

Commissioner Kellner: Then I will call to order the meeting of the Board of Canvassers and the Elections Commissioners. I wanted to start with a, on a point of privilege, to mourn the loss of Commissioner Reginald Lafayette. We learned this weekend that he passed away. He's been Commissioner at the Westchester Board of Elections for many years now and was very committed as a member of our election community, that he actively participated with the other county commissioners to share perspectives, and he was particularly committed as a commissioner to making sure that it was maximum ability to vote and making the Board of Elections user friendly. And I recall in particular his efforts in introducing early voting to Westchester, both in maximizing the number of poll sites as well as being one of the first large counties to introduce the vote center model for setting up their early voting. So, I regard it as a great loss that we have lost this member of our election community, and I wish well to his family, and to those at the Westchester Board of Elections who will suffer from his loss. I know Commissioner Spano was County Executive when he became Elections Commissioner.

Commissioner Spano: Yeah, thank you for those comments. He was actually my friend for 40 years. And when I got the phone call the other day, it really silenced me for a while, because I've been through so much with him. He had multiple jobs, he was the Chairman of the party, Chairman Mt. Vernon, and Commissioner of Elections, and he was able to juggle them responsibly. He helped many candidates. He helped the public. He always got along with his counterpart, which ya know in a situation like that, where you're always battling to win the next election, that's a good trait. He was funny and he didn't suffer fools. We're all going to miss him. I must have gotten 20 calls in the last couple of days. It was just a tragic situation for a really nice guy.

Commissioner Kosinski: Yeah, I'd just like to join in with the other two commissioners. I've known Reggie for quite a few years, he was a gentleman, and although we were on different sides of the political spectrum, he always dealt with me and everyone he came in contact with great respect, and I respected Reggie. He was a great guy and will be sadly missed.

Commissioner Casale: I'd like to add that I was very impressed with the fact that the first communication I received was actually from his Republican counterpart. Reggie apparently appealed to people on both sides of the isle. He was a fair person. He stood behind his beliefs, he wasn't going to compromise his beliefs for anyone, but he was able to work with people knowing that the end result usually require compromise. He was a real gentleman. He will be missed.

Commissioner Kellner: Thank you, all. And so on that note, we'll move to our regular agenda. The first item is for the Board of Canvassers, the amended certification of election results for the November election, and the changes.

Tom Connolly: There were changes, that were a result of an amendment in a canvass that we received from Sullivan County, it impacted the vote results for all statewide propositions and the results for supreme court in the third judicial district. I believe you all have copies of the results.

Commissioner Kellner: So is there a motion to approve the amended canvass?

Commissioner Spano: So moved.

Commissioner Kellner: Second?

Commissioner Kosinski: I'll second.

Commissioner Kellner: Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Any opposed? So the certification is approved unanimously. What's the procedure for the paperwork now to have the Commissioners sign it?

Tom Connolly: So go ahead Brendan. We can send down a package to you, we can talk offline about that I do have Commissioner Casale paperwork, and I'll get Commissioner Kosinski's paperwork as well, and I know that we have a package out to Commissioner Spano as well to return that.

Commissioner Spano: Mine is already in the mail.

Tom Connolly: Okay, thank you very much. We can get the information down to you to sign and send back up.

Commissioner Kellner: Thank you. Alright, so next is the regular agenda for the Elections Commissioners. We'll start with the approval of the minutes and the Executive minutes for the December 14<sup>th</sup> meeting. Is there a motion?

Commissioner Casale: Move to adopt both.

Commissioner Kellner: Commissioner Kosinski, you look like you, do you want more time?

Commissioner Kosinski: No, no, no, I'm fine, I was just glancing at them. No, I'm fine.

Commissioner Kellner: I'll ask for a second.

Commissioner Kosinski: I'll second them.

Commissioner Kellner: Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? The minutes are adopted. We'll turn to the unit updates, and we'll start with our co-executive directors Kristen Zebrowski Stavisky and Todd Valentine.

Kristen Zebrowski Stavisky: Thank you, Commissioner. I'll just take a moment at the beginning to echo the thoughts on Reggie Lafayette. I had a unique relationship with him. Rockland and Westchester are right across the river. I was Chair and Commissioner with him for over a decade and a gentleman is right. He was an honorable man. He will be greatly missed.

Okay, as you heard before, our CIO Bill Cross is retiring, his official day is this coming Thursday, so Mike is here, Mike Haber, who has worked closely with him for the past 5 years, so we will have a seamless transition there and we're very grateful that Mike has decided to come aboard, and we thank him for stepping in on this meeting today. We continue to meet biweekly with the Division of Budget, the Office of General Services, and the Executive Branch. Within the Board of Elections, we meet biweekly with Enforcement. We also, as Cheryl mentioned, meet weekly as part of the leadership review for the Public Campaign Finance Board, there's been much activity over the past month as we move forward for their project launch on November 9<sup>th</sup>, 2022. We had a good RFI Request for Information, and we did see some demonstrations, and it gave us a lot of good information as we look forward to guidance on our procurement process.

Internally, I would just like to add that the work they've done on the business requirements is really exceptional. They have spent many hours weekly working on parallel tracks, and have come together, and I really thank them for all that work.

Space, after finalizing space plans for the State Board on September 9<sup>th</sup>, we have hit a big of a snag with the fifth floor. We seem to be moving forward with work on the tenth floor, which is where Enforcement will move. The first floor we have gotten some swing space. Unfortunately at this point, I'm not sure that we could accurately refer to it as "swing space" because we are completely at capacity, and we will be moving people down to that space, but we're already out of spots. So it just becomes space at this point. In terms of the fifth floor, we have not heard anything since December. In December we were hit with a bit of a curve ball and told that we would have a new project manager from General Services working just on the fifth floor, and it would likely be outsourced to a construction company. This is just to put it in perspective, we had originally signed off on September 9<sup>th</sup>, and expected six to eight weeks for cost estimates. So we don't have cost estimates, and now we are working hard to get a meeting or a phone call, as is the Division of Budget who has been working to make that meeting happen, but we have yet to meet with the new team. So that is a concern that we really think you need to know about. You

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know it's critical for us, especially for the launch of the Public Campaign Finance Board, and as Cheryl mentioned, we're at a fill of 64 by the end of this year, but we expect more because our candidates are quite different from the other programs across the country and within the State. We have 217 offices; we also have a time period of completing the audits and that work within two years vs. for example New York City has a four-year time period. so we're dealing with many more people in a shorter period of time and that will require software that's automated. It will also require additional staff. So, for us the space is a big priority. And we're looking forward to moving that forward, but just thought you should have an update of where we are right now.

The Online Voter Registration and Automatic Voter Registration project continues. As we mentioned in December, we do expect to have a contract signed with the awardee, it has not yet happened though, so we still can't speak about who received that contract, but we can say that we're pleased the vendor does have experience with online voter registration in other states, so there is a good experience there and we're ready to hit the ground running, in terms of meetings with shareholders, and county boards, and voter registration vendors and County IT. So those things continue, but they will really ramp up once we have the vendor onboard which, at this point we're hoping for the end of February, but again that is a bit of a concern, because once the contract is signed, it has to go to the State Comptroller and then to the Attorney General. So, we need to get going as quickly as possible in order to meet our time goals.

We continue our monthly conference calls with the Election Commissioners Association. As you heard, due to COVID concerns, the upcoming conference is rescheduled to March 1-4, 2022. As Todd mentioned, it is in the same spot, and at that point, we will do programming I believe all day Thursday, our staff has already been working on that, and we expect Commissioner Yankah and Kolb to give a brief overview of the Public Campaign Finance Program on, I think, that Wednesday. So that would be the 2<sup>nd</sup>. We completed accessibility training for the staff in December, and there was another special election proclaimed on January 6<sup>th</sup> in the 60<sup>th</sup> Assembly District and the 72<sup>nd</sup> Assembly District. We formulated an election calendar, and we will facilitate all we need to do for NYESS ballots in order to make sure the ballots are available for military and overseas voters.

