

Peter Kosinski: Okay, good morning. Welcome to the meeting of the New York State Board of Elections. My name is Peter Kosinski, and I am a co-chair of the Board. I am joined today by Commissioners Doug Kellner, Tony Casale, and Andy Spano. We are starting our meeting this morning with a public comment period. Today, we are considering the ES&S vote system for certification, and we've had a number of requests from the public to be heard on this topic. And because of that, we are offering a public comment period here at the beginning of the meeting, to accommodate those people that want to speak before the Board. Before we begin that particular period, I'd ask if any of the commissioners have any statements, they would like to make prior to us hearing from the public.

Douglas Kellner: Thank you, Commissioner. I appreciate the opportunity to just review for a few minutes the history of how we got here. For me, it has been a very personal journey because back in 1992, when New York City entered into a 100-million-dollar contract to develop what became the Sequoia Advantage Direct Recording Electronic system, I felt personally so alarmed by doing that that I asked the New York County Democratic Elections Commissioner to challenge that system, which was really black box voting in its most dangerous form, as far as I was concerned. Essentially, the results of an election were completely unverifiable, and there was no transparency. Effectively, everyone was simply trusting the persons who program computers that the results of the election would be accurate. It was the equivalent of taking a ballot box into a side room, counting the votes in secret, and then announcing the results. I was appointed Elections Commissioner, and in 1993, I am still very proud of the fact that I was the first elections official in the country to call for a voter verifiable paper audit trail, and it was a tough slog educating others in New York City as to the problems with black box voting, but as we all know that New York City never actually implemented that system; although, other jurisdictions outside of New York did go ahead with the Sequoia Advantage machine, and indeed, it is still used in some places throughout the country. At the same time that I was concerned about black box voting, I was pushing New York City to use scanners for counting absentee and affidavit ballots, and in 2000, we were eventually able to implement a scanning system for New York City elections, and I'm also very proud that at that point, we introduced the requirement that in close contests that there be hand counts of the scanned ballots. And it's taken a while for the state to adopt that rule, but finally that is now in place for New York State, New York Statewide, not just in New York City. When congress passed the Help America Vote Act in 2002, Governor Pataki appointed a taskforce for implementing the Help America Vote Act in New York, and I was honored to be one of the participants in that taskforce. At that time, Commissioner Kosinski was executive director of the State Board of Elections, and he also joined in forming the outlines of how New York would respond to the Help America Vote Act, and in 2005, the legislature, working with the governor on a bipartisan basis, at that time we had a Republican governor and Republican Senate and Democratic Assembly, passed the Election Reform and Modernization Act, which is still the key league of provisions governing voting machines in New York State today. And that law introduced a number of concepts that in my view made New York the gold standard for running elections. The law required a voter verifiable paper audit trail. The law provided for state certification of the machines, including a thorough review of software, required by law that the source code for all software be escrowed with the Board of Elections, so that it is available for public review in case of a contested outcome. It

prohibited voting systems from being connected to the Internet, and it required a three percent audit, which at the time was the standard that election integrity officials were recommending. And then again, with Commissioner Kosinski as executive director, and I was then asked by the Democratic leadership in the state to assume the current position as co-chair of the State Board of Elections for implementing that system in New York and again on a bipartisan basis, we were able to add the regulations that we still have today that again are significant because they are more stringent than almost anywhere else in the country. They include the provision that the election management system has to be completely standalone with no Internet connections at all and requires that election officials and not outside vendors are responsible for ballot configuration, again to further control the process within the state. So it's with that background that we are now examining the latest submission by ES&S for approval by the state. And for my friends in the election integrity community, I need to remind you that the function of the commissioners of the State Board of Elections on reviewing certification is a ministerial function. Our job is to determine whether the system complies with the statute and the regulations. We don't make the decision whether a jurisdiction should actually buy and use the machine. Our job is simply to determine whether the machine meets the very rigorous standards established in the New York law and regulations. Some of the considerations that people in buying the machines, certainly many of the issues that people have raised are important considerations on whether or not the machines should be used. I would ask people also to keep in mind two concerns in favor of using these machines that some people are raising. First of all is within the disability community there are many, not everyone, but many who are arguing that the current system of using a separate ballot-marking device does not give full accessibility to persons with disability who are unable to move a ballot marked by, a ballot-marking device to a separate scanner. And then a second issue raised by some in New York City is that the current auto-mark machines don't have adequate memory capacity for New York City to go to countywide early voting. I don't personally agree with that analysis. I think that New York City could go to countywide early voting with the existing auto-mark machines, but so far, the staff and commissioners in New York City have not been willing to accept those modifications in order to implement countywide early voting. Another issue I wanted to make clear from the outset is that I've spent a lot of time reviewing the literature with respect to the use of barcodes and its effect on election integrity, and it is my conclusion that those who are objecting to the use of barcodes are missing the point. We have a requirement that there be a voter verifiable paper audit trail, and it is true that a voter cannot verify the barcode, but that's not the point, because in the audit, the audit needs to review the voter's choice as marked on the ballot, and not the barcode, so that the barcode itself is irrelevant in the audit process. And it is important also for people in the election integrity community to understand that even with a hand-marked paper ballot, the actual process of counting the vote still happens inside the black box. No one can observe how the vote is actually counted on a hand-marked-paper ballot because it is the computer programming that determines the interpretation of the mark and creating the cast-vote record that leads to the counting of the ballots. So a hand-marked-paper ballot is still counted inside the black box that is not directly verifiable. Instead, whether it's a hand-marked-paper ballot or whether it is a machine-marked ballot with a barcode, there needs to be an audit that actually verifies that the ballot, that the cast-vote record for the ballot is in fact the same as how the ballot was marked that could be observed by the voter. So I appreciate you giving me these few minutes

to just review this history. I take this role that we have very seriously; although, as they say, it is a ministerial function. We can no more refuse to certify a voting machine because we don't like it, than we can refuse to put a candidate on the ballot because we don't like our candidate or to sustain an objection of a watcher at a canvass who says I don't want to, I don't want you to count that vote for that particular candidate because that candidate is unfit for service. On the other hand, we have very strict regulations, and I do intend for my part to carefully apply those regulations as we review the technical requirements for certification. So I still reject the idea that we should trust and instead insist that there be transparency and verifiability for our election systems. Thank you.

Peter Kosinski: Thank you, Commissioner. Do any of the other commissioners wish to speak? No, okay. I appreciate Commissioner Kellner's comments, his review of how the voting systems have been adopted in New York, the bipartisan effort that was undertaken back in the early 2000's, which I was an intimate part of, as was Commissioner Kellner, and I agree that it was a bipartisan effort that put these regulations into place, and I am confident that going forward on a bipartisan way, we can continue to administer elections here in New York. So with that said, I think it behooves us to give an opportunity to the public to make their comments. I have received, I believe, somewhat over 300 emails regarding this particular topic, and we've had some of the people who have sent us emails request time to speak today. So, the commissioners have agreed to allow people to speak here in this meeting, and I have a list of 25 speakers that wish to speak today. Because of the time involved, I am asking, and I think we have notified people that each participant has three minutes to speak. If any questions that the commissioners have, they can certainly ask of them, but we would ask that the participants keep their comments to that time. There will be a notice during your speaking when there are 30 seconds left in your speaking time, but in deference to everyone and to accommodate everyone, I just ask that each person keep their comments to that period of time. We have prepared a list of people really based on how, you know, they came in chronologically asking to speak, and I believe all of them have been given access to the meeting today, so they can make that speech. Once they are done, we would ask them to leave the meeting, so that they don't clog up the website, and then you can rejoin the meeting as an observer after you have participated by going back through the New York State Board of Elections website, and you can then watch the rest of the meeting, if you so choose. So we'll begin with the public comments. My first participant is Emily Stewart. What I would ask is if a participant is a representative of a particular group, if you could just identify yourself and the group that you represent, and then you can give your statement. So, Emily Stewart is first up.

Emily Stewart: Yes, I am Emily Stewart. I am a member of the Bethlehem Morning Voice Huddle, which is a grassroots organization concerned with voting safety, and I have a statement that I would like to read. I believe there are numerous security issues related to the Express Vote Excel voting machines that ES&S want to have certified by the New York State Board of Elections. One of the most disturbing in my opinion is the use of Microsoft's Windows 7 operating system by these machines. As of January 14, 2020, Microsoft's support for Windows 7 ended, meaning, I quote, "Microsoft will no longer provide security updates or fixes and with continued software and security updates, it, meaning devices using it, will be at

greater risk for viruses and malware.” It is inconceivable to me, as a voter and as a voting reform grassroots organizer, that the New York State Board of Elections would consider certifying voting machines at greater risk for viruses and malware. The certification process needs to consider this basic functionality. Additionally, prior to the certification of the Express Vote Excel voting machines, I believe reassurances need to be made that there have been no financial conflicts of interest in the processing of certifying or marketing these machines for purchase. I request this based on the voting technology procurement investigation, dated September 25, 2019, by the City of Philadelphia, Pennsylvania, Office of Comptroller. From January of 2014, ES&S spent more than \$425,000.00, as of the most recent filing, in lobbying expenses related to the City of Philadelphia, including \$27,856.00 related to Commissioner Schmidt specifically. As part of its response to the RFP, ES&S was required to fill out mandated disclosure forms and disclose any campaign contributions, business, or its affiliated entities persons made, the name of any consultant used to help in obtaining the contract, and any campaign contributions the consultants made. On its mandatory disclosure form, ES&S did not disclose its use of lobbyists, the lobbyists’ activities, or the lobbyists’ campaign contributions in its bid to win the contract for the purchase of new voting machines. It is worth noting that as a result of this investigation’s disclosure findings, ES&S agreed to a nearly 2.9-million-dollar penalty, “the largest penalty in the city’s history”. Also, it is my understanding that ES&S has paid for trips to Las Vegas of an advisory board of top election officials, including from South Carolina, New York City, and Dallas County in Texas, according to records shared with the Associated Press from the Freedom of Information Act request. It’s imperative that the certification process by the New York State Board of Elections be transparent to the public. Thank you.

Peter Kosinski: Thank you. Thank you for your comments. Next, we have up Allegra Dengler. By the way, if I mangle someone’s name, I apologize. I will do my best, but if you want to just repeat it, that would be helpful, but I have Allegra Dengler as my next speaker.

Allegra Dengler: Yes, hi.

Peter Kosinski: Hi.

Allegra Dengler: So from Citizens for Voting Integrity in New York, we must have elections we can believe in nationally. Can you hear me?

Peter Kosinski: I can hear you, yes.

Allegra Dengler: Most Republicans and many others did not, you know, believe the results of the presidential election. We have seen that. New York has had pretty good elections right now, but the amount of distrust, the amount of violence, the amount of concern is going to spur the federal government to do something to make our elections better. There is a bill that has been pending that the House has passed, HR1, that would ban this type of voting machine. So, I would urge you to delay your vote. You are required to follow the law, but we know the laws are going to be changing after January 20<sup>th</sup>, when the new Senate comes in, become active. HR1 at the federal level, Senator Ron Wyden, I know, some of you commissioners are

very familiar with his distrust of this type of voting machine and these voting machine companies, along with Senator Gillibrand and Senator Klobuchar, they have been pushing these acts at the federal level. The paybacks specifically banned any ballot-marking device that passes the paper under the print head. In his testimony, on the congressional record in 2019, Wyden said, "I believe the worst thing you can do in terms of election security in America is this, using this type of voting machine, it is the worst thing you can do in terms of election security in America short of putting American ballot boxes on a Moscow street." I sent you a forty-page document about the corruption and the problems with ES&S with Express Vote Excel on paper, so I am not going to go through that. Of course recently, there has been a major security breach in the Capitol, with the Orion SolarWinds attack. So I would just, thanks for persevering to keep the system of paper ballots hand marked by the voter as the basis of elections New Yorkers can believe in and delay voting on this voting machine until the new laws are in place. Thank you.

Peter Kosinski: Thank you. Next, we have Jennifer Wilson.

Jennifer Wilson: So, thank you for giving me the opportunity to submit public comment. My name is Jennifer Wilson. I am the Deputy Director for the League of Women Voters of New York State, and I want to start out by making it clear, I am not a technology expert, I am not a security expert, I am not a computer scientist, but I am a voting rights advocate, and I am always in favor of anything that makes it easier and more accessible for New York State voters to access the ballot. Since last February, I have had the opportunity to demo this machine on several occasions, and I have read both of the independent reports that were compared by NYSIT and S Elect Compliance, and our national organization also urges us to use the SARAT criteria, which stands for secure, accurate, accountable, accessible, and transparent. I haven't quite memorized that one yet. But after taking these goals into consideration and working with some of our partner organizations, the League is not at this time taking a public position on the certification of this machine. There are definitely some drawbacks that have been cited by disability rights organizations and language accessibility experts, but this machine does offer a lot of positive features as well that aging equipment in New York State currently does not offer. The League strongly supports recommendations made by Disability Rights New York to ensure voters' identities are protected, and efforts are made to enhance the audio read back feature to include reading of party names and write-in candidates. We would also urge the State Board to consider again reviewing the language accessibility of the Express Vote Excel and to remedy the ongoing issue of activation cards only printed in English. And in addition to these recommendations, we would urge the State Board to continue the conversation on the certification of this machine. Based on the reaction of many organizations and individual voters, we greatly appreciate taking part in this public comment period. A greater opportunity for public outreach would benefit both voters and the State Board in their decision-making. Now, more than ever, voters are concerned about the sanctity of their ballot and holding additional remote public demonstrations, public comment periods and any kind of public outreach will further educate voters on this new equipment and address their fears of fraud and hacking. So, thank you again for the opportunity to provide comments, and we hope to continue this conversation before this machine is certified.

Peter Kosinski: Thank you. Next, I have Arnold Gore.

Arnold Gore: I thank you. I would like to oppose the purchase of the ES&S at Express Vote Excel Machine. It has been found to be readily hackable. It is impossible to get 100 percent security guaranteed with electronic voting machines. New York uses paper ballots that can be recounted in order to have good reliability. Touch screen machines are very unreliable. Even though there is a printout of the recorded vote, computer experts have found that the printout can differ from the actual choice of the voter, and the printout can also be altered after the vote is cast and recorded. Paper ballots and hand counting of election results are the most accurate and cheapest. Most advanced countries in Europe use paper ballots and hand counts. Results must be delayed, but it is worth waiting for. It will restore confidence in elections that have been undermined recently. In a memo from Brendan Lovullo, who on a call as the Deputy Director of Election Operations in January 24, 2019, indicated that ES&S had deceived the Board of Elections once before by not disclosing everything about their court involvements. This is not the most reliable company to depend upon. Thank you.

Peter Kosinski: Okay, thank you. Next, I have MC Ironside.

MC Ironside: Good morning.

Peter Kosinski: Good morning.

MC Ironside. Thank you for the opportunity to speak. I am a resident of Rockland County and am also in the Rockland Citizens' Action Network. We are very concerned about voting security, and several issues have been brought to our attention with this system that I would like to ask that in line with previous statements that the purchase, or the certification of this system be withheld until after new federal guidelines are issued, and that also the security issues having to do with this solitarily being based on a very outdated Windows version would seem to make this system not certifiable at all. So, again, I am not an expert, but I'm a citizen, and I care very deeply about our elections, and I would like to have you commissioners make a decision that will reassure the public about the security of our elections. Thank you very much.

Peter Kosinski: Thank you. Next, I have Sally Castleman. Is Sally Castleman on the call?

John Conklin: She is trying to speak, but she is muted.

Sally Castleman: Am I unmuted?

Peter Kosinski: Yes, I believe you are.

Sally Castleman: Okay. Thank you. I am Sally Castleman, and I have worked since 2004 to promote transparent and verifiable elections in our country. I have worked with several national organizations, and from 2006 to 2016, I was a cofounder and national chairperson of Election Defense Alliance. As has been stated, and as we all know, it is essential that both

winners and losers of our elections, as well as all our citizens, know that the outcomes are legitimate. As Commissioner Kellner pointed out, New York at times has been an example of election practices that are better than most states. However, the new barcode writing equipment that you are considering, the ES&S Express Excel will not produce election results that can be trusted, and in fact, does not even meet New York's own regulations. And those regulations mandate, and I quote, "A voting system in which a voter records his or her vote by placing a mark on a paper ballot." The machines you are considering violate this New York State regulation. Express Vote Excel provides touchscreen vote capture that incorporates the printing by the machine of the voter's selection as a cast-vote record. Furthermore, if the voter were to check the ballot printed by the machine, the voter is reading a copy that is not the mark on the ballot that will be read and counted. That mark will be a barcode that is not decipherable by the voter. The voter has no way to know that the barcode corresponds to his or her actual votes. It is not about the audit; it is about the vote when the voter marks his or her ballot. This is not transparent. There are additional issues that I have put in a letter, but this is the one I want to stress! A barcode indecipherable to the voter is hardly a legitimate or transparent vote. Even if the vote were not a barcode, if it is written by a machine and not the voter, there is no way for the voter to know for certain that that is the vote that is going to be counted. The machine could show the voter anything it wants and put something else in the actual document that will be counted. To be consistent with your own New York State regulations, you must establish that this equipment does not adhere to New York's standards. Thank you.

Commissioner Kellner: Um, Ms. Castleman, this is Doug Kellner. You read a citation about the requirement of marking a ballot. Do you have the actual reference to that? You are muted.

Sally Castleman: Hello, am I unmuted?

Peter Kosinski: Yes.

Sally Castleman: Okay. It's 6201.1 (u).

Commissioner Kellner: I am sorry. Say it again.

Sally Castleman: It's 6209.1 (u).

Commissioner Kellner: 6209 or 6210?

Sally Castleman: I have 09. I could be wrong. I could have written it wrong, but I have 09.1. In my document that I submitted, I also cited the regulations.

Commissioner Kellner: Alright, that's just a definition of an optical-scan ballot, but the New York law allows both optical-scanning and direct recording electronic machines, as long as the direct recording electronic machine produces a voter verifiable paper ballot.

Sally Castleman: Yes, and I am saying this is not voter verifiable. My point is that this is not voter verifiable because the voter can't read a barcode.

Commissioner Kellner: Yes, except that is not what the ballot is. The ballot is the choices printed out.

Sally Castleman: But the voter has no way of knowing that what is printed out is what he or she voted. If the voter marks

Commissioner Kellner: Ms. Castleman, if you hand mark a paper ballot, you also don't know how the scanner is going to count that ballot because the scanner on a hand-marked-paper ballot is still counting the ballot in secret according to the programming of the scanner.

Sally Castleman: Yes, but, Commissioner Kellner, most scanners these days take a digital image and they count the image, and those images are supposed to be part of the record and kept for 22 months, the same as all the other election equipment, so the issue of the scanners is separate from the issue of hand-marked-paper ballots, and I understand there needs to be other systems for the disabled, but in terms of the majority of citizens, they should be able to hand mark their ballots in ways that they themselves can read. Thank you.

Peter Kosinski: Okay, thank you. Next, I have Daniel Wolf.

Daniel Wolf: Hello Commissioners. Can I see? Yes. Some of the controls are delayed. My name is Daniel Wolf. I am CEO of Democracy Counts, a nonprofit, nonpartisan election software development company. While a student at Harvard Law School, I wrote the world's first country specific manual for election observers. While a doctoral student at the University of California San Diego, I was a close observer of the elections in Nicaragua and Mexico. I was senior advisor to a congressional delegation monitoring the presidential election in Taiwan in 2012. In 2015, I established Democracy Counts to develop an independent people-powered independent audit system to provide independent verification of election results. I am testifying in opposition to your certification of the Express Vote Excel audit election system. My colleagues, such as Sally Castleman, whom you just heard, representing other election security organizations are testifying to specific weaknesses. I want to include those weaknesses by reference, but I am taking a more different, mental level approach to thinking about this right now. As we have seen in the last two months, and especially in the last week, the issue of trustworthiness is of critical importance for the peaceful transfer of power and the tranquil functioning of government. The breakdown of trust, whether or not the vote count has indeed been conducted and reported accurately, must be confronted, and addressed independently from the narrow issue of whether the particular system is counting and recording accurately. That these functions may be correct is irrelevant if the system cannot be independently verified to be correct. On this score, the Express Vote Excel falls down badly. The question I urge you to ask is the following: Does the system inspire public confidence in an atmosphere of public mistrust of government? I argue that it does not. Why? Because it fails the test of transparency and verifiability during the count. The mere ability to conceal possible surreptitious changes and expressions of voter intent is a fatal error. Tiny and



imperfect self-audits do not cure this. It has to inspire trust at the front end. That the State of New York may officially trust the integrity of the vendor and all its personnel, as well as all of the personnel within the vast election apparatus of the city and state is quite irrelevant. It cannot be independently proven that each and every ballot was created, counted, and recorded with integrity. Voters, like crime investigators, look for crimes where there could exist motive, means, and opportunity. We have those three characteristics, those factors in plenty in politics. Any time those factors exist, we know that the only thing preventing a crime from occurring is the personal integrity of the potential actors. Because this system is opaque and worse, unverifiable in the count, and it depends on an eventual audit that may itself be imperfect and untrustworthy, should you certify this system, you will essentially be telling New Yorkers to everyone else around the country who follows New York, to trust us. That, I would argue, is unrealistic and at this moment asking for trouble. Thank you very much.

Peter Kosinski: Thank you. Next, I have Joseph Damiano.

Joseph Damiano: Good morning. My name is Joseph Damiano. I am from the Voice Self-Advocacy Group and the Downstate Voter Engagement Group. I am a voter with a disability who has voted for eight years. I am opposed to the certification of the voting machines known as Express Vote Excel. Here are my three reasons why I oppose said certification. Number one: Voter cannot feed their marked ballot back into the machine to confirm that their marked ballot correctly has been marked for whom and what they wish to vote. Number two: The glass guard covering on the machine prevents voters with low vision from being able to see the ballot, and number three: Voters disabled and not disabled, who wish to use a ballot-marking device, must use a ballot which is known as a skinny ballot with dimensions that are eight inches long and three inches wide and not the standard ballot dimensions. Also, I recommend that the New York State Board of Elections train an advisory board. The advisory board should consist of New Yorkers with many different disabilities. Its role would be to assist the New York State Board of Elections in creating greater access for people with disabilities in regard to voting. Thank you.

Peter Kosinski: Thank you. Next, I have Ruth Strauss.

Ruth Strauss: Hi, I am Dr. Ruth Strauss. I am actually a member of Smart Elections.US, also several voter-integrity groups, as well as having reviewed the City of Los Angeles technical report on our machines, which found forty-three faults and seven outright fails, but were used anyway. So, I think that is problematic. Fortunately, or unfortunately, due to COVID, most ballots were hand marked, and the machines were not used. My comments are a little bit different. I am sorry, but I am going to list just the experts that have testified at least to our organization that they oppose these machines.

1. Dr. David Bader, New Jersey Institute of Technology, Director of the Institute for Data Science.
2. Dr. Duncan Buell, University of South Carolina, NCR Professor of Computer Science.
3. Jen Bendoor, Statewide Coordinator Michigan Election Reform
4. Dr. David Demillo, Chair School of Cyber Security and Privacy, Georgia Tech
5. Emily Levy, Founder and Director Scrutineers.org

6. Dr. Virginia Martin, Former Election Commissioner Columbia County, New York
7. Karen McKim, Coordinator Wisconsin Election Integrity
8. Susan Pyncheon, Founder and Executive Director Florida Fair Elections Commission
9. Dr. Stephanie Singer, Research Assistant Professor, Portland State University, Former Chair Philadelphia County Board of Elections
10. Daniel Wolf, whom you have already heard from, election expert, observer in other countries, CEO founder of Democracy Counts

Groups, and again I apologize, but I just want you to understand, not only the experts, but the national groups who have reviewed this and stand in opposition.

