

Jim Walsh: Good afternoon everyone. My name is Jim Walsh, I will be chairing today's meeting and I'd like to introduce our fellow Commissioners.

Douglas Kellner: Douglas Kellner.

Gregory Peterson: Gregory Peterson

Jim Walsh: Around the table please.

Todd Valentine: Todd Valentine

Kimberly Galvin: Kimberly Galvin

Paul Collins: Paul Collins

John Conklin: John Conklin

Tom Connolly: Tom Connolly

Dave Loomis: Dave Loomis

Joe Burns: Joe Burns

Anna Svizzero: Anna Svizzero

Bill McCann: Bill McCann

Bob Brehm: Bob Brehm

Jim Walsh: And guests and who and what you're representing.

Norman Green: Norman Green, Commissioner of Chautauqua County

Dennis Ward: Dennis Ward, Commissioner of Erie County

John Ferri: John Ferri with the State Board

Tarry Breads: Tarry Breads Election Operations

Aimee Allaud: Aimee Allaud League of Women Voters

Jessica Alaimo: Jessica Alaimo Capital New York

Jim Walsh: I thank you every one. I have noticed it's 11:15 so please don't believe it.

First item of business vote to approve the minutes of the February 4th meeting. Do I have a motion? All in favor?

[chorus of ayes]

Opposed? Carried.

Unit updates. Executive Directors, Robert Brehm and Todd Valentine?

Todd Valentine: Well the petition season has started. Petitions for Congress are circulated, started last week and noticed that filing period is due the first week in April, 7th through the 10th and we'll go from there. We're still waiting for approval of the budget by the 1st. Meantime administratively we've been clearing out existing bills to close out this year's account so that's taken some effort from a lot of people reconciling tribal documents and interagency bills. And we're just kind of waiting. Bob?

Bob Brehm: We resumed for the year the monthly calls with the county commissioners and January was the year's first meeting. February we resumed and we have a schedule and I think they worked really well. We had a conference call with the officers in trying to come up with an agenda and we keep that contact going on a monthly basis. So we've given a copy of the agenda that we had mentioning any specific issue we've been dealing with. We did send out our legislative packet after the last meeting where it was approved to all of the members of both the senate and the assembly committees and the leadership of both houses and to the Governor's Office. So we did do that follow up also. It is budget season so we are drastically working to get all the bills paid that we can that will fit into this fiscal year because the cut-off date for that is March 14th and then anxiously awaiting what next year will bring to that issue. I don't think there's anything specific that we probably won't cover elsewhere. I think generally we had a meeting with the New York City Executive Staff with Dawn Sandow and Michael Ryan in mid February to review with them a number of issues related to their list maintenance and also the DOI report and PIO I think as Todd and I and John and Tom from PIO and also Dave Loomis that met with the City. I have to say I thought it was a very refreshing meeting. I think we covered a lot of ground in many hours that we met with them as to what the list maintenance efforts need to be and they're working to update those as much as possible. But one I thought it was a refreshing meeting, I thought it was very positive. I think it shouldn't necessarily be once every couple of years, but certainly I think you should know that I thought it was a very worthwhile visit and I think they genuinely sound and are making, I think, all the right words that we're seeing and hearing from them that this is something they take more seriously now than they have in the past. And I think that's good for all of us to have an updated and clean list.

Jim Walsh: Any questions? Thank you gentleman.

Legal, Kim Galvin

Kim Galvin: Thank you Commissioner. I really don't have anything to add. Our unit report is kind of small. However we do participate in a variety of meetings and calls throughout the building. I will start again harping on the financial disclosure filers. I'm currently working with Jay Hope on a number of things, one of which is the financial disclosure list. So all of you within the sound of my voice that have to file such a document should be receiving from them shortly an e-mail allowing you to access your profile online and I'll continue to send you updates and e-mails regarding that. Do you have anything to add?

Paul Collins: Yeah just by way of information, on Friday I received word from the Attorney General's Office that the last open piece of the Credico case, the plaintiff's attorney's fees had been resolved and they had filed a stipulation with the court to that effect.

Jim Walsh: Thank you. Any question of legal? Thank you. Election Operations, Anna please.

Anna Svizzero: Thank you Commissioner. We had reached out to, subsequent to our last Board meeting, the 8 counties that were not using memory cards for the production of their election night results. 7 of the counties have spoken with our staff, we walked them through the process. We're comfortable that they know what they're doing. A couple of the Boards did a test upload of that data so we're going to reach back out to them prior to the June primary to make sure we're onboard. We do still have to work some conversation into the agenda with Westchester. They're the last county that we have not had that conversation with, nor made progress with but we'll be doing that hopefully in the next week or so.

Certificates of vacancy were prepared for the balance of the vacancies that were aware of. We have 12 total, 2 in the senate, 10 in the assembly. We provided the county boards the paperwork they need to extend their shoebox contracts. Those expire this month and we're hoping that the comptroller agrees that the new contract will be for a 2 year period instead of 1, so we're not always chasing paperwork with the county boards. The funds don't expire but the ability to reimburse does, so we want to make sure that that's seamless for the county boards.