And finally, we distributed a draft political calendar to counties, reiterating that it is likely to change because redistricting has not been finalized, but they were clamoring for that, and we did put out that calendar to them. Todd, did you want to add anything?

Todd Valentine: Yeah, just on the calendar, and we have mentioned this probably to everybody individually, but the reason we delayed was not knowing if there would be changes based upon the redistricting which has happened, at least in my two prior redistricting's, so it was reasonable to think that there will be some modification. But if we felt it was important, at least that's what we thought the dates were for the public and obviously the county commissioners. We're hopeful because one of the things that related to that, with the timing of the calendar, was legislation that had been signed and effective on the beginning of January, but chapter amendments had been passed with respect to the web-based portal and the new absentee canvassing bill. So that has to dovetail with the operations or the June primary and I'll speak to that later, but it's certainly something that we're hoping to work on, and as Kristen started with, we are waiting to hear from

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the budget today, just to see exactly what's in there you know. It's not over until it's in print, and then we'll see what we need to do from there.

Kristen Zebrowski Stavisky: And that concludes our report.

Commissioner Kellner: Are there any other comments? If not, we'll go to Election Operations, Tom Connolly, and Brendan Lovullo.

Tom Connolly: Thank you Commissioner. Obviously, from what our office has been working on, we prepared the amended results for your consideration, which you did already earlier in the meeting. We continue to work with the counties to have them complete their annual fiscal surveys which are due by the end of the month. At the moment we've got 17 so far, so hopefully more of them will be coming in. Also, as Todd mentioned, with the passage of some recent legislation, particularly the Early Canvass Bill, there are a lot of questions and impacts to the operational processes, which we'll be working on guidance, internally, with the counties. With regard to Voting systems, Dominion did submit their completed application as part of our process. They also prepared sample ballots, to make sure that it would conform with New York State law. They did contest tabulations that we reviewed, and we also received estimates from Boulevard Testing Partners, SLI is the federally certified voting system testing lab, as well as NYSTEC. We provided those estimates to Dominion to make sure that they were okay to move forward with it. They did provide us with that approval on Friday. And so there is a resolution for consideration later in the meeting, to permit the Election Operations Unit to proceed with the testing of that system.

Clear Ballot has currently two items in the works; the first one is just a modification to their existing system. The real only purpose of that modification is to alleviate a limit in the number of ballots filed that the software can handle. It was only really discovered when New York City was using it because they do tend to have quite a number of ballot styles. I believe that the limit is being bumped up almost tenfold, so I don't think there will be an issue going forward. The other item that Clear Ballot is looking to do on the certification front is the submission of a complete voting system. We're still working with them on the different documentation of requirements. They are looking to come here in March to do a demonstration as we have with some prior certifications, with some of the Fiscally Rights New York, we've been able to coordinate a meeting with them and some of the constituents that they serve. That's currently scheduled for March 4<sup>th</sup> at 1:00 p.m. So a 10:00 a.m. meeting should be okay. We can always shift it as need be. Hart has also submitted an application for their voting system, which we're in the process of reviewing. We just scheduled a meeting with them on Thursday to go over the documentations that they submitted and to kind of go through the overview of the process that needs to be followed and the timeframe. ES&S continues to indicate that their plan for submitting their new system is sometime in March and we continue to have conversations with the Democracy Live about their ballot marking device tablet, and their plan for submitting configurations for certification sometime later this year. With regard to the electronic poll book systems, we've been working with the vendors normally. We kind of do two updates a year. we've been working with them on their submissions for an update to be tested, and potentially approved in time for the primary election. Those updates will also include compliance with the early canvassing law,

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which now changes the workflow a little bit so that anyone who has requested an absentee ballot, should they show up at a poll site during the early voting period, or on election day, whereas in the past they would have the ability to vote on the machine, they will no longer have that option, and they will need to vote by affidavit ballot. So, all of the vendors have confirmed that that workflow is something that their systems can handle, and we will be reviewing that when we do our functional testing.

Otherwise, with regard to technology, on the Voter Registration front, Chenango County is now the first county to go live with the new NextVote Voter Registration System that was recently approved, at the end of the year by the Commissioners. They're looking to transition a few more counties going forward. We've not started that process yet. In addition, Schoharie County, which had their own homegrown Voter Registration System is working towards transitioning to the NTS system. We will be having a meeting with them in the next week to review that process. And then lastly, there were two other vendors both Know, Inc. and Tenex are two of the approved E-poll book vendors, who I've spoken with in the last week and who have expressed interest in having their voter registration systems evaluated against our requirements.

Then lastly, with the Absentee Tracking System becoming law, office has been working with PIO and IT to determine the necessary data elements that all of the local voter registration systems will need to capture so that that can be communicated to the State Board, so that we can display it on our Absentee Tracking portal. With that being said, I think that's all I have.  
Brendan?

Brendan Lovullo: I'm good, thank you.

Tom Connolly: Any questions?

Commissioner Kellner: Then we'll call upon our Counsels Kim Galvin and Brian Quail.

Brian Quail: Good afternoon, Commissioners, I think the first place we'd like to begin is to give an update on cases where there've been notable developments since the last meeting. In the Upstate Jobs case where the Board had taken an appeal, our appellate brief is due to be filed today. We're represented by the Office of Attorney General, and we will be making that filing today.

In the NAACP case related to the accessibility of 17140 of the Election Law to line warming activities, we have filed a required letter, as the court requires before a motion to dismiss, and that process is underway.

In the combined three cases libertarian, Green, and SAM Working Family's case/cases, the Board won a summary of judgment motion on December 22<sup>nd</sup>. At that time, though we had won a prior preliminary injunction motion and appeal, that obviously went up to the second circuit, there was a pending preliminary injunction appeal, a slightly different theory in one of the consolidated cases that was still in the second circuit. We made a motion to dismiss the pending

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appeal as moot, and whether or not there will be an appeal in the underlying consolidated matter, we'll know by Friday, which is the deadline for the plaintiffs.

In the context of Compliance, I would note that today, given the holiday and the weekend before it, is the deadline for the filing for the January periodic. Many committees have already filed, obviously, which is reflected in the numbers that I'm going to provide now. We have received a total of 181,000 reports and have totally processed 165,000 of them, 3,058 since the last Board meeting, and a large number of those are brand new filings. The number of paid internet digital ads is unchanged since the last meeting. And on the training front, the training unit has conducted four Winding Down the Campaign seminars and 1 seminar on how to use the ESF filing system. Total number of end users that participated in those trainings is approximately 500, that's very successful. As the Commissioners are aware, there has been a substantial number of new staff members both in PCFB, and also backfills in Compliance. Our training unit has conducted detailed training with new staff on nine discrete topics, and provided very comprehensive and carefully thought out training to that staff and also to hearing officers so that they will have a relevant similar baseline in terms of knowledge on how the agency functions through other staff. And we have been active with other parts of the agency in particular Operations in drafting regulations that are needed to implement some of the new bills that have been signed and in particular the canvassing legislation, and we will have a draft of that circulate very soon and in time to adopt, at the next meeting. The Counsel's office has also been involved in preparing proposed legislative agenda for consideration by the Commissioner's, that will be ready by the next meeting also.

Commissioner Kellner: Thank you Brian. I noticed from reading Michael Johnson's report, which we'll talk about next, that he indicated that his unit had to dismiss or close out two complaints for failure to attribute the contributor on literature, because of errors in the Campaign Finance handbook. I'm just wondering who's in charge of that, and what's happening in terms of getting the book revised so that it conforms with the statute?