1. Alliance for Democracy
2. Audit Elections
3. Bethlehem Morning Voice
4. Bronx Green Party
5. Citizens' Audit Broward
6. Clean Cook County
7. Concerned Citizens for Change
8. Concerned Families of Westchester
9. Consumers Health Freedom Coalition
10. Democracy Counts
11. Downtown Nashua Women
12. Social Group Dutchess County Progressive Action Alliance
13. Florida Fair Elections Coalition
14. Indivisible Scarsdale
15. Indivisible We Stand
16. Jamestown Justice Coalition
17. Los Angeles County Voters Action Coalition
18. Michigan Election Reform
19. Alliance Movement for People's Party
20. National Voting Rights Taskforce
21. New York Democratic Lawyers Counsel
22. New York Progressive Action Network
23. New York PA and Green
24. New York FAN Southern Finger Lakes
25. New York City District 16 Indivisible
26. Progressive Democrats of America
27. Protect Our Vote Philadelphia
28. Sierra Club Atlantic Chapter
29. Scrutineers.org
30. Tompkins County Progressive
31. Ulster Activists
32. Allocate the Vote USA
33. Westchester for Change
34. Wisconsin Election Integrity.

Thank you very much for your attention.

Peter Kosinski: Thank you. Next, I have Martha Harausz.

Martha Harausz: Hello, my name is Martha Harausz, and like your first speaker, Emily Stewart, I am part of the group Bethlehem Morning Voice Huddle, a concerned citizens' group that meets weekly. I must say that I feel a little out of my element here because we have a lot of professionals. I would say that my real concern is that for over 20 years, I have been a poll worker, and I have watched people attempt to go from one machine to another machine, and how often terrifying it is for them, being in a public place, doing something so important, and fearing that they might make a mistake. One of my big concerns at looking at this machine was that the editing of their ballot seems to me to be a very daunting process. I really doubt that many people would be able to sufficiently edit their ballots. I also taught literature and language for 36 years as a public-school teacher, and I know that editing is not a strong suit for most Americans. I won't take any more of your time, but I do think that I would like the Board to understand just how concerned the average citizen is. People like me, Emily Stewart, and I think one other member of our group is going to speak, that we are very concerned with our elections, and I think that there is nothing more satisfying for a voter than to actually see their ballot marked by their hand. So, I thank you for your time today.

Peter Kosinski: Okay, thank you. Next, I have Greg Titino.

Cheryl Couser: I do not see him logged into this meeting.

Peter Kosinski: Okay. Alright, if he comes in, would you just let me know, and we can add him to the end or something. Next, I have Emily Levy.

Emily Levy: My name is Emily Levy. I am the founder and director of Scrutineers.org, which is a national, nonpartisan election protection group with 900 members. I have also served, I have been involved in fighting for fair and transparent elections for over 16 years, and I have relatedly served as my community's, my city's accessibility committee chair, when the city was drawing up its transition plan in response to the Americans With Disabilities Act. I was a representative of the disability community, and we spent over a year looking at how to make the city's facilities and services accessible to people with a variety of disabilities and combinations of disabilities. Never in that time were we asked to provide access in a way that destroyed the purpose of the thing that we were providing access for, the way that using a system such as the Express Vote Excel destroys having the ability to have fair elections in order to provide access. Never were we asked to insist that every member of the public use an adaptability device because some people needed it. So, like for example, we weren't asked to tear downstairs because some people with disabilities couldn't use them. We were asked to add ramps. So, every person who is a part of the disability community who I have spoken to, when they understand that their, a choice is sometimes made to risk the security of an election in order to provide access, every single one of them has said that that's ridiculous and that they would rather vote in a completely separate manner from able-bodied voters than have the integrity of an election be compromised by the provision of disability access. So, I also want

---

to speak briefly to what Commissioner Kellner said. I have tremendous respect for your work over the years, Commissioner Kellner. Over ten years ago, we worked together on some projects, and so I am familiar with your work and your commitment to fair elections, and I believe that you are mistaken in what you said about barcodes. Okay, I have 30 seconds left. The issue is that while the voter can verify, though they often rarely do, the voter can verify the printed selections printed out by the machine; they cannot verify that those selections are fairly represented in the barcode, which is what's counted. And I hope other speakers will elaborate on that, since I am out of time. Thank you.

Peter Kosinski: Okay, thank you. Next, I have Venessa Merton.

Venessa Merton: Hi, my name is Venessa Merton. I work with the organization Citizens for Voting Integrity New York, although, I do not represent that organization. Thank you, Commissioners, for the opportunity to speak with you today. Some of the prior speakers have already addressed the serious substance problems with this particular machine. My point is focused on three aspects of the process that I would ask the Commissioners to keep in mind. First, I just want to be clear that the concerns being raised here today have nothing to do with the bizarre, deranged claims of the tin hats who are propagating all kinds of nonsensical statements about voting machines. This is a very difficult time, I must say, to raise any type of critique of voting machines, and certainly, I don't want to be associated with, and I am sure no one else does, that particular and I hope temporary situation. The second point is in deference to Commissioner Kellner, whose work I also greatly respect, no one is asking you to refuse to certify this machine because we don't like it or because it is not the best possible voting machine. The problem is that those strict regulations that have been mentioned, did not fully contemplate this type of machine, and do not address the specific issues that it raises, and our point is that there is no reason or necessity for the Board to act now to certify a new machine at a time when confidence in our mastery of election technology and computer security is so challenged. And while our understanding of what is happening in terms of Cybersecurity, we know about this horrific attack that as a country, we have had no opportunity to attend to because of our other crises. While all of this is so much in flux and in development, there is no reason and is not sensible to introduce yet another new technology into our systems of election. Boards of Elections around the state, I know you are aware of this, are still struggling with the current technology, the current machines, and the training and the handling of a lot of issues that they have already raised still requires improvement, let's say. Meanwhile, the legislature, our state legislature and our experts need time to address the specifics raised by this technology. This past year of extraordinary emergency has delayed consideration of these issues, which otherwise might have been resolved by now, and it is more than ample reason for you to provide additional time for further consideration. Finally, as an attorney and a law professor, I want to emphasize how very important it is that this Board, like all state agencies, not allow itself to be cowed or pressured or manipulated by threats of lawsuits. Any vendor, any well-resourced corporation can always file a lawsuit against any government body in an effort to stop implementation of what is best for the public, instead of what is best for those private, profit-seeking companies. Unfortunately, there are few penalties for those who abuse our justice system in this way. That is why we have, and we fund, the Attorney General's Office, which has ample capacity to resist and

respond to frivolous legal actions against our public agencies. That should not be a factor in your deliberations whatsoever. If ES&S wants to sue, let them sue. That's what our system allows for, but that should not be a factor for you. Your responsibility is to make the right decisions to protect the best interests of our democracy. That is your duty. It is not a purely ministerial function. However, in terms of the ministerial function, right now, you ought to provide an opportunity for further consideration and development of specific regulations that address this new technology before you certify it, because when you certify, boards around the state, legislatures around the state, county legislatures around the state believe that you are signaling approval of the reliability and accuracy of this machine. Even if that is not what you intend to do; that is the way it is interpreted. And you must consider that as you face this decision. Thank you again very much for the opportunity to speak.

Peter Kosinski: Thank you. Next, I have Ruth Walter.

Ruth Walter: Hello and thank you for the opportunity to speak. My name is Ruth Walter, and I am the Westchester County Legislature for District 15. Election security is in the news. We know elections have consequences, and we know that New Yorkers rely on you, the State Board of Elections, to ensure that voter intent is always secure. Last summer, five Westchester County legislatures voted against the Dominion ICE machines due to the design flaw that allows a paper ballot cast by a nonimpaired voter to pass under a print head. These machines, ballot-marking devices, are also substantially more expensive. These machines were purchased because the majority of my legislative colleagues and the election commissioners relied upon your certification. More technology does not equal more security. Every voting advocate, machine advocate, says hand-marked-paper ballots are the gold standard for voting. Touch screen voting does not allow for this gold standard. It is a degradation of the voter security we have all come to rely on in New York State. I salute Majority Leader Andrea Stewart-Cousins and the entire Westchester-Albany delegation for passing and continuing to pass measures to increase access to the ballot box. I also salute the Governor for allowing COVID-19 modifications to be put in place by executive order, including no-fault absentee ballots. But here we are, as Commissioner Kellner said, looking at a ministerial process that will certify touch screen machines. My question to you today is what does it take for the certification review to change to more accurately reflect the Cybersecurity threats we face to our democracy. Along with all 16 of my colleagues on the Westchester County Board, I signed a letter urging you to delay this certification. Thank you for your time.

Peter Kosinski: Thank you. Next, I have Anne McCabe.

Anne McCabe: Hello, I am Anne McCabe. Sorry, trying to get video. I am really impressed about what I have heard today. I come to you as a person whose voted for 55 years and whose expertise has come really just from listening to some of the people who spoke today, but hearing from them before, and from doing some reading. So, rather than to repeat what they said, and I really am totally impressed by their expertise and their facts, I would like to stress the fact that what Ms. Walter just said, it is time to rebuild trust. I was one who lived through the hanging CHADS and the resultant furor and lack of trust that followed that, who then

---

lived through, in Dutchess County at the time, massive amounts of money being put forward when there was the great voting machine grab to be the first company that would get the monies that had been, the public monies that had been supplied in order to buy new voting machines. And so, I think when I heard Christopher Krebs, the former Cybersecurity chief from the federal government, say on TV that he could say that this was the most secure election in American history, and his reason for it was simply because we had spent time prioritizing getting states to use machines, which had backup paper ballots capable of being recounted weeks after the election. To me this stood out as a really singular statement. A man who worked his entire life with technology and yet the reason he could verify that election was the paper ballot. Frankly on a personal level, I think we should just use paper ballots. They seem to be efficient, effective, and with help, I think people with disabilities would be able to use them, but mostly I think we should wait at this point that for you, to at this point certify, would not be sending a message of rebuilding trust in the community. First, we have to have the communities trust; all of us, all parts have to trust other parts and to spend State monies at this point, or at least to certify to allow Election Boards to spend State monies at this point, would not send a good message. Thank you for listening to me. I really learned a lot today. Thank you.

Peter Kosinski: Thank you. Next, I have Kathleen Collins.

Kathleen Collins: Hi, can you hear me?

Peter Kosinski: I can hear you.

Kathleen Collins: Okay, great. I'll start. My name is...

Peter Kosinski: I don't have, oh there you are. Now you have video. So ahead.

Kathleen Collins: Okay, great, thank you. My name is Kathleen Collins and I'm here speaking on behalf of the following seven organizations who represent people with disabilities. These organizations are Downstate New York Adapt, Greater New York Counsel of the Blind, The American Counsel of the Blind of New York State, The Center for Independence of the Disabled New York, Disabled in Action of Metropolitan of New York, New York City Chapter of United Spinal Association, number six is National Federation of the Blind Vanguard Chapter of Greater New York, and seven is Brooklyn Center for Independence of the Disabled. We believe that the ExpressVote XL manufactured by Election Systems and Software also known as ES&S, should not be certified presently released in New York State for the following three reasons: One, a voter cannot feed their marked ballot back into the machine to confirm that their marked ballot correctly has been marked for whom and what they wish to vote. Two, the glass guard currently on this machine prevents voters with no vision from being able to see the ballot, and three, voters disabled or not disabled who wish to use the ballot-marking device also known as a BMD has dimensions that are different from the standard ballot. The dimensions of this ballot are eight inches long and three inches wide and it is known as "the stinging ballot" thus really these machines as they presently operate violate several federal New York State laws and should not be certified for use in New York

at this time. Finally, as previously stated by my colleague, Mr. Bariano, we would recommend that in order to ensure greater voter participation by voters with disabilities, the New York State Board of Elections create an Advisory Board and that this Advisory Board should consist of New Yorkers with many different types of disabilities. This Advisory Board's role would be to assist you, the New York State Board of Elections, in making voting more accessible to people with disabilities in New York State. Thank you for your time and thank you for all your hard work this past year with the elections and I would like to continue working with you. Thank you.

Peter Kosinski: Thank you very much. Our next speaker is Harvey Epstein, Assemblyman.

John Blasco: Hi all, I'm the Assemblyperson's Chief of Staff, John Blasco. The assembly person is having trouble hearing and seeing.

Peter Kosinski: Alright.

John Blasco: Having some tech issues.

Peter Kosinski: Okay, do you want me to delay? I can put somebody ahead and when we're ready, we'll take the Assemblyman.

John Blasco: Yes, appreciate that, thank you.

Peter Kosinski: No problem. Alright then, we'll move on to Brian Reitz.

Brian Reitz: Hello, can you hear me?

Peter Kosinski: Yes.

Brian Reitz: Alright.

Peter Kosinski: I can hear you, but I can't see you. I don't know if you have video.

Brian Reitz: I do, okay. We good now?

Peter Kosinski: There you are, yes.

Brian Reitz: Alright, thank you. Hi, my name is Brian Reitz. I live in Manhattan and wish to speak against the ExpressVote XL voting machine on behalf of SMART Elections. My general argument is that we're not in an environment where we should be creating opportunities for additional scrutiny. Barely a week ago, the U.S. Capital was stormed because enough people believed an election was stolen despite any relevant evidence and to provide more error for basis claims is reckless and dangerous right now. I think a similar metaphor would be if you are hosting a live event and then you get mad at somebody for spreading the virus because they weren't wearing a mask, you're passing on the, you know,

you shouldn't be hosting the event. It's similar you know; you shouldn't be creating an environment where people can take advantage of it. Election security experts and advocates have repeatedly provided testimony against the safety and trust of this machine and we're accepting that which I believe we should because they are the experts then that means that we were to certify this machine, we are saying we don't care about the security of the election. If ExpressVote XL is certified, it will open the door to more bad faith political candidates undermining the election and that is not something we should do in this environment. Thanks.

Peter Kosinski: Okay, thank you. Next, I have Sarah Goff.

Sarah Goff: Good Morning. I'm Sarah Goff, Deputy Director of Common Cause New York. I would like to thank the New York State Board of Elections for including a Public Comment portion in today's meeting. As many of you know, Common Cause New York is a citizen's nonpartisan lobby and a leading force in the battle for honest and accountable Government for over 50 years. We have submitted written public comment, but I'd like to take a minute to outline our primary concerns. As other folks have mentioned, New York currently uses the Gold Standard in election security and marked paper ballots. There is no rationale for making our elections less secure by certifying the ExpressVote XL and making it available for purchase by County Boards of Elections. Again, as other folks have noted, the ExpressVote XL is in violation of New York State Election Law as it does not produce a voter verifiable ballot in languages other than English, and it is reliant on an obsolete operating system which would ultimately make this system vulnerable. Thank you for your time.

Peter Kosinski: Thank you. Next, I have Howie Hawkins.

Howie Hawkins: Thank you, I'm Howie Hawkins. I've been a Green candidate seven times since 1998, U.S Senate Governor at the last election for President and over the years, I've felt better about the integrity and credibility of elections results as we went from the lever machines to hand marked ballots. I used to go watch them audit the machines because a lot of times, the grains at the bottom of the ballot were counted in the Election district because the old folks couldn't look down that far, it was dark, and while I was in there, one election technician showed me how with a screwdriver you could change the results. I don't have to worry about that with hand marked ballots, and I'm worried about these electronic ballot-marking devices. I've watched them audit the hand marked ballots, scan them into the machine at the Onondaga Board of Elections, you know that gives me faith and if it's close, we can do a hand mark, I mean a hand recount. So I'm urging the Board of Elections not to certify to ES&S ExpressVote XL voting machine. The others have testified about the security in Administrative and transparency problems with this machine and how they relate to the New York State Regulations. What I want to emphasize, particularly at this time when tens of millions of Americans don't believe the outcome of the Presidential Election. There has been evidence presented but for the reason that allegation has a credibility is because a lot of the vote was done on machines in so many states. So I think that at this time, it would be terrible to certify this machine. We should stick with the Gold Standard we have, so I urge the Board not to certify this Express XL voting machine. Thank you.



Peter Kosinski: Thank you. Next, I have Julie Weiner.

Cheryl Couser: She'll be unmuted momentarily.

Julie Weiner: Can you hear me now?

Peter Kosinski: I can.

Julie Weiner: Oh great, thank you. I had a lot of difficulty getting on. First, I want to say I'm a little bit submitting my comments a bit under protest because all of the report from the SLI wasn't published in reference to A through G Addenda that are not included in the what we were able to read. Second, and oh by the way, I'm a member of Citizens for Voting Integrity. I want to add to what Stuart said earlier about the Windows and Adobe systems that or maybe I'm adding Adobe, that are out of support by the networks. I believe that this is covered in the SLI report under the encryption issues, under the cryptography issues. It says the ES&S system does not comply with SBE regulations 6209-10I, which requires that all cryptographic software, in the voting system shall have been approved by the US Government's crypto-module validation program that is applicable. So without the adequate cryptography for these out-of-date off the shelf parts of the software it should not be used, it should not be approved. I want to highlight a few other points in my written comments and underline that my written comments need to be considered in detail. Section 72021T requires systems approved cannot include any device or functionality potentially capable of externally transmitting or receiving data via a wireless port. I have to, your technical people ought to know that any port can be transformed easily now into an access point to the internet. ES&S, the voting, any port is potentially capable of externally transmitting or receiving data. This capability is in violation of New York Election Law 72021T requiring it to be approved the device can't have any functional potentiality. Over here are a little tiny dongles, all of you have used them to attach wirelessly your mouse and so proving that any USB port and in fact, if you will check the technology today, any port can be used to set up internet access so that the role for potentiality is not fulfilled so you would have to not approve this voting machine because it does not comply with New York State Law. Second, oh yea, I just want to add a USB dongle is defined, the quote in my submission is includes these instructions; simply plug in the USB Bluetooth dongle adapter into your computer's USB port and any Bluetooth peripheral device will be able to be equipped. Section 4132 provides that equipment in polling places include separate boxes for the purpose of receiving ballots. This is not, this is a Hybrid voting machine. The ballot box is not separate that is supported by the XL live report which describes it as, which mentions on Page 31, the ExpressVote XL will tabulate the summary card when the cast button is pressed, but just prior to the party entering quote, "the attached ballot bin or containers". So there's no separate ballot bin in the Hybrid voting machines. The problem here is, and this is also outlined in, this is also referred to in the report rather obliquely, the problem here is that New York State Law has no provisions for certifying hybrid voting machines. You complain that the, you complain that the, that the, you complain that you're using DRE rules. You gave instructions under Rule 6209 2 F1 IV or for DRE, that means touch screen voting machines and how they can be certified, and ES&S replied, oh well, but we're not a DRE, we're a hybrid. Well they have a point there. You folks at the

Board of Elections instructed SLI to ignore the fact that there was, there is no provision in the New York State Law for certifying hybrid voting machines and you instructed SLI instead, to test the machines based on all the Laws that, and instructions and regulations that apply to DREs and to testing simple optical scanners, so that completely, so you're saying to us that you can only do what's under, what's allowed under New York State Law and Regulations and there you go yourself and creatively walk around the directions and say and you just hand wave and tell them, well, we didn't have any directions from the Legislature for certifying hybrid voting machines so go ahead and certify it under the DRE regulations and then also certify it under the Optical Scanner Regulations. That completely ignores the fact that a Hybrid is a completely different thing, that a total is not the sum of its parts. A hybrid voting machine has a particular part. It has a belt that carries the voting, carries the ballot right back under the printer after the voter casts their ballot, so there's absolutely no way for you to, for this machine to comply with any provisions allowing for evaluation of the ballot, let alone the evaluation of the ballot right next to computer monitor after it passes. So I am saying, you're telling us Mr. Kellner, with all due respect, that you have to comply with New York State Election Law and then you give hand waving instructions to SLI and the testers to go ahead and certify it under regulations that do not apply to it. So going back to the problem of verifiability of the ballot, I'm sure you need me to come up with which number, it's in my submission, the actual regulation that requires that the ballot summary be able to be compared to the ballot. I don't know how well you can see this, but the way, this is an ES&S picture of their voting machine, there's a great big touch screen that is named the Ballot and by the way, this is another systematic, here is the official, this is the official ballot. The official ballot is not ever being used to verify the vote, instead you sneak around the law again to make this ballot summary be the official ballot, but you won't call it the official ballot. You just call it the ballot summary because all of its characteristics violate all of the laws and regulations that apply to the design of the ballots. It only reports in English. It doesn't include the name of the offices that are being voted for and the provision that it can't be compared. So here is the big screen, here is the tiny little slightly recessed ballot summary and the problem for the voter is that the second they indicate that they've completed marking their ballot, a pop-up comes up that it obscures voting, it obscures the screen so the voter can't even see to compare, and that is a direct violation of the rules that they can compare.

Peter Kosinski: Ms. Weiner.

Julie Weiner: I'm sorry

Peter Kosinski: Ms. Weiner.

Julie Weiner: Yes.

Peter Kosinski: Your time has expired. Could you just wrap up.

Julie Weiner: Okay, thank you for the. There are many more points in my submission. I also didn't get a chance to speak out loud about the photography issue, or maybe I did include that, so thank you very much for the time to speak. I urge you to read my submission through. I've

done my best to supply you with regulations and if I can finish this sentence with just mention of that the US is a signatory to the International Convention on civil and human rights and that that requires equality under the Law of Equality of Opportunity on Discrimination Against People who don't speak English or who have disabilities. So you're not supplying the ballot in English is among the many ways, including the fact that it can't be verified, that discriminates against the voters. Thanks again.

Peter Kosinski: Thank you. Okay, next I have Nick Smith.

Nick Smith: Thank you very much. Good Morning everyone, I'm Nick Smith, I'm happy to serve as First Deputy of Public Advocate for the City of New York, under our City's Public Advocate, Jumaane D. Williams. Thank you for the time. So I'll just start with the inclusion and work backwards no vote on the certification of the Express XL voting machines, and I'm going to frame it this way: Think about it from the perspective of the average voter who may not be involved in groups like this, or in Government, and they even Google like what the Express XL voting machine and how should I think about it as a voter? The first thing they will see is that in 2019 in Northampton, PA, there were vote count irregularities in the election there and where quote "they were incorrectly recorded votes for several candidates in the November election prompt in the county to county backup paper ballots to identify the winners". That is not by the way express confidence, and even though I know that the ES&S statement saying that we fixed it and there was a mis-programming. That is actually the problem. How can the average voter have confidence in the machine when the vendor themselves didn't get the programming right in its debut? Secondly, New York City has shifted to a Ranked-choice voting system that is going to be debuted firstly in a City Council election out in Southeast Queens. We have no evidence to my understanding that these machines will be able to handle the new Ranked-Choice voting process where folks select several candidates and there's a post voting tabulation. I think Common Cause pointed out additional few points. This barcode issue is very problematic, so although as I've heard you can, you know, when you vote there is a printout that shows you names, the barcode itself is the problem. No voter should have a receipt that or printout that shows a barcode that the cannot independently easily and immediately verify. That is just a big problem. Barcoding is a big problem. Secondly, I think again is Common Cause mentioned, there is a violation of current State regulations or law in terms of not providing that information that is mentioned in languages other than English. And lastly, of course there are documented accessibility issues with these machines. So those are a few core identifiable problems, and the summary is with those issues it is not right to move forward with the certification of this machine, particularly with this vendor. We have three million voters who voted in the 2020 General election in New York City alone, about 2.25 million voted in person, and you know, the last thing the State and the City should be doing is adopting a machine that those voters can't rely on and mind you, even with the new machines, there may be longer lines because it takes more time for voters to adjust to a new system thus potentially also disenfranchising other voters. So I said 3 million, we want more than 3 million people to vote from New York City, and so those are our core points and to wrap, again we call for of the rejection of the certification of this voting system. Thank you very much.

