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**Peter Kosinski:** I'd like to welcome everybody to the State Board of Elections Meeting. I am Peter Kosinski and I am chairing this meeting today. I'd just like to make a few opening remarks for myself I guess. I was honored to be appointed to this position yesterday and I want to thank Senator Skelos, Leader Kolb and Governor Cuomo for the appointment. It's an honor and a privilege to be a member of the State Board of Elections Commissioners. As some of you may know I worked here at the Board for many years. I've held various positions around here and always enjoyed my service here and left here a few years ago to work in the legislature so I fortunately have the experience of both working in the Executive Branch, here at the Board, and also in the Legislative Branch. I started my career in the counties, so I also have a local perspective. So I hope I'm bringing something to this job that is worthwhile. I think I am and I look forward to the future in going forward.

In addition to thanking them for the appointment, I want to thank Jim Walsh who I am replacing. Jim is a good friend of mine. I know Jim has been looking to move out, he's a busy man and I think he's happy to move on and do other things, but I want to thank Jim for his service here at the Board. I worked with Jim for years, and he's a very good guy. So I just wanted to also mention him and his service as well.

So, if the other Commissioners have anything they want to say, I just want to make sure to introduce Doug Kellner who's the co-chair of the Commission. Greg Peterson on my left who's a fellow Commissioner and Andy Spano on my far right who's also a Commissioner. So just so everybody knows who the four Commissioners are serving here and I don't know if they had any, I wanted to get to the meeting, if they had any opening statements.

**Douglas Kellner:** Thank you Peter. I want to congratulate you on your appointment, we're very grateful to have you join us because you do bring such experience and qualification to the job, and I know that we worked well together with you as Executive Director, and indeed you were instrumental in setting a very positive path for the implementation of the new voting systems in New York and it was a great accomplishment as well as many other things that you did in your service as Executive Director.

I, in particular want to thank Commissioner Walsh who has done a very great service in his years as a co-chair of the Board. We worked very well together and while I'm very happy to have you on board, we will miss Commissioner Walsh and we want to thank him and acknowledge his very fine service.

**Gregory Peterson:** I want to take this opportunity to first of all welcome you Peter to the Board. It's a great group of people. We have super staff here and I know from your experience not only here but elsewhere in government that you'll be a great addition. I'd also like to extend my gratitude to Jim Walsh who, for those of you who know him, you

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couldn't find a finer gentleman, a man who was also even-keeled, knew how to get things done in a quiet manner, knew when to stand up when standing up was called for, and knew how to compromise and again to accomplish an end. He was very interested in not only the service of this Board but watching it move forward through a computer age as we have shifted from the old lever machines to a new system and he was very much a part of that and I would like to thank him for his service. On a personal note, I consider him a very good friend and certainly will be missed.

**Andy Spano:** I want to welcome you also Peter. You come with a fantastic reputation of knowledge certainly about this particular area. I'm looking forward to working with you but I will miss Commissioner Walsh who I found as amenable as my colleague there did. And I look forward to working with you and I reiterate everything everyone else said.

**Peter Kosinski:** Thank you very much and I also just want to say how thrilled I am that so many people came out today to the State Board of Elections. I didn't even know word was really out. This is fantastic as I really didn't expect this kind of turn out. So thank you very, very much for that as well. I just wanted to say that.

So, I guess I'd like to get to the meeting. What I'd like to do is we have a meeting agenda which I think we should get right to and we do have a few items, some of which I am more familiar with than others probably. I have tried to bring myself up to speed on the issues that are presented before the Board today and I would hope we can move forward on these.

That said, I would like to start with the minutes of the last meeting. I don't feel that I can really act on those but I'd ask if there's a motion...

**Douglas Kellner:** I move to approve the minutes for the public meeting and the Executive Session as printed and distributed.

**Peter Kosinski:** Is there a second? And then I would ask for a vote.

[Chorus of ayes]

And I will abstain since I wasn't at the meeting.

What we would like to do is start with unit reports. Now what I would ask is as I do unit reports I'd like to have the individual that's giving the report to identify themselves and then if you can give the report after that. So first off would be the Executive, Bob Brehm and Todd Valentine.

**Todd Valentine:** Todd Valentine here. Just a couple of things we want to highlight from our written report is obviously the budget has passed and our budget is included in that. We are waiting for the formal certification from the Division of Budget to do the spending. There's other things in there but that should be coming shortly. We have

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joining us today and you'll hear from him shortly is Bill Ryan has joined out staff as the Chief Security Officer at this point is his title. He started last week and just a reminder that the County Election Commissioners Association Conference is upcoming at the end of May. We are on the agenda I think for Tuesday or Wednesday.

**Peter Kosinski:** Excuse me Todd I'm going to interrupt right there. Chief Security Officer.

**Todd Valentine:** Oh in the IT unit I'm sorry. It's a title we have the Chief Information Officer which is currently a vacant position. He is the second level down in that unit. He is the Chief Security, the title is Chief Security Officer, each agency is required to have one.

**Peter Kosinski:** Chief Security of the computers?

**Todd Valentine:** Computer security yes, I'm sorry. And a reminder that, that conference is at the end of May. Its Memorial Day weekend and we typically make presentations. I don't have a copy of the agenda, we can get that to you, we're on Thursday.

**Bob Brehm:** I mean there are a number of items but the State Board portion is Thursday. I think the other item I think, I'm sorry I'm Robert Brehm the other Executive Director. Welcome Peter, it was pleasant working. I arrived here at a time when you were on your way to your legislative accomplishment but we crisscrossed a few years as far a County Commissioner level where we would go off and talk in that capacity. Welcome back.

With regard to I think some of the highlighted issues, I think yes the budget was a major issue and I think we can through fine. There's a number of personnel items that I think we've included in our report to you as part of coming up to full staffing level in the Compliance Unit. We continue to report how, you know, job classifications, etc. but I think we're almost close to being finally up to full staff, training and it's proven to work out I think exceptionally well. It's a fine group of people but I listed for you the most recent staff hirings. We welcome them. One just began today and a number of other ones starting.

**Peter Kosinski:** Are there vacancies in the staff?

**Bob Brehm:** We promoted one so that created a vacancy that we would look to fill and I think there's one other that is pending. So yeah it's in the process of being filled.

I think the only other item and I think we'll talk about it a little bit further probably in the IT is the work we're done on some of these technology projects is taking an awful lot of time without an IT director. Todd and I with the help of John Conklin and Tom Connolly have been helping to meet with the staff to at least keep the IT agenda moving forward

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but they have 3 major projects with the way things are going, are kind of tied together because of the technology that is being deployed. We have the NYSVoter Program that all the equipment we purchase will be at end of life in 2016 so our proposal we've been working on and should be completed in this fiscal year is to have the hardware and the software upgraded so that we address those end of life issues before we meet end of life. So our target date to have that rolled over is December of this year with a little bit of extra work on knowledge transfer, etc. before the end of that contract.

The other issue is the Candidate Management Campaign Finance System. As part of last year's budget was to give us money to upgrade those two systems being as old as it is had a target date to finish later in 2016 and one that has come up is the entire computer network that we have. When we restacked from just down the street to this building, our data center, our computer center was located in State Campus and that was just 2, 2 ½ years ago. That entity is moving to the College of Nanoscale, easier to call it CNSE or the Nano College and that kind of is more urgent because the deadline is this May to move that component. So it's all kind of tied together because the technology has got to be able to cover that. But just so we know it's a major effort for the infrastructure to make sure one, we're current and we meet the deadline, and it's taking a tremendous amount of energy from a number of people staff and as you walk through the building, various consultants from OITS the Information Technology Services.

**Peter Kosinski:** So are you saying that the head of the IT unit is vacant right now?

**Bob Brehm:** Yes.

**Peter Kosinski:** And how long has that been vacant?

**Bob Brehm:** Just shy of a year. It's a civil service position that we have done a round of interviews. They issued a new test, we were told to expect a new list that we could consider a new round of interviews in March. It's now April but they keep telling us any day now we should be getting that list so we can...

**Peter Kosinski:** So you're trying to do this major upgrade of the computers in the agency but that vacancy is a hindrance I'm assuming?

**Bob Brehm:** It's not helpful.

**Peter Kosinski:** Does it seem to be a priority here to try to get this thing filled?

**Douglas Kellner:** We don't even have a list though.

**Bob Brehm:** Well we had a list and it's the same list that we interviewed when we hired the person who moved on and we have enjoyed his continued assistance since he's moved on. He has continued to be...

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**Peter Kosinski:** But a years a long time.

**Bob Brehm:** But a years a long time but it is a finite list that we came to the conclusion that there's no one on that list in the reachable category that we could interview that would be appropriate to recommend. So, we are waiting for the new list. As soon as that list comes out we will review it again. The only other option is to reclassify the title to something different and get that list.

**Peter Kosinski:** Well, I will say to you just based on what little I'm hearing, it seems filling this position should be a priority if we're doing all these transitions of the computer system and migrating into new systems and we're doing it without a head person, it just seems to me to be a recipe for problems and to leave that vacant for a year, that's a really long time.

**Andy Spano:** When you get down to the bottom of the list it's difficult sometime to select somebody who's adequate for the position.