Brian Quail: So, I am responsible for that. the handbook has not been substantially revised since 2019. On my desk now our staff has prepared a comprehensive revision to the handbook for 2022, and that will be published very soon. It's just going through the final steps of looking at that, making sure that everything that needs to be in there, is actually in there. But the description of the issue, I think is a little bit not wholesome, it's not incorrect, but it's not wholesome. The 2019 manual did not have the attribution information in it that would be relevant. So posted on our website when the mirror where the manual itself is, was a notice to all filers with a detailed description of the attribution requirements. So I don't think it was an agency failing at all. But when we have a new law that comes into place, there is a period of time from when it occurs to when it manages to trickle completely through the regulated community, and we've reviewed things to try to speed that up, but inevitably there are some delays. I think what ended up happening in the two instances that you're referring to, I'm not off the top of my head directly familiar precisely who the entities were, they basically were like, "Look we read the handbook, we're complying with it, you should not ding us for not providing the attribution." And I think, in my opinion, the Enforcement Counsel acted completely responsibly in that regard given that there was no bad faith on the part of the individual involved. But in terms of updating the

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handbook, a comprehensive update is underway as we speak. And we did have a notice on our website to the regulated community on the attribution part.

Commissioner Kellner: Great, I appreciate that. Any other questions for our Counsels? Alright then we'll go to Enforcement, Michael Johnson.

Michael Johnson: Thank you Commissioners. Just to talk about the particular issue you just raised, Commissioner, the people, quite a few of those individuals, they contacted me directly to point out, "Hey, I didn't make the attribution, and this is what I saw in the handbook." The fact that those individuals contacted me and brought their errors to me, I just felt in good faith, there's no way I can just simply go after them, when they came to me and pointed out their errors and their reading of the handbook. Now granted, the information is on our website, but they looked at the handbook, that's what they saw. They pointed out their errors to me, so that's why those cases were handled the way they were. I mean to me it was just in the interest of fairness and that's what should have been done, and that's what I did.

As far as what else the unit is doing, we're looking at, we're working with the IT unit to develop an in-house sort of case management program specific to the nonfilers so we could better track what we've done, who we've made contact with, what has been said, what has not been said. Very similar to the Compliance Unit. They have a case management program, so we're in the process of working with our IT people to develop something specific to our needs as far as the Enforcement Unit's concerned. We're also taking a demo of a case management system that's more geared toward tracking the Enforcement cases. So, I, at any point in time can see what's going on with a case, what communication has been taken place. What e-mails may have been sent. So, we don't have anything like that right now, we kind of sort of do but it's sort of a hodgepodge system and so that's what we're look at as well, a whole comprehensive case management system.

As far as staffing, we have on-boarded one investigative auditor, another associate attorney, I've made an offer to an election enforcement investigator which would give us two investigators. I hope that happens soon. I mean I'm sort of in the same situation others are, where you're waiting for either DOB or someone to approve the hiring. I personally have expressed my concern to the second floor in terms of my position of well, this unit is supposed to be independent, so to speak, then and we have a particular budget. We have our own budget, if I reached out and said, okay this is a person who I'd like to bring into the unit, okay the second floor signs off, great. I guess I'm a little confused, why does DOB need to weigh into the extent that they need to, and why does it need to take so much time? I don't want to belabor the point, but basically, I sort of sympathize with everyone else in terms of the time it takes to get someone hired and onboard and salaried.

As far as our move is concerned, we've been working with OGS with regard to moving up to the 10<sup>th</sup> floor. I spoke with OGS, they've had to make several changes to the blueprints that we've seen changing an office from one place to another, having to board up some switching and things like that but that seems to be at least we're hearing from them. what type of time frame we're looking at, I have no clue. At this point, I'm just happy to get calls from OGS so when we will

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move, I don't know and as OGS has said to me, we need to move to the 10<sup>th</sup> floor before they can do anything real on the 5<sup>th</sup> floor and my position is we're ready, you just tell me when you want us to start. So that's what's going on with that.

We are gearing up, today's the filing to do the January periodic, so we're getting ready for that, the nonfilers. Hopefully it won't be nowhere near as big as previously. What I'm looking at is I'm looking at how other states handle in particular how they treat people who don't make their filings. It seems like quite a few states actually have sort of a fee schedule for those who don't make their filings. And that's sort of what I'm looking at right now. There are so many states who do it and not every state does it the exact same way. So, I'm looking at how most of the states do it, and what would fit best for New York State. And once I have a better sense of what I think will work here, I'll present it to the Commissioners and get your feedback on that. We're also looking at our IT person. They've told me we've got approval; we're going to develop a website, it will be a link from the State Board's website for Enforcement to sort of give people a better sense of what the unit does, the types of issues that people run into and the types of um situations that people can avoid, in terms of having to deal with Campaign Finance and also Election Law Enforcement. To sort of, I guess, try to take the mystery out of what we do on some levels, and to give them a better sense, well, if you have a problem, let's work it out, let's try to come to some sort of resolution before it becomes a much bigger problem, before we have to go to a hearing officer, or before we have to look at fines, or getting judgments against you. So that's sort of, we're in the process of putting our collective heads together to see what would work in terms of a website. Other than that, that's pretty much all we've really got going on right now, in addition to all the closed cases. I think I must have closed about 19 or 20 cases.

Commissioner Kellner: And I really do appreciate those closed reports. They identify issues and as you saw, one issue was updating the handbook, and I appreciate you calling that to our attention through those reports. But now I'm going to start to give you a little bit of a hard time as the honeymoon is over. We still haven't seen any cases against nonfilers. So, when are we going to see real Enforcement against nonfilers?

Michael Johnson: You should start seeing them once we get the list of nonfilers and we can start sending out our letters and handling it from that perspective. if you recall, we held off going after the nonfilers the last time around because of the non-filer lists that we were getting, there were some errors, and it was a bit incomplete. And we, I think even you might have actually also gave us an answer Doug in terms of we would sort of wait until January, once the people have made their filings. In working with Brian Quail, I'm confident that they will have an updated accurate list. Once we get that list, then we can proceed with our enforcement. We've kind of gotten our hearing officer process, we've narrowed it down a little bit, so it's not as voluminous in terms of evidence that needs to go to a hearing officer. So, we're looking forward to you know actually starting some real enforcement. One interesting thing that I have heard from people from the last mailing that we did, was, because we were supposed to send the letters out certified, and because of the time crunch, we sent them all out first class, and what I had heard from some people who actually got letters was, because I explained to certain people, okay we sent it regular mail, it should have been certified, quite a few people said to me, "You know I'm glad you actually sent it regular mail because I never go get my certified mailings." One person said to me, "Usually I

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sort of see you know certified mail either means either I owe money or it's a problem." So he never collected his certified mailing. But to me it's sort of like, okay well we do the mailings, we send the e-mails out as well, and actually, this time around, I've asked if we can get a list of the candidates as well, because I think that it would be handy to also let the candidates know that a filing hasn't been made. Because a lot of times the treasurers, we sent letters to the treasurers, that doesn't necessarily mean that the candidates know. So, from my perspective, I think it would be beneficial to send correspondence to not only the treasurer but the candidate as well.

Commissioner Kellner: Well, I think that's all fine, but the bottom line, is how many proceedings have you brought, and the answer is zero.

Michael Johnson: Zero, Doug, I can't sugar coat it its zero. That's what it is.

Commissioner Kellner: No, I will be asking the same questions in March. The honeymoon is over, so you know.

Michael Johnson: Well, but Doug, I haven't but just remember when we talked about the nonfilers the last time, you were one of the individuals who said, "Okay well we can give everyone a pass and we will start aggressively going after the nonfilers with the January filing period." And that's what my plan is, but I just wanted you to be aware of that.