Peter Kosinski: Thank you. Is Assemblyman Epstein available now or not yet?

Harvey Epstein: Yes, I'm here. Can you hear me?

Peter Kosinski: Assemblyman if you want to go ahead.

Harvey Epstein: Yes, thank you. It is easy to follow Nick because we agree on most things, so thank you Nick for laying out a lot of my arguments so I have to say less. I will start the way Nick ended, that we should reject the certification of these machines. I think one, is I really don't feel as proposed they comply with the State's statute. Just the language alone, the lack of ability to have language capacity on these alleged ballots should be enough to reject this machine. Since last year in Albany, we saw the machines that are out there, I was able to, you know, mock vote on the machines. I think they were deeply, deeply problematic, the ballot isn't compliant with the statute. It's only printed out there in English. There are so many limitations there. You can't verify, it's really difficult, I mean, Nick's point around Ranked-Choice voting is a critical one, especially this year with Ranked-Choice voting, these machines will be deeply problematic when we have Ranked-Choice voting, especially since when you, I know when I vote, I look over it three or four times to be like, oh did I vote for the right person in the right line, did I not make any mistakes, were there not other additional issues that I wanted to be thinking about, did I not keep looking along. Not to be able to touch the ballot ever I think doesn't comply with our statute. This hybrid machine, I don't think complies at all. So end of summary, I think the vendor needs to go back to the drawing board. I think we need to ensure that this machine does not get certified. The barcode issue that Nick raised as well, the accessibility issues are deeply, deeply concerning. I stand along with my colleagues in Government and with organizations like Common Cause, to ask you to reject this, and to there are questions around additional statutory language. I'm happy to work with my colleagues in Albany to amend the statute to make it clearer, but this is definitely not in line with what we intended to do, and I don't think this is anything that will benefit the millions of voters in New York and please reject this now. Thank you.

Peter Kosinski: Thank you Assemblyman. Next, I have Kevin Skoglund.

Kevin Skoglund: This is Kevin Skoglund. I'm the President and Chief Technologist for Citizens for Better Elections. I'm also a Cybersecurity and Voting System Expert. In written comments, I recommended against certification of ES&S EVS6041. (cut off) model requires Federal approval but the modifications have voided any prior certifications. It is concerning that this uncertified version makes significant code changes to every single component. SLI test report does not list those changes.

Peter Kosinski: I'm sorry, we are having some trouble with your feed Kevin.

Kevin Skoglund: Can you hear me?

Peter Kosinski: I can now, but I missed a part. You should go back to after you were talking about the changes that ES&S made to the software.

Kevin Skoglund: Certainly, the version being considered also uses extremely outdated software. It runs on Windows 7, which became end-of-life a year ago. End-of-life software cannot get critical bug and security patches unless counties pay a lot of money for extended support contracts. Taxpayer money should not be spent on outdated insecure software. I do not understand why ES&S is asking New York to certify this old software when they have a newer version. EVS 6100 uses Windows 10 and was EAC certified in September 2019. At that time, ES&S said they would migrate their customers to Windows 10. A year ago, ES&S took this new version to Texas for State certification. Initially ES&S told New York, its version used Windows 10 too like Texas, but SLI made them correct it because it is not true. It's weird. Both the old and the new version include the ExpressVote XL and ExpressVote Tabulator components. I understand the appeal of an all-in-one device that can both mark and tabulate ballots, but these have critical design flaws. First, ballots are stored in chronological order. An election official, who knows the order of voters, could discover how they voted. This violates the right to a secret ballot. It enables voters cohesion and vote buying and selling. Second, the paper path inside the device such that every cast ballot passes through a printer on its way to the ballot box. It's like giving a cast ballot to a person holding a pen. A hack or malfunctioning printer could change the ballot or just black it all out to make it inaudible. This Board reviewed the Dominion Image Cast Evolution for the same flaw and required that the printer to be mechanically disabled until needed. But here, every voter needs the printer enabled for the device to even function. Third, the XLs privacy curtain also gives privacy to anyone wanting to break into the poorly located admin panel, which contains the elections results and the core software or to stop the ballot box, because a new voting session can be started simply by inserting another piece of blank paper. Fourth, a massive tabulation failure in Northampton County in Pennsylvania in 2019, was never independently investigated. The software flaws which allowed that failure may still exist. Fifth, many voters, especially voters with disabilities or using non-English languages find it difficult to verify their ballots, in part because it has small faint text whose size and language cannot be changed by the voter. For these reasons, I recommend that the Board reject EVS604. The Board should invite ES&S to submit EVS6100, but without the ExpressVote XL and the ExpressVote Tabulator. Thank you.

Peter Kosinski: Thank you. Next, I have Virginia Martin. [Long silence.] You seem to be having technical difficulties with Virginia. I can skip over Virginia and go to our next speaker, if that is appropriate here and see if you can resolve those difficulties. We have Lulu Friesdat as our next speaker, if you want to insert her and we will try to resolve Virginia's issues.

John Conklin: Go ahead and do that.

Peter Kosinski: Can we have Lulu Friesdat?

Cheryl Couser: I believe we've unmuted Ms. Friesdat on our end. She can unmute her phone and proceed.

Peter Kosinski: I still have Virginia Martin on my screen. Are you going to put in Lulu Friesdat? How do you want to handle this? We're actually almost done with our speakers here. I have three more speakers that are listed on my list for today. Cheryl, are you able to resolve those?

Cheryl Couser: Yes, Ms. Martin is muted on our side and Ms. Friesdat is unmuted on our side.

Peter Kosinski: Okay, then we should take Lulu Friesdat first.

John Conklin: Unfortunately, since we can't see her, we can't tell her if she is trying to talk.

Peter Kosinski: Okay. Is there another way to communicate with her to see if she is aware that she's on?

Cheryl Couser: I will send her an e-mail. In the meantime, in the chat room, Ms. Martin indicated, oh actually, both Ms. Martin and Ms. Friesdat indicated that they are here.

Peter Kosinski: What does that mean?

Cheryl Couser: Ms. Friesdat, if you are available, can you speak? She said she has unmuted herself but seems that we cannot hear her.

Lulu Friesdat: Hi, can you hear me now?

Peter Kosinski: I can. I can't see you.

Lulu Friesdat: Can you hear me now?

Peter Kosinski: I can, I can hear you, but I can't see you.

Lulu Friesdat: Hello.

Peter Kosinski: Hello.

Virginia Martin: I'm here. This is Virginia Martin.

Cheryl Couser: Can you identify yourself, because I believe both Ms. Friesdat and Ms. Martin are unmuted.

Peter Kosinski: Let's take them one at a time. So I think Virginia Martin, you were first. If you are unmuted, just go ahead.

Virginia Martin: She is trying to log back in with a different browser. This is Virginia Martin.

Peter Kosinski: Go ahead Virginia.

Virginia Martin: Yes.

Peter Kosinski: We can hear you, go ahead.

Virginia Martin: Hello, can you hear me?

Peter Kosinski: Yes. Apparently, she can't hear me though.

John Conklin: Virginia, can you hear us?

Virginia Martin: Okay, this is Virginia Martin.

John Conklin: Can you hear us Virginia?

Virginia Martin: I am unmuted.

Peter Kosinski: Can you text her or something and tell her we can hear her?

Cheryl Couser: Ms. Martin, we can hear you, please proceed.

Virginia Martin: Can you hear me?

Peter Kosinski: Yes.

Virginia Martin: Right, this is Virginia Martin. Thank you so much. I'm not turning the video on because I'm having a little trouble. Good morning, Commissioners, thank you so much for being with us all. I was an Election Commissioner in Columbia County. First, I want to reiterate what I said in my written comments about the Express ballot verification which the law of course requires. Okay, I was speaking. Could you hear me then? Yes. Okay, secondly, yes.

Cheryl Couser: It has been indicated to me that this is a...

Virginia Martin: Yes.

Douglas Kellner: Lulu Friesdat says she is in the waiting room if Courtney would admit Lulu to have her testify.

Virginia Martin: You did hear me and can continue to hear me. So, I want to talk about how the Express Vote prevents voter verification and I also want to add that as experts have said, ballots from this machine cannot be successfully audited. So first, the voter can't verify her vote. She cannot tell that the barcode that she is trying to look at is correct. She is asked to trust that the written name that's printed on the ballot somewhere on the card that she peers at

behind a piece of glass is correctly repeated in the barcode. This is not verification. This is hoping and praying. It's guessing that the experts who certify the voting machine made a good decision and that the County personnel who programmed the machine didn't make a mistake and that the equipment has not failed. It's trusting that no hack has occurred. That's not verifying. That's assuming, and you know what the definition of "assume" is. Verifying is knowing that it's so and the voter doesn't know that it's so. The ExpressVote ...

Peter Kosinski: John, we've lost her again.

Virginia Martin: May I finish? Can you hear me?

Peter Kosinski: You are in and out.

Virginia Martin: Well, alright. I'm going to continue, is that okay?

Peter Kosinski: Sure, you can continue.

Virginia Martin: Verifying is knowing that something is so, and the voter doesn't know that. The ExpressVote verification process is too complicated for almost any voter to truly comprehend, and no voter can confirm that that barcode is correct. What's more, research shows that most voters don't do, yeah. Research shows that most voters don't do even the simplest of verification and the voters that do try to verify their ballot, an overwhelming majority miss the mistakes, so how is that verification? So to my second point about audibility, what good is a post-election audit of ballots that voters didn't directly mark, and they didn't actually review? I say it's worthless. Experts say the results of a system like that that are not defensible, that such election cannot be trusted and that it cannot be audited or just approve that it's accurate or that it's not accurate. The ExpressVote fails legally on both ballot verification and audits. Today as the nation reels as people are crying foul about their elections, we should not be heading in the direction of unverifiable, indefensible elections. We should be building voters confidence, not eroding it. Thank you.

Peter Kosinski: Okay, thank you. And then we have Lulu Friesdat. Are you able to speak?

Douglas Kellner: We see you, but we don't hear you, Ms. Friesdat.

John Conklin: She is unmuted at our end. I neither see nor hear her.

Cheryl Couser: Her video is coming through and she is unmuted as well.

John Conklin: She is in the second row, Peter.

Peter Kosinski: I'm not sure what that, is there something I should do?

John: No, I don't think there is anything you can do.



Peter Kosinski: Okay because I'm neither seeing nor hearing her.

Douglas Kellner: I am patching her through my cell phone if Ms. Friesdat will pick up her phone.

Lulu Friesdat: Hi Doug, can you hear me?

Douglas Kellner: Yes.

Lulu Friesdat: This is a weird awkward patch that's going to kind of give me feedback, but I will, it's kind of weird and I'm not sure if I can concentrate while my phone....

Douglas Kellner: Turn your own sound off then.

Lulu Friesdat: Okay.

Douglas Kellner: Let me ask everyone else: Are you able to hear her through my phone?

Peter Kosinski: Yes, can you get the volume up at all?

Douglas Kellner: No, we don't hear you. You are not coming through on the phone.

Lulu Friesdat: Okay, can you hear me now?

Douglas Kellner: Yes.

Lulu Friesdat: Okay, I'm going to start. You can hear me?

Peter Kosinski: Yes.

Lulu Friesdat: 1:45 Thank you for your patience with technical difficulty. I really appreciate all the patience and Doug clearly showing himself as somebody who can think quickly on his feet, called me, and got me through. So kudos to you Co-Chair Kellner and thank you for all of your services over the years to the election officials here. I know that you work very hard and take your job very seriously. My name is Lulu Friesdat. I am the Executive Director of Smart Elections. I just wanted to very briefly touch on this question of the barcode assures security stability in the future of elections. In New York's roll as a leader in election security. We have to think really carefully about this, about where we are going. For the future of elections, as we understand it, based on current legislation in the Federal level, is that many, many states will be doing risk limiting audit. That is the next step in election security. We cannot audit this machine and that is according to the inventor of risk limiting audit, Phillip Stark, the Professor of Statistics at University of California Berkeley who has developed with blooming audits said clearly in his publication, ballot-marking devices cannot assure the will of the voter, that on this type of system, a ballot-marking device that reduces the ballot for the voter cannot be audited in a way that assures that the will of the voter is actually represented.

---

He literally says this type of voting machine, you can't audit it. You can't do an audit with it, and I want you to read his literature. They are very, very clear about this. If you certify this machine, you're basically putting New York into the gutter on election security and saying that our state is never going to comply with current contemporary best practices. This is a very, very bad decision. This is a fork in the road that you have to make, and you have to understand also with the barcodes. I understand, Commissioner Kellner, you said that the audit is going to check the mark of the voter, but the voter never makes that mark. The machine makes that mark. Again, you cannot audit this and the way to know that this is a bad decision is because Colorado, who is also a leader in elections security has banned barcodes for voting. Again, please look at the literature, because it's a very important decision that you cannot go back on. I want to talk about a few other points. We did put together a whole letter that Rich wrote all of the groups that signed on today including disability group. I've got to talk about the certification process and by the way, that letter is available on our website, Smartelections.us. I encourage the public to review it. There are many details about many problems with this machine. But the certification has been unusual, and it has been forced through with breath of litigation. According to e-mails that are available on our website, the 2019 the New York State Board of Elections halted certification of your voting machine the ExpressVote XL. ES&S the vendor then threatened to sue them at which point the certification process continued. ES&S also threatened to sue Board of Elections, and even me personally, for advising the public about the issues. Why was the certification process halted and then resumed apparently under duress? And we've been told there is also extensive information available and we would be requesting it today via public record request. This process needs to be stopped at least until more can be understood about the trouble we got. This is another important point that no one has made yet: the ExpressVote XL prints the vote on summary cards that are made of thermal paper. Thermal paper, that is like what you get at the grocery store, a receipt. A report on the use of thermal paper says that "although the initial images were good, they faded after a few months in storage." A certified engineer with decades of experience said to me via e-mail, that he has seen data fade to the point of being unreadable in as little as six months and he said thermal paper cannot be relied to last the 22 months required retention period required by Federal Law. Also, data on thermal paper can be wiped away with hand sanitizer. The ballot-marking devices used in Georgia, by the way, are not printed on thermal paper. They are using a specialized paper that is more like card stock. I want you to imagine that you certify this ExpressVote XL, and it is in use in a high profile New York election that is contested and needs a hand count, say for example the New York Senate race that can tip the power of balance in Congress. As the world watches we see votes disappearing from the thermal paper summary card and the race cannot be decided. Here becomes the new war of 2000. An example of bad leadership and low confidence topic of and late night jokes having sent millions of dollars to buy disappearing votes. Now Commissioner stated we did not have much discussion over certification but disability right advocates that I spoke with said that from 2002 to 2007, the board declined to certify 40 to 50 ballot-markings that were put forward in testing and then that's five years no ballot-marking devices certified, then in 2007, they suddenly come with the Dominion DMV in a record three month time and insisted that most of the counties buy it in a matter of days. One advocate I spoke with told me "it seems like a done deal with Dominion". You did show discretion now, and you did show discretion then, and we call upon you to use it now. ES&S has bullied, has focused on

the intimidation, instead of bringing a good product to market. Please inform them immediately that the ExpressVote XL does not meet New York requirements, does not meet Federal requirements, and that it cannot be certified here. I thank you so much for the opportunity to speak with you. I really respect your process.

Peter Kosinski: Okay, thank you. And then I have one more speaker, Timothy Haliett, who is with the ES&S system has asked to speak today as well. Mr. Haliett? John, is Mr. Haliett up there, or is he?

John Conklin: He is in the queue. And he is unmuted.

Peter Kosinski: Okay.

John Conklin: We don't have a video.

Peter Kosinski: Okay.

John Conklin: Again, I can't tell if he is trying to talk because we can't see him.

Peter Kosinski: Can you communicate any other way with him to see if he's available?

John Conklin: Courtney is chatting with him right now.

Peter Kosinski: Okay.

Cheryl Couser: And his colleague, Mr. TJ Burns is also on the call, but he had just left.

Peter Kosinski: So is Mr. Haliett still waiting?

Cheryl Couser: He is still in the meeting.

Peter Kosinski: Okay. So I have him scheduled to speak so if he is going to speak, it's his turn.

Cheryl Couser: Courtney, can you unmute Mr. TJ Burns please. Mr. Haliett is unmuted. Mr. Burns, can you just turn down your speaker on your computer please? Thank you. Courtney, please mute Mr. Haliett, and we are going to unmute Mr. Burns and proceed from there.

Peter Kosinski: So Mr. Burns, so am I to understand that Mr. Burns is speaking instead of Mr. Haliett?

Cheryl Couser: Yes.

TJ Burns: Hello? Can you hear me?

Cheryl Couser: Turn your computer volume down please. It's echoing on this side. Or if Mr. Haliett and Mr. Burns are in the same room, please make sure one device the volume is totally down so it doesn't interfere with one another.

TJ Burns: Can you hear us now?

Peter Kosinski: I can.

TJ Burns: Okay.

Jeb Ryan: Hello Commissioners. My name is Jeb Ryan. We are on TJ Burn's laptop, but I will be doing most of the speaking today. Can everybody hear me?

Peter Kosinski: Yes.

Jeb Ryan: I want to thank you for the opportunity to respond to many of the issues that have been thrown out here today, you know ironically, we're very passionate about some of the same things that have been discussed today, and that is making sure that every vote is counted, counted corrected, counted accurately, and allowing voters of New York and every state in the country to 100% verify and feel confident that their vote was counted and counted accurately. So I think if I may, I'd like to just kind of run down, we've been keeping a running list here of a lot of the comments that have been made by the various presenters and just talk through them. Some of these are recurring. I've taken notes in order so hopefully we're not duplicating a lot of efforts here. I think number one on the list was there's various comments about Windows 7 and it's support. Microsoft has actually extended the support for Windows 7 to January of 2023, and those upgrades are at no cost to the counties. We've also heard many comments about the ballot in general and barcodes and various other things and it not being verifiable. This ballot ExpressVote summary card is 100% verifiable by the voter in every mode and every language. The voter also has many more capabilities using a ballot-marking device to actually verify a correction to their ballots and so forth. By voting on screen, they can vote in their language and their language only. They can change their mind like with a hand marked paper ballot where if you make a mistake, you have to exchange it. You can change your mind as many times as you want on a ballot-marking device prior to the printing, then you review what is printed. You can reinsert the card and you can verify in the language of choice and get the onset too, you know, there has been a lot of discussion about barcodes. At the very beginning, Mr. Kellner accurately portrayed what goes on with any tabulation system. There's really no difference between a barcode on a ballot-marking device ballot or the barcodes that are present on a hand marked paper ballot. There is no way of knowing that these ovals that you filled in beside a different candidates name is actually being tabulated that way by the scanner. There's audits in place in the State of New York for that very reason. There was another issue raised about that the voter has to mark the ballot and a machine cannot mark the ballot. That's not true. There have been ballot-marking devices being utilized in New York since 2008. The entire State of New York uses ballot-marking devices and has the last thirteen years. Another comment by one of the presenters was that the Express Vote does not print back the party in the audio. That's untrue and is verified by

---

Disability Rights New York and their subsequent review of the machine. There seems to be a lot of concern that Voters Choice to receive a hard marked ballot is going away. Certification or even implementation of the ExpressVote XL does not mean that you no longer or can request a hand marked paper ballot. It is another option for jurisdictions to pursue. A lot of stuff about the Auditor vote nature or inability to verify or audit this type of document. It is crystal clear on here that I voted for Andrew Cuomo for Governor, Mr. DiNapoli for City wide Comptroller, etc. This document is crystal clear. It is objective. There is no subjectivity if my oval completely filled in, did my mark extend into another oval. None of that gray area that is persistent with the hand marked paper ballot exists. This is a perfect audit trail. There are comments made that we cannot verify the ballot that it's English only, and you cannot reinsert the ballot. You absolutely can reinsert the ballot. This machine works just like the Automark mark. The Automark has been praised by the disabled community as has the ExpressVote line as being one of the only systems on the market where a visually impaired voter can actually verify what is printed on the document. After this card is printed, a blind voter can reinsert it and actually verify because it does an independent scan, it can verify what is printed and have it played back to you audibly for 100% verifiable paper audit trail. Somebody made comments about Los Angeles and issues with ballot-marking devices there, that is not ES&S, that is Smartmatic, totally different company. One of the presenters said that Chris Krebs personally verified that this was one of the most secure elections in the nation's history because paper ballots were involved. We agreed with that statement. Paper ballots were involved, and ballot-marking devices were used in every state in the country except for the three or four that still utilize DRE's including States that use the ExpressVote and the ExpressVote XL; Philadelphia, Delaware, New Jersey. All states that are utilizing this technology, we also have a 100,000 ExpressVotes used throughout the country as do our competitors have ballot-marking devices that are utilized throughout the country. Every polling place in the nation that is not using a DRE has to have a ballot-marking device. There was concern about USB drives and fraudulent USBs getting introduced into the system. As everybody knows through evaluation of the system, our USB drives are built specifically for this voting system. They are digitally signed. They are encrypted. Any introduction of a USB from an outside entity is completely rejected by the system only then to be looked at. Not to mention in addition to all those security metrics that are placed on the media itself, there are also physical controls and security measures. There are locks on the doors. There are tamper-evidence seals that are in place to prevent any kind of tampering. There was a comment about DRE and a hybrid and there are no standards for a hybrid in New York State. We've had both laboratories testify the fact that this is not a DRE and it's not a hybrid. This is a digital scan system. It scans images and tabulates from the valid images. Nothing is being recorded electronically from the voter's touch. The paper is scanned, it is imaged, that image is maintained within the system. So the gentlemen from the public advocate office raised several points and I want to hit all those. He brought up the Northampton issue in Pennsylvania. Some of the statements were not accurate. Every vote was recorded on an ExpressVote card. The gentleman was correct that there was a programming mistake that the ExpressVote did not deliver the correct results out of the machine. That was the importance of having this paper audit trail. The paper records that were created in Northampton were then brought to the central location, tabulated on a central scanner, and the results were present and all the candidates in the jurisdiction was satisfied with the results after the fact. They did not rest

---

there. The State of Pennsylvania did a thorough investigation of the Northampton issue and decided that what happened should be corrected, which it was corrected, and that the system met the guidelines and it's still allowed for use and is certified in the State of Pennsylvania. The gentlemen from the Public Advocate Office also brought up Right Choice voting. This was brought up by the Board and many of the people that are on the phone back in January 2019. Following that, we brought the machine to Legislative office building, we demonstrated Right Choice voting for the Bureau office, demonstrated Ranked Choice voting for many of the members of the assembly and state senate. It satisfied that request. It does accommodate Right Choice voting. The gentlemen from Public Advocate also brought up languages and the ability to accommodate languages. ExpressVote XL is actually much more accommodating for languages. We're talking about name on ballot, this is very restrictive. It's restrictive to the point where the City of New York can only do a trilingual ballot. So that means they have to deliver to precincts in Wayne and Kings, English, Spanish, and Chinese, English, Spanish, Korean, English, Spanish, Bengali, so on and so forth. As more languages become prevalent, the City Council is calling for more languages, that problem is only going to be acerbated throughout the process. So what that looks like for poll workers in the polling place is, okay, I have a thousand voters, so I have 300 English, Spanish, Chinese, 300 English, Spanish, Korean, 300 English, Spanish, Bengali. What you can imagine what happens is the English, Spanish, Korean gets handed out first, by noon there are no more Korean ballots. This machine, ExpressVote XL offers 15 different languages, 14 or 15 in our certification including some of the ones that are projected to be needed in New York City, allowing the voters to select their language, and view it in a uncluttered crystal clear manner where they're voting in their particular language. Now, if they want to verify that card prints in English is the same in Chinese, they can simply reinsert the card, it does an independent scan, and they can review all those selections in Chinese.