**Douglas Kellner:** And we haven't really left it vacant. It's not like...it's not willful.

**Andy Spano:** We are borrowing the previous participant over the year.

**Peter Kosinski:** He's pretty available to us?

**Bob Brehm:** We do have a tremendous, I mean he is available to continue not full time. He did a tremendous job to plan for these events so he did restructure the unit and bring them up to a tremendous amount of training to be ready. So our staff is, I think, doing a tremendous job. So we don't think it's a hindrance but it certainly would be more helpful to have one more person to help even the load. And William, this is his one week anniversary so he brings.

**Peter Kosinski:** Wow, you're not the new guy anymore. You got that going for you.

**Bob Brehm:** So we are very pleased and a number of us have set in on those interviews and we think he will help us to...

**Andy Spano:** There have been situations in the past in local governments and the state government where jobs like this get transferred over to categories that deal with experience and come off the test list. They were on another kind of list. But we get a list quicker and you can interview more people. And we should have the option of discussing that with civil service. I think that would be much better especially in IT positions.

**Peter Kosinski:** Can we follow up on Commissioner Spano's idea?

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**Bob Brehm:** Sure.

**Peter Kosinski:** Is that is from the Executive Unit? Okay. Then we'll move onto the Counsel/Compliance Unit, Kim Galvin and Kathleen O'Keefe.

**Kim Galvin:** Thank you Commissioner. My name is Kimberly Galvin. We're a relatively new unit that consists of the Counsel's Office as well as the Compliance people that work for the Board. The Compliance Unit has been extremely busy doing the reviews. As Bob mentioned we have one new hire last week and a new one started today. We are also interviewing for a vacant phone spot in the phone bank and Bob Eckels and Cheryl are starting that interview process off the same sort of lists that they just talked about there.

We've gone through some training with the Compliance Staff. We had some customer service training that came in and was taught to them as well as the training department rolled out the new training webcast or seminar if you will to everyone in the Compliance Unit to get them up to speed on what the new thing looks and feels like.

We participated in the various meetings regarding the change in upgrades to the software and the CAPAS FIDAS redesign project. And we've worked with each other I guess on some of the Hearing Officer regulations that you'll see here and the resolutions that will come before the Board today to get those in order for your vote today. And that's all I have. Kathleen do you have anything to add?

**Kathleen O'Keefe:** Well we have the January period report. Kathleen O'Keefe, I'm the other counsel here. We had the January periodic, all the early letters went out and anyone that did not subsequently file that has been sent over to the Enforcement Counsel. We are continuing to get requests for the political calendar. We have not generated that.

**Peter Kosinski:** By the way do you have a number on how many people did not file in January?

**Kathleen O'Keefe:** I don't have it immediately at hand but it was a pretty significant number. Cheryl do you? No we don't have that number here.

**Douglas Kellner:** It's in the high 100s.

**Kathleen O'Keefe:** Yes, it's a big number yes.

**Peter Kosinski:** They were required to file by law but did not file?

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**Kathleen O’Keefe:** Right. We send them a letter saying, “You should have filed and you didn’t file” and these are the folks that didn’t comply with that letter and that’s the list that goes over to enforcement.

As Kim mentioned, the Unit is meeting at this point daily. Bob and Cheryl are meeting with the IT Unit and literally answering questions everyday on very specific type issues. So that’s really moving forward. The recent budget did impact the Compliance Unit in that there was an amendment to the personal use of campaign funds section. There was also some tinkering that occurred with the Independent Expenditure Law. We’ve already received a significant number of calls on the new personal use law. We had a pending motion before the second circuit to dismiss an appeal that is related to last primary, believe it or not, that motion was recently granted. Brian and I have completed our admission in all four district courts in New York and while we were down getting sworn in in Brooklyn we actually went to the Brooklyn Board and had the opportunity to see print on demand absentee ballot machine which was pretty interesting. So the New York City Board is going to be doing something with that with the special election that’s coming up. It’s a little pilot program.

**Peter Kosinski:** I’m sorry Kathy I don’t mean to interrupt. Can you explain that a little bit more, print on demand absentee ballot how does that work?

**Kathleen O’Keefe:** It was pretty interesting. They have a computer where the information for the voters in there. They put the voter’s ID number in and it generates the ballot that is then sent to the machine that prints the ballot for that particular voter and then a little attachment on the side folds the ballot so that they can print it in batches based on the ED and then they just pick up the stack, put them in the envelop. So in other words instead of ordering the number of ballots ahead of time and not knowing what you need, you’re literally printing as you go. Pretty interesting concept.

**Peter Kosinski:** So is the advantage it reduces the number of ballots that you have to print because you’re doing them individually?

**Kathleen O’Keefe:** Right and also the waste that comes from not needing ballots that you’ve printed.

**Peter Kosinski:** Because I believe I read, there was an article I think I read in the paper that the Comptroller’s Office was somewhat critical of our Boards of printing too many ballots in this state because they are wasting so many ballots I think was the conclusion I believe of the Comptroller’s Office. Would this be an effort to address that issue?

**Kathleen O’Keefe:** The Comptroller’s Office basically, and this is a very broad summary, looked at the different ways that various Boards actually meet their ballot requirements. The Board gave some feedback with respect to this report because we don’t actually agree with the entire summary of the report, but it was comparing the

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various different ways that Boards do it. Some Boards print their own ballots and some Boards order ballots from professional printers.

**Kim Galvin:** I think it was in the works prior to that report coming out but it just happens to address these type of issues.

**Peter Kosinski:** But this type of effort would address that issue. Is that fair to say if other Boards participated in this.

**Bob Brehm:** It's partial because I think the Comptroller review is more the Election Day ballot which is clearly the larger volume. It's along the same lines of, especially in New York City with the thousands of ballot styles is how many do you print wondering if someone needs an absentee ballot as opposed to the Election Day ballot also. So there are a number of counties that have taken on the responsibility to print their own ballots, Schenectady was one of them, Erie County, Albany County. There's a number of counties that do in house, they bought the equipment to print their own Election Day ballots and I think the report kinds of looks at those costs and the flexibility. You know you can print as many as you need because you don't have to wait for some vendor to prepare one.

**Peter Kosinski:** Did we respond to that report at all?

**Kathleen O'Keefe:** Yes.

**Todd Valentine:** No, we haven't responded to that, we have a 90 day window to respond.

**Bob Brehm:** I thought we did. They issued the report.

**Todd Valentine:** They issued the report but then you have another 90...

**Kim Galvin:** We're supposed to report back on their report.

**Peter Kosinski:** Did we respond to their report?

**Kim Galvin:** No we didn't.

**Bob Brehm:** Included in the report is our response.

**Todd Valentine:** There's a second respond that's required upon the issuance of the report from the agency as to the actions taken or not taken with regards to the recommendations of the report. That has not happened.



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**Peter Kosinski:** Are we in the process of doing that? Are we going to respond to that? I mean it seemed like there was a big issue they made about the expense that's being incurred out there amongst our counties for these ballots and that somehow the State Board had a role in trying to limit these numbers and how that is being doing around the state. Is there a response we're going to make to that or is there a change we're going to make to that? Of is there someway we are going to address that?

**Douglas Kellner:** I think we already addressed it in the response to the draft report.

**Bob Brehm:** To the extent the recommendation was to have a further communication with the counties, we figured we would have the May conference, the counties will be there and we will at least review once more with them what we already told the Comptroller we had been doing, our response we had to that but we didn't have any problem including it in one more communication with the counties and we would accomplish that, since the May conference is coming up, we would do it at that conference.

**Peter Kosinski:** Okay, can you get me whatever that response is? I'd like to see that. Sorry, go ahead.

**Kathleen O'Keefe:** Quite alright. So we also have completed the legislative agenda that the Board voted to send to the legislature. We're awaiting for sign-off before we actually do that. But it has been prepared. It's in the right form. There are a couple of additional proposals that we are continuing to discuss to see if those will also be included in our legislative agenda. We're hoping to get that to the legislature shortly.

The contribution limits have increased based on the 4 year cycle with the consumer price index and we are going to have the Board vote on that today because there was a small flaw in the vote that occurred at the last meeting and so we are correcting that today.

We have had many, many calls about town, village, special, fire district elections. There seems to be a big gap out there as far as knowledge. Many times the local Boards are calling us instead of their town attorney or their village attorney or the village attorney or town attorney are calling us. So we're hoping perhaps at the ECA Conference to address some of the laws that are relevant there, hopefully to help the local Boards deal with those types of questions. And I think that's about it.

**Peter Kosinski:** Okay, thank you. Next we have Elections Operations, I believe Ann Svizzero is out today. Is there someone, are you guys going to handle this?

**Bob Brehm:** I know Anna very much wanted to be here today to welcome you back but she will be joining us shortly. And just as part of our personnel, Joe Burns the Deputy has moved onto greener pastures so that vacancy is in that unit.

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I think some of the main items, if I summarize her report of the staff did the required acceptance testing of the central count, Absentee Ballot Counting System that New York City recently purchased since the last meeting. Clear Ballot Central Count System is the system that is currently in for certification testing as a central count ballot counting system. It's my understanding that the preliminary review, the staff identified some issues, some functional issues that their ballot had to address. They submitted the new source code and it is working its ways through that testing process. I think the estimate and I only talked with Anna briefly, but she thought probably by June, she thought that that testing at least would be completed and would be able to make a recommendation to the Commissioners whether or not to recommend it for approval.