Staff is working on writing the candidate management system for the petition filing for congressional seats. We worked with the Office of Court Administration to get the list of Supreme Court vacancies. All of those documents were part of the March certification that went out to county boards. It provides information on where to file the order of the parties, the various emblems, party colors for primary ballots, etc.

We continue to revise our county board procedures. We hope to have the first batch of those to you at your next meeting. Those will be the ones that the county boards could benefit most from. There is a change in the Testdek process that should save some time

and money. We're also looking at the quarterly maintenance aspect of county operations to see if we can work through that and not make it anymore burdensome. Our counties are conducting more elections, hopefully more counties are using scanners to do them so their pre-election work really serves to constitute a periodic maintenance process. So that's one of the big changes that we're hoping to have before you.

We are awaiting the ES&S upgrade. We don't have it yet. There is a revised timeline in your Board packet. We are expecting that software this week, so this is off from this timeline that was originally submitted but it's still within our reach to get this done in a timely way. We have prepared our own test cases, we're ready to do the functional testing and one of the aspects of that functional testing will be, the public testing. We'll be inviting all of the ES&S counties to come to Albany to do that if they want to participate in that aspect of the functional testing.

We don't have anything other than what's in our written report and what I've just shared with you now. Jody do you have anything?

Jim Walsh: Any questions?

Douglas Kellner: I thought we were going to discuss the Presidential Commission report on election administration and how it affects the operations or how their recommendations can be applied for improving the operations of the county boards of elections.

Anna Svizzero: In my review of it I was happy to note that there are some items that we've already addressed. For example, they recommend no wait time more than 30 minutes, which we've addressed in our own regulations. They do encourage county boards to track voter turnout for purposes of committing resources, inspectors as well as equipment, etc. We've been urging our boards to do that. We've provided sample forms and a process for them to do that. It could be something as easy as simply noting the public counter number on the scanner every hour and we'll be urging the boards to do that again in the June primary, but more importantly in the general election being that it's a statewide year. So that hopefully they can develop some quantitative data that will serve them moving forward. You have to start at some point. You can't just take this number and invent it out of the clear blue sky. So we're hoping that boards will see the value of that.

They recommend for purposes of managing activity within a pole site mapping of where equipment is, where paths of travel are, etc. Again, we've urged our boards to do that. It's one of the items that's in the equipment management and facilities guide that we've given our county boards. There's some software available, Putnam, Rockland and a few other boards have purchased that software to create floor plans, diagrams, where the power is, just logistics. Where the bathroom is. Where the accessible entrance is depending upon what kind of pole site you're using. The purchase of that software is reimbursable through the shoebox program and it's been very helpful in those boards that

are utilizing it. Others have simply done a mock up, you know by hand of pole sites. Other boards aren't doing anything at all. so we're hoping that we can get more boards into following that recommendation that the commission put forward.

They do raise the issue of school not being in session on Election Day. That's something that is in the Election Commissioners Association packet. I don't think it's in ours but we're certainly supportive of not having students in schools on Election Day. But we'd certainly like from my own perspective, the school boards to follow their own advice. If the school is vulnerable on Election Day because there are members of the public coming in, then it is equally vulnerable on school district election days. There is a school of thought that says our elections and our participants are somehow more dangerous to the students that are in the school, and that's just not true, nor is it fair. So I would only add that when they make those comments they consider their own elections and make those in service days and open up the facility which everybody in the community could make use of.

Posting sample ballots, making them available on websites, etc. We've been working with our boards, made presentations at conferences, etc. to make sure that they do that but we'll be following up with our tip list for election preparation and make an issue of that as well. I'm not quite sure why they recommend that ballots should be reduced and the length of the ballot and complexity of it in a presidential year. If the ballot is confusing, it's confusing all the time not just in a presidential year unless they're looking at first time voter and presidential voters only.

Douglas Kellner: I think they're talking about states that have long numbers of ballot questions.

Kim Galvin: And it's a Presidential of Commission isn't it?

Anna Svizzero: I understand but I would make the point that if your ballot is bad it's bad every time you issue one so we need to work on that.

Douglas Kellner: That was the major source of the delays in Florida was that they had 10 propositions on the ballot.

Anna Svizzero: We do need to deal with lines. New York City certainly has issues with lines. Some of our other counties did, but they did because of an anomaly. Voting system breakdown or one of our boards ran out of ballots, a board we're all very familiar with. That kind of thing. But the EAC is doing a webcast of how to manage lines in a polling place. I shared that link in the Opportunity to register for that with the City Board with Mr. Ryan and Ms. Sandow and Ms. Perkins so I'm hoping that they'll participate in that and we'll have our staff sitting in on that as well so that we can take their best ideas and share them with the county boards.

Tracking wait time. We do ask our boards to do that. It's one of the questions that they have to answer in our annual reports so we are collecting some data on that. If it becomes anything significant that we can share with you that is meaningful, we'll do that. But right now those reports are still coming in so we're still looking at the data and making sense of it.

One of the recommendations was a statewide curriculum which obviously we do in New York. We've shared those directories with our county boards. We do that regularly with the new commissioners, make them aware that there is a state curriculum for training. Suggestions for tests.