Peter Kosinski: Can I just interrupt just for a second. You've gone past your three minutes, and I just want to let you know that, you know, I think it's instructive that you allow the people to hear the different elements of the machine, but I think we need to wrap up. We have limited everybody else to a three minute time period and I was hoping we could move through this. So...

Jeb Ryan: Ok, I just, one other speaker took 10 minutes, I think with all these being, I would respectively request a few more minutes.

Peter Kosinski: Absolutely, I'll give you a few more minutes. Just be aware we do have a time limit. Okay, go ahead.

Jeb Ryan: Okay, thank you. I think I commented on the ability to correct mistakes. The process of this machine that allows you to make your selections on screen, go to review screen, if you see any mistakes, can correct them without the trouble or hassle of going back, spoiling your ballot, exchanging it for a new one. Much greater flexibility for the voter with this equipment versus hand marked. Ms. Friesdat from SMART Elections says that this cannot be audited. I think simply by looking at the card, you can tell it 100% can be audited. It can be audited by hand, it can be audited by machine, and it can be audited in a risk limiting

---

fashion as well, because every ExpressVote card that goes through is imaged and it's part of that digital record and comes with a corresponding cast vote record. Those cast vote records can be exported and absolutely utilizing risk audit, it's just not true. And then the last thing was thermal paper. This meets or exceeds the 22 month requirement being the life of this card is actually 7 years, but it is good for work to belt and suspender it. When you have an imaging system like we do, not only can you store the cards that require 22 months, the images are also zipped up and any backup of the election is stored as well. So, seven years on these, as well as the digital image. And just so a few things in closing. I think Commissioner Kellner laid things out very nicely at the beginning in summary of some of the history here. We introduced the Automark in New York then we introduced the ImageCast in 2008. They have been utilized statewide. The Dominion has been replaced with the certification of the ICE machine and they have been allowed to upgrade their clients. ExpressVote XL is the replacement or the successor to the Automark for the ES&S customers. It's a ballot-marking device. Ballot-marking devices in the State of New York have historically been used by the disabled community. The disabled community has always spoke very positively of the Automark and in like, in their letter to the Commissioners have said that the ExpressVote XL also meets their needs. I will quote one line from that letter, that is "overwhelmingly people reported to DRNY that the ExpressVote XL met their accessibility needs to vote privately and independently". This is the very machine. It's intended for use by the disabled community, and they are writing you, saying that this machine meets their needs. This is the bridge to the future for the disabled community when it comes to a ballot-marking devices. And I think Commissioner Kellner, you started off to, you said, you're not purchasing machines today. That is up to the local boards. You know, this machine was brought up back in 2019 in the March meeting where you were debating a lot of these security issues on the Dominion machine and both Commissioner Kosinski and at that time, Commissioner Peterson, advocated for the use of this type of technology. A ballot-marking device as well as a tabulator and as pointed out by Ms. Galvin in that meeting is that this is something where, where the disability community wants a device that will not only mark a ballot but tabulate it, so they don't have the added inconvenience of taking that ballot over to a scanner. Our machine is identical to what you certified in the ICE machine from the fact that it marks the ballot, images the ballot, tabulates the ballot. That's an option. People don't want that option; they can use the ballot-marking option just like they have with the Automark. They can vote whether they're using the ATA feature, they can verify, they can verify on screen, they can have their card ejected, they can reinsert, verify the scan, take it over to a scanner. There are many options before the jurisdictions in New York or the voters of New York, and I think most jurisdictions will say, you know what, we'll let the voters chose, but this machine is a vast improvement on the Automark. It's faster, does not require use of an ink cartridge, which was an expense, what the customer's hated about the Automark. It's faster so that not only can it be used by the disabled community, it can be used by any voter that chooses to vote in this manner and it is more cost effective. There have been some things said about price. A ballot like this that is restrictive, and the full face has to be printed on a 38 inch sheet that cost \$1.25 to produce. This ballot is the exact same election that I have on here: \$1.25 to \$0.09. So cost is present as well. This just allows flexibility and another way that jurisdictions, yeah, the jurisdictions can service the voters of New York. I think the most powerful thing is this machine is primarily meant for the disabled community, Disability Rights New York is

advocating for our machine. They did the opposite for the Dominion machine, and it got certified anyway, and this is the machine that is there to service the disabled community. So I think there are a lot of things that are said about our machine, about our company, many of it stems from the fear that somehow the vote can be manipulated or isn't going to be audited, and I hope you know after evaluating the technology that that is absolutely not true. It is crystal clear how it's printed, audited by machine, it can be audited by hand count. That's all I have to say. Thank you for the extended time. If you have any questions, I'll be happy to answer them.

Peter Kosinski: Thank you. Are there any questions from the Commissioners?

Douglas Kellner: If I can proceed, Commissioner?

Peter Kosinski: Do you have questions for ES&S or you just want to speak on the issue?

Douglas Kellner: For ES&S.

Peter Kosinski: Okay, go ahead.

Douglas Kellner: Alright, so first, can you tell us why this system uses Windows 7 rather than the current version of Windows?

Jeb Ryan Yes, I mean when you are, we have it in Windows 7, and we are also bringing forward a Windows 10 version. Obviously, we applied with this application back in 2018. This process has taken two years. You know depending on whether or not we are approved, you know, following that we will be coming with another version that has Windows 10 support. Obviously, we expect to do that well in advance of the 2023 expiration of support from Microsoft.

Douglas Kellner: And the current certified system for the DS200 uses Windows 7 now?

Jeb Ryan: Yes.

Douglas Kellner: So in any event, even if we didn't certify this machine, we'd still be using Windows 7 with the DS200 software?

Jeb Ryan: That's correct.

Douglas Kellner: Now, someone mentioned that the ballots are stored in order. Is that accurate?

Jeb Ryan: On a single machine, the cards do fall in sequential order. Obviously, if it's the sole method of voting, the machines would be staggered. Nobody is going to the same machine so it would not be able to be tied back to a check in procedure. Then obviously with, if there is a



DS200 or a scanner and a ballot-marking device, again, nothing sequential because some people will be going to one or the other.

Douglas Kellner: Alright, and then with the Northampton County issue that came up, I've seen your report that indicated that there are configuration errors that were made, so they were really human errors rather than the technology, although one could argue that good technology would prevent human error, but I understand, and we've had similar problems with configuration issues in New York where election officials have not properly followed protocols for configurations and had problems. But is it true that there has been no independent analysis of the ES&S report for Northampton County?

Jeb Ryan: Ah, I don't believe so. A few points on that. One, it was a programming error. The logic and accuracy testing that was done in the warehouse was not done early otherwise, the mistake would have been caught before getting to election day, but we have taken additional steps and those steps are present in the 6041 release to prevent them from happening and what we have before you in New York, and as far as an audit, the State of Pennsylvania did come in after the Northampton issue and audited the entire election. So it has been evaluated and obviously the corrections to that has been independently evaluated by, in your case, both SLI, ADSAK and NYSIT.

Douglas Kellner: Okay, those are my questions. Thank you.

Peter Kosinski: Okay, thank you then. So that completes our list of speakers today. I appreciate everybody coming and participating, and we now have our Board meeting. Now I would ask the Commissioners if they're interested, so is there an agenda item on the Board Agenda today and we have other issues to resolve. Is it the wishes of the Board that we take this issue up first or do you want to take in the sequence it was on the Agenda? Do the Commissioners have a preference here?

Andrew Spano: Can you hear me?

Peter Kosinski: Yes.

Andrew Spano: Yea, I think we should take it up now.

Peter Kosinski: Okay, alright, then we will take it up first, rather than in the sequence so that we can resolve this issue first. So I think to start for me, I think it would be helpful if maybe the staff, and that would be Tom and Brendan would just talk through a little bit of what has transpired here, from our end, as far as how the procedure has worked for this machine, the process it has gone through at the Board for determining its certification prior to it coming to this meeting here today. Tom or Brendan, maybe you could speak to that.

Tom Connolly: Alright, sorry. Sorry, it looked like I was muted for a second. Can everyone hear me now?

Peter Kosinski: Yes.

Andrew Spano: Yes.

Tom Connolly: So thank you, Commissioner. Obviously, with regard to any voting system, whether it be a complete voting system like this was for ES&S, or a modification to a voting system...

Cheryl Couser: Tom, we can't hear you.

Tom Connolly: You cannot hear me?

Peter Kosinski: I can.

Commissioner Spano: I can hear him too.

Tom Connolly: Ok.

Cheryle Couser: Never mind.

Tom Connolly: What we do here is a process that we follow, for whatever is submitted to us, there are a lot of aspects to it with regards to this individual system. There was information that was submitted to us. Obviously sometimes with regard to the documentation that occurs at the beginning of the process. There is back and forth to make sure that we have a complete application. We did, we were provided with an initial batch of source code, which we began to look at. We did get a subsequent set of source codes, a subsequent version of the source code that. That actually came to us this past March, which included some of the functionality that was discussed about potential of overprinting, which you may have seen in some of the comments. This is what we call kind of the Xbox Code because if there is a gap, if there is a space on the card that is printed by the ExpressVote, there is now a box with an X through it that is printed in that space to prevent a barcode from being printed on that after the fact. As a rule of thumb, we use SLI as our testing lab. They are one of the two voting system testing laboratories that are approved by the Federal EAC. We also utilize NYSTEC, who is our independent security consultant for doing review of all the testing labs work in addition to a lot of the other components of the testing. For the ExpressVote, we had SLI do all of the functional testing of the hardware. This, what was submitted to us was a complete system. It was a new version of the election management software that kind, is a behind the scenes software that programs the election. It also includes a number of hardware components. It includes the DS850, which has been previously certified as a central count scanner. It includes the new DS450, which is also a central accounts scanner albeit for a smaller throughput. It has a DS200 precinct scanner which is previously certified and as Mr. Ryan mentioned, the ExpressVote XL, which is their kind of replacement for the Automart, which is a ballot-marking device. The ExpressVote XL was also submitted to us in two different configurations. One as a standalone ballot-marking device and one as an integrated ballot-marking device and tabulator in one. So we obviously worked with SLI to look at the testing.

---

They developed a testing matrix, which is basically their approach for how they plan to go about testing all of the different components. We had NYSTEC review that testing matrix while there was some conversation there until we had a sign-off by NYSTEC, at which point then SLI then went ahead and executed all the required testing. In addition, there is a source code review that is done. SLI has done some of the source code review, and then we had NYSTEC engage a third party contractor in order to kind of do a secondary source code review, this to ensure that the review completed by the testing lab was up to snuff, for a lack of a better term. And they both then provided reports to us that explained the outcome of the whole process. With regard to some of the discrepancies that have been included in the testing report, which are published on our website, we had lots of conversations with both SLI, ES&S, and NYSTEC. We stated some of our concerns about some of the open discrepancies. Obviously, we started with a larger number of them, and then as we went through them, we were able to mark many of them as addressed. Some of these can be addressed through procedures like they have been in previous submissions by other vendors and also by ES&S. There were three at the conclusion of testing remained as outstanding. One that was mentioned by one of the commenter's earlier which is the cryptographic issue. This has been raised before in previous submissions of voting systems and NYSTEC agrees that like we have done in years past, this issue could be addressed with compensating controls as those compensating controls are included in NYSTEC's report which is also posted on our website. There were two remaining discrepancies that were open, and I provided the information to all of the Commissioners on those items. One is about the comparison or the printed and electronic display, other voter selections, and the other was about the alternative languages. ES&S, I stated I believe that I was provided information to the Commissioners about some of the conversations that have gone back and forth.

They have provided written responses addressing those discrepancies which have been shared with the Commissioners and I believe that largely covers the overall processing and here we are. So if there are, Brendon, if you think I missed anything?

Brendon Lovullo: No, I think that's the summation of it based on everything was sent out and I agree with everything you said.

Tom Connolly: So if the Commissioners have any questions about the process, I would be glad to answer them.

Peter Kosinski: I don't have any particular questions. I have the reports that you eluded to; one from SLI and one from NYSTEC, both summarizing the testing you identified and the different issues that were raised and the way they were either dealt with or left open, so I think for my standpoint I have the information that was provided to us by the two testing agents. I would just say that I agree with Commissioner Kellner in the sense that I think that the process that we undertake as a Board is to follow the law and the regulations that promulgated in the area of voting machine certification, and it is our job, I believe to identify the issues that a voting machine has and to put it through the process that you have identified both the SLI for the National, and NYSTEC really for State purposes, undertakes a review of the voting system and sees if it complies with the various state laws and state regulations that have been implemented in New York for certification of voting machines. I think some of the issues that

come up are not necessarily related to that particular aspect of our job. We are restricted in a sense by the statutory scheme that the State Legislature has put out for certification of voting systems as well as our own regulations, and I think it's our job to see that any voting system that's introduced into New York is compliant with those particular regulations and not necessary our own personal opinions, but it's the regulations and the statutes that have to be followed in order for a vending or a vendor to be certified here in New York. And again, our job is to certify, it's the county board's jobs to purchase. So the mere certification of a machine does not mean that it's automatically going to go into use in New York, there'd be a secondary review by any county Board of Elections once a machine is certified to determine whether they feel that machine fits the needs of their county and that's their decision whether they want to go forward and purchase one that has been certified, but clearly, they cannot use any machine in New York that has not been certified by this Board for use in the state. So I think that's the process as I see it, and I certainly am reliant, myself in large part on the reports that have been promulgated by both SLI and NYSTEC and I rely on them as well as our staff in identifying issues and resolving issues where they can with the vendors. So I agree with the process and some of the issues that are raised, I mean I understand there is a lot of controversy right now, certainly around the country regarding election voting systems. There's been allegations raised, issues raised but many of them in my mind are not really related to our certification process, it's our state laws and state regulations that determine whether or not I, or we as Commissioners I believe will act to certify or to not certify. So I agree with that process as we go forward.

Commissioner Spano: Can I say this? The assumption in that process, is that all the information we have in that process is professionally presented, very accurate and doesn't have any other alternative. If you go through many issues like this in government. We have hearings, and we don't just pass off the hearings because we have 3 reports that say a particular thing. The hearing is part of the process where we develop the information and the way we're going to go. We just had I don't know, 25 I guess, individuals representing God knows how many organizations that referenced I don't know how many reports, Ph.D.'s, etc., etc. and I think that that is a valid component of the decisions that we make. So I don't think we can just pass this off and say, well we did this with NYSTEC, we did this ourselves, we did this with an independent outfit and we're through. This is what they said to us. No, we were told something now by 25 individuals who represent thousands of people, and we have to take that into consideration. Now I have mentioned this many times. Every Ph.D. there is an equal and opposite Ph.D. and I have some particular confusion in how to vote here. I have a problem with it. I have two problems; one is technical, and one is just emotional. Emotionally, and I've dealt with buying a machine. As County Executive of Westchester I took the old mechanical machines and we had to buy brand new machines, \$20 million later, I was reluctant at that point. When I went in and voted on those mechanical machines, I voted, I voted. I pulled that level down especially if it was my name, I pulled it down and I voted. I walked out I felt confident. I had a certain kind of feeling about it. When the concerns came us about the fact, and we've always had concerns about the numbers and you have all your people watching the numbers in the back of the machine to make sure those numbers got out, but you never had a record of exactly who that person, where my vote was. it was just a number somewhere. Then we went to these new ballot situations, and I was reluctant because

---

it was extremely expensive, and I thought the mechanical machines worked fine. But I could see, you know that it was much better to have paper ballots. Paper ballots are the best thing you can have, and I like paper ballots because when I go in and I get a paper ballot I get all these people I have to vote for, I take the pencil and mark it and I feel I voted. I really do. I feel I voted; I walk out. Now I like that feeling, and you shouldn't just dispense with it. Now I'm going to the left and I'm going to get on the screen, and I know other counties, states, etc. do this. I get on the screen, and I start tapping this and tapping that and the machine gives me my ballot. I look at it, I put it in, and it goes in a path and depends on who you believe, that makes this accurate or inaccurate. And I don't know who to believe okay. I don't believe everyone that spoke before, and I don't know what to believe. Every Ph.D., there's an equal and opposite Ph.D. But I'm not unwilling to make a decision. And if I only have to make 2 decisions, I'm against it and I'm for it, it's going to be a tough decision for me. I just want one more look, and it's worth it, one more look at the questions that were brought up by the people who just spoke to us. I think that's important. I think we take them down with some numerous questions, like the paper, you think that's a minimum question? The paper the thermal paper, I don't know if he's telling the truth on the thermal paper. Now you know that eons ago as County Clerk, and I can go back, and I'd look at the documents. The documents up to 1920 they were all perfect. any from 1920 to whatever the date was they were all fading out and I had to somehow protect them because of the type of paper that they were on. So I know that paper is a big deal. I would like to know what the truth is in that. I'd like someone to tell me, because certainly I don't think people were lying who presented to us, and I certainly don't think the people in the company are lying. But I think we have to have some sort of additional information in common language, not in the reports we get, but in common language, that takes maybe five or ten or whether it's eight, number of major questions we heard and put them in English and says, this is what our best thoughts are on this, do we do it by an independent evaluation? Do we do it by our own evaluations, I don't care, and have that and take a look at that and then vote on it. I just feel tough voting on it right now. And if I vote on it right now, I'm voting no.

Peter Kosinski: Okay, fair enough. Do the other Commissioners have any thoughts on that? I guess Commissioner Spano is suggesting that we take some of the issues that were raised today in the public comment period, have the staff, tell me if I'm wrong Commissioner, have the staff analyze those where there's a...

Commissioner Spano: Yeah, and give us their best shot at it. I don't mind...

Peter Kosinski: discrepancy between I'm assuming where there's a discrepancy between what say an individual said and what ES&S says about the particular issue, and then have our own people give us their best information on which one of those positions is I guess correct? Give that to us.

Commissioner Spano: Or what the truth is on it.

Peter Kosinski: I gotcha and then bring that back to us before we vote is that your suggestion Commissioner Spano?

Commissioner Spano: That's it.

Peter Kosinski: Okay fair enough. I'm interested in the other two Commissioners if they have any thoughts on process today or Commissioner Spano's suggestion or whatever.

Commissioner Kellner: I'm willing to defer to Commissioner Casale if he wants to.

Peter Kosinski: Commissioner Casale you haven't spoken really much. Have any particular thoughts on this topic?

Commissioner Casale: I refrained initially, I had refrained initially because Andy Spano is a tough act to follow, but I understand where he's coming from. I would be prepared to vote today if required to do so but if Commissioner Spano, whom I respect, is suggesting we need to analyze the public hearing comments today, I would agree to that. But I'd like to have it done objectively by our staff without any peripheral or outside influence at this time, keep it strictly to the record we have in front of us and sort out between, again, I think everybody is speaking the truth, it's just they see the truth differently, perhaps they see the facts differently. So if we have a chance to review what was said today, let's do so. I would agree with, defer to Commissioner Spano and his request.

Commissioner Spano: No, I think that's a good suggestion, it's exactly what I'd like.

Commissioner Keller: The staff reports raised three issues. My understanding is that the staff is concluding that the first issue on the cryptographic software complying with the CMVP is resolved through other corrections. Brendan and Tom do you agree? Do I understand that correctly?

Tom Connolly: That is correct, Commissioner.

Commissioner Kellner: And then the second discrepancy with respect to displaying the paper record in alternative languages, as far as I'm concerned, I don't think there's an issue, that the system does not comply notwithstanding...

Commissioner Spano: Does the system print out in the language?

Commissioner Kellner: In English only. So if you're a Chinese voter you have to compare a printout in Roman characters and I don't see how that in any way, shape or form comes even close to complying with the requirement, nor do I understand why ES&S can't go back and redo its software so that the ballot can be printed out in at least two languages, and that they follow the regimen that we have been recommending to New York City, that where there is an alternative language, dual language requirement, that there be a rotation so that the ballots only need to be in two languages and I guess I'll address separately his suggestion that in New York City, that they use up all of one type, before going to the other type, as inappropriate and I would hope that's not the case, but we'll take that up separately. So I think that there's no question that they don't comply with discrepancy 2. Now discrepancy 3, I'm not sure I fully

understand the staff report here. Are they saying that because this is a hybrid that the requirement in 62092F1 sub 4 should not be interpreted to apply, and I think that's what they're saying. Is that correct?

Tom Connolly: Which discrepancy are we speaking about specifically Doug, I'm sorry.

Commissioner Kellner: What you call the last discrepancy on page 2 of the staff report, 62092F14.

Tom Connolly: Okay, right. So that requirement is just that in a case of a DRE voting system, the paper and electronic display of the voter selections shall be presented and positioned so as to allow the voter to easily re-insert the two. In looking at the system, the issue that we had is that the only time you're presented with a full-face ballot is when it's displayed to you entering initially, and when you're navigating the ballot in order to make your selection. When you make your choices, even if it's when you're forced to commit your choices to be printed, the card itself is printed, it comes down behind the glass so that the voter can indeed see their choices, in both the bar codes and the human readable format and it's only providing their choices. On the screen while this is happening, whatever the last screen you were on in case of, let's say the test selections we had set up, and I believe I shared some of the images of the screens with the Commissioners, it's the second page that I was dealing with on the ballot was for propositions. When I was done marking all my selections and I printed my card, there was a dialogue that came up on top of a semitransparent layer which was obfuscating that second page. So I had my choices printed on the card under the glass, there was no way for me to compare that to the complete ballot electronically. There was no way for me to navigate back to that first page. Our understanding was when we met with ES&S I believe back in March, that it was raised with their product manager, I believe that's his title, Dean Bowmer, and he thought that was a change that they could make but I believe it was their intention to make, it in a future release. The issue that we had in comparing this to the way other machines work now, is that all other systems leave the voter with a full-face ballot so they're always able to see their choices in the context of the full page. This system only prints out the choices, and so the voter is unable to kind of have that comparison. Even if I wanted to spit out the ballot card and then do a verification of my choices, I can insert the card it gets scanned into the Express vote and my choices will now be displayed on the screen. Again, just the choices but it's also similar to the way the auto mark now works. However the issue this go round is that the paper actually gets sucked into the machine and is not being displayed under the glass. So I'm not able to see the electronic and the printed display of my choices at the same time to at least as the regulation says to easily read and compare the two. So that is why we had flagged that under discrepancy.