**Douglas Kellner:** Bob I see Bob Warren is right behind you and you said that they were required to do new source codes, so there were code issues? What were the functional issues that they had to address?

**Bob Warren:** They were more of user issues. You would click on certain links and you would get an error message. There were no accuracy issues. At this point we found no accuracy issues through our preliminary testing but it was more user type issues. There were some wording issues that they did correct the wording issues that were displayed on the screen. There were some reporting issues that they had where you would click on for a report, the report wouldn't print. It was those types of issues, but nothing along the lines of accuracy at this point.

**Douglas Kellner:** And nothing significant that you don't think that they are not in jeopardy of failing certification?

**Bob Warren:** No, not at this point.

**Douglas Kellner:** Thank you.

**Bob Brehm:** I think the only other item that Anna did since the last meeting is we certified the vacancies for the general election. At this time those are all Supreme Court vacancies. It is a substantial list this year. But other than that it is the routine work of the unit.

**Peter Kosinski:** Okay, thank you. Next is NVRA/PIO. And that I believe is John Conklin

**John Conklin:** Thank you Commissioner. We've been busy with media and public inquiries since our last meeting. Our written report is fairly short. I just have a couple of things I would add. Greg and Patrick in the unit are in Warren County today doing a training for NVRA so for any counties that will see this video file when we get it back, just want to let them know if they have new staff and they want to do some trainings we can come out and help them out with that. They just need to let us know about that and

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we'll be happy to do it. Other than that, I don't have anything to add to the written report. I don't know if Tom has anything he wants to add.

**Tom Connolly:** I do, there are a couple of things. Tom Connolly. As a result of the gubernatorial election we had to make changes to the registration form with the Commissioners had previously approved. It went into a lot of counties and other people have been inquiring. Those forms have been printed and delivered here, they will be going out to the County Boards so they will be available shortly. As part of that we've also been getting the translated versions into the required languages to reflect some of the new language in the enrollment box as well as the new parties, the Women's Equality Party and the Reformed Party. That also affects the affidavit envelopes that are used by County Boards so we will be providing them with revised versions and translations of that document.

We've been working with IT to prepare for Election night reporting for this special election in May. The two counties down in New York City; Kings and Richmond so that we'll be repaired to have those results on our website on Election night. I did go down with a couple of members of IT down to Hawthorne, New York to visit our Disaster Recovery site for our new system. We are putting a more robust system down there than they had previously so that we have almost a full complete backup for our new system that will be going at the College of Nanoscale Science and Engineering. So we just wanted to go down there to see what the possibilities were for the set up so that we were making sure that the stuff that we were ordering which is going down there, we wouldn't have any problems. We had to order some additional connections to facilitate what we kind of envision for the backup process.

And, lastly, I just returned from a conference down in Florida with the Council of State Governments and the Federal Voting Assistance Program, they have the overseas voting initiative and I'm a member of the technology working group to kind of discuss how we can use technology to help military and overseas voters. And one of those things, actually one aspect of technology we will be working with IT to get ready for the national change of address which we will run on the beginning of May and prepare County Boards to send out their notices in August. This year is the first year that they'll actually have military change of addresses implemented into the database so we're looking at writing a separate list of military addresses to kind of improve the quality of the address information that we have. We do find that we do get a lot of ballots back undeliverable because obviously the military can be very mobile and it's not always on the forefront of their mind to make sure that their address information is up-to-date with their local Board of Elections. That and we also decided to participate in the Industry Cross Check which is one of the two list maintenance initiatives that was recommended in the Presidential Commission Election Administration Report. We did get our results back. Just a quick summary of what that is. There are a number of states, roughly 30 that upload their voter roles and so they look for dual registration or dual voting. So we did ask for a number of counties to consider being part of a pilot group to kind of evaluate how efficient or who

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that data is as far as cleaning up the list. So we're going to be working on rolling that out and working with the counties to see how they implement the information that we receive.

**Peter Kosinski:** Tom have any counties volunteered to participate in that?

**Tom Connolly:** Yeah, at this point we have about 4, we'd like to maybe open it up a little bit more just because we have to take a look at being that for the 2 separate things, we're doing pilot programs for the military NCOA and also for the Interstate Cross Check. Obviously, we'll be looking at counties that have higher numbers of military voters to judge the efficacy of the military NCOA. With regard to the Interstate Cross Check I spoke with John also this morning, I think we might take a look at the data that we received back to see which counties really seem to have a larger amount of the results that are coming back.

**Peter Kosinski:** Can you explain that military NCOA a little bit more?

**Tom Connolly:** Sure, a change of address comes to the US postal system.

**Peter Kosinski:** I'm familiar with that. How does it work with military?

**Tom Connolly:** So in September last year there is a separate system called MILPARS, unfortunately I don't know the actual words for that but it's a military change of address system that military personnel will use as they go from base to base. It's for them to update their information so that all their military documentation can get to the right spot. Last year was the first year that they actually kind of merged the databases so they're passing that information on that was in MILPARS into the NCOA database. So right now, for our military voters, we have a couple of different addresses. We have obviously their mailing address, their residence address, but when they request an absentee ballot they often may have a completely separate absentee mailing address. So we're going to be pulling out that separate mailing address, running that through the normal NCOA process to see if we can get any hits from the addition of the military information they put in last year. So this way we're just trying to get updated information from our military voters to ensure that we can get them their ballots.

**Peter Kosinski:** Do we have like a percentage of how many military ballots come back undeliverable?

**Tom Connolly:** I do. It can be significant and it does swing from year to year. At the last general, I'd have to go back and take a look but its high single digits right now, which is always a lot more than your regular absentee voter.

**Peter Kosinski:** What's your regular absentee voter? What would that number be?

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**Tom Connolly:** Low, closer to 1.

**Peter Kosinski:** Yeah it's that low?

**Douglas Kellner:** And it's also one of the highest in the country.

**Peter Kosinski:** It is. Ours is higher than most states.

**Douglas Kellner:** We're either like 48 or 49<sup>th</sup>.

**Bob Brehm:** Well military lumps together both military and overseas voters and we have one of the largest, where there's a few other states, we have larger naval installations. But we have over 40,000 civilian, citizens overseas and the kind that when you do the summary are in the same survey, but that clearly is the largest group for whatever reason.

**Peter Kosinski:** So you think the reason that we're showing up so poorly is because of our overseas voters not our military voters.

**Bob Brehm:** Well I personally, since you've asked, I think the one issue is at the federal level and I keep reminding Tom who goes to these meetings, at the federal level, the federal law requires that every time a military person has a change of duty and they show up at their duty officer at the new base, that person is supposed to provide them the registration opportunity to update their record. And the GAO report that looked into that has quite a critical eye that the military are not doing that. So that would be the opportunity under the law that they would be provided the best chance to update their record. This is a new system to try and help us to find, up until now they would not tell us where they moved because the secrecy issue, it was very hard to get through any of these sites that there is any change of address.

**Douglas Kellner:** One other factor is that we keep a more comprehensive list than almost any other state in terms of most state will cancel a list or require a request for the ballot to be reviewed on an annual or biannual basis and New York does not do that. So, the denominator of the people who get the ballots, we have a process by state law where we will send out more ballots than other states will send out and the result is, is that we have a much higher percentage of...

**Peter Kosinski:** So we're not cleaning up our list as often as other states leading to a larger number of inaccurate?

**Douglas Kellner:** With military voters in particular.

**Bob Brehm:** Right in 2009 the Military and Overseas Voter Empowerment Act changed what had been the standard under UOCAVA which was two general and federal elections

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had to pass and that application was good for that period of time and they went to one general, actually I think its one year. So New York when they amended the law in 2010 wanted it to be more inclusive then less inclusive so we kept the 2 federal general elections, the period of time that an application is good for. So we could look better but we might miss people that are still qualified. I think the policy decision at the time was we're rather be more inclusive than less inclusive.

**Tom Connolly:** And if I may add onto that one of the things we're looking to do and been continuing to try to do with the County Boards and obviously we'll do again in May is that we really try to stress the importance of trying to take every opportunity they can to communicate with the voter to get additional forms of information. I know last January I had given a report where military voters can ask for if they're overseas, their ballots either by mail or by e-mail or by fax, but even for the ones who have requested it by mail, for 50% of those people we also have e-mail addresses. Many County Boards try to send out the ballots to those voters in multiple ways if they can just to kind of really increase the chances that we're at least reaching that voter. There are challenges of getting ballots to the voters. There are certainly challenges with getting those ballots back. We can really only control the outgoing process. As Bob mentioned with regard to what are called voting assistance officers on every single base, I do know because I did meet the commanding officer at the Naval Air Station in Pensacola while I was down in Florida and we did discuss they're trying to really improve these efforts. But unfortunately they have their own challenges where a lot of times they voting assistance officer or the VA duty is really just more of a collateral duty for somebody else and that kind of changes over every couple of years. So it's difficult but the Federal Voting Assistance Program which is part of the Department of Defense certainly acknowledges the problem and they're trying to do what they can on their end to kind of improve getting the ballots back.