Commissioner Kellner: Anyone else? Alright well then, we'll turn to Public Information John Conklin and Jennifer Wilson.

John Conklin: Thank you, Commissioner. So Public Information remains busy since the last Board meeting. As Brian stated, the January periodic due to the holiday was moved to today for the filing date. We had many, many questions about that. We continue to get questions about filings for different candidates, gubernatorial candidates. Also as Kristen mentioned, with the political calendar when petitions are due, the signature periods, when the lines will be done, the dates of the elections next year, all of that stuff, so we actually have filed the political calendar on the website as well today. I know Kristen said it was a draft, but we did not couch it as a draft, but there is a large warning on it that says, it's a redistricting year, please use this advisably and its subject to change by the legislature.

So, as part of our normal maintenance procedures dictated by the statute, we will be doing the National Change of Address process beginning the first week in February. So Jenn and I are going to be doing a presentation on Thursday for the County Boards to discuss that with them and raise any questions that they have for new Commissioners or old Commissioners either way.

The Election Assistance Commission and the National Association of Secretaries of State decided that next Tuesday, January 25<sup>th</sup>, will be the National Poll Worker Recruitment Day. We're preparing materials to promote that with the press and the local board of elections. Reaching out to our sister agencies and other constituency groups to help promote that. We participated with that in 2020, and it did help increase the number of poll workers available to the local boards. Just as a statistic, approximately 55% of all poll workers in New York State are

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over the age of 60 which makes them particularly vulnerable to the pandemic. As a result, the local boards are having a hard time recruiting and keeping poll workers. So we think that will help with that. A group calling itself the New York Coalition for Open Government issued a report last week calling on the legislature to create an entity to enforce the provisions of the Open Meetings Law. They seem to target the county board of elections for not complying with the statute. We'll be analyzing that report to determine what action, if any, we want to take from the state perspective.

The PIO Unit processed 62 FOIL requests for the month of December. We continue to participate in working group meetings for automatic and online voter registration projects. We continue to have weekly meetings with IT and Compliance on the public reporting page for FIDAS. I'm pushing out updates, and we participated in the monthly ECA call in December.

For the website, we published the agenda and related documents for today's meeting. The link for Election Night results for the special election in AD 68 New York City, as I said the 2022 political calendar. We also put up the political calendar for the special in the 68<sup>th</sup> assembly district, which is today. We also did a political calendar for special election in the 60<sup>th</sup> assembly district and the 72<sup>nd</sup> assembly district which is scheduled for February 15<sup>th</sup>. And we posted the webcast for the December 14<sup>th</sup> PCFB and SBOE meetings. With regard to the website accessibility coordinator, as Kristin mentioned, we did the annual staff training for accessibility in December. We had a very good showing, and also, I am submitting the final report as the website accessibility coordinator to the co-executive directors today in compliance with our lawsuit. Jen, do you want to talk about grants a little bit?

Jennifer Wilson: Yea, definitely. Hi, Commissioners. So, on several grants in the month of January, we submitted our final HAVA care closeout certification to the EAC. We're continuing to administer HAVA education training grants, poll site improvements, and Shoebox grants to counties. We actually have three grants that are expiring at the end of this month, so the Early-Voting Expansion Grant, Early Voting Aid to Localities, and Electronic Poll Vote Capital Grant are all going to expire at the end of January. So, all counties have to have their persons named by January 28, 2022, but they can submit their claims up until April 28, 2022, but the funds need to be spent now, these are not being spent at this point, so counties need to make sure that they do spend those funds by the end of this month. Cyber security remediation are continuing to collect the contract extensions that were approved. We have 23 outstanding contract extensions. Those are also due this month by January 31<sup>st</sup>, and there is 6.9 million dollars left in that cyber grant. I should also mention that these grants are expiring. In the electronic Poll grant, we have 376,000 dollars remaining. The Early Voting Grant has 112,000 dollars remaining, and the Early Voting Expansion Grant has 1.2 million remaining, and the final grant, the Tier, Technology Innovations, and Election Resource Grant, again, continuing to collect contracts on those. We have 26 outstanding, and we have 19.9 million dollars remaining for that grant.

John Conklin: Any questions?

Douglas Kellner: I just wanted to follow up on the Freedom of Information, I mean, the Open Meetings Law issue. I know that we have made presentations on this to the county

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commissioners at the conferences on several occasions. Have we put anything in writing in terms of which functions of the county election commissioners should be done at open meetings?

John Conklin: I am not aware, unless counsel's office did it, and I don't think that they did. I'm not aware of us making a presentation specifically on the Open Meetings part. I know we've done Freedom of Information things, and certainly, we provide advice to the counties when they ask about it, but I don't recall specific open meetings presentation. We have not put any guidance in writing, that I am aware of, specifically on the open meetings law.

Douglas Kellner: So, let me ask then, Kristin and Todd, should we assign somebody to do this? By making guidelines, will we avoid litigation by saying just which functions are meeting functions, as opposed to which functions are just ministerial work?

Kristen Zebrowski Stavisky: We actually had some preliminary conversations with PIO, and we are going to make a determination going forward of how to respond to this report. One of the things we talked about was some sort of guidance to them, in terms of when they should have minutes, and what sort of decisions, how decisions should be documented, so we are going to come up with a response, and we will get back to you with that.

Todd Valentine: Yes, because it is an intersection of both the election law and the open meetings law. One is our area, and one is not our area, so you know this is something that the counties, I assume, are going to want guidance on, so we'll have to provide it, have to come up with something at least on the election law, what we believe is covered from that point of view.

Kristen Zebrowski Stavisky: We also, the Governor did sign into law, requiring that in addition to the agenda, materials be posted. I think that was in December, John, does that sound right? So, John and I actually talked about that the other day. There are new things that have happened, and we should give some guidance to the counties on what that means for them, because technically, they should be posting things on their website, as well, so we will work on that moving forward.

Douglas Kellner: Kristen, what was your practice in Rockland when you did the public commissioners' meeting? What types of issues would you put on the agenda?

Kristen Zebrowski Stavisky: We created minutes basically for the organizational meeting every year. And we had a, what we would do with petitions was we documented everything. Both commissioners would sign off. We had forms that we created for that purpose, so we would distribute and give to the public. Were we 100 percent? No. We could do better, but I think that's something that we are committed to make sure that looking forward, we do better.

Douglas Kellner: Has the State Board ever taken a position on whether the county boards need to have hearings on petitions?

Todd Valentine: You can make determinations, but I don't know who would ever want hearings because we don't have a hearing on every issue. We issue a determination, but we operate differently, just because of the nature of the challenges we face, and obviously the city board

does all of the different agreements there. It isn't structured the way we are with commissioners coming in, but they always emphasize determinations, notice of the candidates, so that they can get the due process, as least as far as court challenges, notice is provided to get that operational, but hearings...

Douglas Kellner: Well, at the state board, but at the state board, every valid access determination is presented to the commissioners, right?

Todd Valentine: That is correct.

Douglas Kellner: And that's usually on notice to the candidates, so that if they wanted to appear before the commissioners, they could.

Todd Valentine: Yes. They are aware of when the board meeting is, and what the option is. Brian is nodding his head, which you can't hear.

Kristen Zebrowski Stavisky: I think it is a less formal process in the county, from experience.

Douglas Kellner: Well, certainly, when you had just two people who were working together, it's a lot easier for them to just say, okay, here, and to sign off on each other's work, but it seems to me that there's some, well, it's a difficult place on where to draw the line, so I'm thinking ballot access should be done in a formal manner, on notice to candidates, with a meeting, where at least the commissioners read off their rulings, even if they've worked on them together, so that there's a formal decision. I'm wondering whether election district boundaries should also be a matter that's publicly agenda'd and at least the public has a right to be heard before the Commissioners make a final determination. Would I do that for inspector appointments, even though technically, I guess inspectors are appointed jointly by the commissioners? It would seem pretty unwieldy, and I'm aware that in New York City, that was never an issue. But it seems to me that we need to go through a list of what election commissioners do in terms of decision making, and check off a box and say, this should be done at a formal meeting, on notice to the public, and here are other things that you can do without having to do a public meeting. And it seems to me if we take the initiative on that, it's less likely that a judge will overrule these distinctions. Commissioner Kosinski, do you have any thoughts on this?

