

Commissioner Kellner: Good afternoon. I will call the meeting to order. My name is Commissioner Kellner, co-chair with me is Commissioner Kosinski who is also a co-chair. (Can't hear) The first order of business is the State Board of Canvassers to certify the election results from August 23rd.

John Conklin: Can't hear him.

Commissioner Kellner: ...two special elections. ...second?

Commissioner Kosinski: Second.

Commissioner Kellner: All in favor say aye.

Commissioner Casale; Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Kellner: So, we will take a moment to sign the certifications.

Large block of time (about two minutes) where there is no sound.

Commissioner Kellner: Alright, so we congratulate our two Congressional winners. The next item on the agenda is the adoption of the minutes from the August 15th meeting. Is there a motion?

Commissioner Kosinski: I'll move it.

Commissioner Spano: Second.

Commissioner Kellner: Those in favor say aye.

Commissioner Casale; Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Kellner: The minutes are adopted. The next agenda item is the Unit Updates, we'll start with our Co-Executive Unit, Kristen Zebrowski Stavisky.

Kristen Zebrowski Stavisky: Thank you, Commissioners. We continue to work with staff and the county boards and other state agencies since our August 15th meeting. As you know since you just certified the results of two special elections in addition to the August primary. We activated the Secure Election Center, we met with our statewide partners, there were no issues, and IT and Secure Election staff did an excellent job keeping everyone informed. They really have the process down to a science of working with all the state partners to make sure that we are watching utilities and all different things that could go wrong during the elections, so they also at the same time participated in CISA's Tabletop the Vote exercise and actually, Ben Spear was the facilitator for the New York breakout room during early voting. So, that was a great job by them.

In terms of online voter registration and automatic voter registration, the contact was approved by the Attorney General's office. It is not under review by the state Comptroller's office. We have had back and forth with them, providing them additional information that they have asked for, and we are working to finalize that process. The memorandum of agreement with the other state is moving forward. We are really at the end of that process, just the final details to make sure we have a secure transfer of the code. As was mentioned in July, we did have a demo of the system, and expect to receive the code for their entire system, some modules, which we may or may not use, but it is our hope that this will be a productive partnership with the other state, so that any enhancements we make could benefit them in the future, and visa versa. I will say that we, IT will probably speak more about this in the future, but they are on target for an interim solution, so that in 2023, we will have an online voter registration.

The Public Campaign Finance Board, we are finally, I think, in the end stages of the review of our RFP. We have a meeting tomorrow, and I think that really is the final, fingers crossed, we're hoping we will be able to release that shortly. As we have noted in the past, the scope of the project did expand to ensure one integrated system, so that all of our CAPAS, FIDAS, our public reporting, that it will all be integrated, and currently on that project, we are meeting with, the project manager is holding sessions with operations, compliance, and IT to make sure that we have all the business and functional requirements necessary. And I think in the next week or two, as an agency, we are going to have an update of the progress.

Space planning, I am pleased to report that our first-floor space renovations were completed. The staff moved in, and it looks great, so maybe we will, at the end of this meeting take you for a little tour of that. We are still on track to begin our construction on this floor at the end of February 2023. We have biweekly meetings with our OGS team on this, and we continue to raise the concerns that we need adequate swing space for this renovation. Ideally, we would rebuild, relocate this entire floor during renovation. It would be quicker, less disruption. Currently, we do not have swing space for that, so we continue to advocate for it. We would also want to move at least, at the very minimum, fifty percent, so that we could have temporary walls and at least have the process moved forward with the least amount of disruption and also recognizing that this will start right before the presidential year. We want to make sure that it goes as quickly as possible. One recent positive on that is the area on the first floor that is just above the lobby up the steps and next to our current administrative space

is becoming swing space for us. This is already wired for us. It is a lot more conducive to our operations, and we were told, I think, at the end of or two weeks ago that this would be the case, so that is definitely a positive.

Commissioner Kosinski: Kristen, have they given you a timeframe for how long it is going to take once they start?

Kristen Zebrowski Stavisky: Well, they did, at one point. I think it was seven-to-eight months, but that is saying that the entire floor moves out, so it increases if we can't move the entire floor out, and I did, during our meetings, Todd and I both made the inquiry as to why every other floor in this building that is renovated, they have all moved out. So, seven-to-eight months would be optimum if we cleared the floor and resumed operations somewhere else.

We continue to do our biweekly meetings with the Division of Budget, General Services, Enforcement, Executive Chamber, we meet biweekly, and our monthly conference calls with the Election Commissioners Association. We last met on August 25th and went through all of their election night reporting, and results and deadlines, winners, how to deal with post-primary vacancies, and the beginning of the successful absentee statewide system. And I think Operations will talk more on that, but they held two trainings last week. There is a guide, so for November, we will have a statewide successful absentee system up and running.