**Peter Kosinski:** Are we finished? Thank you. Okay next we have ITU and I guess, I don't know whose going to present. Can you just identify yourself to everybody so everybody knows who...Just identify yourself to everybody.

**Bill Ryan:** Oh sorry, I'm Bill Ryan of the new ITS staff, IT staff person here. Both the Board of Elections and ITS staff continue to work on the Migration Campaign Finance data the old database server to the new system. Phase one development for this project which covers the public phasing reporting aspects of the system is continuing on. The dates for conducting stakeholder meetings for project in putters being finalized and the initial set of goals should be completed by the beginning of May. And delivery of phase one has been retargeted for the fall of 2015 but the remaining phases are still on target. On the data center migration as mentioned, we're holding weekly discussions with ITS and their migration team to finalize the plan for relocating our IT resources currently at building 8 on the Harriman campus to the ITS co-location facility at the College for Nanoscale Science and Engineering. That the CNSE. The scheduled date right now for the move is May 29<sup>th</sup>.

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On the NYSVoter Refresh Project work is progressing on the project.

**Peter Kosinski:** I'm sorry can I just go back there for a second. So you're saying they're going to physically move the servers from what one building to another?

**Bill Ryan:** Building 8

**Peter Kosinski:** Building 8 on the campus out to the Nano Tech Center on Wolfe or on Fuller Road? Is that what they're doing?

**Bill Ryan:** Yes.

**Peter Kosinski:** And is that something everybody's doing or is this just the State Board of Elections or is this a statewide effort or, why are we moving?

**Todd Valentine:** We're the last tenant. They're closing up building 8 as a data center. I believe we're the last tenant in there. We've pushed this off until after the election so this is the window of opportunity we've identified.

**Peter Kosinski:** Is this a one day move?

**Todd Valentine:** No it would be a weekend.

**Bob Brehm:** So we're going to communicate both to the counties and to the public we will take it down the Friday of that weekend and we may need a certain amount of Monday to come back up. It is the period of time that we've targeted because it is outside of the window of the May school elections, the June village elections, and the regular political calendar, and our first target date to move was last August and with the statewide election cycle we suggested that that was not the appropriate time to move and they agreed with us. So this was the period of time that we thought we could handle the move.

**Peter Kosinski:** But this is the state moving us, we're not really doing this.

**Bob Brehm:** We are working with them, the state OATS had brought in a consultant, I believe IBM is a consultant to them to help us.

**Douglas Kellner:** This was not voluntary.

**Bob Brehm:** Not voluntary, no.

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**Bill Ryan:** After the NYSVoter Project we're progressing on the project. The OE and HP staff are focusing on the requirements and process for setting up the new environments for both production and disaster recovery PR sites.

**Douglas Kellner:** You mentioned that we're getting what you call the stakeholder groups and stakeholder meetings. Do you want to go into a little more detail on what you envision will take place in that process and the types of people we've invited and how anybody who thinks they want to be involved in that process can do so.

**Tom Connolly:** Well basically with the CAPAS FIDAS system it's going to be one unified system for Candidate Management and also for financial disclosure we kind of identified 3 different categories of users for user groups; first you have the consumers of the data which would be like the media and public who go on to our website and view Campaign Financial Disclosure documents. We do have a kind of treasurer group where the people are actually using the system to facilitate those funds in the first place.

**Douglas Kellner:** We have to upload the data.

**Tom Connolly:** Right and then the last group would be more with the county boards and the county vendors for EMS systems. It's really more for the candidate information we're getting from them. What we're going to be doing since we are in phase 1 of the project, we are going to be holding an initial set of I guess webinars or conference calls, albeit a webinar where we expect to give the opportunity to those groups a quick explanation of the scope of the project and what we plan to do. Obviously giving those people the opportunity to provide their feedback for either comments on what they don't like about the existing system and what they would really like to see in a new system so that we can not really develop the system in a vacuum and get the outside input for those people who are going to be using the system to make sure that as we go into this undertaking that we develop these two very large systems that we're going to "do it right." So we'll kind of run through the basics of what we see different timeframes for the projects. This would only be the initial call. Obviously the consumer group is probably more important at this point because phase 1 is the public phasing reporting. However we are going to have meetings with all 3 groups and then there will probably be subsequent meetings after that depending on the timeframe of the process and the different phases.

**Douglas Kellner:** Who on our side attends those meetings? Or who has control over the development and design of the system is attending those meetings?

**Tom Connolly:** Well obviously I think from the State Board we'll have members from a number of different units because I would say we have Compliance and Counsel with regard to the financial disclosure while Enforcement has been taking part in some of the meetings internally. Election Operations with regard to the Candidate Management side of things and John and I have been there all along. So I think from our side we'll



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certainly be there in the room listening and trying to get feedback. As far as who will be on the other side of the phone call, we'll be kind of opening it up to, we have a treasurer group that we've used in the past for beta testing new software. We've been accepting recommendations from other people who I know who will be looking into different government groups for who are also consumers of the data. Hopefully members of the media. Just opportunity for people to kind of see what we're doing and give them the opportunity to kind of give some feedback.

**Douglas Kellner:** And if there's somebody who wants to be involved in that process, they contact you and John Conklin?

**Tom Connolly:** That would certainly be a fine way of going at it, yes.

**Peter Kosinski:** All set. I guess I wanted to ask another question about the report. I see our budget is in here and I'm just asking how the budget came out for the Board. Is there any issues with the budget that was adopted?

**Bob Brehm:** Well I'll start with, it's better than it has been in the past, but it certainly could be better. If we look at our general funding level it increased by about \$342,000 and I think this time it appears to have addressed a major structural problem in our budget where they will place certain items on the ballot and propositions, constitutional amendments and we have to publish them. And the last we had 6 it cost us \$340,000, last year was about \$260,000 and our budget, even our appropriation level has been closer to our spending level. So we didn't have that flexibility in our budget to cover those items and it's been a problem for the last 2 years. So, last year they originally took the money to pay the bill because it had to get paid, out of our technology budget that is paying for this CAPAS FIDAS redesign and thankfully, they've restored that funding fully in this appropriation so we're very happy that that issue won't impact that project.

And the other is, there's a new appropriation of \$340,000 that could be used in the future for any future proposition amendments or for any publications or any other contractual services that we need to do. So it's more than we had. It's always tight, but I believe when we looked at the new model in the last year, I think we are finally coming up to the final staffing level and training level. I think from looking at the work that the group has been doing, we knew we'd fall a little bit behind because we didn't have the staff but we had the biggest report due July 15<sup>th</sup> and the effective date of the law was June 29<sup>th</sup> and then we went into all of the election cycles. So the staff has been working tremendously. I think the model is working as far as getting the work done. I believe once we're fully staffed it will be working. So I think from the model of the money it's okay. This year still would be tight if things break and these new technology items as we bring them up. I think there are new efficiencies that we will see with the technology upgrades, we probably won't see them until the next fiscal year and one of the critical items that we continue to talk to staff about is since the Candidate Management System and the Campaign Finance System is so old, the estimate we had for that project was \$2.4 million

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and as we get into the design, if we run, we had that appropriation to deal with it in 2 sources but if we find, we have 2 options, we might have to put something into a later phase if we run out of money, or we'll have to go back and make the case since it's been since 1990s, we might need a little bit more money to finish that project. But I think overall it's more positive than it has been in the past. It's fortunate that it's higher than certainly going in the other direction over the many years.

**Peter Kosinski:** So, I'm looking at the budget I have here and it shows \$342,000 difference in the regulation of elections. That's the money you're talking about?

**Bob Brehm:** Yes.

**Peter Kosinski:** And then there are down below aide to localities.

**Bob Brehm:** That has not been, there are no new sources of funds for the local governments. There have been no new federal sources of money. That's generally the left-over Help America Vote Act or the money that the legislature appropriated for poll site improvement or inspector training. So those are just reappropriations of those authorities. A little bit of the federal money in that group it all the aid to locality of all the left-over money. The Health and Human Services, Poll Site Improvement money for each of those years all go to that account. So there's no real new activity there. The special revenue, other funds...

**Peter Kosinski:** Are we not spending that money is that why it's still remaining in there?

**Bob Brehm:** It's all appropriated for the counties.

**Peter Kosinski:** So it's showing in our budget but the counties have access to it? Each county was allocated a certain amount and they're just not using it is that a fair statement?

**Bob Brehm:** Correct.

**Peter Kosinski:** Am I seeing \$29 million?

**Douglas Kellner:** They're "banking it."

**Peter Kosinski:** Am I seeing \$29 million here? Is that what I'm looking at here?

**Bob Brehm:** Depending on which fund you're looking at, yes.

**Peter Kosinski:** And that money is for what? Poll site improvement.

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**Bob Brehm:** I don't have the numbers in front of me but largely \$20 million of that was left over in that pot of money that was assigned to the counties for buying new voting equipment. So of the \$190 million that was associated to them that's left over, we call that the Shoe Box Grant and that stands for something. If Anna was here she could tell you but after we certified that we were in compliance with the Help America Vote Act then we could use that money for other purposes to further the administration of a federal election. So that's where the program changed from us submitting the vouchers directly to OGS to buy election equipment to a grant program where the county spends the money that's reimbursed through a contract. And many counties have exhausted that money, others have not yet. The education and training there's still a pot of money there of the original \$10 million appropriations probably over 3, \$3.4 million, in that account. A lot of the Health and Human Services is a series of grants that were annuals so those sunset at the end of 5 years. I think we only have, Greg and Patrick administer that program, I think we only have 1 or 2 more years left but otherwise they either spent the money or they've been taken back by the federal government.