There is a lot of interest in testing in the DOI report, there was as well from New York City. There are a lot of ideas on the purpose of testing. I'd be happy to talk about those offline if anyone is interested.

Poll site accessibility, check list, standard forms to make sure your site is accessible. The NBRA unit does that right now with funds that were made available through HAVA. It's an extensive document for making a site accessible and there is no longer a waiver process in New York, every pole site has to be accessible. And I think we've got compliance there but something that continues to need monitoring obviously.

Post election audits which we do in New York. I was really happy that we had a lot of pluses in our column when it came to that presidential report. They do get into a bit about certification of voting systems but other than our traditional kinds of problems, we think the process works pretty well for us now. Once we got out of that first 4A and the cost of it.

Douglas Kellner: If you look at their report it's really modeled on what we did.

Anna Svizzero: Right. I was very pleased reading their recommendations and ticking off the things that we do and that we would remind our boards to do as opposed to them hearing it for the very first time. We have made a lot of progress in that regard, so I'm very happy to point those issues out for you.

Douglas Kellner: I think in general, I agree with your comments. The biggest thing that we need to focus on particularly in New York City is the efforts to bring waiting time down to the 30 minute limit as proposed in their report. And to at least get New York City to try to pay attention to their calculator program that they've put together in terms of how the board need to determine what the appropriate staffing levels are in order to meet those time limits. And I think that that guidance is useful.

The other thing on the report is really an issue that I've asked when the Public Information Unit report comes up which is doing the, ERIC, and the Presidential Commission has strongly recommended that and so I'll wait for Mr. Conklin's report to raise that as a discussion item.

Jim Walsh: Just a curiosity point, what kind of creative suggestions have been given to cut down on the wait time? Anything new?

Anna Svizzero: Well we've had instances where some boards really only dedicate one scanner to each election district. They have additional scanners, if they don't they should buy them. This seems to happen in boards that do have HAVA money in their shoebox accounts to purchase the scanners, although the county would have to purchase them first and then be reimbursed. But having additional equipment so that if you do have that influx of voters, there's more than just that one scanner to go to. It also encourages if you have a lot of activity in a single ED with that single scanner, if you had multiple EDs in a polling place, a voter should really be able to go to any scanner. It's one of the big pluses of having a scanner as opposed to that traditional this is your table, your line, your scanner only. So we're hoping that we can make some progress with those boards that are doing that. We really don't have lines and wait times again unless there's an anomaly but that would be the incident that I would recommend.

Douglas Kellner: Outside of New York City

Anna Svizzero: True yes sorry. I should have finished that part or added that part first. But yeah they can dedicate the proper equipment and if they need a coordinator in the poll site, certainly staffing, I mean it would cost them more to do that but you do need someone to help direct traffic in that kind of a poll site. Make sure voters get to the right check in tables, etc. Someday, if we ever get around to working through those parts of the election law, you might even be able to dedicate staff. You can have X number of poll workers to open a poll site rather than look at it on an ED by ED basis, look at it as a poll site unit and then when you had your influx of activity. For example, maybe upstate is from 3 to 7 at night, that's when you would bring your inspectors in. you don't need to pay all the inspectors for a 16 hour day, pay the inspectors for the work they're doing when they come in to do it and that would certainly maybe help recruit and retain some inspectors, but also give you the help when you need it and not have that sense of what am I doing here wasting my time, kind of thing, in the other parts of the day that aren't as active. So that's something that we could hopefully work on in the future.

Jim Walsh: Good points, thank you. NVRA Public Information John Conklin please.

John Conklin: Thank you Commissioner. PIO remains busy. Petition time has started again for the House of Representatives. We've had a lot of questions about that. Village elections are next week. We've been getting a fair amount of questions about that. We participated in a lot of discussions and meetings that Bob and Todd mentioned so I don't really want to be redundant about that. There's not too much to add beyond our written report so probably if there's any questions, we should probably go right to them.

Jim Walsh: Any questions?

Douglas Kellner: So why don't we start with ERIC.

Tom Connolly: Well

Douglas Kellner: Explain what it is and what we're doing to investigate it and or what we need to do to reach a conclusion or analysis.

Tom Connolly: Well I mean one of the things that was brought up in our meeting with New York City because it was recommended in the New York City DOI report that New York City Board look at other data sources and it was also recommended in the Presidential Commission Report that a couple of other systems be looked at, two of which are ERIC and Interstate Cross Check which basically are both kind of multi city consortiums with the goal of kind of comparing data, from different states to see whether or not there are duplicate registrations, incorrect information. With regard to ERIC, ERIC was originally developed by Pew and IBM and then they handed it over the Board of Directors which basically is made up of representatives from the member states. There are currently 9 states in ERIC. What they do is they basically get information, bare minimum information as the voter register rolls and the DMV records, they get that from each of the member states, they uploaded every 60 days, they compare it to the different states to see if there is any matches or any kind of updated information and then they return that information back to the states. The states who are members of ERIC then have to take the information as far as people who have been identified as either eligible to vote but not registered to vote, and/or that may have incorrect, inaccurate information and they have to reach out and contact those people or those voters to try to either correct the information or provide them with the information that they need in order to register to vote if they're not registered already.