Commissioner Spano: So why don't we take a good look at this. I've been working in elections plus I've voted since I'm 20 some odd years old I think it was 21 when I was younger...

Commissioner Kellner: I have one more issue.

Commissioner Spano: I'm looking in my mind's eye at some of the voters that I know, some of the newer voters, some of the new citizen voters, some who, and they think sometimes they're going into a place of sanctity to vote. They get very confused. They ask a simple question, now you put them in front of a machine like this with these kinds of situations that might come up with confusion here or there. We just better get this right that's all I'm saying, and I think that you can't avoid the context that this is occurring after what we just went through and are still going through. We have to take that into account. We have to make sure people vote and feel their vote is accurate and it's going to be counted. Period!

Commissioner Kosinski: Fair enough. Commissioner Kellner you had one more point you wanted to make.

Commissioner Kellner: Right. So, during the public comments, it was raised that the ballots go into the ballot box in order. Is that accurate, and is that different from what happens now with the DS200 or with the image cast where the ballots drop into a ballot box, but they don't necessarily drop in order?

Tom Connolly: Because I guess I would explain it this way, the container of the cards for the Express vote is a much smaller and compact space than that of a much larger ballot box let's say on the DS200. So a ballot dropping into that ballot box, especially when a ballot box let's say the DS200 is first being used is empty leaves a lot of room for ballots to kind of fall all over themselves and not necessarily be put in a sequential order. I know this issue was raised also during certification in Pennsylvania. There was I believe, the Secretary of State's office believed that in response to that issue raised, they could put into place some sort of a procedure so that when those ballots are being stored or obviously when that bin fills up, that there could be some sort of a comingling process to kind of scramble the order of the paper ballots. However, because of the usability studies that we looked at for New York, the numbers that we were looking at, is probably that you need at least one machine for every 500 voters. So given that during early voting you have to have at least two machines, and on election day it would be unlikely for you to be in a situation where you'd walk into a pole site based on these usability studies that you'd only have one machine, the fact that a voter could go to either one of two or more machines would kind of eliminate the chances of there being 100% completely ordinal, an order of the ballots being stored that could somehow be tied to let's say the check ins of voters.

Commissioner Kellner: Well that's an issue that concerns me, and I know that our regulations explicitly say that the cast vote records have to be randomized and it was addressed with respect to the other machines we've certified by having large ballot boxes. So as I say, based on the second issue with respect of the failure to print the ballots in any language other than English, I think that alone is a disqualifying factor, and this other failure to randomize the ballots in the ballot box is a second concern that I have. At least based on what's before me now I would not approve certification. But if people want to put this over for further consideration, I don't have objection. The staff did suggest, I don't think any of the comments have been raised with respect to the certification of the upgrades for the DS850 Central Scanner or authorizing the DS450 Central Scanning System, and I don't think there's been



any discussion at all about the Dominion upgrades. But there is also no specific resolution. So I guess we would need to carefully review the text of the resolution even if we were going to certify these others.

Commissioner Kosinski: Okay.

Tom Connolly: We have a resolution.

Commissioner Kellner: I haven't seen it.

Tom Connolly: Sorry Commissioner. There is a resolution for the Dominion System later on in the agenda which has been circulated to the Commissioners. With regard to the comments that we heard today and also that we received by e-mail I will say that there was just over 420 comments that were submitted, having gone through all 700 pages of them last night for fun, I can say that there were no comments about the Dominion system amongst them, nor were there any comments about any of the other comments of the ES&S system aside from the Express Vote itself.

Commissioner Kosinski: Okay. Well, I am, for my purposes, I'm certainly willing to defer to Commissioner Spano's request that we get more information on some of the issues that were raised today. I do want to just go back to what I said earlier about the way I see our role here and that is to look at the statutes, look at the regulations, look at how this machine complies with those and make a decision off that. I will say this machine, I think, one of the things I do like which I know was raised earlier was the audit capabilities. I do think they're superior with this machine because in the auditing there is no variance. There is no ability to try to discern the intent of the voter by determining when the oval was properly circled or filled in and whether the machine actually counted that vote or not when you do an audit. It's a very clear audit where the person, the candidate's name is listed on the piece of paper, and in the audit process it's very clear how many voters voted for a particular candidate, there is really no discretion that can be given there. I think that's the strength of this where I think the audit is actually better than the optical scan ballot where there can be some judgment calls required when you have an oval filled in partially let's say as to whether or not that actually constituted a vote for that candidate. So I certainly like that aspect of this machine. And I think audits are one of our basic principles we have in this state for ensuring the accuracy of our voting systems to make sure that they are working properly. I know there's a lot of concern about security, but certainly this audit procedure that we put into place the 3% audit was done specifically to deal with that, so that we do a random selection of voting machines. We do an audit of 3% to see if there's any discrepancies with the hand count vs. the machine count and, of course, if there is, you go up and do more audits if necessary. But that component is critical to our voting systems, and I do like the way this machine does it because of the very determinative way that the ballot is put out and you've got a clear indication of how the voter voted. The two issues, and Commissioner Kellner referred to them, that were highlighted or flagged by the two voting or the two testing agents both SLI and NYSTEC namely the fact that the receipt the ballot that's printed out only prints out in English and that I think that really does compromise the ability of the voter to verify that the vote that was cast on that

machine is the vote that that voter intended. In addition to the way the machine obscures the full-face ballot on the machine once you're trying to compare what is printed out to what's on the screen, you really can't do it. I mean I looked at it myself and there is a screen that pops up that tells the voter what to do, but in doing so it obscures the actual ballot that is on the screen at the same time that piece of paper with my selections on it is printed out so there's no ability for the voter to compare the printout to the full face ballot that is on the screen. Full face ballots have been a very critical part of our voting process in New York for a very long time. It's been a part of our law that the legislature intended to have the voter able to see a full ballot at the time they are voting. This is not true in a lot of states, no question, but in New York it's been a part of our voting process and the legislature is determined it's important that as a voter is voting on the ballot, they can see all of the contests, all of the candidates that are on the ballot that day, and that I think helps ensure the people don't forget to vote for a certain office or forget to see a certain candidate and that's been a very important process or component of our voting system. This pop up screen really compromises the ability of the voter at the time they're actually casting their vote to have access to a full face ballot so they can be sure that they selected the candidates they intended and that they are able to see all the candidates and all the offices at the same time they're casting their ballot and the casting really only occurs when they determine that the piece of paper is accurate and accurately portrays what they want on the ballot and they can then actually cast it. Those two discrepancies were flagged by both of the voting system testers as well as our staff as not compliant with our law and with our regulations. I agree, I don't know how we can certify something that frankly isn't compliant with our own voting system regulations and laws. So those are two very problematic areas. I know in speaking with the staff they've been raised numerous times throughout the process. I don't think this is anything new today at all. This is something that's been out there for some time. It has not been resolved. I'm not aware of us certifying a machine that is not compliant with our vote testers testing regiment. So, if the decision is to put off the final decision until we get a report back from the staff on some of the issues that were raised today that are in somewhat discrepancy I guess between the vendor and some of the people that spoke, that's fine with me, but I do think those two issues that have been identified, I don't really believe there is much of a discrepancy. I know I've read ES&S's response, but the fact is these have been identified by our testing agents as issues that are unresolved, which in essence means to me they've failed the test. I think those are very, really determinative issues. So I'm willing to defer is that's the wishes of the Commissioners and we can have a report done. I would urge that we do it if we're going to do that that we do it soon. I do understand that this has been under consideration for some time this voting system. I don't know if it's fair to keep delaying this but I'm certainly willing to put it off for I don't know how long a week or how long it would take our staff to put together some sort of a report regarding these different issues that were raised today. I'm sorry Commissioner Spano, I don't hear you. I think you're trying to speak. I still don't hear you. You're still muted.

Commissioner Spano: Can you hear me now?

Commissioner Kosinski: I can hear you now go ahead.

Commissioner Spano: In that case, if the consensus here, I certainly don't mind voting against this thing.

Commissioner Kosinski: Well it's not just voting against it, I guess it's whether we have issues we still want to get resolved. I mean I have two issues, Commissioner. I have those two issues specifically that aren't resolved, that I think need to be resolved before I'm willing to approve this. If you have other issues that you think also need to be resolved, I think those need to be identified. And if you want to wait for the staff to report so you can identify those, I'm fine with that, but I think it's probably helpful to get a full idea of what all the issues are that are outstanding that might cause a Commissioner to vote no if that's the case. But I think that's important to resolve as well. But again I'll proceed however the Commissioners wish.

Commissioner Kellner: Well I think it sounds like there's a consensus that the Express Vote XL is not going to be certified in its current configuration, but I also haven't heard any dissent from certifying the rest of the ES&S application. But the staff would have to draw up the resolution to clarify exactly what is being certified and what is not being certified.

Commissioner Kosinski: I mean I agree with that Commissioner. I think the only issue before us is the EVS6.04.1 and I think that's the one that we are under consideration. The other ones, as I understand it, do not have, and if the staff has any difference, they can tell me, any discrepancies with the testing's that were done on those different systems, and I am prepared to go forward on those as well today, but I think as far as the EVS system that's a different story.

Commissioner Kellner: Is there a resolution now on the ES&S?

Commissioner Kosinski: That's fine, if they want to put one together and we can act on it, I'm fine with it.

Tom Connolly: I can certainly, if I may speak, so just to be clear as you mentioned, the only component of the submitted system that seems to be in doubt is the Express Vote XL, that would leave the 850, the 450, the DS200 and the new version of election ware? If the Commissioners would like, we can certainly work on the language of a resolution that we could bring up later on in the agenda when we would pick up the other voting system resolution. I can circulate that around if you'd like to take a look at it and we can read it aloud then and then if you want to take a vote on it, you're certainly free to do so. I can do whatever you'd like.

Commissioner Kellner: Well I just hope there be sufficient care in the drafting, and I'm not sure just whipping it together now will assure that. I guess my preference is that Tom Connolly and Brendan Lovullo carefully review our comments and then draft a resolution for the next meeting.

Commissioner Kosinski: Okay so you'd prefer to put off the certification of those systems as well or at least that one?

Commissioner Kellner: Well I think we've tipped our hands that there's a consensus that we're going to certify...

Commissioner Kosinski: That's fine, if there's a consensus on the one system, I'm certainly willing to go forward on that today. If you want to defer on the others until a resolution is drafted on those, but again I don't think there's any real disagreement on certifying them, but it's the language of the resolution if we want to wait for that that's okay too. Do you not feel comfortable acting on the certification of those then until you see the resolution?

Commissioner Kellner: That's right.

Commissioner Kosinski: Okay.

Commissioner Kellner: And I apologize, but I'm just looking at the resolution on Dominion Imaging Cast Evolution right now for the first time and I don't know whether it's in order to discuss that now or you want to wait until...

Commissioner Kosinski: I'm inclined to resolve the ES&S issue since that seems to be what all of the comments are today and get that resolved and then we can go forward in the meeting and take up the other agenda items as they come up.

Commissioner Kellner: Fine.

Commissioner Kosinski: Okay. So is there a consensus, so it does sound like there is a consensus on ES&S EDS machine?

Commissioner Spano: Repeat the consensus.

Commissioner Kosinski: I believe the consensus is we would not certify the machine today based on its current configuration.

Commissioner Spano: That's my position.

Commissioner Kellner: Right, and I guess also consensus that we will certify the rest of the ES&S submission with respect to the DS850, the DS450 and the new election model.

Commissioner Kosinski: Correct.

Brendan Lovullo: That would also include the ES200 as well.

Commissioner Kellner: Right.

Commissioner Kosinski: Correct. So if you could draft up a resolution to that effect on both issues, I guess you should have a resolution drafted on both issues, that the Commissioners

can act on reflecting those consensus I think we'll be prepared to act. Are we not prepared to act on those today then because the resolutions aren't drafted? Although I think we can give direction to the staff as to how we want the resolutions drafted, we just want to see the exact language that we could then act on it our next meeting formally, but I think we should be clear that's our direction to the staff. Is there any disagreement amongst the Commissioners on that?

Commissioner Spano: No, and if we have a problem with the resolution there's no discussion no other discussion.

Commissioner Kosinski: Okay then I think that's our direction to the staff. So you should draft resolutions reflecting those consensus on both ES&S components, or all the ES&S components and then we will act on those formally at the next meeting. And that would then conclude our discussion of the ES&S systems today, which is part of our agenda items under New Business and unless there's more discussion on this; I'd take us back to the beginning of our meeting which begins with the minutes of December 3, 2020. Is that to everyone's satisfaction?

Commissioner Spano: Yes.

Commissioner Kosinski: Alright then I think the staff has its direction and we'll start with the top of the meeting agenda that we put out today, and that does begin with the December 3, 2020 minutes. I do understand there's some issue related to that. That they are not complete is that true? I got a copy but there was some issues with the copy I got. I don't know if they redrafted them. It wasn't anything that was wrong I think a couple of issues were left out and there was some...

Commissioner Kellner: So let's put it out.

John Conklin: Yes, we can put this over till the next meeting.

Commissioner Kosinski: Can we do that cause I think we need to see those again. So let's put the minutes over if that's okay with everybody and we'll move on to unit updates. And we'll start with the Executive that's Bob Brehm and Todd Valentine.

Todd Valentine: We have been working obviously completing the election process since our last meeting. All the certifications that you did then were transmitted to the appropriate parties and up to Washington, D.C. We continued to wait for the budget which we submitted after the last meeting. So that's still waited. There were references to election changes in the Governor's State of the State from two days ago, but when asked they had no draft language of any legislation, so I'm not exactly sure what it is they're proposing. There was nothing hard to that. And I know that Bob wanted to go over some details about outstanding appointments we have that are hanging out.

Bob Brehm: Thank you. Can you hear me?

Commissioner Kosinski: We can hear you.

Bob Brehm: Yes, with regard I think just one other item, there was an executive order that we learned if late Friday 202.89 that impacted village elections, so the co-executive director sent that out to county boards as soon as we could, but it was pretty late in the day on Friday, just to share that information. A couple of issues; one is in relation to our building how to fit the staff in here especially as we plan to grow due to public financing. One of the tasks while public financing was being discussed in one form or another at the end of 2019 and all of 2020 was the realization for the State Board if we were to have that unit here, we needed more space because we physically don't have room on this floor. We have some spare area on the first floor that IT is using but our ability to use that space was limited into the future. So we will need to bring those individuals into some longer term space as well as provide space for Public Financing, and we worked with the State Agency here, we worked with OGS base planning came up with a plan and once we had a plan in place an estimate to move the agency to 150 Broadway, and that provided enough space for our future needs, and it also was a very economical plan because it needed minimum fit up changes in order to accommodate the State Board. We submitted that plan to the individuals in the Chamber that we were told to communicate with, our Deputy Secretary, the Commissioner of OGS and a representative in the Division of Budget on September 21<sup>st</sup> and requested a meeting to figure out how best to accommodate that process. It's been 115 days since that was submitted and simply other than it comes up in a weekly phone call where people claim they're looking at something, we have no answer and no agreement to have the phone call that we asked for in September to make some plans on his to deal with this. Also, I'm going to go in reverse order from most recent oldest, New York State received a grant from the federal government for Cybersecurity to improve protections for election infrastructure and part of the plan that we put together as an agency to submit was to expand our staff with regard to the Secure Election Center so we can monitor misinformation on social media. It's been on a number of topics, those representatives of our agency that have a secret abilities have attended a number of meetings and while I don't have that standard, they tell me that this is one of the highest priorities that comes out of that type of meeting. So we put that in place. we tried to classify some titles, did interviews, we appointed some people on September 14<sup>th</sup>, that was 122 days ago and to this day, we still don't have the divisional budget waivers approved. So think of everything you've read and heard about misinformation with regard to the election on social media, we tried desperately to get it done before last year's election and it still isn't done. And we're going into another season of elections. And to be honest, one of the disturbing things was probably on this past Monday when Todd and I had regular calls with the Chamber on a weekly basis and we said, "What again is the status of this?" And we were told that we missed making that decision in time for last fall but there really wasn't a busy election this year. Now there can't be anything farther from the truth than that, because we have all of the elections at the local level for Mayor, County Executive, New York City leadership. We've just had national attention on people from all walks of life who are challenging what they've seen on social media with regard to the election results. So to put together a team of people and the staff and the coordinated effort to make sure we're on top of this, is very important. And I must say, at a time when we might not have state money to pay for these positions, this is

federal money to pay for these positions. So I fear that we could lose talented staff that are here that are being recruited away, and I raise the issue with you as I've done weekly. I don't know what else to do other than to say how shocking it is that this is still outstanding. And when I say that my last point, I want to make will probably be more shocking, but we had vacancies in the Office of Counsel, one of the technical people to help do some of the processing of compliance review work that the Compliance reviewers do, was a vacancy last year because we promoted the assistant to a compliance reviewer. And Brian's confidential secretary to help in a number of issues that come before Counsel. I appointed those two positions on February 13<sup>th</sup>, 2020 and our HR department completed the paperwork to ask for the waiver on February 18<sup>th</sup>, 2020. That was 331 days ago and to this moment they still haven't been processed. It's just shocking of the work that we have all done. We have the pandemic, we have executive orders, we have a number of pieces of legislation that we had to deal with last year to get information out to counties with regard to how to comply with all of the changes and not to have the staff is really difficult on counsel and we've had an unprecedented number of challenges whether it be generally to the election results but also all across the year with regard to changes that we're putting in place in response to the pandemic. So it's really difficult that these are being held up. So I wanted to raise it because I think it's unfortunate. But I think you need to know. And that covers my list.

Commissioner Kosinski: Well that's obviously a problem. So Bob is there something we, as Commissioners, can do to help move this along on behalf of the staff?

Bob Brehm: I don't know other than to join the voice that Todd and I have weekly. I don't know what else to do other than to raise the issue of how possibly we can get this work done when we don't have the bodies. I know people think we are this big state agency, none of the people on this screen, but we're this big state agency, but we are a very small entity, and we are very limited in our ability to do the many things that are in the statute without people. And many of the people we have now are doing two, three, four titles. It's hard to add five, six, seven titles to their responsibility but the fact that the statute was created at a time in 1974 to make sure the bipartisan nature of this Board was the people responsible to make these decisions without outside interference, if somebody would explain to me what an issue is but maybe issue 1 is we don't have state money but the state money decision ought to be ours as to how to spend what money we have, not somebody else to say what we can and can't do. But we have federal money that the statute and the law says is the responsibility of this bipartisan board to decide and no one else. And that's being hampered also. To say that we can't do Cybersecurity to protect election infrastructure in New York State because we have a state deficit that we're not getting our share out of Washington. Well, we got our share out of Washington for this little portion and we still didn't get the ability to spend it. So I think, I'm interested in hearing your ideas. I've pretty much exhausted my voice. Todd can join me he knows that I have raised, the two of us have raised this issue on a weekly basis and I think other than having this conversation today, I'd be interested in your views on how best to proceed.

Commissioner Kosinski: I don't know. I don't know. Do the Commissioners have any thoughts on the...

Commissioner Kellner: I have said many times that the 2008 Executive Order issued by Governor Patterson cannot legally apply to the State Board of Elections based on the existing statute and court precedent and that we should not feel bound by restrictions placed on us by the Office of the Budget. Now physically, do we have the ability to pay people?

Bob Brehm: Not without their approval.

Commissioner Kellner: So we need to...

Todd Valentine: Depending on the Budget's approval and that's what's holding it up.

Commissioner Kosinski: I know there are court cases that have been determined at the local level where once the legislature allocates money to the county board of elections, the county board of elections can determine how to use it. I mean it is dependent on legislature allocating money to them, but the courts have upheld the autonomy of the Board of Elections to determine how to spend their own money, and it is almost all of it based on this bipartisan nature of the Board of Elections, that it's to be free of partisan input and partisan interference and that the Boards have a different status as it relates to other county departments because of our role of our job, which is to oversee elections, and we have to be free to use the money as the board sees fit, rather than having it dictated to by say the state or the county legislative body. Now again, these are all county issues, but I think the same principle should apply to us. Now unfortunately that required them to go to court to have a court rule in that way and that takes time and that's very unfortunate. But I think the principle is definitely out there and why this is not being followed at the state level is beyond me. I mean I absolutely agree that we have been burdened I'll call it, with fifty changes to the Election Law over the last year and unprecedented number of new ways that we have to administer elections, and without the funding necessary to do that it's apparent the federal government has recognized that by allocating money to the locals to the states to do it, to have the state not free that money up to allow us to use it, it's shameful. I mean we need to have the resources available to administer our elections. We've seen how much of a struggle it's been, and it has. And our counties have seen it and we've seen it. It's been a struggle to administer an election in this atmosphere with COVID going on, numerous changes coming down, some of them last minute, and we've had to administer them, and to not give us those resources, I don't understand it, I don't get it. I think to make our plea to the public maybe to get the necessary resources. I mean I know there were people on this meeting today that were here to talk about other things but I'm sure they're concerned about the administration of elections as well. I don't know, if we can get their attention maybe they can make the plea for us. Unfortunately, if they're not listening to you, I'm not sure they'll listen to me. But I'd be happy to do whatever you think. If we send a letter, if we make a call, however we can advocate for ourselves, I think we should do it and I'm prepared to do that.

Commissioner Casale: Peter, do I understand correctly from Bob and Todd, you talked to your counterparts or your contact person at the Division of the Budget in the Governor's office?



Bob Brehm: Our point of contact Commissioner, generally has been through the Deputy Secretary. We've had a number of Deputy Secretaries, the current person in that role is Debra Alligood White, um they do give us a contact with regard to counsel, and we do have a budget analyst...

Commissioner Casale: No, I understand, I just want to clarify you've been talking at that level. My political instinct is to go the nuclear option, but before we do that, I think the four of us should request a meeting with the Director of the Budget. Make sure that we can honestly say that we made it very clear to the Director of the Budget what the issue is, what our position is, and then if that doesn't work, then we have to look at other options. But I think the biggest problem you've got from my experience in state government over almost fifty years is that they don't pay attention to what they consider a small agency or one that doesn't affect them directly. We're not building roads, we're not creating educational programs, we're not doing the high profile stuff that they think is so important for political purposes. But I think it's important that we at last let the Director of Budget know exactly how we feel.

Commissioner Kellner: I support what Commissioner Casale has just proposed. I think that that's excellent. It's my understanding that there is no basis in the State Finance Law for holding up the funds, that this is simply an executive order dating back to 2008 that was put in as an emergency executive order and the emergency is still in effect. I have previously said that I have been in favor of litigation, and I think that Commissioner Casale's idea is fine and we should communicate that to the Director of the Budget that if they're not going to act promptly, then I'm certainly prepared to file suit to compel them to do their job.

Commissioner Kosinski: I might add that we might also reach out to Senator Stewart Cousins cause I noted I think earlier this week the Senate Elections Committee reported out 10 new bills for action at the legislative level for new rules, new obligations for the State Boards as well as the County Boards and I think maybe the state senate, maybe the leadership over there would be sensitive to our lack of resources to implement some of these new proposals that they're putting forward. And they could put some pressure as well.