The only other pot of money that we have that's in there is there was that state money that we received in 2006 through Senator Flanagan I believe when John was there for the \$5million appropriation for pole site, for temporary pole site, no pole site access improvement. So that could be used for permanent activity. There has been some talk in the budget discussions where they go in, money that hasn't been spent in over 7 years where they take it back. That pot has not been taken back because we used that \$5 million appropriation as part of New York's 5% local match we had to do for the state portion of the money. So if the state were to take that back here and use it for something else, they would have to restore that money because that's what we claimed as a match money and was accepted as that. So that money is still available to the counties.

**Kim Galvin:** The counties are told continually though about the money and you spend their money and use their money and it's not like they don't know it's there. We tell them often and regularly.

**Bob Brehm:** Yes, especially the federal money, we lose that at the end of the federal fiscal year at the end of September and our staff, there's no doubt that the reason why that money goes back to the federal government is because the county didn't do something. Because Greg and Patrick go around repeatedly to make sure they know and there's no miscommunication that there's a voucher in the work somewhere, because if the voucher isn't paid in the fiscal year it's gone. So we work very hard to make sure that it's not for lack of trying.

**Peter Kosinski:** Okay. So I think we're finished with that and then Enforcement. Risa.

**Risa Sugarman:** We have everything. I've been discussing over the past several meetings about the Division of Election Law and Election Law Enforcement obtaining that case management program and we have been successful in doing that and we are in

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the process of having that program loaded so that it will be available to us to have our cases and all of our processes loaded into that program and that should be able to better serve us in managing and keeping track of all of our investigations and what we're doing within the division. We are working with Compliance and with Counsel, well we have been on the hearing regulations that you'll be looking at today. We made some suggestions some were accepted some were not.

We have been working with the Division on other issues that have been confronting both the Division and the Compliance Unit as to committees that have come to our attention. Sometimes committees that are coming to our attention really deserve to be treated by compliance rather than by the Enforcement Unit. And we had tried to work out a process where we feel or I feel that the committee is better served by compliance that perhaps Compliance takes their first attempt with the committee to deal with the compliance of that committee so that they can come into compliance rather than be treated by the Enforcement Unit.

I think at the last meeting I had a vacancy with one of my attorney's, that attorney has started. His name is Jake Arnold. He has been working I think for the past maybe month and a half. So I am at full staff. And we too are getting many, many calls from the local governments, the villages and the towns seeking assistance. Sometimes we refer them back to the Compliance Unit and sometimes we try to help them and answering their questions as well. So that takes not a good part of our time but it has increased as the months have gone on.

**Peter Kosinski:** Okay, any questions. Okay. I think that finishes the Unit reports. Next order of business is old business. I believe this is the contribution limit issue that was raised earlier. There's a technical mistake as I understand it in the previous Reg and this is meant to correct that.

**Douglas Kellner:** So I move that we adopt the revision to part 6214.0 Campaign Contribution Limits as drafted and submitted to the Commissioners in order to correct the error that was in the list that was adopted last time.

**Gregory Peterson:** Seconded.

**Peter Kosinski:** Is there any discussion? Could someone just identify what the error was?

**Bob Brehm:** It was a typo in the maximum contribution party committee, recalculation comes up to \$109,600, the last one with the typed resolution it said \$109,000. So the calculation work that the staff did when it got translated to the resolution was just a typo.

**Peter Kosinski:** Okay. All in favor say aye.

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[Chorus of ayes] Opposed? It's adopted.

Next is new business. We have a Hearing Officer Process part 6218 in relation to civil enforcement hearings. Who would like to explain that, Todd, Bob?

**Kim Galvin:** I'll take a stab at it if you'd like.

**Peter Kosinski:** Could you explain that?

**Kim Galvin:** Basically when Enforcement was created there are provisions in that authorization that will require the State Board of Elections to do potentially many more frequent hearings, so we needed to establish the requirements that the hearing officers would in fact follow and then create a pool that the Board would approve to be randomly chosen in the event that a hearing is required on a civil non-criminal issue. So, the staff, almost all of us I think worked on the language in this and as Risa I think mentioned, she made some comment some were accepted, some not. I think Brian Quail did most of the drafting in the amendments, but basically this is the agreed to draft that we put before the Commissioners for acceptance. Right Brian?

**Brian Quail:** Yes.

**Risa Sugarman:** Not agreed by me.

**Kim Galvin:** Agreed to by the Board proper staff.

**Peter Kosinski:** So this is a hearing officer process that occurs if there's someone who's out of compliance?

**Risa Sugarman:** The statute provides that after an investigation by me or my staff that if there are no criminal charges that are found during the course of the investigation, if there are violations that could be civil in nature, the legislature has added a step rather than go directly to a special proceeding, there could be a hearing officer process under the SAPA which is the State Administrative Procedure Act. And the statute provides that the Board should appoint a group of hearing officers to conduct those hearings. And it also gives the State Board the power to create regulations, and these are the regulations that came out of that.

**Peter Kosinski:** Can I just, is this the process that's holding up pursuing failures to file?

**Risa Sugarman:** Yes, well this is the process that I have requested that we do. The hearing officer process is the process that I've requested in order to go forward on failure to file as well as other civil enforcement processes. Because the statute does say that if there are not hearing officer's appointed that I could take those directly to a special proceeding. But I feel that there is a better process by going to a hearing officer initially.

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**Peter Kosinski:** So, do you anticipate that a person who fails to file this number that was referenced earlier of 1000 failures to file in January, each one of those would get a hearing before they were pursued?

**Risa Sugarman:** My hope, the last time that we, first of all we got that list yesterday of people. In July for the hearing the failures to file. My division sent out approximately 500, more than 500 letters. Over 270 of those letters came back as undeliverable. Under the former procedure, since those letters came back, those people did not come in to compliance since they didn't get the letter notifying them that they needed to come into compliance that they were not in compliance. That process that was in place, the next step would have been to file a special proceeding. And there would have been an attempt to serve those people with the special proceeding. My goal is to get a good address for those people, to notify those people that they're not in compliance and make an attempt to bring them into compliance before bringing them into a litigation process. I have taken steps to bring a program into my bureau, my division that will help me obtain good addresses so that we can notify those people that they have a responsibility to file, and bring them into compliance. Because I think that it's better to notify people to get them into compliance rather than just filing a special proceeding and a lawsuit when they don't know that they have to come into compliance.

**Peter Kosinski:** I don't disagree. So this regulation we're adopting then really doesn't have any specific impact on the failure to file issue, that's more of an address issue, more of a notice, due process issue. You feel that you're not right now sufficiently giving notice and due process to those individuals before you sue them.

**Risa Sugarman:** Well I would like to have that process and that would include the people that would be coming into the hearing officer process. Because if I file those 270 hearing officer reports, then I don't know how I would notify those 270 people that they have to come before the hearing officer, and we would be in the same situation. The hearing officer would make a ruling and we would be in the same situation.

**Peter Kosinski:** That's very nice. I guess my concern is that we don't make this more cumbersome than it needs to be. I know in the past this Board has been very active in pursuing people who failed to file anything and there's no real dispute about whether they're in compliance, it's just a fact they just didn't file at all which I think is indisputably not in compliance with the statute and they have been pursued and I know they always did pursue them when I was here. We always made the effort to pursue those individuals, those treasurers to try to bring them into compliance meaning file something or we are going to sue you. So, I guess I understand your concern about having accurate information. I guess in my own mind, I'm not clear why it's so inaccurate because my sense is you're using treasurer information that's been filed here by the treasurers themselves so it's curious to me why so many of those addresses are wrong when I think that's the information they've given this Board as to the filer's name,

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the treasurers name and address. But if that's the case, that's the case. But I guess from a procedural standpoint this hearing officer process, to put that other layer on having those people then go through a hearing before they're pursued is adding another, to me, bureaucratic layer to people that just haven't filed anything. And to me, filing is a minimal requirement that people have to meet here.

**Risa Sugarman:** Legislature added to the process and when we're talking about...

**Douglas Kellner:** No the legislature made said though if there's no hearing officer, you can go into court which is what we've been doing and so now you have nobody's filed in July, the non-filers from July have not been prosecuted, the non-filers for the primary have not been prosecuted.

**Risa Sugarman:** When we're talking about the election cycle filers we're talking about different numbers and we're talking about a different process that I put into place. We have been in touch with the people in the non-filers in the election cycle and those people are being treated in a different way. Those people are being reviewed as are, the last time you asked me about the 100 or so people that did come into contact with my division and still didn't come into compliance. Those people are being treated a different way. Those cases are being looked at individually to see how we're going to treat them. So we're bringing those election cycle non-filers either into compliance or we're looking at them specifically to decide whether they're frequent non-filers and needing to be looked at either in a civil manner or a criminal manner and we're making that decision now. So we're not treating the January and July periodic non-filers the same as we are the election cycle non-filers. And those are maybe 50 people not hundreds. So you can't make those, the difference. We're talking completely different categories in those.