As far as that goes, the ERIC system, there is a cost to it, there is a \$25,000 membership fee to pay initially and then there is an annual dues that is based on two things; number one how many voters you have, and also how many states are part of the consortium. Half of the annual dues fees is based on the voter population and the other half is split amongst however many states there are. So the logic from their part is that that the annual fees will go down because as more states come on, that cost will be split across more states. ERIC uses, like I said, the bare minimum is voter registration rolls and also DMV information. They compare it with the NCOA list. They have the social security death index and then basically any other statewide data file that a state wants to include in the fee that they provide, they can. So anything that any state provides would also be used in comparing different voters.

As far as the Interstate Cross Check which is a little bit more simpler version that is done on an annual basis. Basically what each state that is part of that consortium for which there are currently 26, they upload their voter file that contains also voter history for the previous election once a year in January. Kansas is the state that basically runs this. So currently the 26 members say would upload their file. Those files would be looked at for duplicate registration and also double voting to see if they have voter history in both

states. That information is then prepared and returned to the states in early February and then those states that received the information could then take whatever action they have to take based on the information they receive. That system is free, and like I said, it's current 26 states, it has been growing, I think they're in their 9th year now and like I said its done on an annual basis. So those were the 2 that were...

Jim Walsh: 26 States?

Tom Connolly: There are current 26 states, largely in the Midwest.

Douglas Kellner: According to the President's Commissions report, it says 29 states for the Interstate Voter Registration Cross Check program.

Tom Connolly: Well they may have added 3 after because I know the letter from Harry...

Douglas Kellner: I'm just looking at the Commission report. So the Commission, which as you know was nonpartisan and had substantial contribution from both parties strongly recommended that the states use these interstate cross checking systems in order to update their registration records. And I think that we should be moving forward to implement them unless there are real reasons not to. My understanding is that the Interstate Cross Check System just as a very crude match system so it would still require significant work to actually do the matches after you get the data from other states.

Tom Connolly: Yes and the Secretary of State's letter to the Presidential Commission stated that various states do various things with the information. Some of them focus more on just duplicate registrations depending on what resources they have. Some of them might focus more on the double voting issue, some might focus on both. So it's really, the Cross Check is a lot more simplistic rather than ERIC where it just basically upload your information once a year we'll give you the results back and then you guys are pretty much free to do what you want to do with it based on whatever the state's decision is.

Douglas Kellner: And the feedback that colleagues in other states are using ERIC is that ERIC really does all the work for you and that the file you get back on ERIC is in a form that can be immediately used that doesn't require further checking on and matching the way the Interstate Cross Check System does. But I would like to, I think that this is an important recommendation from the Presidential Commission in an area where we're a little bit behind the curve right now and that I would like to ask the staff to more carefully review each of these projects, analyzing the pros and cons on New York's participation and that we make a careful decision soon, but that we make a decision whether to join each of these programs. So what I'm calling for is a project for the staff to actually look at each of these systems and decide in a report to the Commissioners, yes we recommend to do this or, no we don't agree with the President's Commission that this isn't right for New York and to explain why. Okay?

Jim Walsh: Whose responsibility is the \$25,000 fee and annual dues and whatever else comes?

Tom Connolly: State facility, well the \$25,000 the initial membership fee just to become part of the consortium, that's a one time fee, the annual dues obviously would be the state. I was informed by the ERIC staff that I guess Pew, it's public but not necessarily confirmed that they're looking to do some grant funding to cover the cost of each member states first mailing out to people who are identified as not, you know, registered to vote or who have incorrect information. But basically otherwise the cost is burdened by the state.

Jim Walsh: No fees going back to the counties in any fashion is there?

Tom Connolly: Not based on the membership agreement from ERIC. I mean, that's obviously right now it would be a direct cost to us as a state.

Douglas Kellner: One of the benefits from ERIC it would help implement the mandates in the election law that the State Board of Elections develop programs to reach out to unregistered voters. And the ERIC system, because of the way they do the matching would provide a list of eligible voters who are not registered.

Tom Connolly: Their rule of thumb is about 25% of eligible voting population is unregistered, but based on the last census numbers that I saw, we have more than 75% of the voting age population registered in New York so the number of unregistered but eligible citizens in the state is probably a lot less than 25%.

Douglas Kellner: I think it's closer to 7%. We're joined by Commissioner Mohr from Eric County, welcome.

Jim Walsh: Welcome Commissioner.

John Conklin: So the ERIC system has sort of a carrot and a stick approach because they provide you with a list and then you're required to contact I believe it's no less than 95% of what they give you and if you don't, they'll come back and punish you for not having made that effort. So there would be costs associated with reaching out to all of those people in the list that you're provided with.

Douglas Kellner: It's true but we're supposed to be doing that under the mandated statute now.

