

Douglas Kellner: Alright I see it showing up on the monitor now. Good afternoon, everyone, my name is Douglas Kellner co-chair and we're joined by Commissioners Kosinski and Spano in this meeting that we're holding with social distancing online. And so, I'm calling the meeting to order. The first item on our agenda is approval of minutes of February 28<sup>th</sup>, March 3<sup>rd</sup>, and April 27<sup>th</sup>. I will ask that the minutes for April 27<sup>th</sup> be held for corrections and in particular I noticed that the minutes do not reflect the fact that we commenced the meeting with rulings on the petition hearings and I would ask that we include a paragraph on that including the motion that I made with respect to the LaLota petitions. Are there any other comments about the February 28<sup>th</sup> or March 3<sup>rd</sup> minutes?

Peter Kosinski: No, so I'll make a motion to approve both the February 28<sup>th</sup> and March 3<sup>rd</sup> minutes.

Douglas Kellner: Alright thank you Commissioner.

Andy Spano: I'll second it.

Douglas Kellner: Alright. Those in favor say aye.

(Chorus of ayes) Alright so the February 28<sup>th</sup> and March 3<sup>rd</sup> minutes are approved unanimously. The April 27<sup>th</sup> minutes are held over.

Next on our agenda are the executive reports. We'll start with the Executive Directors, Robert Brehm and Todd Valentine.

Bob Brehm: Can you hear me?

Douglas Kellner: Yes, we hear you.

Bob Brehm: Great. Since our last call there have been a number of communications with the counties boards of election to keep a dialogue going and to do our best to learn of the various challenges that they are facing in this environment to prepare for this election. We have scheduled, at a minimum, weekly WebEx phone calls with the county boards and in some instances it's more than weekly. And that is part of the reason why we have some additional resolutions for you to consider under new business in order to best provide guidance to the counties based on the questions that we have received. Our next regularly scheduled call with the counties is tomorrow. So certainly, they'll be interested in what activities are approved today and also as we make further inquiries to preparedness for the June primary. On May 15<sup>th</sup>, the State Board updated guidance that we had sent to the counties in March. The March guidance was to help them prepare for the originally scheduled April presidential primary and we did our best to review guidance mostly through the CDC on how best to prepare for early voting bringing their staff back into the Boards of Elections, and for Election Day. So that was an e-mail that we sent out of May 15<sup>th</sup> and then on May 19<sup>th</sup> we did a WebEx to review the material and to answer their questions. We also held a kickoff session with County Boards of

Elections with NYSTEC our vendor with County IT Directors and County Managers were invited for the Risk Remediation program. That's where we're primarily using resources of 2018 and the 2020 Federal Cyber Security Grants to help the counties come up with plans to fix the items that were identified in the grant important election infrastructure security reports. So that project is underway. We still are waiting on final approvals of the contract language and the allocation of the grant funds to actually fix the items. That's where there's \$9 million available and one more grant program. So, everything else is out in the field except we're waiting on that approval so we can get those grants out. We don't have an actual date. We did do the Covid grant that was the extra round of 2020 grant funds that Congress approved specifically to help counties pay for unanticipated expenses to administer the elections for federal office in 2020. It's almost \$25 million. Those contracts are all out and they know the staff. The PIO unit has been busy, and Todd and I have been very busy signing contracts. So that is moving along. I don't think there's anything too alarming other than there still is a strong encouragement to the counties to get their vouchers in for last year's expenditures so we can get them paid.

And with regard to budget, Todd and I have had a couple of calls with representatives of the Division of Budget. We have not yet received any information on any reductions in the actual budgeted amounts other than the budget bulletin that won't approve any purchase orders for anything other than health and safety items right now. We have a few purchase orders that go back to March that are somewhere in the queue but there have been various rumors of a reduction from the budgeted amount, but we have not seen anything other than talk of it. So, we have asked the budget 'What is going on? When will they give us the numbers?' I guess it's good that we don't have any bad news yet, but I still anticipate that there will be a reduction in the number at some point. So at least from an internal point of view, we are at least looking at contingencies if we have to. other than that Todd, do you have anything else?

Todd Valentine: On our front obviously we've been advising county boards as Bob said but we've also started to bring back you know, we never closed, so not reopening, but we are bringing more staff back on a rotating basis, to make sure that those who can do work here can do it safely. That they have obviously physical barriers between the employees where they exist, providing masks, if they need to have closer interactions, then obviously we have plenty of soap and water and hand sanitizer. So, we're still operating, now the rest of the building has not really brought anybody back so as far as I can tell, we might be the largest agency in the building right now, based upon the traffic in the elevator, but we expect that to change soon. We're not sure when but we're working, we're going to continue to work towards that. So, any questions?

