

Commissioner Kellner: Alright and with that I will call to order the meeting of the four Commissioners of the State Board of Elections who are all present and on the call. Our first item on the agenda is the approval of the minutes from March 15th. Is there a motion?

Commissioner Casale: I move to adopt the minutes.

Commissioner Kellner: Second?

Commissioner Kosinski: I have a question about the minutes if I could. Under new business in our minutes, there is a reference to a brief discussion on a regulation for High Density Early Voting sites. That terminology I'm just trying to understand where that came from, and my understanding was what we discussed was the statute that requires the largest municipality in a county to have an early voting site. And that to me is a different thing than a high-density early voting site. So, I'm just trying to understand how that term got inserted. Is that the way the statute refers to that or how did that come about? I just feel those are two different concepts. Your biggest municipality may not be the most high-density area that's all so I'm just trying...

Commissioner Kellner: Commissioner I propose a revision.

Commissioner Kosinski: Well, it seems like as I understand that term was the most populous principality early voting site that was the issue, I think we're looking at for regulations was that correct?

Bob Brehm: It is the population I think they just put in the word density for population but you're correct in your interpretation. That's based on the change in law that would require at least one early voting site in the jurisdiction and the county that has the largest population.

Commissioner Kosinski: I just think that's a different concept in high-density, so I just thought that term was misleading in our minutes.

Commissioner Kellner: I don't have any problem revising that that we should have either explicit text or we'll have to hold this over for the next meeting.

Commissioner Kosinski: Could we just hold it over I think it would be easier, do you mind and if somebody could just put in whatever the statutory term is, unless somebody knows it off hand which is okay with me too.

Commissioner Kellner: That's fine we'll put this over for the next meeting. With that we will then start with our unit updates, and we'll start with our co-executive directors, Todd Valentine and Bob Brehm.

Bob Brehm: Hello Commissioners, this is Bob Brehm. I wanted to cover I guess in the order of importance the budget is now done. There were no line item vetoes that impact on Election Administration from the budget that was initially proposed by the Governor to the budget that was adopted by the legislature. There were a few changes with regard to the state board and

county boards. The State Board received a total separate from the earlier meeting that we had for Public Campaign Finance, for the rest of the agency there is a total appropriation of a little over \$8.1 million excluding Enforcement to rule the agency. That presents a \$1 million increase in personal services for the State Board from what was originally proposed. There are also a couple other areas of the budget, the Aid to Localities budget provided an additional \$2 million grant for county boards of elections to assist them in the expenses related to the expansion of early voting. And there was in the capital budget an appropriate of \$25 million, \$20 million of that was dedicated towards county boards of elections for a host of eligible expenses to upgrade equipment, etc. and \$5 million of that fund was made available to the State Board to likewise make improvements to systems. So that's the good news.

The second on my list is we have the State Board has been working through the pandemic with the Office of State Comptroller. We had identified last year, just before the pandemic began an audit of the 2018 Federal Cybersecurity funds and we just completed that audit in February of this year. And receiving a preliminary report from the Office of State Comptroller on April 14th and Todd and I responded to their request for comments on April 20th. The report is still preliminary so the Comptroller's Office has asked us not to release the specifics of the report until it gets into the final stage because it might be modified to some extent, but I think generally I can say it was a very positive report and we look forward to sharing the public findings.

I think we talked a little bit about States Planning at our earlier meeting. While we have not made great strides in our resolving the matter, small steps are good, and we've got to start somewhere but we've continued to have conversations with the Executive Chamber and Office of General Services. Todd and I have a follow up meeting with OGS scheduled for Monday, April 26th to go over the plan that they submitted and to identify where it falls short of the actual programmatic needs, etc. I think the easiest to describe besides the fact the number of spaces is wrong, they just basically provided 134 spots that were 6 x 6, and it didn't matter if you were the intake clerk or the program director, you got 6 x 6. Things like that that we need to address anyway. So, I thought that was a good sign that that is moving forward.

With regard to the new programs, we will need to set forward and I think we will probably cover it in the PIO section that we will have to do additional grant programs to be able to share the \$2 million Aid to Localities with the counties and the \$20 million capital budget with the counties. So now that those funds survived the budget, we can turn next to getting those contracts ready and usually we bring those to you for consideration when we come up with that plan.

Neither of the grants require an approval of a plan outside of this building. Remember in 2019 that was a requirement of the funds needed by the approval Division of Budget. The Aid to Localities this year only requires the State Board to come up with a plan and make it available to the Division of Budget and the Senate and Assembly Fiscal Committees. So hopefully that will expedite it. I think that's my general list that I have. Todd, do you have others?

Todd Valentine: I'll only add two things; one on the audit that was a preliminary report, the next phase in in a Comptroller's audit is a draft report in which we will be able to put a formal response to and there's normally 30 days to respond to that. But again, it was overall a positive

report. And with regards to the grants, we'll obviously the counties are familiar with the grant process so I think they'll be appreciative of the funds that they give you and what we will, once we've established that obviously we will continue as we've always done with the counties is to package up once we've approved the plan and start to put it together, we'll put together a webinar for them so that we can explain to them how to access the resources. And we actually continue our regularly scheduled calls with them, our next one, because of this Board meeting got pushed to next week and, of course, they're also dealing with ballot access issues. So, we'll certainly update them as we go forward with that.

Bob Brehm: Any questions?

Commissioner Kellner: Thank you so next we'll turn to the Counsel's report, sorry to hear about Kim's problems but we'll have Brian give the report.

Brian Quail: Thank you Commissioner. Give a little update on significant status changes in some litigation and a report on a litigation that's pending or rather that commends prior to the last meeting. The Board made a motion for summary judgment on April 9th and the consolidated motion for the summary of judgment actually in the FAM-Green-Libertarian cases and on the heels of the very favorable rulings that we got at the trial level on the PI and then the Second Circuit decision that process is now unfolding and hopefully it will cause the case to come to an end. Since the last meeting there were four suits commenced against the Board; two of them actually were voluntarily discontinued, one of them was dismissed this morning, leaving one pending, which is a case in Western New York, Niagara County Supreme Court, Ross versus New York State Board of Elections, dealing with the constitutionality of provisions of the Election Law that allows for absentee ballots by reason of illness or reason of concern given the pandemic. And the answer in that case is due on May 21 and it is proceeding.