Tom Connolly: And my understanding also is that some of those mandates have changed over time by the Board because they used to be every year and now it's every federal year and they, it's also a matter of contacting. So it's not necessarily dictated by first class mail. Because I know one of the fields is e-mail, but with regard to let's say,

those people who are eligible but unregistered who would likely be coming from DMV the question then becomes, well how many people from that category have provided DMV with an e-mail address so that the contact can be done via e-mail instead of mail, just reducing the costs.

Douglas Kellner: These are exactly the kinds of issues that I'm asking that you address and get a report to the Commissioners so that this is on our agenda to make a decision on this rather than just talking about it.

Jim Walsh: Thank you all. Campaign Finance, William McCann

William McCann: Thank you Commissioner, firstly we did file our Order to Show Cause for our January periodic filing that was filed on February 27th. We brought action against 559 filers, that matter is returnable on April 4th. Pursuant to the direction of the Board we did solicit and receive approval from the court to serve at the addresses on file with the Board and so we did that via certified and regular mail, resulted in about 2000 pieces of mail. We're looking at some of the cost aspects of that, but it's a process but the initial might be a 2/3rd cost based upon the service process. But again that's returnable on April 4th. So certainly we'll keep you abreast of that.

Our Education Outreach and Training Unit has scheduled 26 seminars to take place between May and August, 6 of which are CLEs. To report on an added component, we have applied in February to the New York State Education Department, their State Board of Public Accountancy as an equivalent program for accountants as for CLEs. For attorney's it's called Continuing Professional Education. And, so we've applied, our application is pending to offer 3 credits for CPE for accountants. We've done a review of our files in the system and have identified a pool of people who have identified themselves as CPAs and such, so just as an added program as soon as we receive approval, we're hoping to have that in place by the time we start our current years' training. The training unit also will be, as part of their training, looking to do a modest run of handbooks to have available at the seminars and also, as is our custom, they'll be mailing out our annual filer update at the end of March which will go to all the filers giving them current information on campaign finance, etc. And also that's where we also give them the filing calendar for the upcoming year as well as the calendar of seminars and hope that they will attend. We also work in tandem with the county boards to solicit their support to get attendance numbers up at those.

Our Audit Unit is working with our IT Unit right now, testing a new committee type which is specifically for independent expenditure committees. When the database was developed, there was no such committee type specifically for independent expenditure committees, and as we're seeing more and more activity in that arena, we wanted to be able to make modifications to the system to allow for that to be specifically references. And so our IT unit is working with Audit. They're setting up a test of that now and staff is working on that and so I don't have an exact timeframe of when that would be implemented, but our goal is to implement it as soon as we have it available.

Our intake and processing, specific note, as we previously mentioned we've implemented a new phone system. We're still working on some issues relative to that, specifically metrics capturing of statistics for that. In our old system we were able to track and monitor the number of calls, call times, staff assigned, whole times, abandoned calls and things like that that would go directly towards our use of the system and our ability to assist their callers. We're working with our Adm Office who is working with the phone system folks to see if we can get some accommodate and update on that.

Our current active filers presently, we're still at more than 14,000. We have our regular resignations and terminations as well as our new registrations, and we anticipate as the political season comes upon us, we'll see more and more registrations for those offices that are up this year. So with that I'll take any questions.

Jim Walsh: Thank you Bill. ITU Dave Loomis.

Dave Loomis: Thank you Commissioner. I don't have anything to add to my written report, but if you have any questions I can answer them.

Jim Walsh: Okay thank you Dave.

New business. Vote on a resolution to pay expenses related to HAVA expenses to have administration complaint to Alternative Resolution Services.

William McCann: Thank you commissioner. Under Federal and State Law the State Board of Elections is mandated to have available for alternative dispute resolution purposes a vendor on contract to meet that federal and state mandated. This is an annual thing that we bring to the Board for that purpose.

Jim Walsh: Any questions? If not I'll accept a motion to approve.

Douglas Kellner: Has there been public bidding on this contract recently?

William McCann: No we work with the Office of General Services. As you know Commissioner when this was first bid, we had worked with the Attorney General's Office. They had, we have a unique circumstance whereas we need to be able to provide these arbitration services around the state in a specific way under the statute. And so at that time under HAVA, we worked to identify a vendor who would be able to provide those services. We worked specifically with the Attorney General's Office because they had a vendor in place, NYSADRA, New York State Alternative Dispute Resolution Association because they handled the Lemon Law and those matters across the state. The other vendor at the time was the American Arbitration Association and the costs, as the review showed were significantly higher for them. As you also know, we have this contract in place to meet the mandate, but we have not had any institutional need as of yet to avail ourselves of those services and so it's basically a hold contract to be in

compliance. But NYSADRA is a very reputable organization and again they can offer the services throughout the entire state and they were highly recommended by the Attorney General's Office and so we fully anticipate that should the need arise, they'll do a great job.

Jim Walsh: On the motion, all in favor?

[chorus of ayes]

Carried.

Next item, discuss access to ballot images.