Peter Kosinski: Well, I have thoughts. I think that this report indicated a lot of the boards are not following the open meetings law, and I agree, there is a sort of a judgment call being made as to when the open meetings law is triggered in the context of a board decision. They make a lot of decisions throughout the year. This goes to one of my pet peeves I've had recently about this new bill that's going to require them to start opening up absentee ballots early and doing it regularly, so prior to this, there was always a notice for opening up ballots, and people could come and watch, and now the boards are going to be faced with a whole different prospect of opening them up consistently, over a long period of time, and is that going to trigger an open meetings law opportunity for people to come in and watch, and so, I think there are a lot of challenges the boards are going to have making decisions during an election cycle, where the public can be welcomed to come in. I think it provides some practical issues about having the

board able to conduct its business in the context of open meetings laws, because arguably, these decisions regarding absentees are happening everyday over a long period of time, and is the public welcome to come in and watch? I think they should be, but again, practically speaking, it's going to really hamstring a lot of the boards' ability to make decisions, and how they are going to process all of this information, so I think it is a real challenge, but I agree, that I think there's a benefit to having this board provide a guideline to the counties as to what decisions and what discussions are under the open meetings law, and what are not, as you say, are ministerial, as opposed to a discretionary call, which I think does trigger an open meetings law issue, so I think it would behoove us to go through the processes that the local boards engage, and then come up with a list, a laundry list, I guess, of which of those warrant open meeting law, having an opportunity for the public to come in. But I think it could be a very long list. I think you know under some of the new laws, this could be a long list that our boards are going to have to adhere to, which is probably going to slow down their work, but that may be unavoidable.

Kristen Zebrowski Stavisky: Commissioners, I do believe a lot of the boards actually do this work. I just don't think it, some of it, because it happens on a day-to-day basis. I just don't think it is a deliberate thing that they are thinking about, and I think guidance will help them, and recently, guidance that we have done, as the state board, has included scenarios and examples, and I think that is very helpful for this, and I know that Operations right now, are working on something similar for the absentee canvass, to really give them a list of this is how you would go about completing this. So, I agree, guidance is helpful, and we'll take all of your comments under consideration when we develop this.

Douglas Kellner: Well, two things. First of all, I want to underscore that my interpretation of the new law on counting absentees, is that the boards must do that process in public and have to notice the times when they're going to do it, so that watchers can be present and make objections if they wish to. So, the board's going to have to put together a schedule, depending on what they anticipate their workload to be, whether they do it every day at a particular time, or every couple of days at the early part of the cycle. They have flexibility, but I believe that they have to provide notice to the candidates and the political parties of what the schedule is, on when they are going to make those absentee ballot rulings. So, that's one thing I wanted to say. Our co-executive directors, I would ask that you circulate an outline to the commissioners before the conference, so that we can make a presentation to the county commissioners on this issue, but I think that the floor commissioners ought to have a shot at looking at it before you present it to the counties.

Kristen Zebrowski Stavisky: Okay, we can do that.

Todd Valentine: Yup, that would make sense.

Douglas Kellner: Alright, anybody else?

Peter Kosinski: So, I'm sorry, did we leave this that we are going to make a presentation at the conference in March on this topic, and that we'll have something prepared prior to that for the county boards?

Kristen Zebrowski Stavisky: Yes.

Peter Kosinski: Okay.

Commissioner Casale: On that subject, Doug, you mentioned the new canvass law. Is it your understanding that these canvasses of absentees do not have to occur every day?

Douglas Kellner: That's right. At the beginning of the process, isn't that the case? Brian, correct me, if you have the text there. I don't have the text.

Commissioner Casale: I don't have the text, but my question is, I understand again that it's subject to interpretation, that they're supposed to start counting as the absentee ballots arrive. Is that correct?

Peter Kosinski: That's my understanding as well.

Tom Connolly: During the early voting system period and prior to early voting, the boards have four days to process the absentees, according to the new law, so they can either do it every day, as Commissioner Kellner said, like sometimes after the mail comes, and have a rolling meeting every day, or if they want to do it on Mondays and Thursdays, they can theoretically do that because that would provide them with the four-day window that they would need.

Commissioner Casale: Okay, and it's your understanding they have provide not only the opportunity to notice people who want to be there in person, and they have to accommodate them as well, correct?

Douglas Kellner: Sure.

Tom Connolly: Yea, the requirement for noticing as it exists now, it's just that the canvassing is now taking place prior to the election, and it will be a much longer process, and it will be sort of a this is the day in which we are starting this process, and then when we're down on that day, we might adjourn to either next day, or to four days from now, so that's how we anticipate they would probably follow that.

Kristen Zebrowski Stavisky: They have to accommodate them there at the board, yes, but they don't have to if they can't attend; they don't have to accommodate by changing the time.

Commissioner Casale: No, I understand.

Kristen Zebrowski Stavisky: They could, they could.

Douglas Kellner: Let me just share...

Commissioner Casale: I just was thinking about some of the smaller counties, where they don't have a lot of space to begin with, and do they have to do it at their offices? Do they do it at the early voting site? Where do they do this?

Douglas Kellner: Well, they have to do it somewhere. They can provide access, but when they do the canvass now, when they do the postelection canvass, where do they do it?

Commissioner Casale: Most of them...

Kristen Zebrowski Stavisky: It depends...go ahead.

Commissioner Casale: Most of them...my experience it has been their offices, but that's after voting, so that they don't need room. The early voting is over with. The election day is over with. They can accommodate them. We have to take into consideration, and we talked about this when we spoke before the Senator Myrie's committee, you know, one size doesn't fit all in the State of New York, and there are some counties that have very little space to begin with, some county buildings, and of course, also, the other thing they did, the legislature, they changed the early voting sites, in one of the counties I am familiar with, they were forced to go to a much smaller facility because they had to be in a larger township. It turned out, the larger township did not have a facility as large as where they were before, so we put all of these burdens on them, and then we expect them, to have it all done and meet the open meetings law, and meet the election law, and everything else too, and I think it is good we provide, I agree, I think we should provide them with some guidelines.

Douglas Kellner: Right. You know, just to share, my understanding, for example, in New York City, when they do the postelection canvass, staff people work up, you know, actually look things up and go to the computers and write notes on the affidavit envelopes, or on the absentee envelopes, but then, there is an actual meeting of the commissioners or their designees where the candidates and their attorneys, can raise objections to those staff rulings, and so in a larger board, I would anticipate that you'll have lots of staff working on processing absentees on a rolling, ongoing basis, but they won't be making formal determinations, but instead, they'll have to be a set time when those staff workups are then presented to the official Board of Inspectors that are designated, either the commissioners or their designees, at a set time when the watchers would have the right to make objections. That's how I anticipate this process. Alright, well I think this is something, though, that I think the four commissioners are very interested in, so we would ask the staff to try to get this done by mid-February and circulate something to us, and maybe, we'd even want to hold a meeting to discuss it, if there are issues that warrant further discussion, but I would hope that we could come to an agreement on at least what the procedures are in laying out guidelines, so that we do it instead of the courts. You know, one of the benefits of this bill, is they basically overruled the O'Keefe method, and of course, it drove Kathleen O'Keefe nuts that that method was named after her. It was named after her because she was the petitioner in a case, but she never approved of the O'Keefe method and always regarded it as an extra judicial reach, so we need to have our procedures in place, so that the judges don't try to override them. Alright, I guess our next report if there's nothing further for public information, is information technology. Who's going to do that now?