We obviously, in the Counsel Office we're very busy with ballot access. Questions and petition questions, objection questions both from the Board and many members of the public. So, we've spent a great deal of time on that. Also, the training unit has, give a little report, trained more than 1100 people in the use of the campaign software to date. There are I believe an additional significant number of trainings scheduled on our website for just the software that people can still register for and in addition, there are twelve training sessions scheduled for Campaign Finance updates. The next one is on April 29. These trainings are three hours long. People can register, obviously, they are all being held virtually. The trainings are sometimes in the morning, sometimes in the afternoon and sometimes in the evening after business hours to try to accommodate as many people able to receive those trainings as possible. All of the trainings qualify for certified public account continuing education credits and five of them qualify for CLE (continuing legal education credits). The Compliance Unit is at 146,941 reports reviewed which is significant. We're coming up on 150,000 reports in the Compliance Unit. We have the Compliance Unit is preparing a deficiency referral, there are 450 preliminary deficiencies that they're working through right now. I am advised by our staff that for the January periodic, the number of nonfilers is 3,015. We have posted 233 Paid Internet Digital Advertisements as of this morning, the current number. And I think for me that pretty much sums it up unless there are any questions.

Commissioner Kellner: Alright if there are no questions, we'll move to the report for Election Operations Tom Connolly and Brendan Lovullo.

Tom Connolly: Thank you Commissioner. We recently went through a ballot access period, and we are also supporting the county boards. In addition to that we received a number of petitions here at the State Board for judicial delegate and alternate. We prepared the ballot access ruling recommendations for the Commissioner's consideration under "New Business" later in the meeting. That we can finalize the verifications for the primary and get that out to the county boards. We also collected the local filing information from county boards with regard to any petitions for delegate, alternate or state committee which were filed locally so that we can prepare the roll call and the committee list after the primary. With regard to those two processes, with our first official foray into using the new CAPAS system, we've been working with IT on the issues which have arisen and any changes for functionality in the future.

Quick update on Oneida County, there are now both new Democratic and Republican Commissioners in place at the Board. We have been supporting them as they kind of get their footing, and we anticipate going out again for another in person visit to further provide whatever support guidance they need.

We are continuing our conversation with various voting system vendors for considering new system submissions or modifications sometime this year. Again, that includes Democracy Live for them BMD, Ballot Marking Device, Clear Ballot or their precinct voting system, Hart InterCivic for their precinct voting system and also new systems from Dominion. We also are continuing to have our conversations with ES&S as they seek to address the discrepancies that were enumerated during the testing of the ExpressVote XL. We have tested the new configurations submitted by all three electronic poll book vendors. We provided the commissioners with those testing reports and configurations are on the agenda for your consideration later in the meeting. We continue to work with NYSTEC and IT to formalize and document the process by which a new voter registration vendor may be approved for use by a county board. In addition, a number of counties are expecting delivery of some new machines and therefore operation staff will be heading out to those counties to perform acceptance testing. We have sent out reminders to and collecting information from counties on the testing and maintenance data required for any machine that was used in the village elections conducted by the county board. We've done the same for all required electric poll book network security surveys, early voting security plans, and procedures to prevent public release of election results with the first two of those being due to the State Board no less than 60 days before the primary which is tomorrow.

With regard to Ranked-Choice Voting, the certification review continues on the universal tabulator utility that was submitted by New York City for the use at the June primary. The source code and functional testing has been completed. From that testing there were some issues which arose such as a limited hardware configuration not being able to handle more than 1.1 million cast vote records. Obviously in New York we'd probably need a much bigger support number, so we were able to work with our testing partners to figure out what hardware

configuration changes were necessary so that the utility could handle more than 6 million records at a time, given that the February enrollment for New York City is just under 5.6 million. In addition, the Ranked-Choice Voting Resource Center that developed the utility is working on revised and also additional documentation to address other outstanding documentary deficiencies which will be reviewed by SLI and NYSTEC as we receive them. We're targeting the first week of May to have the testing reports completed and available for you with the expectation that actions could be taken by the Commissioners at a May meeting.

With regard to Westchester County, the Operations Unit had received an inquiry regarding potential issue for certain districts in Westchester County that were reporting an unusually high number of blank and void votes for the 2020 general election. The Operations Unit did reach out to the Westchester Board and try to get a better understanding of what may have caused such an issue. We did receive a response back from the Westchester Board on March 19th which did proffer an explanation. However, in the opinion of the unit it does not fully explain the anomaly. As such, the Operations Unit will be arranging for a bipartisan meeting between state and county staff to review the issue in a more comprehensive manner and will report back to the Commissioners at the next meeting.

One other thing that I know Commissioner Kellner had asked me to cover, there was an issue with regards to hash checking. That was first raised by the Texas Secretary of State back in September of 2020 when later documented further by the EAC a month later and again online in an article on the Freedom to Tinker blog in the beginning of March. The issue affected the Expresso BMD and focused on the hash checking procedure for which the purpose is to verify the software installed on the voting machine is indeed the certified version. That article focused on three main points that the supply hash code checker could erroneously report a match. In the article they talked about how if the file containing the hash code was actually left out the hash code checker would still report a pass. It also said that the hash code checker checked the hashes against those values on the application that was first installed and not against what's called a Golden Hash or the authorized reference that they're supposed to, and the last issue that they really raised in that report was that the vendor themselves were performing the hash check on the machine. Now despite the fact that the ExpressVote BMD is not presently certified for use in New York there are also a number of reasons why the concerns raised would be mitigated here. We have historically not relied on a vendor-supplied hash checking procedure, opting instead to create our own for each voting system which uses independent hardware and software to compare the hash checks. In the case of the ES&S system, the state actually created a software script which performs that hash check and returns an error in the Texas scenario so that if there is a file that is left out it does not give a pass, but it will report that there is an error. Secondly, the authoritative hashes that are used in this process are supplied by the state and are hard coded into that script so they actually can't be forgotten. And the counties can only use the software that comes from the State Board and those hashes do come from the trusted build that was part of the certified application. And then lastly, as I mentioned earlier in my unit report, acceptance testing of all new machines is done with the direct involvement and supervision of State Board staff without any vendor involvement.

That being said, I think that pretty much covers it for my unit report unless Brendan you wanted to add anything?

Brendan Lovullo: No, I'm good thank you very much.

Commissioner Kellner: Thank you Tom. That's a very thorough report and shows that we're paying careful attention to these election integrity issues. Thank you. So, we'll move to Public Information, John Conklin and Cheryl Couser.