Douglas Kellner: Well, thank you. Commissioner Kosinski did you want to?

Peter Kosinski: No, I have no questions. I'm good.

Douglas Kellner: Then we'll go to the Counsel 's reports, Kim Galvin and Brian Quail.

Brian Quail: Good afternoon, Commissioners. Since the last meeting we've actually been quite busy with finishing up ballot access litigation and more so with new litigation. I think the Commissioners are well aware of the litigation surrounding the Yang matter which has of course, resulted in the presidential primary being reinstated, and counties are obviously implementing that. We also dealt with the state of federal litigation related to tangentially ballot access and the Queens Borough President excuse me and other matters. The Queens Borough President was not a federal case and its in the second department now, and we were named there although not principally one of the parties. And, of course, we had the litigation that ended last week by the Federation of the Blind and the Disabilities Rights New York for other named plaintiffs and filed papers in that matter this morning, and there will be a hearing on Friday. In the continuing litigation in Upstate Jobs and League of Women Voters also and we are continuing to work on those matters. There was a briefing schedule on Upstate Jobs where we have an opening briefing on summary judgment that's due in July. With respect to the unit, folks have worked toward implementing the resolution adopted at the last meeting on preventing CFB and NYESS Voter for filings. Those discussions on implementation matters have gone very, very well and implementation has begun. Per the adoption of the regulatory change at the last meeting we posted the new calendar essentially eliminating that first post primary filing and merging that with the July periodic. We do have outstanding 1 ballot access matter but does not affect a primary with the hearing in Yates County in a Congressional contest related to the Working Family's Party line on June 16<sup>th</sup>. We actually are in the final stages of updating the legal update to reflect this year's litigation right to the Court of Appeals and we expect that to be posted eminently. With respect to the Public Financing portion of the board that comes into existence on July 1, we have begun the process of preparing draft regulations. Staff has met and discussed. We are reviewing the Campaign Finance Board's Regulations, the FEC, the prior regulations that were adopted by our Board for the pilot program on the Comptrollers race 2 years ago, and we'll be looking at other state's regulations as well. And we do anticipate an initial work product from those efforts be available to the Commissioners in 2 to 3 weeks.

And then, obviously, with respect to the resolutions that are on the agenda, the Counsel 's office was involved in those, and I think it would probably be appropriate to discuss those when we get to them on the agenda. In terms of where we're at in compliance numbers, the total number of reports submitted to the unit stands at 147,765 of which 129,746 have been reviewed. So, there is a little bit of an uptick in the differential between completed reviews and total received which is totally because of the Covid-19 response of the agency and the impact on the review process with people being remote. That situation is resolving itself both at a better job of empowering people to do this work from home and more importantly the amount of work being done on premises is also ramping back up.

With respect to delinquencies, we see with the January periodic we still have 3,247 unfiled reports which is a very big number. I think the biggest number we've ever seen for a periodic or any other report. And we for the July period of 2019 the outstanding

number is 2,385 and I won't run down all of the unfiled reports but for the last 2 that's the number.

The total deficiencies referred that remained deficient is 1,425. There have been no new hearing officer cases since the last meeting which makes for none this year and to refresh Commissioner's recollection, there were two in 2019 and that's it for me. I don't know if Kim has anything else.

Kim Galvin: Nope, that's about it.

Douglas Kellner: Can you report on the status of the SAM party litigation challenging the Public Finance Divisions?

Brian Quail: Yes, so the SAM party litigation is a challenge to the requirement for a party certification that, among other things, but primarily that a party would be required to field the presidential candidate and then derivatively if they didn't field a presidential candidate and would thus deprive their party status an attempt to challenge against the 45,000-signature threshold. And, of course, the number of votes that are required at the presidential election being either 2% or 130,000 is also being challenged. So, the status of that is there is a briefly schedule on a preliminary injunction application and that is due in June. And we've also received some discovery requests that the unit is reviewing with our attorneys and obviously the Commissioners.

Kim Galvin: Just add to that, I don't know if at our last meeting, the days are jumbled now whether or not the SAM complaint had been amended to drop all the other parties but us but that has been the case with the understanding that the other parties could file amicus briefs without objection. I don't know if that occurred before our last meeting or after, but I know that the other parties are still interested in putting forth their position in this litigation.

Douglas Kellner: Okay good. Thank you. Anything else? Commissioner Spano, Commissioner Kosinski?

Peter Kosinski: No, I have nothing.

Douglas Kellner: Then let's turn to Election Operations, Tom Connolly and Brendan Lovullo.