Michael Haber: That would be me. Good afternoon, Commissioners. By way of introduction, my name is Michael Haber. I am the incoming CIO.

Douglas Kellner: If we don't see you, or if...

Anthony Casale: Raise your hand.

Douglas Kellner: Okay, I am sorry.

Michael Haber: Right here, right here. Just look for the shiny glow.

Douglas Kellner: Thank you.

Michael Haber: So, as I mentioned, I have actually been working at the Board in the IT Unit closely with Bill Cross for the last five years, so although Bill Cross is certainly leaving some very big shoes to fill, going off to retirement, we're optimistic for a team list transition here. So that being said, just to give a report, on projects that we've been working on. The CAPAS-FIDAS team continues to make a variety of updates and improvements to the system through the bi-weekly release schedule. We have also established a productive cadence with the enforcement unit, meeting regularly to review and document their requirements to the new system. In terms of the online voter registration and automatic voter registration project, as was mentioned, we received and evaluated our team responses and selected a designated vendor. The contract is being worked through the Office of General Services, as was discussed before, and we hope to start working with the vendor for implementation during February. We also continue a regular cadence of meetings with several of the participating automatic voter registration agencies, as well as the State ITS and county voter registration vendors. In the NYESS voter world, we've had several internal enhancements that were completed over the last month or so, and we're currently evaluating requirements of new legislation. In particular, as was mentioned, we've been meeting with Operations and PIO on specific requirements for the absentee and affidavit ballot tracker. Public campaign finance was obviously discussed a bit earlier, but we continue to work with the Public Campaign Finance Unit on technical matters, including the examination of other campaign finance systems, and payment options through the State Comptroller and state financial systems. As was also mentioned, requests for information for vendors resulted in 29 responses for it, which seemed promising, and for which demos were scheduled and conducted, over the last two weeks. Procurement options are being considered there. In terms of space planning, IT continues to work as part of the team with execs, admin, and others for the required space needs for the agency. Our infrastructure refresh project: We have begun efforts to update or upgrade much of our server and storage infrastructure. All of our orders have been placed, and we've received most of the hardware at this time. Obviously, supply chain issues caused a bit of a delay in that. In security, our secure election center staff continue working with county boards and IT staff in completion of the cyber regulations reporting, as well as evaluating the submissions of the county boards and IT staff, and reaching out to them with questions and assistance. IT and Op staff presented at the New York State Local Government Information Technology Director's Association, called NYSLGITDA, at their fall conference, and we also

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conducted last month a follow up WebEx fall with membership. We also completed an 18-month renewal of the intrusion detection and management security services contract for the county boards, an extension we were very happy to have. We continue to work with NYSTEC and numerous counties on implementation of their risk remediation plan effort. We've also extended, as was mentioned, the grant deadline for this effort, for an additional two years due to supply-chain issues, but also, to allow additional time to implement some of the longer-term efforts that were identified on the plan. There's also the final reports being worked on for the election infrastructure, future of election infrastructure project with the SUNY Center for Technology in Government, and that final draft report is being finalized. And as always, we continue to work on multiple security improvements on our own infrastructure. The website analytics: As expected, there was a decrease in traffic following the November election cycle to approximately 95,000 page views in December, and of those, the primary sites visited were our voter lookup website. And that concludes my report. Are there any questions?

Douglas Kellner: Alright, well thank you very much, and welcome aboard.

Michael Haber: Thank you.

Douglas Kellner: So, the next item on the agenda was old business, which was left blank, and I would just note that at the last meeting, I raised this issue of changing the affidavit ballot forms, and I had anticipated that we would follow up on that. Do the co-executive directors have anything to report on this?

Kristen Zebrowski Stavisky: Yes, now that the canvass, the absentee canvass law's been signed, we will have to make changes to that affidavit envelope to reflect that, and operations is currently working on guidance as, we will do a mockup of the absentee affidavit, and give it to you in advance, so that you can look at it. Soon as we have it.

Douglas Kellner: So, can we target that for March now?

Kristen Zebrowski Stavisky: Yes.

Douglas Kellner: Okay. Alright, so that is the only issue I had. Does anybody else have old business?

Commissioner Spano: I think I have something. I am still bothered by this discussion we had about appointments. It seems that we're going right into the same paradigm we always go into. We are going to talk this, someone is going to make a call, someone is going to do this, someone is going to do that. That's what we do all the time. I don't see why you expect a new outcome, doing the same thing again, or are we just going to live with it? I mean, there's enough criticism of election procedure that I think sometimes is false. Why give ammunition that's real? Real ammunition. That this Board cannot function properly with all the people it's supposed to have, because we are held up by six months, five months, four months or so on. I've made the same calls you have made, and sometimes I haven't gotten anything...why do I have to make a call on every position that comes up here at the Board? And I think we're in a unique position. I don't

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say go to war, you know, but at least try something different, and not do the same thing over and over again. Anyone new who comes in thinks they are going to be great, they are going to come in, and they are going to get kumbaya with the second floor, and the Budget Department, and everything is going to be fine. It ain't gonna happen.

Commissioner Kellner: Well then I don't know what you mean short of war. As you know I have been in favor of...

Commissioner Spano: I think you can start casual stuff, that's very simple. I'm not a lawyer, you guys can take it, but I think we should go say hey to the Attorney General and say, "Hey we're about to appoint someone, but we don't know how to get them paid. What happens?" Ask him for an opinion. Of course they're going to discuss it with the second floor, so let them discuss it with the second floor, but see if it comes in. But this, this is really a problem.

Commissioner Kellner: Opinion of the Attorney General?

Commissioner Spano: Because the other agencies work for the Governor. He's doing it himself.

Todd Valentine: To that end ya know, Kristen and I, to try to move this forward in a way that's less than going to war, is what we have done is actually for those transactions we were holding up, we actually started just putting them through the payment process because they had signed off on those appointments. It was just one domino was holding up another domino holding up another domino. And we are hoping at this point to know the answer to that this week. That's not the normal process, but we're tired of waiting for the normal process. All the approvals by the Board have been done, and specifically with Kate Orsino the PCFB had approved her and actually the Governor's office and Budget had signed off, but they were just picking their own date, not the date the Board had chosen, and we said we're going to fight for that, because it's an important prospect. They had already approved the change previously, we couldn't understand it, so we said we're just going to put it through and see what happens. And so far, as least as of today, although we only did that at the end of last week, although it hasn't been rejected, and we'll let you know from there. But if we can now just start putting through the process, I think that would address our need without really having to go to war, because we think, as we discussed many times, is the Board makes these decisions. And we've had this conversation with the current governor, their staff and they're not disagreeing with us. We do respect that there might be some time to process things to get them on a payroll, but it shouldn't be taking this long, and we are tired of it taking this long, and we just put it through, and we're going to see what happens. So we are trying something different.

Commissioner Kellner: What about that perspective?

Commissioner Spano: Well, my point is, there should be a deadline. One month, that's it. We put the name in one month, they've got to finish it. If they don't finish it, the person is on, and they get paid a certain way. Just find out how we're going to do that.

Kristen Zebrowski Stavisky: For most appointments, one month is pretty much what we experience. It seems to be when there's something different, like in this case there was a date change. So the Division of Budget put through the date that they choose, whenever the paperwork came to them, and we said, "No, attached is the resolution showing that the Commissioners appointed this person in July." So, it seems to happen when there's something out of the ordinary. For the most part I would say...

Commissioner Spano: I don't see that. I'm here for seven years, this has been the problem.

Commissioner Kellner: What about that prospective hire who they wanted to start in November in the Campaign Finance Unit?