John Conklin: Thank you Commissioner. Public Information Office has been busy since the last meeting. We've answered lots of questions about independent petitions and changes that have been made, contribution limits, changes to party enrollment, the January periodic report that was filed, and the Campaign Finance Public Disclosure Reporting page as well, among other things. The unit processed 171 FOIL requests in March. We've also continued with working group meetings for automatic and online voter registration. In addition, we've met with IT and Compliance on upgrades to the public reporting site that had been pushed out. We also, as IT and Compliance as a group met with a group of individuals from Reinvent Albany and also from the New York Press Service. I think those went reasonably well. we've got good feedback from them. we were also able to explain a number of things about the public reporting page. But we continue to work on those issues. We participated in a monthly ECA call with the counties and we're about to reissue the annual SANS Cyber Hygiene Cybersecurity training module for all county boards and state board personnel and some county IT staff as well.

For the website, we posed the 2021 contribution limits, also the Campaign Finance filing calendar for 2021. We did additional updates to the 2021 political calendar for independent petitions and signatures and posted the filings that were received as Tom mentioned for the June 22nd, primary here at the State Board. And we also posted the webcast from the March 15th PCFB and SBOE's Board Meetings.

For the National Voter Registration Act, we continued to do virtual NYSVoter Board reviews. We did reviews with Cattaraugus, Chemung, Monroe, St. Lawrence, Rockland, Chenango and Madison Counties since the last Board Meeting, and we had done Franklin before the last Board Meeting; all were found to be compliant, so we continue to move ahead with those.

For grants I'm going to let Cheryl do a little update on grants so she can discuss what came out of the budget and where we are with the other grants that are taken care of. Cheryl.

Cheryl Couser: Great thank you. With enactment of the State Fiscal Year 21/22 budget, it has inclusion of two new grant programs which Bob and Todd both discussed. There is the \$25 million capital technology fund to make improvements in election infrastructure. \$20 million is allocated to advance for county boards of elections and \$5 million to the state and we are working on the plan and will develop contracts over the next couple of days and weeks to get out to the county boards and for your approval. There is a \$2 million Aid-to-Localities Early Voting Expansion Grant. And there is a similar process around that grant as well. That brings the Public Information Office to administering 9 grant programs; 2 grant programs were re-

appropriated in the state budget, 3 appropriations were for the Aid-to-Localities, Early Voting Expansion grant fund and the capital E-Poll Book grant program. Those relatively have approximately about \$500,000 in those funds. Contract amendments and cover letters are drafted and will be reviewed and sent out to the counties for those programs. We participated in the election assistance commissioner semi-annual report webinar. The semi-annual reports are due on April 30th. The financial statements are being prepared by the Office of General Services and we are drafting narratives and will have those submitted earlier than the deadline.

The HAVA CARES funding for the 2020 election is closing out. We're at the point now that we will notify the Election Assistance Commission of our intent to close out that funding. We have to coordinate that with the Division of Budget and the Office of General Services because when we notify the intent, we make a filing on June 30th and we have 90 days to close it, to refund the money or pay interest. To that end, we have to make a couple certifications and one is to certify what equipment individually that is left over exceeding \$5000 so the county boards have been providing us with that documentation. Very little coming back that the county has left over, unused items in an aggregated form of more than \$5000. Likewise, we have an inventory of any equipment purchased over \$5000 that will be maintained for that HAVA CARES grant. We have roughly \$718,000 refund for that grant.

We reached out to all the county boards that did not fully submit a Cybersecurity contract. We have 10 counties left. Many are going through the legislative process and approximately of those 10, 8 have submitted contracts but they were missing appendices and we sent those back to have those completed and returned. So, we will continue working with them to get fully completed contracts and have that squared away. The contract expires this December.

Commissioner Kellner: Cheryl you seem to have muted in the last 30 seconds.

Cheryl Couser: I'm sorry.

Commissioner Kellner: So, have you finished your report?

Cheryl Couser: I did. For some reason I must have been muted in midstream, so I apologize. I don't know how that happened. What was the last part, I will continue from there.

Commissioner Kellner: I think you were literally on the last sentence when it.

Cheryl Couser: Okay well I ended with the Cybersecurity contracts. There are 10 outstanding, we reached all the counties 8 of which they submitted some part of the contracts, not a full contract so we are following up for those appendices and that is all that I have.

Commissioner Kellner: Great, well thank you. Are there any questions. Alright then we'll turn to our technical director William Cross.

William Cross: Good afternoon, Commissioners. I'll start with projects for CAPAS-FIDAS. We continue to make numerous updates and improvements to the system during our weekly

releases and we have also published a list of those updates to the site under a section called Release Notes to inform the users of what changes have been made over the past week. Most of these improvements have largely been fed by internal and external stakeholders including via outreach sessions to groups as John mentioned the Reinvent Albany and the New York Press Service. We've also actively solicited input from treasurers and filers in the mailing that was done to them to ready for filing to ask for feedback as well. In general, we continue to work towards making the initial and addressing largely most of the concerns of the comments was making initial search results broader and then providing the user the greater ability to filter from there, more a long the lines of the referenced New York City Board site. So, we are working towards that end. We've already made several of the previously required fields now optional to help streamline those searches and I think our feedback from the groups has been positive so far on that. We have also worked extensively with the...

Commissioner Kellner: Bill could I just interrupt for a second and say that the feedback has been that that particular change has been positive. It was my view that the feedback has been universally negative on the system and that there is still very substantial dissatisfaction among the user community. Alright I'm sorry for interrupting you but I didn't want to let that pass with the suggestion that that one improvement has satiated the user community.

William Cross: No, Commissioner I didn't mean to imply that. I think as I pointed out we recognize there is still work to be done in particular making the search as I said making the search easier to use and providing broader results. There is still work to be done there and that is on our timeline. I'm sorry if I implied that, it was not meant to be. We also worked extensively with the Chief Data Officers group for the state, New York State Chief Data Officer to publish the filer data to the Open NY platform. Those datasets went live on Monday, April 12th I believe and are now being published daily. That was one of the large requests we had too was to make the larger datasets available for analysis for those groups.