Tom Connolly: Thank you Commissioner. Just to kind of recap what we've been working on recently. We did issue a number of amended certifications for both the presidential primary and other primaries for June 23<sup>rd</sup> as a result of a court action, a lot of this was discussed in Counsel's update. We've been working with counties on options for holding multiple election events on the same day for typical matters like poll books and ballot on demand printing and programming the machines to be able to conduct multiple election events with the same equipment. We did prepare a memo on pre-

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election testing which is included in your packet, and I believe will be taken up for consideration later in the meeting. We worked with vendors to get additional guidance documents for county boards to aid them in their programming of the elections on June 23<sup>rd</sup>. We've been working with the other agency staff on developing the guidance over Covid-19 for county boards for polls sites and poll workers. We've been coordinating with Public Information unit to get information on early voting sites and hours so that we could provide that information to the office of Court Administration, who has to assign judges for election duty in both the early voting period and for Election Day itself. We've also been collecting data from counties on their readiness for the June 23<sup>rd</sup> elections with regard to confirmation of availability of poll sites and poll workers and we're also collecting information on absentee applications for ballots sent out. With regard to voting systems, for ES&S we have basically finalized the testing requirements matrix with SLI and NYSTEC. This basically is mapping all the different state laws and regulation requirements to a testing matrix that's going to be used to then develop testing plans so we can test the ExpressVote itself. We continue to have weekly discussions with both SLI and ES&S to kind of keep up on the status of everything and determine if any other actions are necessary. With regards to Dominion as I mentioned in the last meeting, SLI has performed an analysis for what testing might be required for an update that was submitted by Dominion to update the ICP and the ICE firmware. So, we're going to be doing some of that testing in-house and we would look to put that together in a report for the Commissioners at a meeting in the near future.

In addition to Dominion, we've also been doing some acceptance testing at Wyoming and Chemung Counties this week. With regard to Clear Ballot, there was a Diminimus, ECL engineering change order received just for battery backup replacement. The old battery backup was no longer available, so they submitted it to the same companies, UPS but just the newer version and we had our tech lab review that and they determined it to be the Diminimus exchange and no further testing was necessary. We are also doing acceptance testing at Cattaraugus, Putnam and Chenango Counties this week for Clear Ballot systems to be in receipt. That's basically it so far; Brendan, unless you have anything you want to add to it?

Brendan Lovullo: No, I'm good, that's good thank you.

Douglas Kellner: Can you tell us have all 58 boards submitted their early voting poll sites?

Tom Connolly: Well, I believe PIO has been collecting that. PIO could probably speak to that better.

Douglas Kellner: We can wait for them. Okay.

Cheryl Couser: We're waiting on one county for their hours and one county for their early voting sites and their hours.

Douglas Kellner: And which are those counties?

Cheryl Couser: We need Westchester County's hours, their poll sites. They provided the poll site designations and New York City has to provide their sites and their hours of operation.

Douglas Kellner: Alright and I noticed that the New York City early voting sites went online at their local website yesterday. So, I guess they haven't told you but...

Cheryl Couser: No, but we'll reach out right after this meeting.

Douglas Kellner: Okay so going back to Tom or the Executive Directors, what is the feedback we're getting on the ability of the counties to actually staff for the Election Day poll sites?

Bob Brehm: We've heard from a number of counties, and we had a call scheduled with the Executive Chamber and the officers of the Election Commissioner's Association last Friday and it's different. There is no uniformity other than as to numbers, but some have had challenges with poll sites if they are in schools that are running programs or adult care facilities, things like that that nobody can get into right now. So, they have had to adjust. But depending on what part of the state you're in, some have had little impact on sites, but some have had an impact on the number of workers. So, they're having a few challenges on actual poll workers and anywhere's from a few to depending on where you are in the state to as many as 50%. They were still working to try and supplement availability and to make adjustments to the plans as best they can for what options when you lose a site, how best can they prepare to consolidate them into another site. And I think it's kind of both from a consolidation point of view and if people are primarily voting by absentee, some of the issues related to the resolution later under new business for the equipment. Some of the standards that are in the regulation for privacy booths may very well exceed the number of people that can safely be in a site and still provide 6 feet of distance between individuals. So, we're asking to waive that requirement in order to, you can't have more equipment in a building than you have people for, it doesn't make any sense and that will help some counties when they have to consolidate what they really do. So, it's a challenge for sure. But right now, the only thing we have is under the statute is to document what is possible, what resources they have available and what is not possible and what impacts the voters in the least way. And if they have to consolidate a polling site, then they'll have to send out a letter within 10 days of the election telling the voters where the new site is, and on Election Day put signs up at the old site directing them to the new site.