Kristen Zebrowski Stavisky: Yeah, that's a backfill, that's all related to Kate Orsino date. Her backfill and then the person backfilling that person.

Commissioner Kellner: Why can't you just put that person on the payroll?

Commissioner Spano: That's my point. I think legally we can do that. There are other complications in terms of procedure and paperwork, I understand that, so they need time. How much time?

Commissioner Casale: I think the question is...

Commissioner Spano: That's legit. How much time?

Commissioner Casale: I agree with everything that Andy has said. I agree with what Todd and Kristen are trying to do here, but I think the question is, who actually writes the check? Who do they work for?

Commissioner Spano: I understand that, that's a real problem, I understand that.

Commissioner Casale: Is it the Comptroller's Office, maybe we approach the Comptroller on this, he's an independently elected official as well. But if misery loves company, I ran a state agency about 25 years ago, we had the same problem then. We've always had the same problem.

Commissioner Spano: A state agency, you work for the Governor.

Commissioner Casale: That's true.

Commissioner Spano: We don't! I mean he wants to do that to his own people, that's okay, I say "he" because it's a "she" and I end up talking about her.

Commissioner Kellner: Commissioner Spano, you actually threw out a new idea short of litigation, which is to ask for an opinion of the Attorney General.

Commissioner Spano: You know, just asking is going to stir things up.

Commissioner Kellner: And I guess I'm sufficiently confident of our position that getting an opinion of the Attorney General may be helpful, but I realize this is precipitous, so that we may want to think about it for a few days, and just see if there are any other unintended...

Commissioner Spano: I feel better now that I said it.

Commissioner Kellner: I'm willing to litigate this issue. I've said that over and over again for year after year. I believe that the only legal basis that the Division of the Budget has, is this emergency budget order that Governor Spitzer put in effect in 2008, and they claim that that budget emergency is still in effect.

Commissioner Spano: I tell you; I never ran the statewide government. I ran a government with 5,000 employees, ok? And the only time, after I got told something was held up, it was on purpose. I mean, make it happen. And if it was held up, it was on purpose. I would hate to think this is on purpose, or incompetence.

Commissioner Kellner: Well, I think that it's right with Kate, it may not be on purpose, it's because of the date that DOB isn't rolling over, in other words that has to go up through the chain of command, because we will be effectively changing their policy and procedure. Although I believe it's lawfully correct.

Commissioner Spano: We're not, see, that's the point. If I'm dealing with this, I don't want to set a precedent with all my agencies like the commissioner said, who's going to come to me and say we want this privilege too, you say well, they're different, they have the legislature set them up that way, period.

Commissioner Kellner: Well I agree, but I understand why Kate's is a little different than everybody else's. Because we are digging our heels in and saying she needs to be paid retroactive to the date of the Commissioner's decision.

Commissioner Spano: That's another issue.

Commissioner Kosinski: I think it's a similar issue. I think it's an issue of control. I think that the Budget Office is trying to control the process by determining that the date is the date that they get the paperwork, not the date that we appoint the person, so it's really a question of who controls the appointment process, us, or budget. I think right now budget's position is they do. Our position is we do. I think we have a legitimate legal position, frankly, I've always thought that I know Commissioner Kellner and I discussed this, and I think we have a legitimate legal position, that we could force it, that we have special powers to make our own determination. I just feel that even if we win in a legal battle, the budget process is not a one-year process; it goes on year after year. Our budget is in the hands of the executive, and so ya know I just think we run the risk if we pursue this too aggressively, that the executive will not be as amenable to our desires going forward. But I think that's a judgment call we have to make and listen, I'm willing

to do what the other Commissioners want to do here, but I do think we only have so many cards to play, and we can play them, we can play this one, which is we have extra legal authority to appoint our own people, make our own decisions, but again, we do not control our budget, the executive does, and we just have to acknowledge that.

Commissioner Spano: Well said. But I'm telling you that you're just going to live like this. People will come on the Board, we have a commissioner that came on the Board I guess within the last year, let's try a reasonable approach. If someone on staff, let's try a reasonable approach. We've been talking like this for seven years I've been here ya know, and it really causes a problem. It causes a problem not only with the person who hasn't been paid for seven months or whatever the hell it is, but with the staff and getting the work done properly. I mean don't even get me involved with two more years to get the 5<sup>th</sup> floor finished. I got a contractor who will do it in a week. And I'm not saying--speaking as a neophyte okay.

Commissioner Kellner: We know that.

Commissioner Spano: These things can be done, and it just bothers me, that's all. You've got people working their tails off, in this office, doing all kinds of great work, look at how far advanced we've brought these new programs. Look at how they're straightening out the Enforcement situation, there's a lot of work going on. You need the right people, and you're not asking for anything that isn't in the budget. It's in the budget. Why wouldn't you spend it? You spend it on everything else, I've said my piece.

Commissioner Kosinski: Commissioner, I totally agree with you. I totally agree. It's been a frustration since I've worked here, which has been a long time, it's not limited to this administration, it has been going on for many years, it's been a constant problem, but I do agree, it's a bigger problem today in the sense that we have more obligations today. We have this huge program we're trying to undertake today. The biggest program the State Board of Elections has ever undertaken, and to have these impediments put in our way today is more of a problem because we have more work to do, and if you don't have the personnel on staff to do the work, you can't get it done, that's a fact. And so the problem becomes more exacerbated by the larger role we're playing in the Elections process in this state. So I agree, it's a bigger problem, but it's not a new problem. It's an ongoing problem. Ongoing not only here, but at the local level at well, I might add. Local boards of elections have the same issues because they have the same authority we do in the law, but they have the same battles with their county legislature, and their county executives, over this as we do. I'm sure it varies county to county. I'm sure in Westchester County when Andy Spano was the Executive, things moved very rapidly and very smoothly.

Commissioner Spano: They did!

Commissioner Kosinski: I'm sure that's not true in every county. So, it depends on who the actors are, and it depends on which jurisdiction you're looking at. But I think this is a problem common to the boards and it's unfortunate that the legislature puts in this extra power, but it's really difficult to exercise it, because of the risk you run as a state agency that you will antagonize the second floor, the executive if you go through this process too aggressively, and

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you'll pay for it in the future. And that's a risk we've been reluctant to run, no question about it. Is it worth running, maybe it is, but I'm open to what the other Commissioners think is the best, and the co-executive directors think is the best way to go.

Commissioner Spano: Well, I think it's important to note the emotions around this problem. In politics emotions are much more important than anything else. And this is a real problem. It's not made up, and it has an easy solution. Easy! It's not hard. The devil made me do it, they passed legislation that this unusual agency has got its own power, we can get this done in a month, or month and a half, or two months, whatever you think is reasonable. Do they do background checks for these jobs because that's another month, at least.

Commissioner Kellner: No.

Commissioner Spano: Anyway I've said my two cents, and I think the Attorney General's gambit is a possibility ya know. Let's see what happens. Maybe they can work this out, maybe in the future things will work more easily. No one wants to go to war with anybody. It's not a war, it's just doing the right thing. Sometimes I use the wrong words. Anyway, I said my piece.

Commissioner Kosinski: Fair enough. I mean our problem is that when the project doesn't get done on time, and then we say, "Well you didn't give us the resources to do it," nobody's going to listen. The problem is it's our obligation to get the project done, to bring it in on time, and when they don't give you the resources to do it, you run the risk of having the project not happen in a timely fashion. We're under a very short timeframe for this project anyways, and if you put impediments in our way, the chances of it finishing on time are diminished. But our problem is, if it doesn't get done on time, the blame is going to fall on us. Nobody's going to blame the executive that oh you didn't give them the resources. The problem will come right back to us, "Why didn't you get this done on time? You guys failed." So our problem is we have that obligation, we have that responsibility, but we don't have the authority to actually put into play all of the pieces we need to put in to make it happen. So while you've got the obligation and responsibility, you don't have the authority. It's a very difficult position to be in.