Douglas Kellner: So I think this is now the 4th time I've raised this issue at the Commissioner's Meeting and the last time I went in to a long discussion at our November meeting and since that time, the Committee on Open Government has given a written opinion that essentially agrees with the analysis that I've been previously giving which is that the ballot images and cast vote records are subject to FOIL after they have been permanently preserved in accordance with the procedure set forth in Election Law 3-222 and our own procedures. I understand that there's still disagreement among some people on the staff on whether the committee got it right or whether this is good public policy, but I believe very strongly that this is good public policy that the records be made available and I would like to keep this on our agenda so that we can discuss implementing procedure to guide the county boards in responding to FOIL requests and also to guide them in how to make these records available to assist the parties in pending litigations. And I've discussed this with several people, several of the Republican Election lawyers who seem also to tell me that they agree with me. Obviously, it's not their call, it's the call of the Commissioners but I really do think that we should press this. And to me there are 4 key values in Election Administration; uniformity, accuracy, transparency, and verifiability. And making these cast vote records available through a uniform policy strikes me as advancing all of those key values in good election administration so that everybody has access to the information and can use that information in an appropriate way. And in the long run we'll all benefit from that. So, I'm told that you're not ready to actually do anything on this today but I'll let you speak for yourselves. I'd really like to press this matter forward so that we establish...

Gregory Peterson: Well my initial thinking on it, I respect your analysis and I respect your opinions on a lot of what we do here and this one I frankly I would disagree with you. One of the things you missed on that list of things that we're responsible for or elections are all about is some degree of finality. When an election is over, it's nice to know that within 3 months, 6 months that we have a winner of that or a decision on that particular election. This type of thing opens the door for the continuation like ad infinitum of looking at every single vote and did one mega pixel or 2 mega pixels on a particular ballot mean such and such and did we really interpret the voter's intent? This is really covered by 3-222 too and they have said basically and that's the statute which by

the way I would have difficulty in saying that we should overturn that. If the legislature means to do that, that should be up to the legislature to turn that around. Saying that you have a copy of a ballot is really saying the same thing as you have the ballot. Just back-dooring it. So, to my way of thinking, at this juncture, I'm not willing to approve that approach. Certainly preserving the records for 2 years is what the statute calls for which means the fund is there if somebody wants to look at it at a later date at the end of that period of time fine. There is an avenue for reviewing, that if there should be something that a particular candidate feels is amiss and say, wait a second I want that reviewed. I want to take a look at that. We have that procedure now in place obviously for absentee ballots and so forth which takes a long time to review. To do every single ballot in an election is really burdensome I think on each of the County Boards of Elections.

That being said, the courts certainly can review any such problem brought up by an elected official saying there was a discrepancy or so forth in it and it's up to a court then to review that which I think is certainly appropriate. To say let's just open a door and willy-nilly just say take a look at every single vote, to me does a disservice to the process.

Jim Walsh: I'd like to join with my fellow Commissioner here. I feel more comfortable personally if the legislature made a change or if a judge had made a change. As a matter of fact in my county we have a situation that fits this like a hand in a glove and I think this will go to a judge with my belief, I'd be very surprised if it doesn't. Hopefully that would be very shortly but I think I would feel more comfortable if a judge decree that here is the interpretation, here is the court's opinion and here is what you live by. As if often the case, we can often find people to give one opinion, another give an opinion, both of them sound believable, both of them sound realistic, but someone has to break that tie. I think we're at that point right now. Commissioner?

Douglas Kellner: On the issue of finality, the statute of limitations is still there that challenges the certification has to be made within that time so releasing the records doesn't change the relationship to finality. In terms of the statute, the statute as the Committee on Open Government has also indicated, the statute does not say provide for any restriction on access to the ballot images. The reason behind the statutory provision on access to the original ballots is to prevent or to preserve the chain of custody of the original ballots. And indeed the statutes does not allow election commissioners to look at the original ballots either without a court order. And that's to preserve the chain of custody so that you don't have any interference with the original balance. But of course, the chain of custody is fully protected when you're dealing with the ballot images. And in terms of the litigation, it actually switches the burden in litigation to the attorneys for the parties if they are given access to the ballot images because then they can be the ones who have to spend the time consuming process of going through the ballot images to find where there are errors, where the cast vote record doesn't conform to the ballot image. And that eliminates basically the questions that you have now where everybody knows that there's some percentage of ballots that are misinterpreted by the machines whether it's 1 in 500 or 1 in 3000, it's probably within that range most of the time. And by giving access to the ballot images and the cast vote records, you're actually reducing the burden

from the County Boards of Elections and shifting it onto the parties to say, look you think there's a problem with the way the machines counted the ballots in a close election, you go look and find it. And then of course, they can flag those particular ballots so that the courts and the elections commissioners are only look at a relatively small number of ambiguous ballots instead of having to go through every single ballot. Which by the way for the record, I'd still say is that in close elections they should do a manual count of every ballot when it's a very close election. But that's a separate issue from whether we give access to the images.

Gregory Peterson: We've gone to a different system now Commissioner, and to me the system is there really because of all of the hoopla in Florida. All of a sudden you had hanging Chads what did they mean and so forth. You're getting to a higher IT problem with basically the same situation. I don't think this voter meant such and such because they put an extra x on this thing, to me it goes right back to a technical version or IT version of Florida and to me that's a back road. I don't know, at this juncture anyway I don't see it that way. I didn't mean to interrupt you but its like...