For online voter registration and automatic registration, as I reported last month the Officer of General Services indicated that our bid for the OVR and AVR had to be reissued in particular as a full RFP. As such, we were going through and we fully revised the document into a completely RFP format as opposed to a mini bid as they had indicated previously. That has now been provided back to OGS and is under their review. We are meeting with them I believe tomorrow for their comments. We expect right now the revised RFP to be issued by the end of May with responses due in July. That, of course, is subject with the full RFP additional approvals by the AG's office and OFC. We can't really anticipate their timeline, but we are hopeful for positive feedback there.

For NYSVoter we continue to work on several enhancements for that system including adding local ballot information, and we have implemented for the counties the ability to directly upload and update their list of poll sites both election day and early poll sites. We've also made the absentee ballot request portal was reimplemented on March 25th. The primary change for that was the addition of or the selection of desired elections to be applicable, special, primary, general, or a date range. That update also included the accessible absentee ballot request.

For security, the proposed Cyber regulations as approved by the Board last month have been issued for public comment. Those are due by June 1st. we continue to work with Operations as Tom indicated on development of the Voter Registration standards for Voter Registration systems both new and existing. And as well, the secure election staff has also worked with Operations on testing and scanning the E-Poll book systems for that process. And we also continue to work with SUNY Center for Technology and Government on the future of elections infrastructure project and that is going well. As well, we continue to work with NYSTEC in various counties on implementation of their Cybersecurity remediation plans, providing guidance and input on that process and to help them along as well as working with PIO to review and approve numerous reimbursements and the associated grant on those plans. And always, we continue to make security improvements to our own infrastructure here.

For our website, I think as to be expected post election levels are still around about 170,000 views per month typically in that range during nonelection period is 170,000 to 200,000. That's my report. Are there any questions?

Commissioner Kellner: Alright there being no questions, we move to the next item on our list which is Enforcement, and the position of Enforcement Counsel remains vacant. I have not received any responses to my communications with the Governor's Office about filling that vacancy. Bob Brehm or Todd Valentine have you got any news from the Governor's Office on whether they're in the process of appointing someone?

Bob Brehm: Todd and I have a bi-weekly call with the Governor's Office, it comes up usually during that call; two questions we always ask in addition to can we fill jobs and space is where is our 7th Commissioner for Public Finance and is there any movement on appointing an Enforcement Counsel? There have been no comments with regard to Enforcement Counsel at our call this past Monday. We were told that they at least have a possibility of a seventh commissioner coming. Some news the staff that are here even though they've admitted they don't have the authority to do certain things, they do Todd and I we've had an open appointment every other week for Enforcement. Risa refused to come to the appointment, but we continue, Carla and staff joined the call. We don't make great progress, but we do talk about more of the nuts and bolts and how to keep the agency aligned to projects. So, I thought that was positive, hopefully that will continue. I mean because it's keep the lights on kind of stuff there's nothing earth shattering to share but I just thought the fact that this is happening is in itself a positive direction.

Todd Valentine: The short answer to your question Commissioner was no, they haven't mentioned anything like that.

Commissioner Kellner: Alright so there is no Enforcement because the law says that that office is the sole person who can do enforcements. Alright unless anyone wants to discuss the reports, the next item on our agenda is old business but I don't believe we have any old business. So, we'll take up new business and the first item for new business are the Ballot Access Rulings. Brian, do you want to just explain, or Tom I don't know which one of you but just introduce what it is that you're asking the Commissioners to do.

Tom Connolly: Thanks Commissioner. Yes, obviously, as we normally do whenever we have ballot access any kind of prima facie rulings we put together for your review and possible approval. This one is pretty short and sweet. We had one petition that was filed late and so therefore it should be invalid and that was for delegating the alternate delegates for the Third Judicial District and 101st Assembly District on the First Party Line.

Commissioner Kellner: Is that the only one?

Tom Connolly: That's it.

Commissioner Kellner: Okay is there a motion to adopt the report? Peter, we can't hear you, but I can see you making the motion.

Commissioner Spano: Second.

Commissioner Kosinski: I apologize, I move that we adopt how's that?

Commissioner Kellner: Thank you. Those in favor say aye.

All: Aye.

Commissioner Kellner: Opposed? Alright that is adopted.

Commissioner Kosinski: Commissioner I'm sorry can I go back for just a minute; I apologize but back under old business for just a second and this goes back to something that we referenced in the minutes from the last meeting that I brought up actually early in this meeting. There was a discussion on that what was called the High-Density Early Voting Sites. There was a reference in that section or minutes that senior staff was looking at drafts for regulations on that topic that they were going to bring to us at this meeting and I don't see any regulations to us here at this meeting and I just wonder what is the status of that particular law and enforcement of the law and how that's working and whether regulations are actually in the mix here.

Bob Brehm: If you give me a moment Commissioner there is the legislature put a bill in to address this issue since our last meeting. They haven't considered it yet but at least they introduced it. I don't have a bill number, but I will get it to you. But generally, we were trying to deal with in a primary if the largest political subdivision didn't have a contest how do we read that language and we either proposed, we discussed last time should we consider a regulation, maybe a bill. We talked about it and in the meantime the legislature put a bill in, and I believe it's in both houses. So, I'll get you the number and at this point I will monitor that bill.

Commissioner Kosinski: Okay. Thank you.

Commissioner Kellner: Alright then the next item on the agenda was resolution 21-09 for the appointment of hearing officers is there a motion to approve the resolution?

Commissioner Spano: So moved.

Commissioner Kellner: Second please.

Commissioner Casale: Second.

Commissioner Kellner: Alright does anyone want to discuss the resolution? Alright in that case I'll call for a vote. Those in favor say aye.

All: Aye.

Commissioner Kellner: Opposed? So, the resolution is adopted unanimously. The next item on our agenda is resolution 21-07 the upgrade to E-Poll book certifications. I guess I'll ask for a motion and a second and then I'll ask for Brian or Brendan to I mean Tom or Brendan to give a short report. Is there a motion.

Commissioner Spano: So moved.

Commissioner Kellner: And a second?

Commissioner Kosinski: I'll second.

Commissioner Kellner: Alright. Tom or Brendan do you want to explain the resolution?

Tom Connolly: Sure, the resolution is looking to approve configurations by all three E-Poll book vendors. A number of them, actually all three of them have submitted changes to their applications and also to the configuration as far as the underlying operating systems for Robus that's the windows operating system and for Tenex and Knowing that is the newer version of the IOS operating system. As Bill mentioned before, with the help of the Secure Election Center we did do some vulnerability scanning and testing that we do whenever we receive a new version of the system. We reviewed the changes in the data package, and we provided you all with copies of those reports as it is the recommendation of the unit that these configurations be approved.

