive on this subject to the county boards for their comments. As of today I believe we have received back six comments from county boards and also Bob Freeman with the Committee on Open Government has also opined informally on the regulation and we're continuing to receive comments. We expect that as a result of the Election Commissioners Conference which is occurring in Albany this week that during that process or rather that conference we will receive additional comments and feedback. Substantively some of the things that have sort of come up is that one of the commenters was very thorough and it pointed out that we have a missed citation in our last citation. We have 6215.5 and it should be 6212.5 and so it's nice that people are reading and examining this very closely. Also there seems to be some concern out there about the final provision in the PROS policy dealing with the timeframe for responding which in all fairness is also something that our PIO noted as the draft policy was being worked through. There's a provision there that while it's not mandatory, it asks Boards to respond to document requests within one business day and some of the boards have indicated that even aspirationaly that could be potentially a problem for their operational concerns. One way of mitigating that that's been suggested is placing that standard in the context of when someone needs something to facilitate a ballot challenge as opposed to not an across the board standard when it's necessary. Because one of the things that this is designed to do is to recognize is that when you only have fourteen days to sue or three days to generally object or six more days to specifically object, every single day really matters to you in terms of getting the information that you need to review documents. And in the same respect if you are responding to someone's challenge of your documents, you have the exact same timing concerns. So, even though the language in that provision is not mandatory, it's aspirational. There was a great deal of concern sort of mentioned about that and one of the ways to deal with it might be to better explain the context of when speed is of the essence and to ask the boards to do the best they can. I would also note that there's no evidence that they're not doing that already. I think most boards if not all of them are very sensitive to the fact that when they need to provide information for those purposes they need to be acting expeditiously.

And other issues that are sort of part and parcel with this that have sort of come up is there's a provision in the statute that with respect to information that comes out of NYSVoter the one statewide list persons who request that information for other than election related purposes are not entitled to that information. It's essentially a provision I think that was added by the Legislature when the big list was formed to avoid commercial exploitation of the information that might invade voter's privacy on a mass scale or on a small scale for that matter. But I think they were, that they were sensitive to the fact that the danger was greater when such a huge amount of information could be acquired and on a single CD. So one of the things that came up is does the provision that relates to not allowing information for nonelection related purposes to be provided out of NYSVoter also apply to the counties in as much as the county

systems and the state system are communicating with each other and it's essentially one dataset. And in that vein there was a comment from Schenectady County on that and then Bob Freeman and his comments noted that based on the Freedom on Information Law there can be a denial providing list information when its purpose is commercial. So that's sort of my update on how I read the comments as of now and we're continuing to receive them.

Peter Kosinski: I just had a couple of things I just wanted um, Brian you made reference to this as a, as a potential regulation. Is this going to rise to the level of being an actual regulation by the Board?

Brian Quail: I hope I didn't use the word regulation. I may have used the word directive. There's a, among the powers of the Board is to issue a directive to county boards of elections in the form of guidance which is mandatory. And I'm not sure that that necessarily requires the adoption of it as a regulation but certainly it's the prerogative of the Board to determine what course it would like to set for that issue.

Peter Kosinski: So you're saying this ultimately as being a directive where the Boards don't follow it, what happens?

Brian Quail: It would be my vision Commissioner but my vision doesn't matter if it consists of yours but it would be my vision Commissioner that it be a directive to the county because the purpose of it is to set a uniform standard so that these kinds of issues are dealt with in the same way across the state.

Peter Kosinski: I'm just trying to understand though the ability of this Board to require a county board to function in a certain way vis-à-vis FOIL.

Brian Quail: Right.

Douglas Kellner: The statute gives us the authority to issue directives and to modify local county procedures but not a whole lot of enforcement short of going to court which we have never done. But we have issued directives from time to time.

Peter Kosinski: Well then I mean I'm, as I recall this issue arose because of a signature questions isn't that fair to say or am I recollecting that correctly that this the issue of FOIL compliance came up in a context of whether a board would provide signatures?

Douglas Kellner: Copy of signatures.

Peter Kosinski: Copy of a signature to a requestor of that there was some concern as I recall on the Board's part that that would violate some privacy concerns that a board might have and they were reluctant to turn that over?