Todd Valentine: Well, if I could just jump in Bob I mean, just not put a rosy picture on it but it's a rare county that has not been impacted in some way by either losing a poll site as Bob had suggested because it's a site that is really no longer usable; a nursing home or a community center like that, or poll workers simply now have decided that they don't want to risk it and have made themselves unavailable. And Bob is absolutely correct.

The statute provides a mechanism for when the poll site is not available, that you have to contract so to speak. The counties are still working on trying to get as many poll sites as they normally would open, and I think you're going to see the impact not so much for early voting because that already had a small number of sites, but the impact is going to be felt when we get to the actual day of the primary election and the one thing we don't know and while we know many people have shifted to absentee voting, whether the turnout will have lessened it enough so that the impact on the actual sites that are left that are reduced doesn't get to a point where it creates lines or long times for voting. We don't know the answer to that. We know that they're trying to do it but those are some good points Bob.

Kim Galvin: And can I just add one other thing for Commissioner Kellner's point, one of the interesting things that we all participated in, Bob and Todd particularly, was a call with Dawn Sandow and Mike Ryan indicating that many of their poll workers travel via the subway, and the subway has now been shut down from 1:00 to 5:00 in the morning for cleaning, pursuant to an executive order. So their concern is if the poll sites are due to open at 6:00 AM, many of their poll site workers ride the subway to get there and so they're asking relief, either to reopen the subways prior to 5:00 AM or to start the opening of the poll sites at 6:00 AM and I know they wrote an e-mail to us and we joined Bob and Todd joined with their call of concern to the Governor's Office and as far as I know that has not been responded to as of yet.

Douglas Kellner: It's a problem. Thank you for that report. My understanding is that what we're telling the local boards is that they need to do everything they can to comply with the statutory requirements but that if its impossible to comply, then all that they can be expected to do is what's possible. Is that everyone's understanding?

Bob Brehm: Yes.

Todd Valentine: Yes.

Douglas Kellner: Alright one last thing for Operations, have we heard anything from New York City about the machine certification requirements in order for them to implement rank choice voting next year?

Tom Connolly: We have not had any discussion on that recently. We did inquire with the vendor a few months back. They did say that, obviously, they were working on including that functionality in a future release, but I think they also demonstrated a utility, kind of a standalone utility that could handle the exports from the current EMS system and kind of do ranked-choice reports, but we will follow back up on that and we'll touch base with New York City and provide more information at the next meeting.

Douglas Kellner: Okay. I'm just concerned that the clock is ticking away, and they may have to implement this next spring. Alright anything else for Operations? Alright so next is Public Information, John Conklin and Cheryl Couser.

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John Conklin: Thank you very much Commissioner. PIO continues to be extremely busy answering a lot of phone calls and e-mails and questions about absentee ballots, how to get them, are they going to get them, what to do with them, etc. We've also had lots of questions about the presidential primary and the lawsuit. We've had a lot of questions about what's happening with independent nominating petitions, so there's been a lot of inquiries handled by the Public Information side of the unit. We've also participated in all the now weekly ECA calls going back through April and May. The unit processed 128 FOILS in April. With regard to the website, we've continuously posted all the updates on the relevant Covid-19 Executive Orders and the different affects to elections. As Tom mentioned, we posted an amended version or several amended versions of the primary election certification and then the presidential primary certifications and then amended special election calendar for New York 27. We posted an update for the 2020 campaign finance filing calendar as Brian mentioned. There was also an updated notice on paid Internet digital ads. We've also moved several things off of the home page, a list of who filed petitions for designated petitions? The objection report, authorization and acceptance report, declination and substitution report of the move over to the Election Results page temporarily.

NVRA unit is not going out in the field right now obviously, so we don't have any reports on board visits. For the website accessibility coordinator, we continue to have internal meetings with information technology and our vendor level access to work on other things with regard to the website that we have ongoing responsibility for. Election night reporting and CAPAS-FIDAS. Just to remind boards out there, if you're updating or changing your poll sites or consolidating, please send us an update as soon as possible for your poll sites and we are also collecting Department of Justice surveys for military and overseas civilian voters. The 30-day follow up survey was due on Tuesday and almost everybody got their stuff in but there's a couple of stragglers. So please do that as soon as possible. So, Cheryl is going to do an update on grants for us.