**Douglas Kellner:** So, when do you expect to make those decisions with respect to the primary non-filers?

**Risa Sugarman:** Well I think we'll be talking about several of them today.

**Douglas Kellner:** I don't know how that answers the questions. Because what we're talking about today is issuing subpoenas is not pursuing the judgments and the law says if you've missed 3 filings you can get a \$10,000 judgment.

**Risa Sugarman:** No, you can get a maximum of a \$10,000 judgment.

**Douglas Kellner:** Well the Board won every one of those cases. We got \$10,000 on everyone of the non-filers of the chronic non-filers historically and those proceedings were usually started 2 or 3 months after the non-filing date and we're talking about the September primary and still, alright well we can talk about it in Executive Session. But I echo Commissioner Kosinski's comments or inference that for the non-filers I don't see why we're waiting for the hearing officer process to do that.

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**Risa Sugarman:** I understand that.

**Douglas Kellner:** But in the meantime I also think that we should get this going so maybe we should talk about the substance if there are any issues that need to be addressed, I'm comfortable with the staff recommendation. But if there are proposed changes decent from any of these provisions perhaps we should hear about them.

**Gregory Peterson:** No, I think they did a fantastic job. It's a work in progress and a cooperative effort and I think what we've arrived at really covers it.

**Peter Kosinski:** My understanding are these are to go out for comment? That's the stage they're in?

**Kathleen O'Keefe:** Well they're ready to be filed and then the formal comment period.

**Peter Kosinski:** Then there will be a comment period and they'll come back to us for final adoption correct?

**Risa Sugarman:** So, I don't delay this anymore I will put my comments in the public comments section.

**Peter Kosinski:** I think that would be appropriate. So I think we should try to move this along to at least get it in the pipeline so. Do I have a motion?

**Gregory Peterson:** So moved.

**Peter Kosinski:** I have a second? All in favor?

[Chorus of ayes] opposed? Okay, so we've adopted those. And those will go out for public comment when? Do you have any idea when they'll actually hit the...

**Bob Brehm:** its 45 days from the publication so the staff will have to submit the paperwork.

**Peter Kosinski:** How soon will those be published, do you have any idea?

**Bob Brehm:** We have a tendency to post them informally on our website to start the public at least seeing this version while that takes its path so people can then have a pathway and start their informal comment here. It all depends on the date the staff submits it.

**Peter Kosinski:** Is that within a week, 2 weeks, a month?



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**Kathleen O’Keefe:** There are regular deadlines. You file it and then it basically gets published 2 weeks later.

**Peter Kosinski:** Right so we’re talking like a month or less?

**Kathleen O’Keefe:** No, days.

**Peter Kosinski:** Okay good. Alright so the next is regulation part 6203 in relation to investigations. This is another regulation. I don’t know who wants to speak to that?

**Todd Valentine:** Regulation that updates the current 6203 to comply with the changes to the structure of agency, to the titles and conform to the new law.

**Peter Kosinski:** You’ve got to tell me a little bit more than that.

**Kathleen O’Keefe:** Basically there is an existing Reg that already addresses this and how subpoenas are issued at the Board by Commissioners or by staff. The current Reg does not reflect the current titles of the staff because there’s been a new configuration here at the Board over the last year or so. So part of it is just technical cleanup type of thing. And then what we were also looking to do was include the subpoena issue that appears in the new Enforcement Statute in order to allow that to make it clear how that works. The Enforcement Counsel comes to the Board, and the Board votes to grant the subpoena. We already have the subpoena Reg so we thought that was the appropriate place to put that.

**Peter Kosinski:** Okay. Motion? Second? Discussion? All in favor?

[Chorus of ayes] opposed? Okay. Now let me ask you this on that, do these also go out for public comment? Is this also in that same vote where these go out?

**Kathleen O’Keefe:** Yes and the thinking was that we would replace the current regulation with this proposed regulation.

**Peter Kosinski:** But does it go out for public comment and then will come back?

**Kathleen O’Keefe:** Yes, same scenario yes.

**Peter Kosinski:** Okay next is a resolution regarding the appointment of members of the Division of Electional Enforcement as Special Investigators. And I don’t know who wants to speak to this?

**Kathleen O’Keefe:** I would be happy to do that, just let me get the...okay so the current statute 3107 addresses special investigators and the way that it reads is primarily in the area of violations of the elective franchise and then there are numerous other pieces in

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that particular section. The new law that affects the Enforcement Counsel requires the Enforcement Counsel to come to the Board to get subpoenas. This resolution makes it clear that the two statutes basically have to be harmonized. In other words, the any kind of authority that 3107 may allegedly provide to special investigators has to be viewed and has to be read in light of the new statute 3104. There was concern raised that if 3107 is read to provide an independent subpoena power for the special investigators that the Board has appointed, then why would the Chief Enforcement Counsel ever have to come to the Board for a subpoena as 3104 requires? So this resolution is just making it clear that 3107 does not provide a separate grant of authority to the special investigators employed by the Enforcement Unit that gets around the requirement in 3104 and it just wasn't clear in the original resolution that that was the case.

**Peter Kosinski:** Did you have a comment Risa?

**Risa Sugarman:** No, I don't know why they think that I would ever do that.

**Peter Kosinski:** I mean do you have any problem clarifying?

**Risa Sugarman:** I mean the original draft was changed at my request so.

**Peter Kosinski:** Okay good.

**Douglas Kellner:** I move the resolution.

**Peter Kosinski:** Is there a second? All in favor say aye

[Chorus of ayes] opposed? Okay. So those three items are completed. Move on.

**Douglas Kellner:** Peter there was one item I wanted to just mention on this, the Commissioners have received two requests for Board opinions on personal use pursuant to the 14130 provisions that were just added to the law by the new budget reforms and my understanding is that well for one of them I'm recusing myself so I'm only applying to the one that I'm not recusing myself for and for that one that the Commissioners were going to direct that counsel prepare an informal response promptly because it relates to a decision that needs to be made immediately and that the Commissioners will review the informal response at the next meeting for a formal opinion.

**Peter Kosinski:** Okay fair enough. I'm expecting now that the legislature's changed the personal use statute there will be probably a large number of these requests coming in. I think we need to be responsive. We need to be prepared, the staff to address them as best you can relatively quickly so people are advised as to what the rules are. But I think you should be prepared for an influx of these because of the change. I haven't fully reviewed the change myself but I'm sure...

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**Kim Galvin:** Yeah, it specifically says that they can come to us and shall issue opinions regarding the personal statute...

**Peter Kosinski:** Yeah so I think we should...

**Douglas Kellner:** I just want to confirm that the 4 Commissioners all agree that the Counsels will promptly respond with an informal opinion.

**Peter Kosinski:** Right. I think some are more time sensitive than others so I understand that. Okay. And then we had one other items that Commissioner's Kellner and Spano wanted to raise today.

**Douglas Kellner:** Alright that's why I think many people are here today. The motion I want to put before the Commissioners is that the Commissioners direct our counsels to prepare an opinion that will rescind opinion 1996-1 and provide updated guidance on the applicability of article 14 to limited liability companies. So that's my motion, I'll ask for a second and then we can start discussion.

**Peter Kosinski:** I'd like to just discuss this briefly. I don't know if there's any other discussion you're in favor of so.

**Douglas Kellner:** Well obviously I'd like to speak in support of my motion

**Peter Kosinski:** Okay so if you want to speak you go ahead and speak.

**Douglas Kellner:** And I note that several people have contacted us and requested to make a short presentation to the Board that would require the Commissioner's consent and I would allow, I would agree to brief presentations, but I realize the Commissioners have to agree to that.

Alright, now in terms of my speaking in support of the proposition, I think many people are familiar with the letter of the Brennan Center that identifies the problem that limited liability companies were not in existence at the time that article 14 was adopted so article 14 does not use the word limited liability companies or specifically address that issue. I might add that there was a time when article 14 did not address partnerships and this Board crafted a policy that has been fairly well defined if I recall it correctly, if a partnership contributes more than \$2500 then it's required to attribute the contributions to the individual members of the partnership and the contribution limitations would then apply to those individual members. At the time this Board adopted the opinion on how to deal with limited liability companies it was following a policy adopted by the Federal Elections Commission which the Federal Elections Commission subsequently decided that it was in error and changed its policy so that the federal policy is to treat limited liability companies as partnerships unless they have elected tax treatment to be treated as corporations in which case they would be treated as corporations. And at the federal

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level corporations are not allowed to make any contributions at all. One of the reasons I haven't actually done a draft but hope that Counsel's could address it and negotiate a resolution on this point is that there are several ways that our Board could go. That in particular I would favor treating limited liability companies as partnerships. I am aware of the letter that was sent by the Business Council objecting to even reconsidering the policy in which they site the definitions of limited liability companies as unincorporated associations. And I would point out that if we actually carefully applied the statute to the theory that the Business Council has advocated that using the strict language of 14-116. 14-116.1 prohibits corporations or joint stock companies from making political contributions and it is subdivision 2 of 14-116 which authorizes corporations but not joint stock associations from making aggregate contributions of not more than \$5000. Applying a limited liability company as an unincorporated joint stock association would prohibit limited liability companies from making any contributions at all and would not even limit them to \$5000 contribution. I am not advocating that and I think that most of the persons who have communicated with us so far are advocating the route that they should be treated in the same way as partnerships so that the contributions are attributed to the members of the LLC on an allocated basis, at least for larger contributions. And one of the issues to discuss would be whether the partnership threshold which was adopted many years ago should remain at \$2500 and whether the same threshold for limited liabilities companies should be as it is for partnerships.