The County Boards continue to receive numerous FOIL requests, and we update our guidance to them and provide assistance, usually on a daily basis.

And we continue to work with the Center for Technology and Government on our phase two of Envisioning Elections Future, and we are planning a full-agency day-long event on that in December. That is all I have. I don't know if Todd would like to add some more.

Todd Valentine: That was pretty comprehensive. Just, then again, looking forward, talking about the primary election, with 40 days to the start of early voting for the general election, so, we'll ramp up the same group that we had for security to be available and be able to respond to questions that come up with counties as we, you know, part of what we are doing today, or this week is to certify the ballot. On Thursday, begin to certify and the first wave of military work. The last day to get military ballots out is the following Friday.

_____ (Unintelligible)

Commissioner Kellner: Questions? Thank you. So, we turn to Election Operations, Tom Connolly and Brendan Lovullo.

Tom Connolly: Thank you, Commissioner. Election Operations has been busy, as usual. Recently, we collected an aggregated the statements of canvass from all the county boards, with the exception of Monroe because they had no primary, but for the August primary election, as well as the two congressional special elections, the results of which you just certified.

As I mentioned at our last meeting, I was heading out to visit 11 of the 22 candidates that were holding the special on the same day as the primary. It was a whirlwind tour. It was very ambitious. The next time, I will actually plan some time for lunch, but we did have lunch on the second day with Commissioner Casale, which was nice. Every, there were, the boards that we visited were kind of a variety of configurations with regard to the electronic poll books. All three of the electronic poll vendors were represented in the counties that we visited. Not all of the counties did everything in the exact same way. Some of them used the poll books just for one election, some of them used them for both, some of them have multiple check-ins, so there was a good variety that we visited, but between our conversations with both the poll workers and the commissioners, everything had gone fairly smoothly. We didn't really hear of any sort of issues with administrating both elections on the same day, so that was helpful.

As usually, we continue our collection of various surveys on accessible absentees after the August primary. As was just mentioned, we did stand up the accessible absentee portal that is going to be used by counties in November. It is a similar process that counties currently follow for military and overseas voters, whereas once the election has been programmed, they will upload some of this election information into the portal. They will also upload information with regard to the voters who will apply for an accessible absentee. The system will then send an email notification to that voter, telling them how they can log onto that portal. They will be able to access their specific ballot style. They will be brought through each contest on their ballot in an accessible manner, almost similar to the way that they experience it now on the ballot marking device. They will be able to make their selections. They will be able to download a PDF of the ballot with their marked selections, that they can review again. And then that will be sent back to their county board by mail. As part of the download process, we will provide them with what we call the origami envelopes. If they want to use those, which are basically just paper that they can print out, and it tells them how to fold it to make an envelope out of it.

In addition, the county boards did attend, we had two trainings last week on Tuesday and Thursday. We had close to 200 people attending, which was good. We went through the process that they would be following with the new portal. We explained that they would cease to send out their ballot PDF that they remediated. Prior to this, they have been emailing themselves, each voter, with the PDF of the ballot. That won't be the case anymore. The one thing that they will continue to do is they will mail out a packet of physical envelopes to each voter who requests an accessible absentee with prepaid postage, so that that voter can then return their marked ballot using those envelopes, should they desire.

We went ahead and formed acceptance testing on some new deliveries in Jefferson, Warren, Wayne, and Wyoming Counties last week. I will be heading out to Putnam and Suffolk next week for a few hundred machines that are being delivered. We will be finalizing the certification of the November ballot this week, and we will provide the counties with that information, along with sample ballots for both Dominion and ES&S, which will show the layouts for all the Supreme Court Justices and also compliance with the Voter-Friendly Ballot Act and all other election laws that apply to the visual appearance of the ballot. We will also

recirculate the language for the one statewide proposition that will be going on the ballot that had been previously certified by you, but we will send that back out to the counties, as well.

With regard to the voting systems, Dominion, we are still finalizing the testing plan based on the previous testing done. As we do give kind of credit for prior testing that has been done by a voting system vendor. We do request that they provide us with the necessary documentation that shows us that it was previously tested to our satisfaction. So, we work with the vendor and also with NYSTEC and SLI to determine that, to see what the final scope of the testing for their system will be.