Commissioner Kellner: Thank you are there any questions or further discussion? So, I'll call for a vote. Those in favor of the resolution say aye.

All: Aye.

Commissioner Kellner: Opposed? None. So, the resolution is adopted unanimously. And next item on our agenda is resolution 21-08 which is for the adoption of part 6210 section 21 of the Absentee Ballot Envelop Cures regulations. Brian, you want to just explain what stage we're at with this?

Brian Quail: Sure, so last year the legislature adopted Chapter 141 of the Laws of 2020 providing for a cures process and the Board promulgated a process that would be followed and that largely has followed through to this iteration. In January, just to fill in a few of the other interstices from then to now, January the Board put this out for public comment and the public comment period has now closed and closed right before adoption. The Board also adopted these on an emergency basis at that time. So, they're in effect presently and the emergency adoption I believe is good until the 26th of this month. So, these are now in a varied modestly revised version mostly ministerial changes like performing the numbering process to that which is provided for by the Rules Regulatory Unit at the Department of State and a few other sentence corrections. But otherwise, this regulation is fundamentally the same as the emergency regulation that was adopted and fundamentally the same as the process that was implemented last year.

Commissioner Kellner: Okay and this will be the final adoption of these regulations is that correct?

Brian Quail: Yes.

Commissioner Kellner: Is there a motion?

Commissioner Spano: So moved.

Commissioner Kellner: Second.

Commissioner Casale: Second.

Commissioner Kellner: Alright any further discussion?

Commissioner Kosinski: Yes, I have a question. On I think subdivision H paragraph 1, there is a reference it's the entitled section Signature Comparison Standards Procedure and Training. Paragraph 1 says, prior to any staff person being assigned to do signature reviews, they should be trained to be prepared for such a task in accordance with guidance developed by the State Board of Elections. I guess my question is about that guidance. Is there guidance that's been approved here for the local boards to utilize for doing signature matches? Is there training? I'm just trying to understand the status of that particular requirement.

Brian Quail: Right so last year when we had the same requirement, the Counsel's unit provided a WebEx meeting with county boards to go over that process and in the translation of the regulations into operational status, we did provide a document to them and then we went over the concept of signature matching. As part of that we borrowed heavily from New Jersey, and I think Colorado. But there is a document and there was previously instruction to the county boards provided.

Commissioner Kosinski: So that's something that's already done. Are the local boards undertaking, I mean is there a standardized process then around the state for how staff is to analyze signature matching?

Brian Quail: Well certainly the expense of standardization they are not all using the exact same form for example. But the process of the regulation itself and the document that we provided was to accomplish exactly the kind of training that you just provided. One of the things that became clear to the counties is that when they have such a large number of ballots and that signature matching as required for which happened last year, that they had to, and when they had to act as a result of finding a mismatch, they did have to largely standardize their process. Cure process itself requires that because you have to actually complete the document that would go to the voter if you find a mismatch and then ensuring that a larger number of core staff perhaps than before would be doing that. When you didn't look at those envelopes until the time of the canvass, and it would be typically the Commissioners that would be sitting there at the time of the canvass it was a different paradigm. So, the boards had to adapt both for signature review and other reviews to using the form of affidavit to be filled out and sent to the voters if there was a mismatch or other problem with the ballot and to get that work done in a timely manner after the ballot was actually received. So, there are a lot of procedural elements that perhaps were not there before did evolve as part of the process. In terms of the matching criteria and this was enlightened by litigation in other states as well, it was important to have people understand that you were looking for signature consistency, not necessarily signature perfection. You were looking to also when you had a fundamental concern about a signature and you had other exemplar signatures available to you, or typically have many signatures exemplars particularly for voters in the absentee realm, they often are not first-time flyers of absentee that they would go back and look at other exemplars and that's drawn out of, I think, subdivision 2 of section H. So, it does continue to be a work in progress. I know from the annual statistical report that there were not any significant number of ballots that were in fact rejected, I don't know the exact number but were in fact rejected for signatures that did not match. So, the reviews solid evidence that the review of signatures is happening and that the Boards are taking it seriously.

Commissioner Kosinski: Does this same process go on for poll workers?

Brian Quail: Poll workers on Election Day?

Commissioner Kosinski: Right or in early voting any other besides paper ballots?

Brian Quail: It does go on, but it is somewhat different obviously because the voter is actually right there in front of the poll worker and then if the poll worker thinks that the signature does not match, they have the ability to subject the person who is in front of them to that process. But the electronic poll books do provide for the signature being captured and then compared by the poll workers.

Commissioner Kosinski: I guess my question Brian is, is the same training going on with the poll workers that's going on with those counting at central count?

Brian Quail: It's not being done at the same time, but the standards should be the same. If that is the point that you're making but I don't actually know precisely on a county-by-county basis how they're amended their breakup of their poll workers.

Commissioner Kosinski: Okay maybe this is an issue for Tom and Brendan, but I think going forward as we're sending out these guidance's to our counties and attempting to standardize the way that they are administering elections that looking at the county boards as you do and seeing how they're implementing these kinds of standards is important I think to me, certainly that they are taking this guidance and working with it. I realize these are not mandates. As far as I know there is nothing that mandates them to use our particular standards, but it does seem important to me that we have some sort of statewide standards that are being used universally around the state for purposes of signature matches as well as other purposes. But if we do have guidance, I think it would be helpful to know how the counties are implementing it, how they're training. Who does the training? How the training is going and whether or not it's bearing fruit.

Commissioner Kellner: Anything else? Are we ready then to vote on the resolution? Those in favor say aye.

All: Aye.

Commissioner Kellner: Opposed? So, the resolution 21-08 is adopted. The next item is approval or discussion and approval of the legislative packet for 2021.

Commissioner Spano: I have some issues something to talk about. It seems to be that we have a couple of problems that we constantly bring up and that may be helped out legislatively if we approach them creatively. We have the problem with the Counsel not following up on nonfilers. And I think that if we can figure out some way of handling that legislatively it might be helpful. I really don't know how to do that, maybe Brian and Kim can put their heads together and do that. But we should fix it somehow. And with a definitive mandate of what has to be done or taking it back and only handing over whatever, but we can't leave it this way. We can't keep reporting that X number of thousand nonfilers that haven't been followed up on. I don't think that's appropriate. We have an opportunity now without a Counsel before they're-appointed and we should do something about it.