Cheryl Couser: Thank you. PIO now administers 7 grant programs. Over the last year we've rolled out 4 new grant programs. Bob covered the HAVA CARE Covid-19 grant, which was kicked off on May 5<sup>th</sup>, and right after the kick-off, we sent all the counties a copy of the contract. Thirty-three counties returned the contract, and this is a very short grant cycle as it goes from March 28<sup>th</sup> for eligible expenses to November 16<sup>th</sup>. In addition, this last week we participated in 2, actually 2 kick-off meetings for the Election Cybersecurity Remediation Grant Program that's a 2-year \$9 million grant program. When the unit receives okay, we will send out contracts to all the county boards. As for the early voting grant, the Early Voting Capital grant program which was a \$14 million grant has a balance of \$9 million. Thirty-two counties fully exhausted their funding. That grant program runs through December 31<sup>st</sup>, 2020. As for the Early Voting Aid to Localities Grant that was a \$10 million grant, we have a balance of roughly \$7.4 million with 22 county boards fully exhausting their funding. It is notable that 19 from both grants 19 counties have exhausted all their Early Voting Funding. I would like to point out that we have 3 grant programs this year that will have eligible expense periods that

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expire in November or December. For a very short period of time, we will be doing a lot of outreach after the election in July and August, and really urge counties to get their receipts in and get their reimbursements. The unit monitored 2 EAC grant presentations around the HAVA CARES Covid-19 grant, and one on the Continuity of the 2018 and 2020 security grant funds and then I'd also like to mention shortly after the last Board meeting, we had a call with the United State Postal Service and they dedicated a team to assist New York State to coordinate with every county and make sure that the standard consumer application and ballot envelopes were turned into return paid postage envelopes and for applications and ballot returns. They also coordinated with counties to ensure that their business reply account set up was correct for these mailings. That was a pretty time consuming 1 ½ weeks and the USPS really turned around the products fast to make sure that when absentee ballot applications were sent out those return paid postage envelopes were correct and had all the right insignia on it and that process would be seamless. So, I'd like to thank the New York State team at USPS of Lisa Del Rio and Tim Rakow, they spent a lot of hours for about a week and a half with us nonstop.

John Conklin: Any questions?

Douglas Kellner: Anything else? Cheryl what is the post office ballot tracking capabilities, given that New York prepares the envelopes?

Cheryl Couser: Well in this project itself I didn't get into the tracking capabilities, and I can call them and ask but they do have advanced tracking capabilities of election mail. This project was to make sure that all the mail pieces had the proper coding on it to be tracked. So, I can get that information and provide a further update for you.

Douglas Kellner: Good, thank you. Anything else? Then we'll go to Information Technology William Cross.

William Cross: Good afternoon, Commissioners, we continue to have a small number of staff on-site to maintain systems and support, while all other IT staff are working remotely in some capacity. For projects, CAPAS-FIDAS overall the team continues to make progress working remotely but we can't yet move forward with user acceptance testing because staff isn't on-site. We're focusing on other areas that we can including performance, security, accessibility testing, as well as some remaining development aspects in preparation of training materials when we can go live. For online voter registration, this project has been placed on hold due to the budget bulletin on April 28<sup>th</sup> which froze capital funds. However just prior to this, the RFQ requests a mini bid were completed and sent to OGS, so it will be ready to go when the funds are available.

NYESS voter, we've completed enhancements to the system to compare affidavit, absentee and voter history to look for duplicates and that we'll do shortly after the primary on June 20<sup>th</sup>, I'm sorry June 30<sup>th</sup>.

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In terms of security, last week we kicked off, as Bob indicated, the 2020 Cybersecurity Remediation Grant program and had a WebEx with county boards, administrators and IT. We've also started our planning meetings with the federal DHS, develop content for our new series of tabletop exercises to be held in the July timeframe. And of course, our project to upgrade the connection to the county boards and update equipment is also continuing. And as always, we are looking to continue to make, well we are making multiple security enhancements to our own infrastructure on a daily basis. In terms of website traffic, traffic was slightly down this period with a little over 360-page views, the most visited page though this period was the voting absentee page. And that's what I have for my report.

Douglas Kellner: Alright thank you. So, I can see that our next report is from Risa Sugarman for Enforcement, and I see that Ms. Sugarman has not joined the meeting. Brian or Kim do you just want to recap what you know has happened from the Enforcement Unit since our last meeting?

Brian Quail: This is Brian, I'm not aware of anything. We still stand at zero hearing officer referrals for 2020. There were two last year and we still stand at the same numbers of deficiencies and referrals unresolved as before.

Andy Spano: Did I hear you before Brian say that you had the highest number of nonfilers than what you can remember at any time you can remember?

Brian Quail: Yes, the more than 3,000 nonfilers for the January periodic and in particular, still being unresolved at this point, is I believe a record.