Douglas Kellner: Putnam County specifically Putnam County but not...

Peter Kosinski: Right but I mean that's what prompted this so you're getting into issues now that I don't think were the concern of the original question that arose in this context and now you're starting to

get into timeframes for people to comply which I mean I guess we can look at. But as far as the signature issue goes is that addressed here as far as what boards can and cannot do with a voter's signature because I can see the concern that voters have in this realm where you're divulging my signature say to someone and then the concern about how that's used.

Brian Quail: Yes I think that it is. The main statutory provision sort of in focus is an election law provision 3-220 which provides for documents of the Board of Elections to be public documents. And then there are other provisions of the law that came along later and have dealt with when the Board is aggregating signatures and it is capturing signatures how it treats the captured signatures. And so there is among the Boards of Elections there has been some dichotomy of views as to how all of these statutory provisions relate to one another. So the main attempt here is to make clear that documents that contain original documents, photocopies of them that contain signatures are not as a matter of law unavailable to people requesting them. At the same time the Legislature determined at the time that NYSVoter statewide list was created that some protections needed to be attached to digitized signatures or the phase that I use to describe them is harvested signatures so that you couldn't sort of have this reservoir of signatures electronically that you could be plunking down into other documents. And so the regulation makes clear that computer generated facsimile of signatures are not to be disseminated except in the instances that the statutes articulated. They may be but that that regulation or in that statute the regulation that goes along with it was not designed to upend the notion that a voter registration document is a public document.

Peter Kosinski: I'm not clear I guess. So are you saying that in this directive as you're calling it that has been drafted that that has been clarified to the counties as to how they should treat signatures? And you've not gotten any feedback from the counties on that particular topic?

Brian Quail: No there have been, I summarized sort of the main, the main feedback. I don't know if the specific comments and I assumed they had been shared with all the Commissioners. I know on our side yeah and they are relatively brief. And I think what might...

Peter Kosinski: I may have them. I don't think I've read them though.

Brian Quail: Right. What might make the most sense if I can actually pass them up to you if you'd like and certainly not want to interpose myself between the decision makers and the people who are making the comments because it's not a particularly vast reservoir of materials that we've gone through, but there have been other substantive comments by the Commissioners that in one instance a Commissioner simply indicating that they disagree with the proposal. Another Commissioner indicating that in section E, the section that I referred to that we use the word should in the description in the heading but then use must. And there was some concern about the timing element being interpreted as being mandatory as opposed to strongly aspirational. And then in the comments from Schenectady County there were several questions that were asked in particular whether or not the county was free to use the procedure but that the language in their FOIL format concluded disclosing the information if it was going to be used for commercial purposes. And a comment from a Commissioner asking sort of general questions about the preamble and certain questions dealing with potentially specific circumstances. So there's and again I expect that we'll be receiving more comments and the Commissioners certainly should have them all.

Peter Kosinski: Well I would suggest that at the conference this week this might be something we solicit more comments on from the counties. I think it's an important issue. I did notice in your recitation that there didn't seem to be anybody that actually addressed the signature question or had a particular comment on the signature question. But that said I think it would be useful if at the conference we could try to solicit more comments from the counties as to how they view this and issues they may or may not see with this. You know I will say before I would be willing to issue a directive I'd want to understand all the issues that the counties may be facing here and I think this twenty-four hour rule for example we need to look at because we know FOIL allows five days for compliance. To reduce it to twenty-four hours is pretty severe and as you said my sense is that in the context of these petition challenges the counties do make an effort to get information to the objectors or to the candidates in order for them to meet those timeframes. So I don't even know if this is really an issue out there. I'm not aware that it is. Maybe it is somewhere but I'm not aware that people are withholding information that challengers and or candidates need in that context so I don't know how big a deal it is. But I certainly think there should be some effort here to get more feedback than these six...

Brian Quail: Absolutely.

Peter Kosinski: from the counties that this is going to be sent out to them and I think we have an opportunity this week so I would, I don't know if you have any time that you've designated at the conference to maybe talk about this a little bit but I would encourage you to do that.