The other thing I was looking a was that within that structure when the Counsel was reporting, we were always told that it was old, it was dead, they're not there. I think we should consider a moratorium on nonfilers over a certain number of years and just get rid of them if that's the case so there are no more excuses, and then we put in some definitive thing that makes it impossible not to follow up on.

The other thing I'm talking about I want to talk about is we have a problem in getting appointments on time for personnel that we have. Uniquely, we have the opportunity to appoint our own people, but, of course, it gets stuck in the morass of the bureaucracy as it goes through Civil Service and so on. I think that if we had a legislative mandate within the scope of our regulations that gave them a 30-day limit on appointments where we'd make the designation and

they had 30 days to finish what they had to do so we'd get all our positions in within 30 days. And I think that that might be helpful. I don't know how fast or what kind verbiage or what legislative situation we could put it in, but I think that's something that we should be discussing.

Commissioner Kellner: I have comments on both of those issues but if Commissioner Kosinski or Commissioner Casale wants to go first that's fine. On the Enforcement Counsel I circulated a draft bill several years ago to remove the provision that gives the Enforcement Counsel the sole authority to make enforcement decisions and to give the Commissioners of the State Board of Elections concurrent jurisdiction over that. I had still been advancing that proposal. I gave it to legislatures earlier this year and I understand that there are discussions underway between the senate and the assembly to do just that. But certainly, I would welcome support from the other Commissioners.

Commissioner Spano: Doug I read that, and I thought it was good, but I just have a feeling in terms of any kind of experience I have where you have a bifurcated responsibility like that, that things get in the way. That the responsibility has to be with us, or it has to be with them, that's my feeling in terms of whatever it is. but I do think that we have an opportunity now with the vacancy and a legislative session, if we're reasonable and I think what we're talking about is reasonable here, we've got proof that we have a problem that we should try to figure out something within the scope of either what you presented or what we can come up and think about. And I think on the other hand, on that 30 days or whatever day but we need our people. Not that everyone doesn't, and I know that every department has the same thing, but we have a unique aspect of having to be able to do things by specific dates in a specific year and we have to have our people there and ready to do this. The most important thing you can do is vote.

Commissioner Kellner: Commissioner I have no objection of you want to ask the staff to draft such a proposal, however, again, I have gone on record many times over the years to say that I believe that we already have more than that authority, that the Budget Office does not have authority under Governor Spitzer's 2008 emergency memo to prevent the Commissioners of the State Board of Elections from adding staff that are properly budgeted and that it is not legal for the Division of the Budget to prevent us from hiring staff once we've made those decisions. And I understand my colleague's reluctance to actually lance the boil and litigate that issue. It was done in Erie County and the Commissioners were successful under the comparable statute for county commissioners and I just want to say on the record that while I don't mind that somebody draft up legislation to clarify this, that I think that it is illegal for the Division of the Budget to hold up paying people that we have determined to hire into positions where there is an appropriation for those positions.

Commissioner Spano: Well, I always try to avoid litigation when I can, and I don't want to win the battle and lose the war. This seems like simple and reasonable and always leads to the option of doing the other and whenever I've gone into court, the judge always asks me, "What did you do to make this go away before you came here?" And I think that this is one of those things that you can do. It's a legislative session. It's a simple ask. We already have the power to do what you said and what we want to do is make sure everyone understands we're being reasonable. There is some ministerial stuff that has to get done whenever you appoint someone. You know

they have to get sometimes background checks, they have to get all kinds of medical things down, they have to get their dates, so there's paperwork to do, good. 30 days is a reasonable time in order to do that. And do we're not giving up anything, what we're doing is we're being reasonable.

Commissioner Kosinski: A couple of comments on both topics. On the staffing issue, I certainly welcome the opportunity or the ability of this Board to be able to appoint our own people and not have to run things through the second floor or through Civil Service or whoever else has to run through to get approval so that we'd have more authority over our own density. I just don't know if that's realistic. I realize, Commissioner Kellner you're talking about what counties can do and I agree with you, and I've had many discussions with county boards about this who are frustrated as well and there is authority within the law that they have the ability to appoint people once they're approved. My caution to those counties you can appoint them this year and I think legally you'll have that authority but be aware that if you go back into your county executive for a budget next year, they will probably remember that you countermanded them and done whatever you felt like doing and I think we run that same risk that if we decide to go ahead and appoint people that the Governor has determined he doesn't want us to, that we run the risk of next year's budget not being quite so kind to us. So, I'm certainly willing to pursue that because I think it is important to have our own destiny in our own hands, but I would just caution that there are potentially downfalls with that particular idea.

On the second topic, on the Enforcement Counsel issue, I certainly concern that I believe it's important for us to have a role in the enforcement of the Election Law and I would certainly welcome our authority to enforce the Election Law not just in the context of failure to file but in all contexts. The concern I have going forward, and I have had it is the Enforcement Counsel has this authority we don't anymore. The Enforcement Counsel is not a bipartisan actor anymore, it's a partisan actor. It's appointed by the Governor; it's now going to be approved by the Assembly and the Senate both controlled by the Democrats. This is nothing against my Democratic colleagues, but the reality is that this Enforcement Counsel position is now totally controlled by one party and the nature of elections is bipartisanship is the watch work. And unfortunately, we no longer have that in the Enforcement Unit. So, the appointment of this new person will be controlled by one party, whoever this person is, and we will be beholden to one party. I think that's a very dangerous precedent to have in the elections arena. I would welcome something that takes back the authority of Enforcement of the Elections and puts it in a bipartisan agency like us, State Board of Elections so that we ensure bipartisan enforcement of our election laws, and we don't run the risk of any one party control the Enforcement, which I think is unfortunate where we are now. Back when our first Enforcement Counsel was appointed, there was at least in one house there was bipartisanship. One house controlled by Democrats one house controlled by the Republicans. Now both houses controlled by the same party along with the Governor. So, I think it's a bigger issue frankly than just us taking back some authority in the area of Enforcement of failure to file. I think there's a bigger issue at play. I would welcome a discussion about that and if you wanted to pursue something that way but again, bipartisanship I think is the watchword. I welcome that, I think Commissioner Yankah has definitely set a good tone for the new Public Campaign Finance Board, but we also know that's got the same issue. It's a 4 to 3 split; one party controls in the sense that they have a

dominant number and I just see a trend here where in the elections arena more and more of the new entities that are being created to govern over elections operations are being done in a more partisan way. I think that's unfortunate. I think it's better to have bipartisan enforcement of our laws, bipartisan administration of our laws and I would welcome that discussion.