We receive a fairly scholarly letter on the subject from the Brennan Center. We've also received a letter from the Attorney General urging us to take action in this regard and I certainly agree with those sentiments that action is long overdue on the subject and so I would urge that we adopt a resolution to have our Counsels draft a new opinion on this subject. Thank you.

**Peter Kosinski:** Any...sure go ahead. No I'll let you guys go ahead.

**Andy Spano:** I'm the only non lawyer here so I don't understand anything he said. But it was very important. I come at this from a different perspective. I was a candidate numerous times and I accepted money from LLCs. Why? Because it was there and we needed money and you accept it and was legal. So we're not discussing who accepted money, who didn't accept money, we're just talking about fairness and what's happening with money and campaign. So this week I went on the Internet and I said let me look up money campaigns, where it's going, all that stuff and I came up with this sloppy silages so don't hold me to every single fact and number here but I just want to give you an impression, okay? In the 2012 federal elections 1% of 1% of just over 31,000 individuals contributed 28% of all contributions. In many major elections about 5% of the contributors contribute about 60% of the money. Now this I loved, American's spent roughly \$9 billion illegally gambling on the NCA Tournament while \$3.7 billion was spent to influence the mid term elections of 2014. However 12.6% of the population bet on the NCA tournament and only .02% of the population made contributions to the 2014 election. Now there was an article in the New York Times on April 1<sup>st</sup> that talked about

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how this is the first year in a long time that the number of new start ups, corporations and businesses dipped below the number of corporation and businesses that went out of business. So the number went down and a whole article on it but I pulled out this particular comment from one MIT economists. Now we know about economists' one arm and the other arm but this made my point, "*Contemporary American politics have become an economic hindrance*" according to this economist, "*It is becoming more and more difficult to run a successful business in the United States without doing lobbying, campaign contributions and other deals with politicians. This I think is the most dangerous and I would even say nefarious trend for creativity of American business in general and young and new businesses that are so badly needed in particular.*" Now that's the comment, so based on my silages and going up and down if this is true less than 5% of .02% of our population is influence to the government and what the government does. That's the influence of money in politics. Now what we're talking about today is insignificant in terms of that process, in terms of these figures, in terms of that money. What I think is something we should do symbolically, at least as a Board, to say, "Hey we don't think this is what should be happening." You have the President of the United States just the other day saying that opining, is that the word you guys use, opining that we should maybe have mandatory voting because he knows what every politician knows is that if you have everybody turn out, the money gets less and less effective. It doesn't matter how much money you have because the money focused can't do anything when you have such a large group like dropping a pebble in an ocean. So, this is significant if we do something about it and I would like to. If we say, just as a Board to the general public, "Okay, we don't like all this stuff going on with money" its not going to make a significant difference but you know where we are. You've got to make a difference somehow and if all the groups that sent us letters, I admire your passion, but in the scope of things, it's miniscule. This is miniscule. This is just a statement. You want to get to it, get people to turn out and vote somehow change the significance of how they vote. I mean you need a constitutional amendment to change this, I don't even know if you'd get that far. But you have to go somewhere else and think outside the box and not inside the box which is where you are. So I'm in favor of your resolution whatever they're going to bring up.

**Peter Kosinski:** I appreciate that. I know there are a number of people here that I believe are here for this particular issue. We have received the documents that were referred to from the Brennan Center Citizens Union, Business Council, I believe the Attorney General's Office also. If there's anyone here that wants to speak that has something to say that's not in one of these letters that we have received today, I would offer you a couple of minutes to do that to the Board but I would like to restrict it to comments that are not already, we've already read the comments that are in these letters. We're familiar with them, the arguments that have been made. If there's something else that anybody else would like to offer to the discussion, I think we'd be willing as Commissioners to listen to that on a limited basis. I don't think we're going to go on too long but if there is anybody that has a particular point they want to make that hasn't already been made, I think we'd offer maybe 2 to 3 minutes for a person to do that if

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they'd like to. If somebody would like to do that. And I don't know what groups are here but if we could have it limited to 1 or 2 people that could do that for us.

**Larry Nordan:** Sure, I'm Larry Nordan and I'm from the Brennan Center, I'm joined here by my colleague Dan Weaner. First of all, thank you for permitting us to have a moment to speak and congratulations Commissioner for being appointed.

I wanted to make, you have our letter so I don't need to repeat what's in there but I do want to make a couple of quick points; one is that this last election showed how much worse the problem has become with LLCs being used to circumvent individual contribution lists. Genet reported that in the last 2 year cycle the amount that was provided to candidates from LLCs was \$25 million. That's the Kennedy's never mind political committee's parties. That's 8 times according to Genet the amount that had been contributed in the previous 12 years. So the flood gates have really opened on the LLC loophole. We've gone from essentially what was a river to an ocean. And there's been a lot of talk about the contribution limits and the circumvention of contribution limits, the fact that these were set up to prevent corruption, in fact when somebody can contribute a million dollars to a single candidate or more than a million dollars, I think for a lot of people that raises corruption concerns through LLCs. But there is also an element of the disclosure regime that was set up by the legislature which again was meant to prevent corruption and was meant to provide the voters with real information and with LLCs we don't have the kind of disclosure that we would under contributions that were made by an individual or partnership attributed to an individual. As you all know the Moreland Commission on Corruption identified this loophole as one of the problems in New York State's Campaign Finance Law and antithetical to the purpose of the Campaign Finance Laws which again was to prevent corruption. The last thing I would say on a day when corruption in Albany is yet again in the headlines I think it would be very appropriate for the Board to act today to revisit it's opinion and frankly as the Brennan Center I think made clear in its letter, we believe that a plain reading of the text means that you're required to do so.

**Peter Kosinski:** Okay, thank you.

**Rachel Fauss:** My name is Rachel Fauss. I'm here from Citizens Union. I just wanted to speak for some of the other groups that I know that many of us have sent you our own letters, our members are also very engaged very involved and we legally bet over 8000 New Yorkers have taken the time to write to you individually to tell you that they believe this loophole should be changed and because of that we think there is significant public support and I just wanted to raise that to your attention. Thank you.

**Douglas Kellner:** If you want to say something that's fine. I have one more comment to make.

**Peter Kosinski:** We have one more person.

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**Susan Webber:** I have something to say. My name is Susan Webber, I'm a volunteer coordinator for Move on.org and I'm a newly appointed member of the Board of Directors of the Albany Museum of Corruption. And I'm happy to, we're having our museum, we're creating our museum because it's what Albany is famous for corruption and I'm here to ask that this Board follow through and do real meaningful LLC closure and the reason I opine that so few people vote nowadays is because they don't think it matters. It doesn't matter because the big people buy the policies and those policies reflect the desires and the needs of the big people not the people who vote. And you can do something to really change this and make it better. Take back our democracy. Thank you.

**Peter Kosinski:** Okay, thank you. I'd like to and I'm sure Commissioner Peterson would like to say something but I'm going to just weigh in I guess. The opinion from 1996 and I know we've looked at it and I was actually here when that opinion was rendered back in those days and it was done based upon New York State law and I just referenced the opinion itself that analyses the limited liability company law in New York State and concludes that they have determined that that law makes them not subject to corporate contribution limits because by definition those entities are unincorporated. I know there's been quite a bit of emphasis put on the whole change of opinion that the federal government put out and that there is a reference in this opinion from 1996 to the federal government's treatment of LLCs but I would note that the opinion itself did not rely on the federal government's treatment, it relied on New York State law's treatment, that has not changed since 1996. This issue has been revisited many time. It's been revisited here several times, I think in 2001 there was another opinion that this Board put out reaffirming the 1996 opinion. Again, I believe in 2008 this was revisited. I know it's also been discussed extensively over in the Capital with the legislature. It's my belief that that's where it should be discussed. This is not a matter for an administrative agency, the State Board of Elections to decide. This is a matter for the state legislature to decide. If the state legislature feels that the limited liability companies should be limited in their contributions further than what they already are then that's their prerogative to do so as they've done with corporations. But to date they have chosen not to and I think a lot of the groups that are here today know that they've spent time in the legislature seeking that change, it has not occurred. In my opinion, it would be inappropriate for a state agency, a bureaucratic agency to usurp the legislative prerogative and to administratively impose a new limit on an entity that's been around for 20 years and that has been treated a certain way, that the legislature has chosen not to change despite a great deal of discussion over these many years about the potential change, but to have a state agency step in and make that change unilaterally I think is inappropriate and I don't think is the role of this Board. Our role is to administer the law not make the law, not change the law. There may be many laws here we don't agree with, there may be many laws we don't like, but our job here is not to change them. We don't have that authority. That authority is across the street in the Legislature. I had the pleasure of working in the legislature for several years and I respect their role in this entire environment. They're