Brian Quail: There are a couple of places on the schedule where it could come up and it definitely was in the plan that was going to. I don't know specifically which element which spot in the program it will come up but it will. There's one minor point of clarification while the boards some of the boards that responded did react with great concern to that section on timing. That section does say whenever reasonably possible. But those words of limitation were not sufficiently comforting to all. It's a complicated issue and it's an important issue.

Douglas Kellner: And it may be, you know, I think that it makes sense to emphasize the need for expeditious response during the petition challenge.

Gregory Peterson: Except you don't want to be in a position where you're changing the laws that exist. We as an administrative body doing that I think is beyond what we should be doing.

Douglas Kellner: Right.

Gregory Peterson: We certainly can suggest but look we have to review these so you understand there are time constraints at certain points and we really want to get that information very quickly but to impose that when the FOIL does not, I think is pushing the envelope.

Douglas Kellner: I think it's just trying to find the right language to...

Andy Spano: Even if the FOIL language says five days for an answer, it doesn't say for compliance.

Gregory Peterson: That's true you can put them off.

Peter Kosinski: I realize that and having worked in the elections arena a long time I know that those timeframes don't always work because you have a three-day window to object. You know you have six days to do a spec. I mean you just don't have the luxury waiting five days or being put off because they said they can't do it. So you know the realities of the situation are those don't always work. But again to give them a directive that says one day seems, you know, maybe more than I want to do that's all I'm saying. I think we need to look at it and then come up with something that's workable I agree with the counties as well. And sometimes they get overwhelmed. I mean, you know, I can easily see in a context of an especially a small county that may have several objectors coming in to turn it around in twenty-four hours is going to be difficult and then it's which one do I do first and how do I do that. I just want to be cautious because people use that directive and you know I want to be sure the counties are comfortable and are able to comply with what we think is reasonable.

Andy Spano: But you know that this could be used that way. Why are people always overwhelmed? And that's you, so it's good to have a direction that people can follow whether it's a directive or it's something that's advised but we can take that up later.

Douglas Kellner: Alright so we'll, I thank you for your efforts in a very thorough report and we'll continue this as old business until we get a follow up report at the next meeting. Alright so next is the resolution proposing amendments to part 6200 section 10 of our regulations those of the Independent Expenditure Regulations.

Bill McCann: Sure further Commissioners directives Brian and I put together this version is an update to make the regulations in the first base important to the statutory amendments that were being made in the budget and our next task after this would be to focus specifically on, we already have started the conversation to work towards a conclusion on coordination.

Peter Kosinski: I just want to understand in my own mind that as to what these constitute. So is there anything in the proposal before us that in any way goes beyond basically a simple recitation of what the statutory changes were in this past year to this particular provision? So in essence as I understand it these amendments amend the old regulations to just incorporate the changes to the independent expenditure statute that was enacted this past session 2015.

Bill McCann: Correct we well with one modification well Commissioner Kosinski you had asked for some factors under definition of membership organization, etc. to clarify whether something would or would not lead to the conclusion that for instance you were or were not and so we did make that change. But that had already been discussed in Kathleen's previous iteration that was brought to the board so there was nothing, it was that same concept was already in the earlier draft. So with those exceptions that the main focus is on the statutory provision.

Andy Spano: But this does not eliminate the discussion. This is a phase one situation.

Bill McCann: Oh yeah there's no question.

Peter Kosinski: Well I would just comment on this one and I think that part of our goal needs to be as we draft regulations that are caring for the statutory provision that we try to ride guidance in those regulations for people who are working their way through the statute. I'm not sure these have gone far enough. I think what these have done is basically take the statute and take it and put it into regulation. So in essence if I'm a person who's looking to function in this arena, the Independent Expenditure Arena I'm not really going to get much more out of these regulations on what to do than I would just reading the statute itself. And it seems to me the goal of the statute should be to help me understand how to read the statute so that I, you know am given some guidance by the Agency that's going to enforce it that how I should read the statute so I understand it better than just reading the statute itself or, you know, it sort of begs the question of what's the purpose of a regulation if it just restates the statute. And I will say there's some portions of this that are difficult to read and really understand exactly what they're meant to say how they're going to be implemented and interpreted. And I think we should be making efforts to try to flesh out these statutes and our regs to say you know in this case this is what this means. When you're doing this this is what you should do so it's clear. And I think again I think in this arena and this goes to the second portion of what we're talking about which is you know getting into the whole arena of you know when are you truly independent? What factors do you use because I think giving guidance to people is part of our job to help people who are working this area to give them some guidance as to how they should act. So I would just encourage it as we work through these regulations and as we continue to work on them which I think we should do that we, you know look at that and see if we can't do better frankly in trying to explain what some of these provisions mean.