Commissioner Spano: I think this is, the problem right now is an accident of the elections. I agree with you by the way, so I just want to say that up front. But you know if you want to go in also and look at the Enforcement Counsel legislation and add to it the majority leader of the minority leader of the senate if both houses have one party, I'm totally in favor. I don't have a problem with that. I agree with you. And after what we've learned in these elections not only in New York State but throughout this country, I think the people will agree with you.

Commissioner Kellner: I think the biggest problem, the bigger problem is the language that gives Enforcement Counsel the sole authority. So, you've made a czar who is not accountable to anyone once they've been appointed and that's just no way to govern, especially in an environment where there should be bipartisan and uniform administration of the election rules.

Commissioner Spano: Given the fact that the Enforcement Counsel was supposed to replace a previous situation, certainly not in total, and that was supposed to be run by bipartisan, nonpartisan group. I think there's a rationale looking at this and saying that that position ought to be bipartisan. I have a real problem with that. I don't mind arguing with these guys if I disagree with them. Sometimes they're great, very short periods of time sometime. And I want to get I want everyone to feel comfortable with this. I want myself to feel comfortable with this. I don't feel comfortable. I don't feel comfortable with this at all. It's like putting a city manager in where you only have to be responsible to 4 out of 7 guys you know, and everyone thinks that's great and meanwhile he has to satisfy, or she has to satisfy 4 people. This is not appropriate for an election commission. All these are reasonable if you look at them, no one's looking to get a benny out of this.

Commissioner Kellner: So far, we haven't discussed any of the bills that are actually on the packet that we're proposing, and I don't know that there's text for either of the independent Counsel or the hiring board personnel issues. So is there any discussion of the 19 items that are...

Commissioner Casale: I would like to ask a question about the last item dealing with the terms of Commissioners. Does anyone know where that came from and what its intended to do?

Brian Quail: Yes, this is Brian. That item has been out there for a while. It's on the legislative program of the Election Commissioner's Association and the rationale is that the work of an election commissioner has become increasingly technical and complicated and that in order to maintain a core of election officials that know what they need to know, them having the certainty of a four-year term would be helpful for consistency and quality.

Commissioner Casale: What is the current situation, Brian? Are they all two-year terms or some two and some are four?

Brian Quail: Some are two and some are four. The statute provides for a few counties that are specified to be four right in the state law. The default is two and county legislatures can increase the term to four if they so choose.

Commissioner Casale: But currently it's the local governing body that sets the term, correct?

Brian Quail: It's the local governing body, in most counties the local governing body can set the term at four instead of two, except for in a few counties that are actually designed in the statute to have four-year terms.

Commissioner Casale: I don't know why we'd want to take away the jurisdiction of the county government. Not really another mandate but it's telling them how to run county government. I think it's best left to the locals to decide what's best for their community. I'd like to suggest that we just drop that one off our list. If they want to leave it on their list and present it, fine, but nothing I could support at the State Board level.

Commissioner Kellner: I'm fine with it, I don't mind dropping it.

Commissioner Spano: No, I'm fine. I don't think anybody should have a two-year term.

Commissioner Kellner: That's the issue.

Commissioner Spano: I don't mean anybody, and any job should have a two-year term. I mean two-year terms were set up at a different time. These are not elected officials, so they're not elected officials but even an elected official you're going to start fund raising when you get in office.

Commissioner Kosinski: Yeah, it might be hard to convince the assembly and senate that a two-year term is appropriate for them but not appropriate for a county board commissioner.

Commissioner Spano: I understand that.

Commissioner Kosinski: I'm fine with Commissioner Casale's request and we can just drop that, leave that to a local decision.

Commissioner Kellner: Okay.

Commissioner Kosinski: I did have a question about the first one myself, the health-related exigency bill. I'm just not clear how that's administered and how does that work and what is the issue that that is intending? I haven't seen a text of the bill to be honest so I'm just looking off the description here on my list but if someone could just describe for me a little bit how that would work and the situation that's addressing?

Brian Quail: Right, this is also an item that comes off the Election Commissioner's Association list of program bills. And what it deals with is a situation that many Boards of Elections have found themselves in where you have someone on Election Day, for example in the morning on Election Day ends up going into the hospital and therefore unable to attend at the polls and they call or someone for them calls and this person is deeply committed to voting but in this exigent situation where they, they can't vote. And I think all Boards of Elections have, certainly in the eyes of county commissioners have experienced this, it seems like once every election this kind of situation arises and if the one day that you have no options for that voter if they can't attend the polls. Any other day including the day before someone can come down with an application, etc, etc. you can accommodate. So, this is meant to be extremely limited because it's not designed to be, "Oh I forgot so I'm just going to use the tool on Election Day." There is very little incentive for that because the voter has the ability to attend if they can at their regular poll sites. But for the voter that finds themselves "in extremis" and can't, this would give a tool to local boards to be able to issue an absentee or in this case essentially a special ballot for help in an exigency. And it is on the legislative program.

Commissioner Kosinski: Brian if you could just explain to me the process so I'm in this situation so I have an emergency, I have to go to the hospital and I want to vote, so we're calling it a special ballot now not an absentee ballot. You get around the absentee ballot requirements. What do I have to do to be able to cast a ballot that day?

Brian Quail: As with any special ballot or absentee ballot, there would be an application. And so, someone would have to obtain that application, the voter would have to complete it and it would have to come back to the Board and then the ballot would be given to the agent of the person and then deliver it back to the voter and then the voter would be required to get it back to the board that day or get it into the mail to get a postmark.

Commissioner Kosinski: So, as I understand it right now, we have a list of people that would qualify for this like election day workers, I believe there are religious scruples that prevent you from going to your poll site on Election Day you would qualify. Am I correct here? There's a couple of different...

Commissioner Kellner: Victims of domestic violence.

Commissioner Kosinski: Victims of domestic violence so there's a few categories of people so this is fourth category to that exhaustive list, and this would just add a fourth category of people that would qualify for this kind of ballot?