Douglas Kellner: No you didn't interrupt me and I appreciate your views and we don't agree but at least it's on the table and everybody knows why its not getting done now.

Jim Walsh: Thank you both Commissioners.

Gregory Peterson: How'd I wind up wearing that?

Jim Walsh: If there's no other new business, our next meeting date will be on April 30th and we do have some other business. Do we need to go into Executive Session?

Douglas Kellner: No we have the Campaign Finance determinations which I don't know that we need to do Executive Session to discuss them but there are a couple that I wanted to discuss. So the Erie County has to be in Executive Session but so can we do these others now unless you want to.

There was one where we, there were actually two reports based on complaints concerning use of uniformed police officers in campaign ads. And we have a written opinion as well as the sentence in the statute of 17-110 is it? Am I quoting it correctly? And in one you have a Chief of Police standing next to the candidate at a Press Conference, but not saying anything or not doing anything that implies a direct or indirect endorsement of the candidacy, simply doing his job by attending a Press Conference with the mayor. And so in my view, that image is completely acceptable and there's nothing wrong with it.

In another advertisement you have some images of just police officers, like police officers walking or attending public events, but then at one point there is a uniformed police officer who's filling out a poster with the word "Progress" on it which is the theme of this campaign commercial and then for several seconds in the ad, actually holding up the poster that says "Progress" which is the theme of the article. And I interpret that as

an indirect endorsement of the candidacy while in uniform. And I think that we should try to create a bright line policy of what is acceptable and what is unacceptable in the use of uniformed police in campaign ads and I think that the line that I would propose that we draw is that, yes it's okay to have a uniformed police officer in the ad if the uniformed police officer is not doing anything that indirectly endorses the candidacy. But where the uniformed police officer is taking an action that indirectly endorses the candidacy that crosses the line and we should give an admonition making it clear that, that crosses the line and that, that's not an acceptable campaign practice. So that's my proposal is that we modify that particular opinion to specifically cite the 2 sections of the ad where the uniformed officer is indirectly endorsing and that we given an admonition and that we write up the description in a way so that this becomes our policy.

Jim Walsh: Kim you have a comment?

Kim Galvin: Commissioner Kellner I just have a question. Reading 17-110, or in any manner directly or indirectly in aid or against any political party organization. So is it your position that uniformed police officers can appear in wholly political ads and as long as they don't do anything...

Douglas Kellner: Well part of it is the intent of the ad. So when you're showing a Mayor doing her duty as Mayor and part of that has a press conference with city officials – right on a non-campaign issue and city officials are present at that campaign press conference including a uniformed police officer. I think that's okay. Commercial says, Isn't our city great, and they show firemen and sanitation workers and uniformed police officers doing their jobs as city officials, that's fine because there's nothing in that, that suggests that the firemen or the sanitation workers or the police officers are endorsing the campaign. But where I think this particular ad crossed the line is you had the uniformed police officer filling out a poster which is the theme of the ad, which albeit is progress, so it's not say, Vote for candidate X. It's just saying progress. But the point of the ad is, is that this candidate has been promoting progress and people are holding up these posters that to me is an indirect endorsement of a candidate.

Kim Galvin: So for example, a District Attorney candidate running that uses a clip of a press conference after a big murder conviction or something like that in the normal course of the duties versus a specific campaign ad in which someone affirmatively takes an action that either directly or indirectly...

Douglas Kellner: Exactly. Or if the press conference were to endorse the candidate then obviously the uniformed official should not be appearing in uniform at the press conference. And we have previously admonished police officers who...

Kim Galvin: So that's more of a fact but we have to look at each individual one closely as opposed to...

Todd Valentine: Crossing the line is a very fact specific matter.

Kim Galvin: I understand his point and I realize it.

Douglas Kellner: And if you take this particular and that's why I would cite the 5 seconds where she's holding up the poster. I don't have a problem with her appearing in the ad, it's her holding up a poster which is the theme of the ad that to me crosses the line and that warrants an admonition.

Kim Galvin: Okay thank you.

Douglas Kellner: Oh okay on the double voting. So what is it 1232? I don't mind using the names because they filed a public press release on this, True to Vote filed a very public complaint with us about persons double voting. I understand that the Campaign Finance Unit has followed up by taking our database match and the Florida database and confirming that at least the data base show voter history of 3 persons who voted in both elections in November 2010. Based on that, I think a proper thing for us to do is to open up the investigation and then actually get, for the District Attorneys the poll book records that show each of those 3 people voted in the same elections and that it's not, I'm not comfortable relying just on the computer voter history because I've seen so many errors in that in the past. And that if in fact they voted in both elections, then referrals should be made to the appropriate District Attorney's including the US Attorney and the Florida District Attorneys as well. But I'd like us to have a formal investigation and actually get the voter records. And I believe the formal investigation is required because in Florida in order to get the voter's signature record, we've had to issue a subpoena.

So maybe we should vote on these separately. So with 1232 I make that motion that we open an investigation to get those voter records.

Jim Walsh: Any second? All in favor

[chorus of ayes]

Opposed: carried.