Douglas Kellner: Commissioner I will endorse that concept that this was the preliminary draft that everybody could agree on and I think we've all stated our position that this is just phase one of the amendments. Kathleen O'Keefe prepared a draft that went into many of the substantive issues that you've raised and we are waiting for her response to that draft. And I'm just wondering what the timetable that you have in mind on the...

Kim Galvin: It wasn't my understanding that we were waiting for a response to her draft. I thought that we were going to work together and do phase one and then work together to come up with coordination efforts not respond to the document already in place.

Brian Quail: If I can offer I know that the differential and it's not a substantive one, it's a process one is that when we agreed that we were going to take out coordination and deal with the other elements, this is what we have. But with respect to coordination and one of the things that we've indicated is that it would be helpful having sort of a democratic version of coordination which is embodied in Kathleen O'Keefe's draft. That it would be very helpful just as we reconciled the other drafts that dealt with that nonissue as if there would at some point be a proposal from you on what your model would be and then we can work through. I'm doing that. We did indicate that that would be helpful. That's not a criticism that's just part of the process evolving in terms of having two drafts and coordination and the reconciling them as opposed to an amorphous discussion that doesn't get us into words on the paper.

Bill McCann: Well certainly we could work on that that's not an issue.

Douglas Kellner: Can we get a timetable on when that's going to happen?

Andy Spano: Well what about February 23rd which is our next meeting?

Kim Galvin: I think it depends on how our discussions go to be honest. I don't think we can get...

Andy Spano: Well we're getting into the season elections and so on and this is a good time to do that. February would be a good date.

Kim Galvin: If we can get there February would be a good date.

Douglas Kellner: Alright so while we adopt this resolution today which will at least post this phase one amendment out for public comment. Can we also then carry the issue as old business and get a report at our next meeting?

Peter Kosinski: Sure and I'll move that these be adopted. Now these are going out for public comment is that the situation?

Douglas Kellner: That's all it's just public comment so.

Peter Kosinski: I'll move these for that purpose the ones in front of us.

Greg Peterson: Second.

Douglas Kellner: Alright those in favor say aye.
[Chorus of ayes] opposed? Alright so the resolution is adopted unanimously and we will have a follow up report on the phase two draft at the next meeting.

Okay now we move to new business. The 2016 Legislative Packet.

Peter Kosinski: Brian's been double duty on this.

Douglas Kellner: Has he?

Bob Brehm: Yeah you know we did the best we could with the right at the time of getting our packet done was when all access to computers was shut off so.

Kim Galvin: Plus Christmas and New Year's.

Douglas Kellner: Alright well so where do we stand right now.

Brian Quail: So Commissioner we have in the materials that the Commissioners have, there's a description of twenty consensus proposals at the staff level and the Counsel's Office is continuing to work on a number of other items as well. But these on a consensus basis appear to recommend to the Commissioners the extent to which the Commissioners would like a recitation of these items to go through them in detail because I know they're in your packet of materials. We can accommodate you at whatever level of discussion would be your pleasure.

Andy Spano: I always have a problem with exempting anyone from jury duty. I mean there are very, very few people who are exempted from jury duty. Even the government has to show up. And this is not like it's a volunteer thing that someone does and they get paid.

Douglas Kellner: And I thought I had commented before and everyone agreed that we were going to stop calling it exempting election workers from jury duty and to call it that election service counts as jury duty.

Andy Spano: Well if you don't get paid I think we should count it even though you do get paid for jury duty. We should use the same numbers.