Commissioner Spano: I just figure from a political perspective. The state is suffering now from incredible deficits. They're not going to listen unless we do something, I think meeting with the Budget Director is a good idea, but I think reserving some kind of nuclear situation is great, that that's the only thing they'll listen to. You can make your comment, but I think they've gotta understand that behind this, is more than that. I think with the legislation we can basically appoint anyone we want, getting the money to pay them is another problem. First, you've gotta get their attention, that's my feeling. They've got twenty departments coming saying the same thing also.

Commissioner Yankah: Let me just chip in with two small things. If there's a meeting with the Budget Director, I would obviously encourage a follow up on our last conversation that the funds for Public Campaign Finances are also pressing and that's something that by law we

have to have in place in the now coming couple dozen months, and we need a lot of build out there. The second thing is more unfortunate. As you know, I don't have a vote on the machine, so I appreciated being able to sit in and learn a great deal, but unfortunately, I now have to wrap up and unless I'm needed for pressing duty, I'm going to have to take off and try to sign back on if you're all still together.

Commissioner Kosinski: That will be fine. Thanks Ekow. Yeah, we're going to commence a Public Campaign Finance Board Meeting immediately following this, and we can certainly give you notification when that occurs, and we obviously want you to join in when we have that meeting immediately after this. So if you'll be available to do that, we'd like to do that immediately following this meeting.

Commissioner Yankah: So do you mean you're going to commence a meeting immediately following this meeting or you're going to schedule.

Commissioner Kosinski: No, we're going to commence one immediately following today.

Commissioner Yankah: What time do you expect that?

Commissioner Kosinski: I don't know the time. It's now 1:30 I don't know how much longer we're going to be. It might be an hour, I'm not sure.

Commissioner Yankah: I should be available by 2:30, could e-mail me and I'll sign back on.

Commissioner Kosinski: Somebody will notice you when we're going back in and then we do surely want you to join into that meeting.

Commissioner Yankah: Thank you all, I'll see you then.

Commissioner Kosinski: Well this is obviously a very troubling issue and I'm happy to do it. I'm sure if we can get Robert Mujica's attention, and able to meet with him, I know Robert, he's a very sensible man, and I'm sure he'd be very willing to listen and sensitive to our concerns, so if we can arrange something like that, that'd be great, and make our plea directly to him, that'd be terrific. So if there's something the staff can arrange in that way let us know. But I'd be happy to join in with any effort like that. This is clearly a problem that needs to be dealt with.

Bob Brehm: Thank you Commissioners. Certainly, Todd and I will follow up in that accord.

Todd Valentine: Yes, we will.

Commissioner Kosinski: Okay, great. Is there anything else to report from the Executive Directors then today?

Bob Brehm: I wanted to talk briefly about the Public Financing issues, but I think it's appropriate to do it at that other meeting.

Commissioner Kosinski: Yeah, let's do that at the next meeting, so I agree with you. Okay. If there's nothing else then I think we can go on with the Counsel's Office, Kim Galvin, and Brian Quail.

Kim Galvin: I'm just making sure that everybody can hear me?

Commissioner Kosinski: Yes, you're on.

Kim Galvin: Well it's nice to follow those couple of issues. Brian and I, and Nick and Bill, and the rest of the staff have been very busy. I'm going to hit on the lawsuits as we've been continuing to work on and monitor. I apologize that I don't use the direct plaintiff's names, we seem to have so many these days I just refer to them by their issue. So I'll start with the accessible absentee issue. If you recall, for last year's primary and general election, we had reached an agreement to allow for accessible absentee ballot applications to be provided by the county boards to those asserting that they needed them. That case continues. We're continuing to conference it. We're looking for potential long-term solutions and that is ongoing. The absentee cure matter if you recall moving into the general election, we had a lawsuit, a new law, and an executive order, that we and the counties had to deal with. From all accounts, I think they did a good job with that considering the timing and being thrust upon them. The executive order has now expired; we are continuing to talk with the plaintiffs regarding a possible long-term solution. As Commissioner Kosinski mentioned, bills coming out of the Senate. One of them did touch on this issue as well, so should it get an assembly sponsor to get passed, we have a regulation that's proposed for later in the meeting where we can talk more about that issue if you'd like. There is a Kings County intra county rules dispute case going on. We have taken a no position in that matter. The motion to dismiss against the Governor and the Attorney General was granted, so now we are the only defendants left in that case, taking a no position is an interesting position to be in. The judge has asked the plaintiff's what they think about our position, and as far as I know, as of right now, we are still waiting to hear what's going to happen there. We have the SAM case if you remember...

Commissioner Kosinski: I'm sorry Kim can you just stop there for a minute. The judge asked them about our no position, position?

Kim Galvin: Yeah.

Commissioner Kosinski: And I'm sorry what was the issue there?

Kim Galvin: Go ahead Brian.

Brian Quail: Yeah, because I ended up being the one that wrote the letter, so I'm just going to jump in on this question. And actually Nick submitted the letter, but the issue is we rarely take no positions in federal actions. We did here, the Commissioners know, but the unique

circumstance is that we're the sole remaining defendant because the other two got off, so now the sole remaining defendant us, instead we don't take any position, so the court asked I think by the 18<sup>th</sup> of 19<sup>th</sup> for the Plaintiff's to respond back that we're the only remaining plaintiff that have taken over this.

Commissioner Kosinski: That's the issue, okay, thank you.

Commissioner Kellner: I may be to blame for that. I think in general, when there are other people who were involved in the case, and we're being asked to take sides that there's no reason for us to get involved. But I don't have any objection if the legal staff wanted to make a formal motion to dismiss along the same lines as what the Governor and the Attorney General did.

Kim Galvin: Well just to comment on that case as well, the political parties involved in this particular lawsuit have taken actions that could aviate the need to continue with the court case, so there's a lot of things in flux right now that we're waiting to hear on, or understand.

Commissioner Kellner: One of the possibilities would be for Nick to get on the phone with plaintiff's and just ask them to discontinue. Or we can just wait to see what the judge thinks about no position.

Kim Galvin: Right, there's a lot of balls up in the air if you will, and Brian and I will continue to make sure that we will monitor all of them, so that none of them crash into the floor or upon our heads.

Commissioner Kellner: My initial recommendation of taking no position was simply not to implicate ourselves in the battle between the reformers and the regulars over the Kings County Democratic party rules.

Kim Galvin: Right, and I don't mean to speak for my Commissioners when they're here, but we agreed with your position as well.

Commissioner Kosinski: Yeah, I continue to agree. We normally wouldn't assert ourselves into a party battle and I don't think that's appropriate for us to get involved in something like that. I didn't realize we were the last remaining defendant, however.

Kim Galvin: That just happened.

Commissioner Kosinski: I see. That's kind of a unique position to be in got it. Well do what you think is right. I'm willing to defer to Counsel as well as how you think it's best to approach this.

Kim Galvin: The next on my list if the Save America Movement case, not SAM. We had oral argument that was held in the second circuit court of appeals on that issue. If you remember we won at the initial court level against the preliminary injunction. The arguments we had

were awaiting the decision in that matter. The associated sort of case, the Green and Libertarian case, we're having ongoing our attorneys are having ongoing communication with their attorneys. They made no discovery demands however they have made deposition demands so we're trying to work through that as best we can. And lastly, with regard to the cases I have listed as CD22; I have done my best to attend all of the hearings, keeping obviously both sides fully apprised of what's happening. The latest scheduling order came out on that. There are briefs filed today on the particular DMV issue that's surrounding and clouding Oneida County a bit, and oral arguments tomorrow, and the final briefs are due on any other outstanding issues next Wednesday the 20<sup>th</sup> with oral argument to be had that following Friday. Judge DelConte has been on it. I would expect that his decision would come out shortly the next week, at which time he has stated that any ballots he's ordering to be canvassed, will occur in his courtroom, and requiring the parties to send the respective county boards of election to send representatives there and the parties will have their representatives convening there and he has indicated to the best of his ability he will rule on any ballot challenges as they come up, to attempt to finalize this case for what seems to be an inevitable appeal regardless of which way it goes. Just to say that I know that there's been a lot of press regarding CD22, much of it warranted, but for the eight county boards in question, some of them did a very, very good job under the circumstances with all of the things we've talked about, the new laws, the executive orders, etc. and some obviously had some hiccups, if you want to call it that, along the way. So that's where we stand. I understand the eyes of the nation are looking at us, and that the legislature is bemoaning the fact that we still don't have a decision. And, you know all can understand and know that the county boards just weren't set up for this amount of paper, and some did make some mistakes, and it is where we is, it is where it is, and hopefully that will be concluded by the months' end. If anybody has any specific questions about that I would be happy watch. I say personally, it's a little bit and I use this term affectionately "a car wreck," once I started to watch I can't seem to tear myself away from it, and so I can answer any questions that you might have, or we can just move on.

Commissioner Kosinski: I just have a couple of comments. I don't want to get into it maybe too deeply because I don't want to try to impact the court case as it's going forward, so I don't know if it's appropriate to speak too specifically about issues, but I do think it's important that we keep a track of issues that have arisen here in the NY22 ongoing court battle decision, and identify issues that have been raised regarding the Boards of Elections. And this even goes back to what Bob was talking about earlier. I think it's incumbent onus as a state agency to make sure that we have uniformity around the state of the way boards handle ballots, the way they count ballots, the way they do things in general, and that of course, requires resources. But I think it would behoove us to keep that list, and then see where the boards were treating voters or ballots differently from county to county. I've been keeping track of this through the press largely. I've seen some instances where counties, as an example I guess and I'll just give the one, where a ballot is delivered to a county board from a voter who is not in the county. And so the ballot is delivered to that county board, it should have been delivered to the other county or different county in the state. What does the county that got the ballot do with that ballot? There's really no specific instructions in statute for what to do. I believe some counties will treat it one way, some counties will treat it another way, some counties may send it on, some counties may not depending on when they get it. It may depend on

things, but I think it's important that the voters all be treated the same. And I think it's important for us to have instructions to the counties that if this happens, this is what you do, and this is maybe it depends on when you get it, or how you get it, but you should treat every voter the same. It's not fair that if I deliver a ballot accidentally in Onondaga County that I should have delivered in Oneida County, that it's somehow treated differently if delivered in Hamilton County and not Oneida County. To me, that's not right, it should all be the same. So I'm just asking the staff, let's keep track of issues like that, that I think have been raised here and we need then to put together a comprehensive instruction to the counties or regulations even, I don't know how we do it best, but some way try to standardize the way that these ballots or voters are handled throughout the states so that every board is handling them the same way.

Kim Galvin: Well Commissioner Kosinski I actually have three notebooks, full of notes and I have highlighted the particular issues, and interestingly enough, when an issue comes up, surprisingly or not there is a section of law hidden somewhere in that law book that may actually address some of the issues that we have not paid a close attention to. Because it would take a considerable staff force to go out and implement a strict training protocol or training program to educate and involve and get everybody on the same page. But I do agree that the counties would like that, and there's a general consensus between the counsel staff and the executive staff at the building, in our building, that we are going to attempt to do exactly what you said. But I will certainly, when the case is concluded, a list out and many of them will be in the decision, a list of items that I personally see and work with Brian to develop that list where we need to beef up or start originally some training and some contacts for those counties. And one other thing with Judge DelConte, he's, it's the first impression for curers accessible ballots, and some other issues substantial compliance with affidavits. So those are all new laws that have not been fully litigated or litigated at all anywhere else. So that compounds the intricacies I'll say of the court case that he's trying to deal with. In my opinion, he's going a very fine job, as are the attorneys on both sides.

Commissioner Kosinski: Well I think the judge is just sort of having to deal with all the different intricacies our boards deal with every election, and he's seeing all the different changes that were made, and how he's having to deal with them. These are the issues faced by all of our boards, in both June and November, to try to assimilate all of these changes into their process, and into the law, and it is a challenge, no question. And I can certainly be sensitive to the judge's difficulty in trying to do this. I'm sure that's why it's taking him so long. People should also understand, this is exactly the problem our county boards faced when they were trying to implement the new laws and all these changes in this last year's election, and it was a very challenging time for the counties, and I don't know that the voters or the public appreciate how difficult it was. But I think this judicial intervention has been instructive to people maybe that yeah, these are complicated issues, that have further complicated by numerous changes coming down in a very rapid fashion to implement new policies, new practices of voting, that our boards have not had to deal with certainly not on the volume they had to deal with them, and it's been difficult to do, frankly. So, I'm not surprised that the judge is having a difficult time resolving all of the issues and making sure that they comport with the new statutes.

Commissioner Kellner: I'd like to second the comment on the need for uniformity and for us to follow up these issues, I certainly agree with that. I'd like to make two other additional observations; first is that the Governor's Executive Order directed the County Commissioners to submit staffing plans to the state board, and we asked them to keep us apprised of their problems with implementation, and just as I was highly critical of the New York City Board of Elections on failure to send out absentee ballots for the primary in a timely fashion, depriving tens of thousands of voters of their ability to get their absentee ballots on time, it was a very difficult task that the City Board was given, but the real sin was not being frank about their inability to comply with the mandates, and misleading us into thinking that they would comply. And many of the Commissioners in NY 22 are guilty of that same dereliction. That they did not tell us or the Governor's Office, of their inability to comply in a timely manner, and I think we need to stress that when election officials are unable to fulfill their duties and mandates that they need to be frank and transparent about that, and to publicly ask for help. So, that's one important lesson. The second thing is, that I think Judge DelConte in general has done very, very well in trying to address the issues, and be careful about them, but there's one issue where I think he's made a serious legal mistake in that the State Board should come out once and for all on this issue, which is where the courts have not followed the requirements of section 9-208 with respect to the canvassing of ballots when both Commissioners agree on how to handle an objection that has been raised. And that is that the statute is clear that if both Commissioners overrule an objection and direct a ballot to be counted, it should be canvassed, and this so-called O'Keefe method, which I acknowledge in one second department decision, the Appellate division directed that method has now come in a manner that does not comply with the statute, and substantially interferes with the canvass process, and that I would ask our Counsel's to take a careful look at that, and brief the Commissioners on this issue, so that we can take a position 1) to either recommend legislation to the legislature to clarify what's already in the law, that the courts do not have jurisdiction to require this Ruth Goldberg method of preserving objections after both commissioner have overruled the objections. And 2) that we agree on a policy so that the State Board can take a position when a court suggested it wants to do this, and do it at a time when its neutral and not regarded as a partisan decision. Because I think it's very important that we agree on these policies in advance so that we can then turn around to people in our own political parties and say, "No, this is the position of the State Board interpreting this statute and that we advance that position whenever one side or the other seeks to evoke it in litigation" just as we I think successfully had agreed on a policy that we're going to object whenever courts interfere with the canvass process and I think that we've done that on a good bipartisan basis so that we've been able to go back to people in our parties and tell them no you can't get this kind of gag order in advance, that we should do the same thing to challenge this continuing process of copying ballots, when one side objects but both Commissioners have rejected that objection.

Commissioner Kosinski: Okay, thank you, I agree with the idea that we do come up with regulations in a more neutral environment. Unfortunately a lot of this stuff comes out of litigation where there's a political overtone to it, and it's probably helpful if we can look at these issues off election cycle, and try to resolve them and do it in a way that then is determinative for the county boards to follow, and it gives them direction. I think they're

looking for that direction. I've certainly heard that from the county election officials. They don't necessarily want to have these issues open so that they have to be resolving them in the context of election every year, and it would help them as well if we gave them the direction and then there's no ability for the county to really debate it, they just have direction from the state, that's what they follow, and that takes it out of the realm of a political battle over a specific election. So, I agree with that as a method to go forward, if we can do that over the next few months that would be helpful prior to our next election cycle. Unfortunately we always have election cycles so it's hard to pick a time where it's actually not going through an election, because we have elections it seems all year now, since they moved the primaries up and we have so many specials. But I think we should do the best we can. So I think this NY22 gives us an opportunity to do some things along these lines and we should take that opportunity to do it. I think it would be welcomed by the counties, and it would give them the ability to act more quickly without having issues out there that they have to resolve every time it comes up at the county level, so I agree with that as well. Okay, is there anything else on NY22 that anybody wants to talk about? Hearing none. Is there anything else from the Counsel's office that you wish to raise with the Commissioners today?

Kim Galvin: Yes, just a couple of things and then, as was previously mentioned, the election law committee and the state senate has seemed to be quite ramped up and spitting out bills so we're attempting to review them both for making sure they're correct, and looking at what's required of the state board, particularly when there's the same as bill in the Assembly at this point. The unit has also participated in, obviously the other unit meetings and all the calls we've had, and I will flip it to my co-counsel Brian Quail to talk about the compliance issue, and in case anybody hasn't mentioned it, the Chief Enforcement Counsel has indicated she will be retiring as of January 25<sup>th</sup>. So maybe this will be the last report of this type that's given, I don't know. Brian?

Brian Quail: Thank you Kim. So just on the baseline compliance numbers and then I'll get into some numbers that are very specific to Enforcement as well. I think it's convenient to just sort of do that now instead of doing a de facto Enforcement report.

Kim Galvin: Well Brian, just one thing, Brian, we haven't really received a decision on our appellate division argument yet in that matter on Enforcement so sorry.

Brian Quail: Yeah, been argued and a decision pending. The paid Internet digital ads a total of 233 of those have been posted to our website, and I believe that number has not changed since our last meeting. For the July 2020 periodic report, we identified 3,681 non-filings as of the 13<sup>th</sup>, yesterday, 93% of those 3,427 remained unfiled. For the January periodic in 2020, we had identified 2,955 failures to make a filing of which 2,830 roughly 95% of those remained outstanding as of the 13<sup>th</sup>. In aggregate, one of the things that we looked at in preparation for this report is, in looking at periodic reports in 2014, what's the picture look like, and the relevance of 2014 is that is when Enforcement shifted to the Chief Enforcement Counsel. During that time, we've identified some 20,926 non-filings on Periodics only, so this is apples to apples comparison from year to year. 20,926 non-filings, 62% of those to this day remain as yet still unfiled. So there is a great deal out there that just has not, a lot of disclosure that



has not occurred. The hearing officer status over the course since 2014 until through now, there were twenty-seven hearing officer matters brought, zero in 2020, two in 2019, six in 2018, six in 2017, twelve in 2016 and only one in 2015. So when you chart that out, you can see that it sort of went low it kind of went up a little bit it came back down and dropped to literally nothing. With respect to criminal referrals, just a reminder, we had none in 2020. I have none in 2019. I believe the last one was late 2017. There were a total of eighteen total. And the number of subpoenas that were brought to the Board in total I believe is forty-seven, there were six requests in 2014, twenty-two in 2015, 2016 it dropped to twelve, 2017 it dropped to seven, and then we have had a series of 0's to date. So, that's my report. If there's any questions, I would be happy to entertain them. Tried to slice the numbers in as useful way as possible, to just give a flavor of what has not and what has happened.

Commissioner Kosinski: Thank you Brian, I appreciate that. Well listen, we wish Risa well, but I will say that I read the report in the newspaper about her leaving and a rather glowing report from the paper kind of surprises me. I mean based on those numbers you're saying Brian, people may think that this idea that you don't pursue failures to file is a small thing, I guess that's the way the press portrays it, that's the small stuff. That's not the small stuff, that's the big stuff. The fact that committees and candidates are out there in droves who have not filed any financial reports in this state for years, and there's nobody been following up on it, is shocking to me. And to portray that as "small stuff," I think misses the point. That's the information our voters need to decide how to vote. That's why we require this stuff so that our voters can see where the money's coming from and where the money's going from their public officials. The idea that that's the small stuff that hasn't been pursued by that office, just to be it's unbelievable, it's topsy-turvy, it turns it on its head. That's the stuff that people need to see. And the fact that the press treats that as immaterial and is not important enough to care about shocks me. But that's the way it's portrayed, and obviously that was the Counsel's office attitude, continues to be. I don't get it. I've always felt that's a critical function that they serve, that's largely why they're there, is to make sure that our voters know where candidates get their money from, and where they're spending it. Unfortunately, that is not the, I guess attitude of the press, they don't seem to care, nobody follows up on this. At one time they did. I remember years ago when we were in charge of it, if somebody didn't do something, the press jumped all over us, where is it? Why haven't you done anything? Why aren't you doing it? Somehow, we have this new Counsel's office, they don't follow up on it, it's okay nobody cares. It doesn't make sense to me. They should care. It's important. I'm hopeful that the next Counsel will be mindful of that. I'm hopeful that the next Counsel will realize that's a critical function of that office, and will do the necessary follow up to see that we don't continue with these numbers, 20,000 almost 21,000 had not filed just periodic reports? Is that right, Brian? Did I catch that correct?

Brian Quail: The number of period reports was correct, the number that were unfiled that remained unfiled was 62% of that number.

Commissioner Kosinski: Yeah 62% of that number that's an enormous number of just Periodics. And that's just Periodics which are the January, June reports.

Brian Quail: It's about 13,000.

Commissioner Kosinski: 13,000, and our voters have been denied the ability to see this, and there's no follow up on it. I don't get it, but that's the situation. And the fact that the press continues to ignore this, shocks me as well. But that's all I have to say on that today. Is there any other comments on that from any other Commissioners? Hearing none we'll go on. Is there anything else from Counsel's office then?

Kim Galvin: No sir.

Commissioner Kosinski: Okay, thank you very much. We will then move on to Election Operations: Tom and Brendan. I know you've had quite a bit to do today, is there anything else to report on? I know that you reported on the voting machines, is there anything else to report today that you want to go over?

Tom Connolly: I will go through, thank you Commissioner, I will go through some of the other items that our staff has been working on, and I'll do it as quickly as I can. I would say after the last meeting when we certified the results, we prepared all the necessary documentation to provide that information to the proper entities, State legislature, State Supreme Court, and US Congress and obviously for the Electoral College. We had collected some updated statements of canvass for the general election for some county boards. Our intention would be to bring an amended set of results before the Board of Canvassers, upon receipt of the statements of canvass from the 22<sup>nd</sup> Congressional District which Counsel was just discussing. We distributed our annual fiscal survey to the county boards for their completion. We did conduct a survey on electronic poll book usage, basically we just kind of asked the county boards about how they used that at early voting and on election day. We asked for their feedback on their experience, any kind of wish list for functionality. We then took that information. We had one on one calls with each of the E-poll vendors, to kind of discussed that information that we got from the counties and also just to kind of get a better understanding of what they were planning for, future updates, and we are currently preparing the information to close the loop and go back to the counties to just let them know what came out of those conversations. Obviously as we had mentioned before, we posted the testing reports for both Dominion and ES&S submissions out website, along with a link for people to e-mail their comments. As of the close of business, this past Tuesday, we received and reviewed more than 400 e-mails. We do have a resolution to approve the Dominion submission for later on in the meeting. With regard to voting systems, we've also continued our conversations with some other vendors regarding submissions to be expected in 2021. This includes Democracy Live which has just a standalone ballot-marking device, Clear Ballot which is looking to submit their precinct system, Hart InterCivic which is also looking to submit a precinct system, and Dominion was looking to submit a new version of not just their EMS, but also, I believe the new hardware. And then lastly, we've just been working with IT on a couple different projects as I'm sure Bill will cover. The CAPAS-FIDAS testing rollout. There's a new requirement as of January 1<sup>st</sup> under 7-118, for county boards to provide the State Board electronically with the contest and candidate information, that we need to display on our website in a successful manner. So we've been working with them to kind of

flush out how that should work and what that data should look like. And then lastly, we've also been working with IT and with NYSTEC to formalize and document the process by which a new voter registration vendor may be approved for use by county boards. Obviously, when NYSVoter came online almost 15 years ago, we really haven't had any change in the environment of Voter Registration Systems, that had been used by county boards. There has been some interest by a number of outside vendors. At this point, I think the number is about four different vendors who are interested in potentially being approved to be used by counties. And since we've been looking to—since we've obviously updated some of the information that we share between the statewide list and the county board list, we wanted to just take a moment to kind of make sure that we look at the big picture and formalize all of the requirements to make the process of approving any potential vendors easy. At that point, we are looking at getting an initial draft of those requirements to us probably the beginning of next month, and in the hope that that will have the final requirements for new voter registration vendors finalized sometime in late March, early April. And that's it unless Brendan has anything.