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the ones that set the rules. There's a very complex scheme in this state for campaign finance contribution limits. We have limits on partnerships, corporations, individuals, PACS, associations, they're all treated in many different ways. The legislature has created this very comprehensive system of campaign contribution limits in New York State. I feel we have to honor that. That's their prerogative to do so. We administer it. We enforce it. We make sure it's complied with but we don't create it and I think that what you're asking us to do here today is to create a new law that would impose a new limit on a specific entity. I also feel very strongly that these are very important issues. These are directly affecting first amendment rights in this country. When you start talking about Campaign Finance issues you're talking about people's first amendment rights. I think those are constitutional issues protected by the New York State and federal constitutions. To have a state agency affecting people's first amendment rights I think is also very troubling. I think that's something for the elected officials of this state and this country to do. They're the people that represent the people. They're the people that should be making the laws that affect people's first amendment rights and that is exactly what we're talking about here today. I don't feel that we have the authority to make this change, and I feel that this discussion should be taken to the legislature as it has been and I know its been discussed. I know it was discussed partially in the context of this year's budget, no changes were made and I feel it would be inappropriate for us to make the changes that the legislature has chosen not to make. And that's my position.

**Gregory Peterson:** I served many years in elected office and one thing I learned over those years never turn a deaf ear to what's presented to you. And I know there's a lot of work and a lot of effort put into research in presenting a very cogent and solid argument in the literature that we have received. I read every one of them and I thought about it and then I thought about my responsibility. I'm not in an elected office anymore. I'm in an appointed office and this is an administrative body and if we were to work in an ultra vires manner meaning beyond our authority we are really short circuiting the responsibility of our elected officials. Now some people would say, "Well they don't act properly." Well you know what then they have to be out of office and vote somebody else into office. Well they don't do this right or this ones corrupt and this one's not, you know what the system is changing. There is a tremendous, tremendous spotlight right now on all elected officials especially in the legislative capacity. That light should be shined on them and arguments made and presented to them. We have to look at both sides of an issue. The Citizen's Union and the McCutcheon cases kind of indicate that things are going in a little bit of a different way as far as protecting free speech, first amendment and that is part of an argument but you know what, that's one side of it. There are many sides to many faceted arguments but I look at it, I look at it very honestly as reasonability that was given to me as a Commissioner in the New York State Board of Elections to make sure that the elections that we oversee are done honestly, that they are done properly, where we can facilitate that process that we do that and that we try to the best of our ability that everybody can and does vote, and that those rights are not infringed upon. Once those votes are in and they have elected somebody, it is that person's responsibility that legislator's responsibility and his duty or her duty to make



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changes in the law so that law be appropriately changed, should they feel that that should be changed. Should their constituents say that should be changed, and there obviously are reasons for arguments on both sides of that. I don't think it's our prerogative to short circuit that process. We live in a democratic society, we have elected officials whose responsibility it is to make those changes. So as much as I appreciate what has been presented to us, I certainly cannot, I can't really, well how do I want to put this, I can't vote, no that's not the case, I can't usurp the authority of our legislators and so I can't support a change at this level. It's the wrong place, it's the wrong venue.

**Andy Spano:** Can I respond to that.

**Peter Kosinski:** Sure, go ahead.

**Andy Spano:** This is just a perspective of listening to and if I'm wrong you tell me. Initially the ruling was made here at the Board of Elections?

**Peter Kosinski:** Do you want me to respond to that? Initially the Board issued an opinion interpreting state law. Interpreting state law.

**Andy Spano:** Okay and subsequent to that they went through another sequence where they did that another time is that what you're saying?

**Peter Kosinski:** We interpret state law yes.

**Andy Spano:** No, you said that they met...

**Peter Kosinski:** Oh there were other requests made over the years to revisit the issue.

**Douglas Kellner:** Which have all been unsuccessful. I mean I made the last one in 2007 or 2008.

**Andy Spano:** The point is that wasn't a venue before, why isn't it a venue now? If the Board's opinion is important enough to go through all that rigmarole for what almost 20 years, why can't we discuss this now and why can't we vote on it?

**Peter Kosinski:** We are discussing it now.

**Andy Spano:** Why don't we vote on it?

**Peter Kosinski:** I think we're going to take some sort of vote I guess, you guys have made a motion. I'm telling you though that nothing has changed statutorily since 1996 that would warrant changing what was said in 1996. That's what I'm saying. So the opinion, opinion number one in 1996 is still valid today because the state of the law

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continues to be the same and our only job is to interrupt the statute, the statute remains the same.

**Andy Spano:** Suppose we tell you right now we're interpreting it differently. For every Ph.D. there's an equal and opposite Ph.D. For every lawyer there's an equal and opposite lawyer. I mean just because you went through this for what is it, supreme court ruled Dred Scott, Missouri Compromise and then they're not there now. Same Supreme Court so why should we be there now if we have different evidence. We have different research. We have support why should we be there?

**Peter Kosinski:** I see nothing new that's been presented that changes the analysis that was made in the 1996 opinion.

**Andy Spano:** And I respect that. I don't see it that way.

**Peter Kosinski:** Fair enough.

**Douglas Kellner:** I agree with Commissioner Spano I wanted to add one thing about what people say is the limited liability company loophole and that is that section 14-120 of the Election Law requires that campaign contributions be under the true name of the contributor and that means that it is illegal and a crime to use an entity as a mere conduit for a contribution. So to the extent that somebody provides money to an LLC and then has the LLC make a contribution that is a crime. And I would certainly urge the Independent Enforcement Counsel, Ms. Sugarman to take a look at two classes of suspicious LLC contributions; one is where there is a large contribution from a limited liability company that does not appear to have any business purpose or source of business income and that would be a suggestion that that limited liability company may be being used as a conduit to launder campaign contributions that are not made under the true name of the contributor. And the second area of investigation that I would urge Independent Enforcement Counsel to look at is where there are a large number of LLCs that appear to be making contributions on the same day and that the contributions are coordinated where the aggregate would otherwise exceed the personal contribution limit. And here we get into a little bit of the gray area which is one of the reasons why I urge that the interpretation be corrected to treat limited liability company as a partnership for the purposes of article 14 of the Election Law is that so you see contributions of \$5000 each by multiple limited liability companies and altogether they aggregate more than what the individual contribution limitation would be. The question is whether in fact that is being used as a conduit to launder a political contribution and those should be investigated and that's already illegal.

**Peter Kosinski:** I'd like to stick to the point of this particular request that's before us on the opinion I believe you're not on the issue.

**Douglas Kellner:** Alright I apologize for that.

**Peter Kosinski:** If you have any more comments on that.

**Douglas Kellner:** My last comment is that to me the letter from the Attorney General on this subject was very important because it shows that the Attorney General would be prepared to support that reinterpretation of the Board in a matter that surely will be litigated. Thank you.

**Peter Kosinski:** Any other discussion. So you've made a motion, is there a motion that was to

**Douglas Kellner:** My motion was to direct counsel's to...

**Kim Galvin:** prepare or rescind 1996 #1 on the applicable guidance regarding contributions of LLCs.

**Douglas Kellner:** Thank you Kim.

**Peter Kosinski:** Thank you. Alright I just want to say I do not support that as you may have sensed from what I said. I mean I don't want to be perceived as just saying no necessarily, I just want it understood what our basis here is that this has to do with who has the authority to render the applicable laws related to contribution limits in this state, that's something the state legislatures does, not the State Board of Elections. I cannot support that request.

**Gregory Peterson:** I'm in full agreement as I have said and certainly the laws on the books right now make certain acts that have been described here as criminal.

**Peter Kosinski:** So I believe the motion fails. Okay so that I believe is the end of today's public session. We will adjourn and we have a...

**Douglas Kellner:** You need a formal motion.

**Peter Kosinski:** I'm sorry, is there a motion to adjourn?

**Douglas Kellner:** No we need a motion to go into Executive.

**Peter Kosinski:** I apologize.

**Douglas Kellner:** Well it's your first meeting and you've done a spectacular job too.

**Peter Kosinski:** Okay a motion to go into Executive Session to discuss Enforcement cases.

**Kim Galvin:** Next meeting?

**Peter Kosinski:** Oh I'm sorry next meeting, you want to discuss that now as well, that's fine.

**Bob Brehm:** We didn't have a chance ahead of time that with the....

**Peter Kosinski:** and we will not be going back into public session is that clear because I don't want to let people think that...I don't anticipate going back into public session.

**Bob Brehm:** Well we're looking at because of the conference June 9, 10, 11<sup>th</sup> if that works.

(Everyone talking)

**Peter Kosinski:** I'm retired. Everyday is Saturday. Wednesday the 10<sup>th</sup>.

**Bob Brehm:** Wednesday June 10<sup>th</sup>.

**Peter Kosinski:** Yeah we're going to take a little break everybody because I need some time. We're going to take a few minutes, maybe 15 minutes or so between these meetings.