Bob Brehm: You get paid for both.

Douglas Kellner: So can we drop that item from the list and then put that as something to revise at the next meeting?

Brian Quail: Commissioner we can certainly do that or if you wanted to revise the title of it we can do that as well. It's up to you.

Kim Galvin: The courts always hates this...

Douglas Kellner: Well I think we have to redraft it so that it needs to be dropped from the list and...

Gregory Peterson: Well the definition of election board is those who have performed duties as elected officials in which case they would be exempt.

Douglas Kellner: Well I guess my point is to stop calling it exempt. First of all it has virtually no chance of passage.

Kim Galvin: The courts hate it every year.

Brian Quail: It's been in our packets for many years.

Douglas Kellner: You know in some states, Maryland in particular, they call the poll workers election jurors. And originally historically in New York poll workers were recruited by the jury system. In other words you got called to be the, it was a random selection who would be the poll worker, who would be the inspector for a given election. In the early 19th century that was the New York custom.

Gregory Peterson: I'd say let it go as it is.

Douglas Kellner: Well I'd like to just move to delete it for now. Move to delete it for now and perhaps take a stab at redrafting it. It does need retyping though. Alright...

Peter Kosinski: Is there a motion on this?

Douglas Kellner: Yeah is there, are there any other changes? Does anybody want to talk about anything else?

Kim Galvin: Commissioner Spano I think you're moving too remove the jury duty work. They asked what we were moving to?

Gregory Peterson: You want to move that now?

Gregory Peterson: Move the list with the exception of 16-02.

Douglas Kellner: Okay those in favor say aye.

[Chorus of ayes] Opposed? Alright so that's adopted.

Next item is the resolution to the testing on the ES&S Central Count System upgrade. We have the resolution in front of us. I had just one comment is that I was particularly annoyed that the original report that was forwarded to us and it was labeled proprietary and confidential. I thought that we raised this issue enough beforehand that the Operations Department would notify vendors in advance rather than forward those reports to the Commissioners. And so it, I realize that once I raise the issue the S&S immediately withdrew the confidential designation. But the fact that it went out to the Commissioners with that designation on it is a concern to me. And I don't know whether the other Commissioners share my view but I would ask that the Operations Unit take a more aggressive role initially with the vendors instead of escalating it to the Commissioner level. To remind the vendors that these reports and proposals should not be arbitrarily labeled confidential and proprietary.

Peter Kosinski: I have no problem making that directive. Normally when they submit documents to a state are they considered, is that how the label attaches, that's their normal process of treating their information in that way?

Kim Galvin: Yeah.

Douglas Kellner: If they attach the label then we cannot disclose the information in a FOIL requests...

Peter Kosinski: No, no, no I understand but I'm just...

Kim Galvin: They always remove it when we ask. I think it's just...

Peter Kosinski: That's just their normal process is they always do that and you've got to...

Bob Brehm: The regulation requires that if they're really I mean some just label everything. The regulation with regard to voting equipment is because it's a transparent process to the extent it can be is only where there are security or truly, you know, confidential but then the, it's up the vendor not to label the whole document confidential but those items within it and then we would have to redact those.

Peter Kosinski: And the burden is on them to...

Bob Brehm: They're supposed to submit to us to the time of making the initial filing the portion which is and that portion which is not so that we know how to treat it when we have it.

Peter Kosinski: Fair enough.

Peter Kosinski: Well I agree with Commission Kellner. I think we should make sure the vendors are aware this is our policy. This is how we expect to get documents. This shouldn't be happening. I agree with that so whatever it takes to inform them of that I would encourage you to do as well.

Douglas Kellner: Thank you. Alright so all of that being said I'll move the adoption of the resolution and call for a vote. All those in favor say aye.

[Chorus of ayes] Opposed? Alright the resolution is adopted. I believe we've already agreed that our next meeting date is February 23rd which is necessary because of the petition objection process for the Federal Primary, I mean for the Presidential Primary. Alright so I'll entertain a motion to go into Executive Session for a review of the Enforcement Cases. All in favor say aye.

[Chorus of ayes] Opposed? Alright so we'll begin Executive Session. Do you want a break before?