Brendan Lovullo: I just wanted to add the one thing that we've been yielding a lot of questions on, village elections as well, and we're continuing to work on that. As far as the Executive Order that came out, I believe was last week that tried to clarify what can and what cannot happen, so we're working with counties and individuals to help them along with that as well.

Commissioner Kosinski: Okay, are there any questions?

Commissioner Kellner: One follow up on during ES&S's presentation, they said that they alluded to the distribution of multilanguage ballots in sequence from the packets instead of rotating them. Is it your understanding that the City Board in fact rotates the multi-language ballots if you have five languages on some of the ballots? I mean you have five languages, but we have been urging them to print the ballots so that there would be no more than three languages on any given ballot, and that they should be rotated. Are they doing that?

Tom Connolly: Well we can certainly confirm with them the process they're following and obviously, some of the new changes to the law do require now that you can have no more than English plus and no more than two other languages. So we can certainly follow up with them and see what their process is, get back to you at the next meeting or before then.

Commissioner Kellner: I would appreciate that because it's my understanding that they should be rotating them unless a voter asks for a specific language ballot so that it's not identifiable who is, that no particular ballot would be identified to a particular voter based on their language choice.

Tom Connolly: Right, sure.

Commissioner Kellner: Thank you.

Commissioner Kosinski: Okay yes, voter secrecy of the ballot is very important. You know I've even noticed that with some of the other issues that have come up overtime about how boards handle different election matters, and I don't know the people appreciate how boards have to treat ballots sometimes in order to keep the secrecy of the ballot pure, and they'll do things that some people might wonder why and oftentimes that's the reason. And I think certainly they may be sensitive to that particularly when you're printing ballots in different languages, and for different purposes that you make sure that you don't have it on a way that allows people to go back later and identify the specific voter's ballots so that it can be done. So I agree, that's an important principle that needs to be enforced at the county level. I know in talking to a lot of the boards they do it, sometimes they get questions about why are you doing this, and people don't really understand how important that is, and what it takes to do. Okay, is there anything else for the Elections Operations Unit, or do you have anything else to report? Any other questions.

Tom Connolly: We have nothing else at this time.

Commissioner Kosinski: Okay, thank you. Then we'll move onto NVRA/PIO John Conklin and Cheryl Couser.

John Conklin: Thank you, Commissioner. PIO has started to quiet down a little bit finally but we're still busy, still answering a lot of questions. NY22 is near the top of the list, still people are trying to find out whether their ballots were counted from the 11/3 election which we can help them with. We've been working on the 2021 political calendar, there are no other questions about that. People have asked about whether there are reductions in the signature requirements or the signature gathering period, etc. and as Brendan mentioned, also lots of questions on village elections. So the unit processed 100 FOIL requests in December. We've been attending working group meetings for both...

Commissioner Kosinski: John, let me just interrupt for a minute, in response to that issue that you just raised, about signature requirements for this coming election. Petitions go out at the end of February is that correct?

John Conklin: I think it's the 23<sup>rd</sup> off the top of my head, yes.

Commissioner Kosinski: And you're not hearing anything, that there'll be any reduction, I mean I know last year because of COVID there was a move I believe to reduce the numbers, truncated the timeframes, you're not hearing anything then that that's being considered or proposed?

John Conklin: Well personally, down at my level, no.

Commissioner Kosinski: Oh okay. Maybe somebody else can?

Commissioner Kellner: Let me just say that this is high on the agenda of the legislature, that no specifics have been agreed on yet, but it's something that they talk about constantly. I

think that there will be some reduction, but I cannot predict what that reduction will be, and it is possible that they will kick this over to the Governor again and let the Governor do it by Executive Order. But it's certainly something that is being discussed, and I would be very surprised if there is no signature reduction.

Commissioner Kosinski: Yeah, I mean it makes sense in this environment, that you'd have something done, because they are coming out there very soon, at the end of next month and clearly, we're still in the midst of this pandemic, and it does create a lot of barriers there.

Commissioner Kellner: Yeah, and I can say that Bob and I have been telling those in the legislature who are interested in what we think, that the end of January is really, that they need to make this decision by the end of January. Whether that will happen, we don't know because there isn't a consensus on what the reduction should be. There is consensus that there should be some reduction, but it's the details that are the subject of much discussion.

Commissioner Casale: Doug? Is the lack of consensus within a particular house or between the two houses?

Commissioner Kellner: It's within the conferences. There is no consensus within the democratic conferences of either houses, from my understanding.

Commissioner Kosinski: Okay, well let's hope they do it sooner than later. I agree, I know we tried to get a political calendar out here, and I know we've held up doing that in anticipation of some changes, but I know candidates are getting ready and they're starting to put, I'm assuming they're putting their teams together to get petition signatures, so I'm sure it's on everybody's mind. Okay John, I'm sorry I interrupted you. Go ahead.

John Conklin: No problem. So I was just about to say that the unit has been attending working group meetings for automatic voter registration and online voter registration. We are almost finished with the 2019 annual report, that should be ready for the next board meeting, and we can start working on the 2020 report. We've also been attending meetings to update the NYSVoter manual and as CAPAS-FIDAS prepares to go live, some accessibility meetings with our consultant Level Access. For the website, we have posted the 2021 political calendar. The report on accessible absentee ballots for the counsel's office, the certified results for the general election, several updates for the compliance unit, a new registration form with the updated list of official parties, the complicated meeting notice that we needed for today, the updated list of elected officials. We've also tackled all the places where the official parties needed to be updated, the voter registration form, the four hour request form, the data file layout and some of the campaign finance forms. As Tom mentioned, we posted a new HAVA voting systems page, with all the voting system testing materials, and lastly, we posted the webcast for the December Board Meeting. There's nothing new to report from NVRA really. Cheryl, do you want to do a quick grants recap?

Cheryl Couser: Certainly, thank you. The unit submitted our annual reporting to the Election Assistance Commission on the HAVA 2018 and HAVA 2020 security grant and also on the

state HAVA operating expenses for the elections or Shoebox fund. As I discussed in the last Board Meeting, the State Board received a \$5 million voter education communication grant award from the Center of Election Innovation and Research. We made the required reporting to the CEER, that's an acronym, in December of all the \$5 million in funding, we utilized \$4.7 million dollars and will have future reporting, and have to return approximately \$300,000. We attempted to use that funding, but I just want to refresh your memories, we applied for this grant at the end of September, received it in October, and it had to be used for the general election. So it was a very short grant period of time. What we had wanted to use it for, was updating the website, but it was not the right time to do so. The eligible expense periods for the HAVA CARES grant the New York State Early Voting Aid to Localities grant and the E-Poll Book Capital Grant Program all expired on December 31, 2020. The claim period has expired for the HAVA CARES grant. There's approximately a little over \$700,000 remaining. We are going to look at that funding. We will have to return and do an analysis and return some of that funding and we will have to do an analysis of what is the twenty percent match. But the majority of the funding will have to be returned of the \$718,000. For the New York State Aid to Localities and the Capital Grant Programs, the claim payments are due by March 31, 2020. Lastly, we have a newer grant, the \$9 million Cybersecurity remediation grant. We have started again our outreach to get all the contracts in from counties. We started the month at forty outstanding contracts and currently we do have fifteen outstanding contracts. Of those fifteen however, a number of the counties have submitted some contracts, they just have to submit a little additional paperwork and we're reaching out to the remainder. We hope to have that concluded by the end of the month. That's all I have thank you.

Commissioner Kosinski: Okay. Any questions for Cheryl? Hearing none, John do you have anything else?

John Conklin: Nope that's it, Commissioner.

Commissioner Kosinski: Okay, great, then we'll move on to ITU, Bill Cross.

Bill Cross: Good afternoon, Commissioners, I'll start with projects. So I'm happy to report we're still on track to go live with CAPAS-FIDAS on January 25<sup>th</sup>. Obviously, we're finishing final testing right now and migration. We'll begin next week, and move into the following weekend. By migration, I mean moving over all the Legacy data from the old system to the new, as well as moving our application from our development platform up until production, so we have a very busy week ahead of us to get that ready. We also have webinars and training videos that have been prepared by Compliance, kudos to them, they've done an excellent job.

Commissioner Kosinski: Bill, I think you should stop right there. You're saying that you're going to have CAPAS-FIDAS up on January 25<sup>th</sup>? If you can do that, if you can do that I think we'll all be very happy with your report. That's been a long time coming, years and years and years and if you've actually accomplished it, I will be very happy that will be a very

big improvement in our reporting system. Now go ahead I didn't mean to interrupt. You go ahead.

Bill Cross: No, I appreciate that, thank you. Yes, I'm, very much looking forward to it myself as you can imagine. All indications are we are a go. We have a lot of loose ends to come together obviously in a very short time, but I think we can do it. Our first exposure will be public reporting which is through the forward facing piece on the website. This, of course, I think I mentioned before was timed to be in between filing periods. So with the January periodic currently finished, the next big filing period won't be until May with the 32 day Pre-Primary. Obviously in between, we'll have the opportunity to test out any filers who are filing amendments it will come now to the new system. But we're largely ready. Obviously, we'll have some things to work out, but it's a go. My staff has done an excellent job of pulling it together, so fingers crossed and full steam ahead.

Commissioner Kosinski: That's great, happy to hear that.

Bill Cross: Thank you. Online voter registration, we've issued the mini bid to the vendors for software analysis and development for both online voter registration and now automatic voter registration now that it's past. We've received indications of 14 vendors of their intent to bid. So we're expecting an active participation and interest in that application and that acquisition. The bids are due back February 5<sup>th</sup>. We will be having bidder presentations February 22<sup>nd</sup> through 26<sup>th</sup>. And we've also, in the meantime, answered several questions from the vendors in clarifying things around the bid. So a lot of activity with that. We've also continued to work while the bids out, we continue to work with numerous stakeholders on the project including state IT services, DMV, the voter registration vendors, now with the passage of automatic, some of the designated agencies there. For NYESS voter, as Tom has indicated, we're working on implementing the display of local ballot information for voter look up and that's in progress. For security, the Secure Election Center continues development of a set of comprehensive Cybersecurity standards for the county boards and county IT that support them, ultimately to be issued as a reg. We've been working with and soliciting input from a large workgroup of county IT administrators in this process. Obviously, we want a standard that's achievable by the counties, so we've received very valuable feedback from them as to what can be done, what can't be done, and what's the timeframes with some realistic timeframes in that, and it's been very helpful. We've also employed the services of NYSTEC in development of this in these workgroups. As I said last month, this reg much will formalize what the counties are already doing in terms of Cybersecurity and pretty much industry standards but there's some new things that will greatly enhance the security at the county level. We also continue to work with NYSTEC and the various counties on the risk remediation plans, which will ultimately be utilized, the grant that Cheryl was referring to for reimbursement of funds, but each county has a plan in place they're working towards to improvement security. And as always, we're continuing to work on our own multiple security enhancements to our own infrastructure here. This month in particular, well I can't share details in the open forum, we've implemented a significant improvement to our logging and monitoring capabilities across our infrastructure and we're working on that. it's a big gain for us. In terms of website post-election, website traffic levels are basically turned back to normal

with approximately 185,000 views for the main site for December. And that's my report, unless you have questions.

Commissioner Kosinski: Are there any questions for Bill? None here, thank you Bill, appreciate it. Our next item is Risa Sugarman, I am assuming Risa is not attending, and we did discuss a little bit the Compliance Unit earlier. Is there anything anybody wants to say about the Enforcement Unit?

Commissioner Kellner: Well, just to confirm that there had been no criminal referrals at all in the year 2020, or in the first two weeks of this year.

Brian Quail: That is true.

Commissioner Kellner: And there have been no hearing officer proceeding requests in the entire year 2020 or this year.

Brian Quail: That is also true.

Commissioner Kellner: Then I certainly subscribe to what Commissioner Kosinski mentioned during the prior report.

Commissioner Kosinski: Okay, thank you. Are there any other comments on that topic? Hearing none, we're done with the Unit Updates, we'll move onto old business. So under old business we have the Fair Campaign Code complaint that came to the Board last meeting. I believe there was an agreement that the staff would craft a letter in response, and I believe they've done that and now are there comments?

Commissioner Casale: Mr. Chairman? Mr. Chairman? Yeah, I understand the Counsel has circulated Resolution 21-01, I think it's well done, I would like to move its adoption please.

Commissioner Kosinski: Okay, so I have that as well. It's been moved for adoption, is there a second? No second?

Commissioner Kellner: I second.

Commissioner Kosinski: No second?

Commissioner Kellner: I second.

Commissioner Kosinski: Oh, I'm sorry. Mr. Kellner seconds. Any discussion? All in favor aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.



Commissioner Kellner: Aye.

Commissioner Kosinski: Aye. Opposed? No one's opposed, so it's carried four to nothing. And I think there's no further discussion on that unless someone else what's to discuss it, but I appreciate that. So that would conclude old business, and we'll now move to new business.

Our first item, under, well is there anything else under old business that needs to come up? I don't think there is, I don't have any on my agenda, I guess not, we'll go to new business. Under that we have our CURES regulation that was crafted again by the staff. I think the staff should give us at least a brief overview, I know the meeting has gone on a while but just a brief overview of what this is would be helpful. I think as I understand it, this a first go-round where we put this out for comment, and then get back for final approval, correct me if I'm wrong.

Kim Galvin: I think this is an emergency adoption, just so we can be sure that the ongoing elections in New York City are still following the process.

Commissioner Kosinski: Okay. So we have not finally adopted anything yet? They're still in comment, is that correct?

Brian Quail: Actually this is also the first, will also authorize the first publication to start the public comment period for an ultimate final adoption, but we have promulgated by agreement with the plaintiffs and one of the League of Women Voters lawsuits in a settlement that is precisely the same in all substantive respects. So we have been following and implementing this. The main difference between this and what we had agreed to do, is that the prior version included elements that were in the Governor's Executive Order that attempted to speed things up post-election, that has expired so we revert back to the timeframes that are in Chapter 141 in the Laws 2020. And so that's reflected in here. But otherwise we aren't doing something new, but we are doing something new in the regulatory arena.

Commissioner Kosinski: Okay, so these are basically the same rules that county boards followed in November.

Kim Galvin: That is correct.

Commissioner Kosinski: Okay. So this is an effort to make these permanent for elections going forward?

Commissioner Kellner: I would simply correct this to say these were the rules that county boards were supposed to follow.

Kim Galvin: Most of them did. Most of them did.

Commissioner Kosinski: I'm confident they did the best they could, under the circumstances.

Commissioner Kellner: It's still important that we follow up to give a report because the legislative leaders had asked us to give them feedback on how the counties complied with the rules and they're very interested in looking at whether they need to modify the statute.

Commissioner Kosinski: Okay.

Commissioner Kellner: With that said, I move the adoption of the resolution.

Commissioner Kosinski: Is there a second?

Commissioner Andy Spano: Second.

Commissioner Casale: Second.

Commissioner Kosinski: Any discussion? All in favor aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye. Opposed? It's unanimous, those are adopted. We'll go onto our next item and that is what's remaining of the voting systems that we did not discuss earlier in the meeting, and that would be first the Dominion upgrade, and if the staff just wants to go over that so we understand what's before us on the Dominion machine.

Tom Connolly: Sure, sure thing Commissioner, thank you. The Dominion submitted some updates to their software a few months back. We had reported at one of the Board Meetings that there was a engineering change order, that we were determined to be de Minimis after review by SLI compliance. That was for printer hardware. The printer inside of the ICE machines the actual printing component itself was no longer commercially available, and so the manufacturer has a newer version of that particular component. At the time it was just the swapping out of that hardware. The hardware worked with the existing firmware that was in the machine. This seeks to just update the firmware so that it is the most up to date with the printing component itself, and then there was also an update to the image cast precinct or the ICE the older scanner from Dominion, just to improve a ballot image processing. We did work with SLI and with NYSTEC to develop some functional testing around that, we had NYSTEC do the functional testing and that report was then also provided to you and posted on our website.

Commissioner Kosinski: Okay, I've had a chance to review the testing report that was submitted so I've seen that. I think the other Commissioners also received that document as they did the ES&S document. Are there any questions for Tom or Brendan on this topic?

Commissioner Kellner: It's my recollection that we had conditions of additional safeguards that we wanted the county boards to implement when we initially approved the certification of the image cast and what is the status of those additional requirements now?

Tom Connolly: Well what we had done Commissioner is amend the audit procedure, so that whenever a Dominion ICE machine is selected for the 3% audit, they have to do an additional step in which they look at some of the information that is printed out on the tape. That the information that is printed out is actually a number of different values; one of them is the number of times that the software thinks its printed or told the printer to print. One of them is pulled from the firmware of the printer hardware itself that says how many times the printer itself has been printed, and one of them is how many times were there an accessible voting session? And in most of the cases, those numbers should always be the same, and for whatever reason they are not the county board would either have to explain the discrepancy or they would have to notify the State Board.

Commissioner Kellner: That was only the procedures, we did not actually amend the regulations am I correct?

Tom Connolly: Correct.

Commissioner Kellner: And I have received reports that several counties that have image casts have not implemented those procedures. Are you in a position to confirm that every county that has an image cast actually complied with those additional procedures?

Tom Connolly: I cannot say that I'm in a position to confirm that the county boards have, I do know that before the general election, we specifically went out to all of the boards that had ICE machines and reminded them of this change in procedure so that they were sure to do it when they did their 3%. We do have documentation that county boards provide to us upon completion of the 3% audit, we could certainly alter that form, so that for any county boards that have ICE machines or any ICE machines that were selected, that the Board has to confirm that they did do the additional steps.

Commissioner Kellner: As I say, I didn't get to see the resolution until this morning and I apologize, that's my oversight but I'm not prepared to approve the resolution without explicit language that requires the counties to comply with those additional procedures. And I don't know if that's something that can be drafted right now, or do we track the language from the resolution that we adopted earlier, but I think it's critically important that we make it clear that this is binding on the counties, and that they cannot use the Image Cast Evolution unless they comply with those additional audit procedures.

Commissioner Kosinski: I would ask the staff; I mean I'm okay with that. I think that was something we agreed on, and needs to be reinforced with some further statement by this Board, I'm prepared to do that. if we can get the resolution to conform to that today, that's fine, otherwise we have to put that off as well till we can get it done and then review.

Commissioner Kellner: What are the practical consequences of laying this over to our next meeting?

Tom Connolly: Honestly, I don't really think there would be any.

Commissioner Kellner: In that case, I would ask that we lay this over and I would ask the staff to include that additional language.

Tom Connolly: Okay.

Commissioner Kosinski: Okay do I hear any opposition to that proposal by Commissioner Kellner? Hearing none, I think we'll direct the staff to insert that language into the resolution prior to us acting on it, and we will review it before the next meeting.

Commissioner Kellner: Thank you.

Commissioner Kosinski: Okay, that completes our meeting. There's just one other topic I wanted to raise today while we're here. I noted that there was a Op Ed piece that was put together by the two conference chairs of our local Commissioners Eric Hayden and Dustin Czarny that really set forth kind of a conceptual idea of how the Boards have acted and what they've been trying to do. I think our Board consider putting something out, that supported our board and just supported the whole concept of how our Board of Elections operate. The idea that we have bipartisan elections in this state, which have been around since really the 1800s is a really important concept that we have, and I know there's been a lot of talk about what the Boards can and cannot do, or have and haven't done, and how they've comported with the law. But I think it's important for us to be supportive of our counties and for us to just support the while idea that our structure is really critical to the fair administration of elections in this state, that we have a bipartisan agency that oversees elections and conducts elections, and goes forward with elections. And this talk about doing some structural changes, certainly I'm hopeful that it doesn't in any way subvert that concept that exists in our state constitution, and has been servicing our state so well for so many years. So I would like to have this Board put something out that supports that. I would like the two chairs of the conferences did, the local boards just supporting that idea so that we're on the record for that. If that's something our Commissioners could agree to, I'd ask the staff to maybe put something together we could look at for the next meeting to endorse that concept publicly as a board.

Commissioner Casale: I agree.

Commissioner Kosinski: Everybody good with that? They have to put it together, and then we could act on it at the next Board Meeting. You know but I know there's been a lot of talk about boards, and I think it's important for us to be on the record. So if we could do that I would...

Commissioner Casale: I think additionally, Mr. Chairman if I may, I think additionally we as individual Commissioners in our discussions and conversations with people in the political arena and the government arena, ought to make it very clear where we stand when it comes to bipartisan elections, bipartisan boards, excuse me.

Commissioner Kosinski: That's fine. I do whenever I have a chance, and I hope we all do, and I think it's helpful right now cause I mean we've seen some hiccups I think as Kim Galvin referred to them. We know they're under fire and there's been some issues raised. But I think overall the system works, it works well. New York State has had a good I think system and a good history of fair elections, and around the country, we see different structures of different elections, and some seem to work, and some seem not to work frankly, and I think our system of bipartisan is very important to maintain and continue and to support and to defend. And I would be—I just think we should state our position so that people are clear on that and going forward we support that whole idea.

Commissioner Yankah: Hi Commissioner, this is Ekow. For what it's worth, I'm in total agreement that we should support the local boards. We have done work under really difficult circumstances. I will say for me personally I've always thought, as you say there are different models and I work in different places, and I think there are some nonpartisan states. So I only say that not to disagree with what you're saying, but to say to the extent anybody wants my signature, if the language could reflect while we can imagine other ways of doing it, and while there are strengths to other systems, we could say that without taking away any support from our board or taking away the basic decency of how hard people work in New York, under a bipartisan system.

Commissioner Kosinski: Well with all due respect, I think the idea of nonpartisan is somewhat sort of like the concept of an "independent actor" on the screen, it doesn't exist. That just doesn't happen. It just isn't real. The idea that you're going to have someone who has no allegiances or no skews one way or the other, just isn't factually possible. And I think the structure of a bipartisan is the best structure to ensure that there's a check and a balance to make sure you have checks and balances at the board level to make sure people are being treated fairly, ballots are being conducted fairly so I really think that's what we're looking at.

Commissioner Yankah: No, and I know that some of my colleagues and I disagree, I know Doug Kellner, I mean it's obviously a conversation I've been having for over a decade, and I have friends all across the country, different states that have had different experiences. So I certainly don't think I would convince everybody at the drop of a hat. I'm just saying to the extent that we want a unanimous, anyway, I don't want to over press the point. If this is something that everyone wants to sign onto, in any case, I would just choose language that would allow people to say, you know to be true to their commitments without at all withdrawing support from what I do agree is a good faith bipartisan work in my short experience on this board.