Andy Spano: Is there any kind of correspondence to the fact that we have all these nonfilers and we don't seem to have any activity in that office?

Brian Quail: Well, I don't specifically know what the reason is. it is possible also that some amount of the reason is related to current circumstances but as I recall, when we initially looked at these numbers after the January periodic was due and before the obvious impact on all of society by the Covid pandemic, we were still looking at a very big number then and I think that when you start off with having a big number and you have intervening events, it makes it more difficult for those numbers to come down. But it is a big number. There clearly continues to be a few out there widely held in a number of quarters that there's no consequence for not filing and the proof is in the numbers.

Peter Kosinski: Commissioner Spano I just responded to that myself. I think its just logical to conclude that the failure of the Enforcement Unit to enforce the law leads to more law breaking. That's just sort of logical. So, it certainly makes sense to me that the failure of the Enforcement Counsel to pursue these failures to file is leading to more failures to file.

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Andy Spano: Yeah, but you know, this bothers me and certainly I can conclude that also. But all we do is report on it every week on that. We don't do anything about it. No one else does anything about it. So, what do we do? Just let it go? I have no recommendation as to what to do but it just bothers me that we report and that's it. That certainly isn't an action, and I don't know what action we can take.

Brian Quail: I would actually like to come back around to that if I may. We won a lawsuit with respect to requiring the Enforcement Counsel to file various reports with the Commissioners on her activities. She has declined as a result of that Supreme Court judgment to follow it and she's declined to obey the regulations that were lawfully enacted according to the lower court and has indicated that while the appeal on that matter is pending, she's not going to comply. We did make a motion for a more definite and clear order that would potentially support a contempt application and the court was not helpful to us by declining to further clarify that the lower court's order, but I do want to report that the appeal is pending and will eventually come to conclusion. Normally, her brief and perfection of appeal would have been due on May 5<sup>th</sup>. As a result of the Covid pandemic, the third department suspended perfection of detail deadlines. They suspended them in the case of appeals that would be due between April 27<sup>th</sup> and May 8<sup>th</sup>. They suspended them until July 29<sup>th</sup>. So hopefully no later than July 29<sup>th</sup>, they have to perfect the appeal. Our responsive brief for the Appellate Division would be due 30 days later and obviously we will be complying on time if not sooner than that and hopefully the Appellate Division will take it up quickly and we'll have a decision from the Appellate Division that would not permit the current \_\_\_\_\_ to continue. But I can say that we certainly here at the staff level share your frustration, and I do not think it's applicable by anything reasonable. She has a legal obligation to do something in way of making reports to you by lawfully adopted regulations and she is not doing that.

Andy Spano: Let's assume that they rule in favor of us, so we'll get reports. That won't change the fact that we have all these outstanding issues. We'll just get a report. It doesn't solve the problem of all these nonfliers, and this is just going to escalate.

Peter Kosinski: Commissioner, I think you make a good point, and I appreciate what Brian told us and I support the pursuit of that lawsuit, but I agree, even if we're successful there it really only requires the Enforcement Counsel to report to us and the public what's going on in her unit. I think we can conclude from what little we know, there's not much going on there. I think this would just force the Enforcement Counsel to finally tell us and the public what is going on, but it doesn't help us with the actual enforcement of the law. You know, unfortunately the legislature chose to take away that power from this Board as a Board and give it to the Enforcement Counsel and she has that unique ability and her failure to do so unfortunately leaves us I think in a difficult spot. She can enforce it; local district attorneys can enforce it. There are limited people in this state that have that authority. We used to have some authority but that was in essence removed and given to the Enforcement Counsel. So unfortunately, while we know there's very little going on, I don't believe we have a lot of options in our arsenal to actually pursue these matters.

Andy Spano: What if in our annual message on what we think legislation should be passed, we ask for that power back?

Peter Kosinski: I mean that's fine with me. Listen, I think the failure to pursue this is unconscionable whether they give it to us to pursue or someone else. I think it's an obligation of some state agency to pursue it. I really think there should be more pursuit of why the Enforcement Counsel is frankly not doing her job in my opinion. I think this was her job, it was given to her by the Legislature and for whatever reason that I do not understand, she's chosen not to undertake that job. Giving us that authority back may help but...

Andy Spano: At least if we had the authority to pursue this the way we did in the past and let her take on whatever next level to enforcement that would be fine, but at least we might clear up some of this, some of this nonfiling.

Peter Kosinski: Well, I'd be willing to entertain that I have no problem with that. I think our office is pretty busy. I don't know how much time the Counsel's office has to take these matters into their bailiwick again but certainly as a commissioner it's fine with me, but I would defer to staff at some level as to how much time they have to devote to this as an activity.