Brian Quail: It would add an additional category. Each of those different categories there are slightly different rules associated with them and this would be the same. But yes, functionally that's exactly what it does.

Commissioner Kosinski: Okay and you have to swear that you have what some sort of medical emergency that requires you to apply for this ballot?

Brian Quail: Yes, as with any ballot, you have to attach it to you're having the qualification in order to use it.

Commissioner Kosinski: So, this is only a medical emergency though that this would apply to is that correct?

Brian Quail: That is also correct yes.

Commissioner Kosinski: Okay but we don't define it any more specifically than what actually amounts to a medical emergency. It doesn't have to be that I've gone to the hospital or any particular type of activity, I would just swear that I have a medical emergency and that's it. I don't have to say I required hospital care or some sort of special care or anything like that?

Brian Quail: It would require an attestation that the health-related emergency arose on or after the day before the election and prevent a person from attending.

Commissioner Kosinski: I see okay. Thanks for that explanation. And this has been requested by the local boards is that correct? County boards have requested that this kind of relief be given to these individuals?

Brian Quail: That is correct. On a bipartisan and unanimous basis, the Election Commissioner's Association are also seeking legislature for that.

Commissioner Kosinski: Okay thank you.

Commissioner Kellner: Alright if there are no other comments. I move that we approve the legislative packet. Is there a second?

Commissioner Spano: Second.

Commissioner Kellner: Those in favor say aye.

All: Aye.

Commissioner Kellner: Opposed? Alright so the legislative packet is approved. That exhausts our agenda. I don't believe there's any need for an Executive Session. Shall we talk about our meeting date in May?

Commissioner Kosinski: We should.

Bob Brehm: I think while you check your calendar the question that Commissioner Kosinski asked earlier about old business, I found the bill. It's the Senate Bill 62.15 Assembly 6478 and it would provide some flexibility for the largest jurisdiction assignment in cases of a special election, a primary election, or run off primary election if the political subdivision having the contest is not the largest in the county.

Commissioner Kosinski: But you're saying right now let's just take Albany County for example. Albany County doesn't have a primary in the City of Albany this year, biggest jurisdiction will still have an early voting site under current law in the County of Albany in June is that a correct reading.

Bob Brehm: I couldn't hear all those words Commissioner. I think generally we hear from areas like Seneca County where the county site is in a nearby town, it's not the largest political subdivision. If they need to move it to the largest town this year for the general election that's one thing. But in the primary that large town might not have a primary and we had asked when the bill was passed, we discussed this internally, but it doesn't say the largest contest in the primary it's in the county. So, if you don't have one in the largest political subdivision and you could put it in another town, is it supposed to be in the largest town in the primary? And it's not clear by the statute so number 1 this at least provides clarity, what flexibility at all you have. It doesn't make it a mandate. As you know the political subdivision that has the primary in some counties could put the primary in a very small town and the poll site in that town just might not have the connectivity for 9 days of early voting, the security, things like that, the parking, capacity. So, you've got to still give some flexibility to the county if there is no site in that town, they could have it nearby. So, I think the bill at least makes clear there is some flexibility in a primary, special election where you find out something is called, and you have to go move a site to accommodate that.

Commissioner Kosinski: Okay so we don't have a regulation right now we're looking at is that fair to say?

Bob Brehm: Well, when they put the bill in, we kind of figured that trumps us. Assuming they consider it and pass it, I think that would resolve this issue.

Commissioner Kosinski: Well, it may create other issues, but I guess that would be for the legislature. We can't fix everything they do. I do share the concern of whether we even have the ability to make a regulation that really changes the way the legislation is written anyway so I'm okay with it. I just wanted to raise it because it was in our minutes, something that would come back to us, and I thought it was something we should point out. Okay thank you.

Commissioner Kellner: Alright so we're talking about meeting dates. I'm suggesting the 24th or 25th of May. I think the one pressing issue is that we'll have to do the Rank Choice Voting Software certification.

Commissioner Spano: The 24th is bad for me but the 25th is okay.

Commissioner Casale: Yeah, that looks good.

Commissioner Kosinski: Alright 25th.

Commissioner Kellner: Okay.

Bob Brehm: One other recommendation would you consider going forward, you will need to meet before August 2nd so that we can approve the wording of the constitutional amendments for ballot proposals right now. There are two that are passed and pending. There are three that are in the judiciary committee of the Assembly and passed the Senate. So, there's a potential for five. So just we should pencil in somewhere around July 28th or 29th since I think August 2nd is a Sunday and we can't be later.

Commissioner Kellner: August 2nd is a Monday.

Commissioner Kosinski: Do we need to set that date now?

Commissioner Kellner: Well, why don't we tentatively say July 28th?

Commissioner Kosinski: July 28th okay.

Commissioner Casale: Bob in order to expedite this will we have the wording in advance? When will the wording be completed so we could have something to look at prior to the meeting in July?

Bob Brehm: It's always on hold so we on some of this we need to get to the Attorney General's Office and then the Attorney General prepares a recommendation for you to consider. And that's always a challenge for timing since we don't control it. We're also nudging those three that are held in the judiciary committee just to find out when. Earlier the better that they get adopted so we cannot drop it on the Attorney General at the last minute but in the past, we've asked them to get it to us 2 weeks before you meet and if you get the meeting then we can at least try and explain to people what our timeframe is. Because if you have it for two weeks to consider that gives you time to review and talk to each other.

Commissioner Casale: Thank you.

Commissioner Kosinski: Are we still trying to coordinate our Board of Elections Meetings with the Public Campaign Finance Board Meetings?

Commissioner Kellner: Fair question.

Commissioner Kosinski: I thought a meeting was set for the Campaign Finance Board before the other two commissioners got off, so I wondered if you want to discuss with them?

Commissioner Spano: Right now it makes sense to do it that way.

Commissioner Kellner: Let's have Bob and Todd contact Commissioner's Kolb and Yankah to check on those dates.

Commissioner Kosinski: If they can do that. If they have a different date, we can talk about it.

Commissioner Kellner: Sure.

Todd Valentine: We'll let them know what dates you've chosen and if they can concur, we'll get back to you. Again, if they have different dates, we'll let you know that too.

Commissioner Kellner: Anything else?

Commissioner Kosinski: No, I would move to adjourn.

Commissioner Kellner: Those in favor say aye.

All: Aye.

Commissioner Kellner: Alright we're adjourned. Thank you all very much.