Commissioner Kosinski: Ekow, we could limit this to the four Board of Elections Commissioners if you're more comfortable with that, and then you don't have to be

concerned about language you're not comfortable with. If you have issues with that, and that may help out as well.

Commissioner Yankah: Yeah, this is nothing grave of course. Maybe I'm saying this as much to point out that I support the local boards and impressed with what people do without needing the type of things this would be the only structure possible.

Commissioner Kosinski: Fair enough, we'll try to put something together we can agree on. Okay, I think that concludes our meeting for today, unless somebody has something else, they want to bring up. I think not. So what I'm suggesting we do is we would adjourn out of the Board of Elections and we would then commence as the Public Campaign Finance Board, but I guess we have to set up meetings for our next Board of Elections meeting, and I think the four of us need to come up with a date we can agree on, and Ekow we try to include the Public Financing Board I think at the same time again probably, so if you could look at your calendar too, and we'll try to come up with dates that everybody's comfortable with. And I think, we do have a couple of pending issues that need to be resolved, so I don't want to let them linger too long, cause we pushed them off today to a future meeting, so I'm hopeful we can do it relatively soon.

Commissioner Casale: Mr. Chairman? Mr. Chairman? Unless I'm incorrect, I thought what we need to do is have the meeting, almost in the very near future sort of a special meeting, just to finally resolve the voting systems issues.

Commissioner Kosinski: Commissioner, we could do that, if that's the desire of the Commissioners. We could even do that, and not have a full meeting and then have a full meeting at some future date. I don't really care which way we go, I'm open so whatever the commissioners wish.

Cheryl Couser: Can I interrupt one moment, and I apologize, I would just like OGS media services to be aware that even though we're saying we're concluding a meeting, to keep the WebEx going for the next meeting. Thank you.

Commissioner Kosinski: Thank you Cheryl. So Commissioner Casale is suggesting we meet in the next week or two about this issue?

Commissioner Casale: I'd say a week. If the staff is comfortable and can get their report to us, I'd say a week from today if possible.

Commissioner Kosinski: Is that possible for the staff to do? Do you think staff...

Bob Brehm: This is Bob, I don't know if you can hear me.

Commissioner Kosinski: I can Bob, go ahead.

Bob Brehm: A week from today, the Election Commissioner's Association has tried to do their winter conference that they can't hold in person by teleconference and they've asked us to present, so we have the task of both supporting them and listening to them and...

Commissioner Casale: No, no that's perfectly fine. Let's find a date though.

Commissioner Kosinski: No, you're right, the Election Commissioner's Conference is next week.

Commissioner Casale: And next week may be too soon if the staff is engaged in other stuff. How about two weeks from today does that work?

Commissioner Kosinski: That would be the 28<sup>th</sup>. Is that something the staff can do? Can you get this together by the 28<sup>th</sup>?

Commissioner Kellner: And I would only be available from noon on, on the 28<sup>th</sup>.

Commissioner Kosinski: Well we'll do a noon meeting again, Commissioner, yeah.

Commissioner Casale: That's fine. But just the one topic, a special meeting for the one topic just to get it over with.

Commissioner Kosinski: Okay if that's the way we want to do it, that's fine. So we'll do a 28<sup>th</sup> meeting at noon and we'll discuss the two well couple of issues that were left today on the machines, that we didn't have resolutions for. Those resolutions will be prepared, they'll be submitted to the Board prior to that, and we'll act on those on the 28<sup>th</sup>.

Commissioner Spano: What time, 12:00?

Commissioner Kosinski: 12:00 if that's okay with everybody. We'll do noon again. Okay? And Ekow, we're not going to have a meeting of your Board on that day, I don't think. What we'll do is schedule another meeting maybe in early February, for that, if you have any dates that you can't meet, let us know.

Commissioner Yankah: Forgive me I have a problem that I'm a permanent schoolboy, so I'm looking at my new class schedule and my best days are Mondays and Wednesdays. Tuesdays, Thursdays, and Fridays I'm in and out of class.

Commissioner Kosinski: Okay so you're talking like February 3<sup>rd</sup>, 10<sup>th</sup>, 17<sup>th</sup>, any of those dates would be good?

Commissioner Yankah: Exactly.

Commissioner Kosinski: Okay so we'll pick one of those dates for our next meeting. Do you want to do that now?

Commissioner Kellner: Yeah, let's say February 10<sup>th</sup>.

Commissioner Kosinski: Okay February 10<sup>th</sup> for the next full Board Meeting okay.

Commissioner Spano: Hold on a second let me check that. February 10<sup>th</sup> is fine.

Commissioner Kosinski: Commissioner Casale?

Commissioner Casale: One second please. That's a Wednesday, I'm fine.

Commissioner Yankah: I'm available any time except from 12 to noon, excuse me from 12 to 1:00.

Commissioner Kosinski: Ekow I think that would be fine if we met at noon, I'm sure your Public Campaign Finance meeting would happen after 1:00PM.

Commissioner Yankah: That's great.

Commissioner Kosinski: I'm sorry Commissioner Casale, did you say okay?

Commissioner Casale: The 10<sup>th</sup>, Wednesday the 10<sup>th</sup> is fine with me.

Commissioner Kosinski: Okay so we'll pick the 10<sup>th</sup> so we're going to meet next on the 28<sup>th</sup> and then after that on the 10<sup>th</sup>. So that concludes today's meeting. I think we can adjourn if someone makes a motion to adjourn.

Commissioner Kellner: I move that we adjourn and start the meeting with the Public Campaign Finance.

Commissioner Kosinski: Second to that?

Commissioner Spano: Second.

Commissioner Kosinski: All in favor?

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye. Opposed? That's carried, we'll immediately go into our Public Campaign Finance Meeting upon conclusion of that. I guess I'll just continue if that's okay with everybody? I don't have an agenda though.



Commissioner Spano: Don't let the power go to your head.

Commissioner Kosinski: It's sort of a free for all I guess, if people have things they want to talk about in this context? I think the Executive, I don't know if it was Bob or somebody wanted to talk about this at the staff level, but we're going to defer it until this time. If you want to talk about it, I think Bob, you were going to talk about it.

Bob Brehm: Thank you. With regard to the budget, after your last meeting where this panel by 5 to 0 approved the staff budget that we had submitted, the Co-Executive Directors followed up with a letter to the Director of the Division of Budget to confirm that it was in fact an approval of the Public Financing Board as required by the statute, to submit that budget. So it wasn't a staff budget, it was now yours, so we wanted you to know that was done. As of this past Monday in our regular conversation with Deputy Secretary Debra Alligood White, Todd and I asked for the status of the budget, we hadn't heard anything from anyone, and if there's any information on when the budget would be coming out, we were informed that they don't have a date yet that they're sharing so we haven't had a chance to confirm if the budget that you recommended, that's required to be shown to people is included or not. Financing is a big issue with regard to public financing, as well as getting the other two Commissioners. It does come up at our weekly meeting. If anybody has any information on when we'll be seeing the other two appointments, it's still being worked on we're told. So that's as much as we know about where the other two are coming from. But from a staff point – I'm sorry.

Kim Galvin: Bob, I was told this morning to let people know the Republican appointment will be here by February's meeting.

Bob Brehm: Okay, good to hear. So from a staffing point of view, we have two main issues; where do we put the people that we'll need to do the work of Public Financing? So moving into a building that can accommodate us, job titles, job classifications, recruitment, hiring, we have zero money for it. In the budget we submitted, we both recommended a number to being on April 1<sup>st</sup> and in the new budget, but we also reminded them of the need to give us resources during this fiscal year because, as Kim knows better because she sat through that Commission. There's a lot of steps that need to be done in order to set up a program, many that are new, that will need a discussion and input to make business rules in order to set up a program. And if the program needs to begin after the 22 general election, that doesn't give us a lot of time to onboard people, you know etc. And as I reminded you, its 331 days since my last appointment was made, and that still isn't approved. So we really need bodies because as much free time as Kim and Brian seem to have, their staff is working full out for Compliance, to keep them up, and to also support the new system rolling out, and on top of that, we need to come up with business rules and concepts and be able to hit the ground running with new Commissioners. So we need people, it is just unfathomable that we can build this without people, and that it can be put together at the last minute. So I'm again unfortunately I keep worrying about the budget and the bills, and how to pay them, but more importantly there are a lot of moving parts that really need to come together in very short order, to have a chance to

set this up in time. And I'm fearful that we're being set up to be said we failed. I understand there are fiscal problems, but nobody's adjusted the schedule either. And it's very hard to expect that if we get money on April 1, and that's when we can begin, that if we don't get this fast tracked, we're just not, there's no chance we're going to make it. So I don't know how more critical to say we're at, but I think we're at a very critical juncture. This is ready to take off and be effective, and I think we all want to do our best to set up this program. We're really at a time where it's going to be very difficult.

Commissioner Kellner: Before you were talking about the location for the new staff, what have you proposed?

Bob Brehm: We had worked with space planning. They had identified 150 Broadway which is not far from the location of the building we're in now, and they had a lease that was being finished with, I think it was Children Protective Services because they were moving out and they thought we could move in in February, if we opted. So we put together that plan, but minor modifications needed to be done to put in a public counter for things like election operations to receive petitions, storage room, very minor modifications in order to make that work for us but it was all laid out, it was a lease that would cost about \$500,000 a year if they incorporated the changes in the lease. But the next step was to talk with people about paying that bill, where's that money come from, and actually launching it. That's when they stopped talking to us. So Todd and I really don't know, we can't keep going on with space planning without an agreement at the leadership. And what they told Todd and I when we said, why isn't this moving forward, the answer is, "Well we don't have to give the money out until 2024, so why do we need the money now?" And after we chuckled a wee bit because it was either that or cry, we responded with very forceful, this has been discussed when the commission met in December and when they did litigation, but they pretty much adopted the Commission's recommendation. But all those discussions went into great detail in the report as to the work that needs to be done to be ready at the beginning of the term, there is a great discussion about when this would start. But the work would need to be done so that on day 1 after the 2022 election, campaigns, people wanting to participate in this program, would know the rules, and know how to not be caught not complying with the rules. So it needs to be done in time so that we can educate people on what is a good contribution, what's a bad contribution, etc. So saying to us you don't have to spend the money till 2024 really misses the point entirely that we need to be up and hitting the ground with a program. And remember 2022 is a busy year. We have all the statewide candidates on the ballot. We have a United States Senator on the ballot, we have all the senate and the assembly on the ballot. It's not a small task. We printed out that if we don't get started until April of this year with budget, I just don't know how we're going to make it. And I have no answer to that, other than we'll we're looking at it and we hope to get back to you.

Commissioner Kosinski: Well I don't know, is there any other thoughts on how to proceed? I think it will be helpful if we can get a full complement of Commissioners that will allow the full Commission to be active, and my anticipation at that point we can start at least putting together some structures but without staff, that's kind of wishful thinking. There's only so much we can do at the Commissioner level and with current staff. But we don't even have a

full Commission yet either. So it seems like this has been in delay mode for some time. I don't quite understand it, but I agree with you Bob that's where we are, and I don't know how to move it forward myself.

Kim Galvin: If I may just suggest something, I mean you obviously could raise it with Mr. Mujica if you had that meeting with him, but I also thought that perhaps since the Senate and the Assembly are fully divested in this program, perhaps a letter crafted to those leaders and the minority leaders as well, would make them more aware of the upcoming budget cycle coming forward.

Commissioner Casale: Absolutely. They need to know that now. Kim is right, they need to know that now so that they can plan properly for the budget, but the people who supported this, the people who advocated for this for the longest time, have to be made aware of what it takes to implement what they have proposed or what they have enacted. And again, I would not preclude this from being a conversation with Mujica as well. We need to say we've done our homework, and we've brought it to their attention. If that doesn't work, then we may have to go elsewhere, but at least we could say we went through the proper channels, and make it very clear, let no one come back and say you never told us.

Commissioner Kellner: I can speak for the leadership in both the Senate and the Assembly are well aware of this, and as everybody knows they appointed Commissioner Yankah in July, and we still don't have the Commissioner's appointed by the Republican leadership or by the Governor. And so I don't think the letter to, well as I say I'm very confident that the speaker and the Senate Majority Leader are very much aware of this, and budget negotiations will be tough, but they know that this is something that they need to address in the budget. But I don't speak for the Governor's office, and I have made myself numerous entreaties to have them appoint their commissioner, and I haven't gotten any feedback that reassures me that this is on the Governor's agenda.

Commissioner Yankah: So, as you can imagine I feel a little impotent that I've been thrust upon you, and as Commissioner Kellner said it's been kind of a stall mode. I have had conversations with people in different positions. I have offered everything I can to inspire them. I've talked to Senator Zellnor for example, on having sort of a road show. He said he would have a conversation with his colleagues, putting together a sort of what we need, what the goal is, that kind of thing. So I've had conversations with various people about New York City's system and what that took, and so you know, I've been trying to bang the gavel to let people know both what we need to do and what the next steps are, and everybody's not, to his credit Senator Zellnor is obviously very interested and very supportive, and he said he'd bring it up at the retreat, and the hope was to energize people, to then have some action but other than that in communicating with the majority leader, I'm all ears if people have suggestions of what I can do to move this further along.

Commissioner Kosinski: I have to admit I don't. I mean other than what you've been trying to do, raising it with the legislators and the Governor's office, that's about all we can do, but I agree getting the Commission fully formed would be a step, so I'm encouraged to think that

the Republican leaders are going to get their appointment in here soon, and you know if the Governor would do that, I think that would go a long ways. But as I said, I certainly sympathize, without money there's only so much we can do. And so somebody has to be willing to pony up some money for this agency to implement this massive program. And I'm not talking about the money for the candidates, I'm talking about the money that we need to hire staff and to create the software, and the whole development of that product that people can use to actually apply for their public money. That's a massive undertaking, and I agree that if that doesn't happen soon, I just don't know how, because it may not apply till 2024 but I believe you can start applying for money at the end of 2022, isn't that correct? It would be that election cycle, so it's coming much faster than 2024.

Bob Brehm: I'm not quite sure if they could apply for the money, but they would start qualifying for the money, so they would know what records they need to keep and in general, can they start submitting them in a system that would allow them, we might be able to approve them...

Kim Galvin: One thing too Bob, is the contribution levels are such that only certain ones would be matchable. So these candidates need to understand and know that if I take a lesser amount now, it's going to be matched down the road, as opposed to taking the full shot now and not getting any match at the end. So that is the critical component for the candidates that are trying to raise money as well.

Commissioner Kosinski: And that's a 2022 issue.

Commissioner Yankah: And I also think, I mean 2022 is even the latest day. I mean in my imagination I think what do we say to the first time candidate who says, "Who do I go to talk to about this?" "What are the rules? My friend is going to be my campaign manager how do I do this" right? I mean we have to have staff and infrastructure for that person to be able to start, I mean that's part of the point of this project, right. So that's the end user I have in mind and like you, I worry that we're going to fail this imagined end user.

Commissioner Kosinski: I think we all are, Commissioner. We're all concerned about that, and I think that more time that runs, the bigger the chance that that's what's going to happen. And we're already in a critical mass. I think Bob outlined it's already 2021 and we're already behind schedule, and we need to get started as soon as possible, or we're simply not going to make it, and then we're going to have to deal with the ramifications of that.

Bob Brehm: And Commissioner, if I may, it's not like we have redundant services that we can pull on. We, as I've mentioned, we have major programs we're building OVR, AVR that were already two years after the law went into effect, and they finally gave us the money to implement, and to be honest the law says we're supposed to have that up and running by April 12<sup>th</sup> of 2021. Well it's just impossible if they didn't give us the money until now. So we have, forget the fifty bills they passed, and however many they passed last year, or the number they're going to pass this year, it takes planning, it takes being ready. The election apparatus in New York State, the fifty-eight counties from 4,000 to millions in New York City, is not

something you can change the night before the election, and the inability to plan and train the people when they are not at their busiest, just before the election means we need to have this in place early when we're not running the busiest elections of our lives under really lifesaving critical pandemic conditions.

Commissioner Kosinski: Well I think Bill Cross' announcement today is instructive. I mean this change to FIDAS and CAPAS was implemented and will be up and running at the end of this month, was begun as I recall in about 2010 if not before, it took us that long to migrate our old FIDAS-CAPAS system into a new FIDAS-CAPAS system. That's a long time. These systems don't pop up overnight as you say, and that's instructive that it took that long for this agency to do that.

Commissioner Spano: And I would like to point something out. This is a public meeting, correct?

Commissioner Kosinski: Absolutely.

Commissioner Spano: And usually we're monitored by the press, is that correct?

Commissioner Kosinski: I don't know.

Commissioner Casale: Maybe one if we're lucky.

Commissioner Spano: Well that's the problem though. They've monitored many of our meetings where things like this come up, and we speak about it. They don't seem to think anything we do is that important. They certainly don't report on it, they certainly don't make an issue of it, this is a great issue if some reporter wanted to pick it up, and delve into the other parts of it and what it's going to do, and what the implications are down the line. I only point that out so that if we can't get the interested of a press person who could make a little name for himself doing things like this, we've got to rethink this and how we're going to do this, because unless we get to a point where everyone thinks this is the greatest idea and they gave us more money than they're going to give the Health Department, the Environmental Department, the Police Department, etc. etc, we got a problem, and I think that we are different, and people don't understand that, and that's a problem. We are very different than these organizations, and I don't think now but everyone would think about a separate funding mechanism that isn't tied to budgetary whims every year to fund a thing like that, and that's not impossible. I've done it before with other things, but this is really critical to a bipartisan group like this, that has to do X Y and Z and has to do it every year and they keep giving us more and more to do. You've gotta know how much money you're going to get every year. you've gotta know that.

Commissioner Yankah: But is it your suggestion that we should be finding more press to cover this, because if that's one suggestion, I'm sure we can, and I'm happy to try to reach out. My goal here is not to create attention for its own sake, but if that's the only thing we can do, we have to do something.

Commissioner Spano: This is a public meeting; we're talking about it in the open. It's like no one cares.

Commissioner Kosinski: Commissioner Yankah, I would welcome more press attention to this topic as well as frankly others that we undertake, but I agree with Commissioner Spano, we don't seem to garner much attention from the press, certainly not during our meetings.

Commissioner Yankah: We're not the sexiest issue out there?

Commissioner Kosinski: Apparently not, and that's despite the fact that this is a national issue right now. There should be great interest, this is a national discussion going on about elections right now. You'd think there'd be massive attention being paid to it. But notwithstanding, we don't get a lot, and if you have any other avenues to access press, I would welcome that. I'm always available to talk to the press, of course, about these topics if they're interested. I'm sure you would be too, and I would welcome it, cause sometimes we know we're in the political arena, that's what they listen to. Sometimes it's the squeaky wheel that gets the grease. If you get some attention, they'll pay attention to you. Unfortunately we have trouble getting that kind of attention, which is one of the reasons I suggested that letter earlier, and even doing some more outreach ourselves. I think that's necessary for us to get the word out there.

Commissioner Spano: An example of this Commissioner Kosinski, you talked about Risa leaving and what the press said. Every meeting we bring up that issue. Every meeting we talk about what's wrong, and it's still after years, and still got a press report like that.

Commissioner Kosinski: I agree with you. I agree it's frustrating to me. I think what the press obviously what they think is important, we don't, and what we think is important they don't. Why? I don't know. And as I said particularly in this atmosphere where there's enormous attention being paid to elections around our country, you would think there would be more attention being paid, but I haven't seen it. It's when you make a mistake, you get all your attention.

Commissioner Yankah: Exactly.

Commissioner Kosinski: Unfortunately, they never really know the issues going on out there. They wait for you to make a mistake, then they jump all over you. But until you get the resources and the attention you need up front, you're going to make mistakes. It's going to happen, but you need that attention, and the politicians don't pay attention most times unless there's some public effort to get it out there, this is a problem. It's going to be a problem; you need to pay attention to it.

Commissioner Spano: I'm telling you the minute you make a mistake, make a mistake on this whole thing, it's going to be gotta change this system with the Democrats and Republicans that all go into a political cabal here. That's what it does.

Commissioner Yankah: I do think this is why I'm in entirely in agreement. I do think one thing I have that somebody might find attractive is precisely that, we can talk about that this is a bipartisan group. We're trying just to hold the system right, and that should be an attractive story, rather than waiting for the disaster and then telling everybody how bad the Board of Elections is.

Commissioner Spano: This is my political background coming in. People think that we get more jobs, this is the public, we get more jobs here that's more jobs for the party, that's what they think. Right Ekow?

Commissioner Yankah: Yes because the reason I do this is for the vast wealth! (laughing)

Commissioner Kosinski: We all are.

Commissioner Spano: Those are the misconceptions. We've got to get rid of them because I mean when I got into this office, and I was looking at it similarly to what I had known about other offices and boards of elections, and I thought, well a lot of this a lot of that, they work their butts off in this office, trying to do the right thing. And so do the people out there. What they did in this election is incredible, and no one really knows it. Because when it runs right, no one says anything. When it runs wrong, you're going to get it. I just give you all this, because I'm going to think about a strategy that works, that at least gets us some elevation of interest in what we're doing. Because we're fighting in a fund base that everyone else is fighting in.

Commissioner Yankah: No, I agree. Look, I'm a neophyte here but why don't I put together, I'm just going to send e-mails to a small collection of op ed and news people and see if we get any bites. I wish I had some clever trick, but maybe I'll try that.

Commissioner Spano: Well you know I think we should all think about it and come up with some ideas. I thought I was retired but I can think of some ideas.

Commissioner Kosinski: And Ekow, John Conklin who works on public relations at the office, if you're interested to work with him on trying to get stuff out there, I'm sure he's available.

Commissioner Yankah: I would love that could you have him send me an e-mail and I'll make some time and we'll find a mutually agreeable time and we'll do our best, we'll do something.

Commissioner Kosinski: John, you're on this, right? You could reach out to Commissioner Yankah?

John Conklin: Absolutely.

Commissioner Yankah: Oh there you are, sorry I didn't, I've got all these little boxes.

Commissioner Kosinski: It's okay. Yeah, John does our PR so if you want to talk to him maybe you guys together can help and if there's something I can do, let me know. I'd be happy to help.

Commissioner Yankah: I appreciate it.

Commissioner Kosinski: Do we have anything else to talk about today?

Todd Valentine: Nothing else on the agenda.

Commissioner Kosinski: Well I appreciate everybody spending their day with us, and I appreciate the public that came out this morning to speak before us. If there's nothing else to speak of today, we will adjourn until our meeting on the 28<sup>th</sup>, and then we'll see Yankah, we'll see you again on the --what date did we pick-- the 14<sup>th</sup>?

Todd Valentine: The 10<sup>th</sup>.

Commissioner Kosinski: Sorry, the 10<sup>th</sup>, February 10<sup>th</sup>. We will convene both the Board of Elections and the Public Campaign Finance Board at that meeting.

Commissioner Yankah: And Mr. Conklin I look forward to your e-mail.

Commissioner Kosinski: Okay sounds good. I would entertain a motion to adjourn this meeting and...

Commissioner Spano: So moved.

Commissioner Kosinski: Seconded. All in favor aye and we're adjourned until the 28<sup>th</sup>.