Andy Spano: Well, I mean she has money in her budget to do this.

Peter Kosinski: Big time. Big time.

Andy Spano: So why don't we just ask them to move some money over that's all.

Peter Kosinski: No, that's fine. If they want to give us...

Andy Spano: I'm not saying we should do this for free, but I mean just this one aspect of it. We don't want to look like we don't need an Enforcement Counsel, but we certainly want to make a point that we want to clear this mess up. We're giving the impression to everybody who runs for election they don't have to file. And if you don't file, nothing happens to you.

Peter Kosinski: I totally agree with you Commissioner and if there is some way, we can make that happen I think we should. I'm open to suggestions myself. If one of those is to ask for the power back that we pursue them I'm open to that but maybe there's other suggested ways to pursue this, but I totally agree with you that we're sending absolutely the wrong message to the community, the political and election community right now about the necessity to follow the law in these matters. And the public suffers because they now will not have the knowledge they need to know where the money that these candidates are raising is coming from and where the money they're raising is being spent.

That was the whole goal of the election financial reporting concept, and it's being totally undermined right now by this failure to force these candidates to comply.

Andy Spano: And look at this issue, our Compliance Unit is doing a great job going over these things and then all that information, all that work goes for naught.

Peter Kosinski: Again, I totally agree. It's shameful and it should be address I agree. So, there's something that we can do, we should do it. If we need legislative change, we should ask for it. But frankly my focus right now is the Enforcement Counsel who is empowered with this, should be doing her job. I mean I felt that the reporting that we have been asking for under the new regulations and now the court has approved, would help us understand what is and what isn't going on there. And would help the public understand and I think the light of day will help people understand what's not going on, why it's not going on, we'll demand some answers and I think that may take us a long way towards getting this resolved. But up until now, of course, we have not been able to actually get this information and unfortunately, she continues to stonewall us on that.

Andy Spano: We do have on the record, information from her in the past where she thought this was not as important as what she was doing. So even if she reports to us, she's already admitted that following up on all these nonfilers is not a big issue to her.

Peter Kosinski: Well again, I just totally disagree with that, and I'd be happy to see exactly what she is doing. I think that's again where these reports could become helpful to us is, well if you're not doing that what actually is going on? What are your priorities? Let the people see what your priorities are, and there can be comments then made as to whether the public, say the state legislature that empowered her with this then would also know what this new unit is that they've created, what they're doing and what they're not doing, and they can also make a judgment call as to the success of this. But until you have information, its very difficult to make any assessment of the success of a particular project. And this stonewalling of just straight information, just numbers, just data, just statistics, metrics, makes it very difficult. Maybe that's the goal.

Andy Spano: Sometimes you need to get people's attention. We haven't gotten it.

Peter Kosinski: I agree.

Kim Galvin: Commissioner Kellner, could I just make a brief comment. I should know enough not to talk, but since I'm only in the room with John and Cheryl, they can't really kick me. but I have two comments on that: 1) obviously the people that make the laws have an indication that she's not doing it because in the creation of Public Financing arena they took all the enforcement away from her. So that's one point. So obviously they don't think she's doing a great job, or they would have, in my opinion, carried it over. And secondarily, to add insult to injury, and I probably shouldn't go there but I'm going to, not only are they not doing their own job we have reports from the counties, at least 4 or 5 of her staff people are calling them up and indicating their guidance is wrong

on absentee ballots and they're not following the executive orders, and what they're doing is creating confusion out there now regarding what the counties are or aren't supposed to be doing. I mean we examine these executive orders, we come up with guidance and now she has at least 4 or 5 of her staff members I know going into these counties directly and giving them inconsistent information with what we're telling them and sometimes their staff guidance isn't even the same guidance to one in her own unit. So now only is she not doing her job she's doing our job incorrectly. So, I just thought that was important to note to the Commissioners.

Andy Spano: Well, that's serious.

Douglas Kellner: Anything else on Enforcement? Alright well then, we'll move to the business on our agenda. There is no old business. The first item of new business is the special absentee voting application procedures. We have two resolutions: one is 20-09 and the other is 20-12. Can we take them both up together? Does anyone want to discuss them? Alright then I'll move the adoption of both resolutions.

Bob Brehm: I had just one friendly amendment I'm sorry I was trying to figure out how to get it to you all. The instructions on the application form for the accessible application, the third paragraph of the instructions we should strike that sentence.

Todd Valentine: Resolution 20-12.

Bob Brehm: I was just giving Todd a copy I sent it internal by scanner.

Peter Kosinski: I'm sorry Bob what sentence?