Douglas Kellner: And then what was the number for the

William McCann: 47 and 36, no 18 was the odd, was the...

Bob Brehm: 36, its 47 and 18

Douglas Kellner: And 47 is the one that we're modifying?

Bob Brehm: Both it's the same issue

Douglas Kellner: Alright. I remember now. Alright so 1347 and 1318 my motion is that we

Todd Valentine: Specificity in the....

Douglas Kellner: Right and that the staff can go ahead if you are comfortable, you can issue the final determination based on that review.

Bob Brehm: Accept the staff recommendation with the amendment.

Douglas Kellner: Right that it explicitly provide detail on the rule.

Jim Walsh: Is that the motion?

Douglas Kellner: Okay yes that's the motion.

Jim Walsh: All in favor say aye.

[chorus of ayes]

Carried.

Douglas Kellner: Does it make any sense to write a paragraph as an advisory opinion so that we're supplementing, the, what is it advisory opinion 9 of ...

William McCann: We have several advisory opinions on police officers, but it would address an issue specifically of appearing in a uniform. So certainly we could look at that.

Douglas Kellner: You know I'm not trying to make a lot of extra work but I think a paragraph and an advisory opinion might be helpful because the question keeps coming up is just what is allowable and what isn't allowable and I think this creates a rule...

William McCann: Sure we can do it.

Douglas Kellner: ...that we should give out. Yes Paul

Paul Collins: At the risk of complicating this and in the interest of clarity, is it your position, Commissioner Peterson, is it your position that a police officer may appear at a press conference announcing the Mayor's candidacy as long as he or she isn't holding a sign?

Douglas Kellner: No

Paul Collins: Okay blanket prohibition against that.

Douglas Kellner: Well we've already and we've already ruled on that, it was about 2 years ago where we said that it was improper for the local Chief of Police to appear at the Press Conference announcing the candidacy in uniform in a way that appeared to be an endorsement of the candidate.

Paul Collins: Well wait a minute and I don't want to quibble with you.

Douglas Kellner: Can a police officer be standing guard duty at the corner of the room providing security and the answer is yes. Can he stand up at the dais joining all the people endorsing the candidacy? And the answer is no.

Bob Brehm: So if he's there in an official capacity for security.

Douglas Kellner: He can't endorse. And to me showing police people in an ad that's a feel good ad about all the wonderful things the Mayor has done and deserves reelection, showing police doing their jobs

Kim Galvin: But knowing of course that in order to get that photograph you have to call them up, they have to appear they have to do all those things. It is a coordinated effort.

Douglas Kellner: I'm not sure that that's

Kim Galvin: Unless it's stock photo of some other thing.

Douglas Kellner: Well that's my point and if it looks like stock photo, even if they showed up saying yeah we don't mind appearing in your commercial. If they're doing their jobs and they're not doing anything that suggest an endorsement, that's okay. But if they're doing something that implies an endorsement of the candidacy that crosses the line.

Kim Galvin: I understand your position but the like, I Love New York ads if you see a police officer that's one thing. If it's a paid political advertisement by a paid political activity and there's a police officer in it I think most people infer that that police officer is supporting that candidate.

Douglas Kellner: Well we could play the commercial right now.

Kim Galvin: Oh I agree, I just think it's a factual area.

Douglas Kellner: Well I think this particular commercial and that distinction at 6 seconds into the commercial there's just a one second shot of her making a poster

Kim Galvin: Bob and I have discussed it at length.

Douglas Kellner: And then at seconds 49 to 54 she's holding up that poster saying yeah I agree progress. But just before that there are two other police officers who are photographed smiling walking down the sidewalk and I think that that's perfectly fine. To me the distinction is, well as I say, I think we should give the admonition on that one and that hopefully then we'll add to the body of opinions that campaign people will understand what's allowable and when they cross the line. Alright. We voted on that right?

Jim Walsh: Yes we did.

Douglas Kellner: So then I move that we adopt the staff reports on the remaining preliminary determinations that are on the agenda with the exception of the Erie County one which we'll do right after we meet with the Erie Commissioner.

Jim Walsh: Second? All in favor?

[chorus of ayes]

Opposed? Carried.

We are going in Executive Session. We are meeting with the Commissioner's Republic and Democrat from Erie County to discuss an election case. You're welcome to stay if you wish but I don't know how long it will last and I don't know to what depth we're going.

Bob Brehm: And I assume we'll take action coming out of it so we will definitely need the camera.

Douglas Kellner: We will take one second, a very quick motion on the record at the end. Do we want to talk about our next date?

Jim Walsh: April 30th.

Douglas Kellner: Okay good.

Jim Walsh: Meet again April 30th. Thank you all. You're welcome to stay.

Okay everyone we've heard today to explain the situation before us. I'd like a motion to come out of Executive Session please. And do we have a motion to do with our

Douglas Kellner: I move that we adopt the staff report on 1337, 1352 and 1375 to open an investigation.

Gregory Peterson: I second that motion.

Jim Walsh: All in favor?

[chorus of ayes}}

Opposed? Carried. Any other business.

Gregory Peterson: I vote we adjourn

Jim Walsh: Until April 30th. Thank you all.