Commissioner Spano: Yea and you know, in the past, I mean people have used a herculean effort to really do their job, and they've been doing it. It's not that we've fallen apart, it's just that as you add and as you push, it's going to become more and more critical that we have the staff, the appropriate staff. And you're not asking for additional people, give me a break, you're only asking for what's in the budget. It's not like we're saying we need 20 more people. That can be an argument. I think we should have a discussion at this level.

Commissioner Kellner: I hope our co-executive directors have gotten the message, and that that will give them a little more backbone in dealing with the powers that be.

Kristen Zebrowski Stavisky: We have

Commissioner Kellner: If they have problems, they should let us know, because I think we're also prepared to help escalate. So it's both getting our staff on payroll, and getting the 5<sup>th</sup> floor

renovation done, those are the two major issues that require escalation if necessary. Alright, anyone else? Then we'll go to new business, the first item is Resolution 22-01 appointing our new Deputy Counsel.

Commissioner Kosinski: Well this plays right into the discussion we just had. I would like to move the resolution appointing Kevin Murphy as the new Deputy Counsel in Counsel's office. But, of course, this plays to the discussion we just had, about when this will happen, how quickly this will happen, but I would like to move the resolution.

Commissioner Spano: Second.

Commissioner Casale: Second.

Commissioner Kellner: Alright those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed. Alright, the resolution is adopted. So Commissioner, is it your proposal that Kevin start today or...

Commissioner Kosinski: No, I think Kevin's got some issues he has to resolve before he's ready to start frankly, so I want him to resolve those. He's working in another position right now, so he's not quite ready, but I know he will be ready soon. I'm hopeful that the budget will be amenable to his onboarded soon, but if not, we'll have to have a discussion again.

Commissioner Kellner: I see that Kevin's currently working for the Reapportionment Commission.

Commissioner Kosinski: Correct, correct.

Commissioner Kellner: So is the idea when the commission winds down he'll come on, or will he be coming before the commission is finished?

Commissioner Kosinski: I think the commission is pretty much done with their work, and I think he's prepared to come soon. I don't know his exact date, but I think it'll be very soon.

Commissioner Keller: Okay, well, we look forward to him joining, and I hope that there won't be issues with it. Alright, next is Resolution 22-02 on the Dominion Voting Systems. Tom?

Tom Connolly: Yes, thank you, Commissioner. This resolution is just to permit the Election Operations Unit to move forward with the testing of the system that Dominion submitted to us, along with the proposed resolution, we did provide some of the information on what is being submitted along with the estimates we received from our testing partners. This is kind of just part of the whole overall procedure that we follow for new systems. We would bring a resolution before you to allow us to move ahead with testing of it.

Commissioner Kellner: So, is this such a new system that it triggers the Voter Demonstration provisions of our regulations?

Tom Connolly: So we will have at least one demonstration. We always have a public demonstration of any system that we receive, and like I had said, as much for the Clear Ballot we would likely also be bringing in folks from the disability community to have them have an opportunity to really have a hands-on access to the hardware, so that they can provide feedback early on in the process.

Commissioner Kellner: Okay, so any other discussion? So I'll call for a vote. Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? Alright the resolution is adopted. Then the last item on the agenda is a discussion on voter turnout, I believe this is your issue Commissioner Spano.

Commissioner Spano: Yes, I didn't plan on preceding this with that discussion, but let's see if I can calm it down. I've been thinking about this for a long time, even before I got on the Board. We've done some very significant things in the past couple of years in terms of legislation, enhancing the ability of a voter to come out, early voting, and all the other things, and now we're going into Campaign Financing, that's all great. And first thing I thought of, was that with all this new legislation and new things happening, it should have a value. The value being greater turnout, more people voting, and so on so forth. So I asked the staff through the Executive Director, to formulate a statistical situation on 2016 to 2021, and get all the data on turnout. And they have that, they have the turnout for early voting, and the turnout for the general elections, that's available now on spreadsheets, to take a look at it, and see if there's been any value in this and maybe add to it, in subsequent years, so we can follow this, and see what value there is in each one of these new pieces of legislation. I don't know if you have the sheet, you can just print it out from the agenda, but, and you all know this, I don't have to give you the numbers, because if you've been around a long time, you know that if we have a general election, the President is running, we get a big turnout. If we have an election for the Governor we get a bigger turnout,

but if we have a local election, we get a low turnout. If we have a Board of Education election low turnout. If we have village election, we usually get a low turnout. If we have a primary, we get a low turnout. And it seems to me in the Democratic process, that there's something wrong with that, that especially in primaries where you're picking the candidate to run in the election, it doesn't give the people who are then voting, they didn't pick that guy, or that person, or that individual to run. So, look at it, and I think in a more Democratic process, there are three elements that are critical: money, voter turnout, and informed votes. That's a real problem, and on the back of the sheet, just as an example, there's nothing scientific about this, that I put on the sheet, I want to make it more scientific, but there's nothing scientific about it. I took all the major media, the ABC, NBC, CBC, CNBC, Fox News, social media, etc., and I got some numbers. And after all the numbers I got, these are national numbers; there are 328 million people in the United States and about 220 million voters. If everybody who goes to those places that I mentioned to get their information on elections were a single person and we know they're not because some of them both of those places or three of those places, there would be about 87 million people who might know what's going on out of the 220 million voters. Now, obviously, they get their information somewhere else too, but that's a significant amount of voters that really don't know everything that's going on in the election. On the money end of it, we all criticize the amount of money that's in the election process, but the first thing a reporter will ask you, if you ask them during a run is, "How much money do you have? That's the first question they ask." And one of the elements to fix this situation that we've given, is now we're going to be unable to pay people to fight the situation. The money you need in an election process. So you've got money devoted to know all about what's going on.

Commissioner Kosinski: I'm having trouble hearing you, Commissioner.

Commissioner Spano: There is a lack of... You're having trouble hearing me?

Commissioner Kosinski: I am. You're sort of losing your...

Commissioner Spano: I don't know why. Can you hear me now?

Commissioner Kellner: Commissioner Spano, maybe if you turn off your video, turn off your camera, just give your computer a chance to catch up. So your last minute or so we did not hear, because it was breaking up.

Commissioner Spano: Can you hear me better now?

Commissioner Kellner: Still breaking up a little bit.

Commissioner Kosinski: I can.

Commissioner Spano: Here's what I'm saying...

Commissioner Kosinski: You're cutting out again, Commissioner.

Commissioner Spano: Can you hear me now?

Commissioner Kosinski: I can, but you're kind of in and out.

Commissioner Spano: I'm not on mute. It's gotta be something, yea. Let's do this another time. I'd rather wait. At the next meeting, I'll make a presentation, did you hear that?

Kristen Zebrowski Stavisky: You want to review this at the next meeting is that what you said? Okay.

Commissioner Spano: That's correct. I'll do it at the next meeting. They can read it. I'll do it at the next meeting. No hurry on it.

Todd Valentine: Very good.

Commissioner Kellner: Does anyone have anything else they want to raise? I think we're at the end of our agenda then and can adjourn.

Commissioner Kosinski: Did we agree to meet on, what was the date? Friday the 4<sup>th</sup> of April, or March I mean, March 4<sup>th</sup>, is that the idea?

Todd Valentine: And we want to then start with the PCFB meeting at 10:00 a.m. followed by this Board Meeting immediately afterwards.

Commissioner Kosinski: Okay, then I will move that we adjourn until March 4<sup>th</sup>.

Commissioner Spano: Second.

Commissioner Kellner: All in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? Alright, we stand adjourned. Thank you all.