Bob Brehm: On the instruction panel the third paragraph it should end after "the deadline for submitting this form is 7 days before the election, but you should return it as early as possible." We had some other sample words in here from Michigan that we took out of the form itself and the instructions still says to fill in this section that we took out after that. Todd, I sent it to you and Kim electronically because I didn't quite get into that room yet.

Douglas Kellner: That's the application that's not the resolution.

Peter Kosinski: That's not the resolution that we're voting on.

Bob Brehm: That's correct.

Peter Kosinski: Now the resolution that I have in front of me, hold on a second, let me just take a quick look at that. So, you're talking 20-12?

Bob Brehm: Correct.

Douglas Kellner: Well two of them mention 20-09.

Peter Kosinski: Let me just take 20-12 it had a blank date in the second resolved, my form does. It says any voter seeking accessible PDF ballots shall request such ballot on or before blank date. What's the date that should be in there.

Bob Brehm: The seventh day. That's what the statute provides.

Peter Kosinski: So, it should say "seventh" in there?

Douglas Kellner: And that's on my copy.

Peter Kosinski: I'm sorry I don't have that mine is blank. Okay so seventh is the word that goes in there okay and that's statutorily required right?

Bob Brehm: Correct.

Peter Kosinski: Okay then I'm okay I...

Douglas Kellner: So, we moved the adoption of 20-09 and 20-12.

Andy Spano: So moved.

Douglas Kellner: Alright those in favor say aye.

(Chorus of ayes) alright so each of those resolutions is adopted unanimously. Alright now the next item on the agenda are the special polling place procedures which are resolutions 20-10 and 20-11.

Peter Kosinski: Okay yeah well, the 20-11 is the privacy or 20-10 is the privacy booth resolution, right?

Brian Quail: That's correct.

Bob Brehm: That's correct.

Douglas Kellner: Okay I have them both now.

Peter Kosinski: Okay and that in essence is allowing the counties to reduce the number of privacy booths to comply with social distancing requirements for the June 23<sup>rd</sup> primary is that kind of what it does basically?

Todd Valentine: That's correct.

Douglas Kellner: And then 20-11 allows a special procedure for using Test Deck mainly because of the presidential primary, is that right?

Todd Valentine: That and the special election CD-27 with the additional elections, that's correct.

Douglas Kellner: Alright so I move the adoption of 20-10 and 20-11 is there a second?

Andy Spano: I'll second.

Douglas Kellner: Alright and those in favor say aye.

(Chorus of ayes) alright so they are unanimously adopted. Does anyone want to make a motion about Executive Session?

Peter Kosinski: Yes, I would like us to go into Executive Session to discuss some litigation issues.

Douglas Kellner: Okay and who is going to attend that Executive Session? And I can send out a separate WebEx invitation to the Commissioners, the Executive Directors, the Counsel s. Is there anyone besides the Counsel s who will attend the Executive Session? Bob, Todd, do you know?

John Conklin: We should be in to take notes.

Bob Brehm: Well Cheryl had set up an extra session that I gave to Todd to send to Commissioner Kosinski, and I sent it to Commissioner Spano and Commissioner Kellner during the...

Peter Kosinski: Should I log out and log back in?

Bob Brehm: So, if we can log out and go to that e-mail that was sent to you while we did this session, then we can log back into that session.

Todd Valentine: Yep, I sent that to your yahoo e-mail.

Peter Kosinski: You can send it to this one Todd, I'll just log out. I'll get it when I log out. So, before we go, we have to set up another meeting.

Douglas Kellner: I don't know that we have a clear, my suggestion would be that we pencil in July 1<sup>st</sup> and then we call an earlier meeting if necessary.

Peter Kosinski: Well, let me say, I can't do July 1<sup>st</sup> I'm sorry. I apologize but that's a bad day for me. Is there another date we could pencil in?

Douglas Kellner: How is June 30<sup>th</sup>?

Peter Kosinski: Sure, sure. I could do either one but the first is bad. How about...

Todd Valentine: I said Tuesday, June 30<sup>th</sup>.

Peter Kosinski: Well, how about June 30<sup>th</sup> so we don't bump up against the holiday weekend, how about the 30<sup>th</sup>.

Douglas Kellner: Okay.

Peter Kosinski: Is that good? Let's pencil in June 30<sup>th</sup> if that's okay. Alright if that's okay, I would move we adjourn out of the public meeting, go into the Executive Session and I would note I don't think we're planning to come back into the public meeting.

Douglas Kellner: Alright I approve, Commissioner Spano say aye.

Commissioner Spano: Aye.

Douglas Kellner: We're adjourned.