With regard to Clear Ballot, Clear Count 2.2 is a modification, they have finalized a report last week, which we have reviewed and also provided to the Commissioners. There is a resolution on the agenda later on to approve 2.2. It largely accomplishes two things. Number one, it removes a limitation on the number of ballot styles that can be processed by the system, which really just impacted New York City and would do so at the general elections. It has not been as much of an issue during the primaries because the primaries do not merit as many ballot styles as New York City is accustomed to. And the second main kind of benefit of the new system is the ability to provide more robust reporting. The reason why that is important to other counties is that now that a lot of counties are using their Clear Ballot as a central county system for the absentees that are counted prior to election day, those results have to be included in the results that they post on election night, and being that they can't really work with any results until eight p.m. on election night, they don't have a lot of time to manually enter those results into their Dominion or ES&S system for then posting, so we have allowed, we were able to figure out an aggregation tool that melds those two together. For the primary, it wasn't that big of an issue because it was a contest-by-contest basis. Clear Ballot currently cannot break down results by party, and the XML that gets uploaded, that is part of what the 2.2 allows us to do that is more relevant for us in the general election. For the special election that we just had, there were about eight counties that were using Clear Ballot and the aggregation tool, and we were able to figure out a kind of a work around, where they were able to break out the total number into the by-party number, and there was validation to make sure that it was correct. So, we were able to kind of get that party breakdown for the special for those eight counties. But I try to stay away from data entry where possible because it always provides for the possibility for human error, and so that would be where 2.2 would also come in handy for all the non-New York City counties.

Hart has already finished their federal certification. We are working with, our testing partners in with them to finalize the scope of functional testing, which they will be starting imminently. They are looking to do that in their source review this month.

ES&S is still working through, similar to Dominion. We are working through the reviewing and documentation of all previous testing, so that we can determine the full scope of the testing plan that we are going to move forward with for their submission.

And then lastly, we did test all three vendors new submissions of electronic poll book configurations, and we provided a report of that testing process to all of the Commissioners,

and we have a resolution on the agenda later in the meeting to approve those new configurations. Brendan?

Brendan Lovullo: I'm good.

Commissioner Kellner: With respect to the testing. When there is public testing, do you have a list of people who will get notice to the public?

Tom Connolly: We do not have any sort of a listserv for that. Normally, if people have asked in the past, we do try to remember that. Otherwise, it usually just been posted on the website at least a week or so in advance.

Commissioner Kellner: Anything else? Alright, then we'll have our report from Counsels, Brian Quail and Kim Galvin.

Brian Quail: Good afternoon. A few case updates. On Friday, the 3rd Department heard arguments and rendered a decision in Sharp vs O'Connor and upheld the Board's invalidation of the Libertarian petitions, so the status quo was maintained for the ballot as a result of that litigation. The Libertarian and Green party oral argument at the 2nd Circuit heard on September 6th, and we are now awaiting a decision there. And in the Schmitt case, which dealt with out of state witnesses on independent nominating petitions, we submitted an application for summary judgment. The other side in that case should move towards resolution in due course. And the last remaining ballot access issue is in the 2nd Department and is for oral argument tomorrow in Stora vs the New York State Board of Elections, and that should bring the ballot access litigation season to a close.

The Compliance Unit has completed now since its inception 171,309 reviews. Presently, there are 10,864 reviews that are assigned and not completed. That's down about 1,200 since last month, so we are past the bulk of July filings, and moving through those, so that number should continue to go down. 2,223 reviews were completed since the last board meeting, and since January of this year, 1,726 committees have been terminated, and 1,926 candidate records have been terminated. I would be happy to answer any questions.

Commissioner Kellner: So, you said that we completed 2,000 reviews since the last board meeting, but now the open reviews are 10,000?

Brian Quail: Yes. So, there would be, the number fluctuates both based on the number that the staff are actually doing and then new reports that are coming in, so it is a moving number.

Commissioner Kellner: So, is this a concerning backlog?

Brian Quail: No. Looking at it, the overall backlog, the net backlog is less than it was last month, and it does move in sort of a sign wave pattern, up and down, based on periodics, and periodics push it up, and a substantial amount of staff time in compliance shifted off from doing reviews to petitioning reviews, and of course, there have been two rounds, actually three rounds, with two different rounds of independent nominating petitions that staff capacity

over the last several weeks then starts to come back online to reviews so that number should start to come down. So no, I don't see anything particularly concerning in that backlog.

Commissioner Kellner: And then, we have been discussing whether there would be a formal list of what's been referred to Enforcement on account of noncompliance. I guess those are both non-followers and persons who haven't responded to notices to correct their filings. Where do we stand with getting a list that's worthy of public formal notice?

Brian Quail: Well, we, I mean, we provide a list to Enforcement about people who have deficiencies and provide lists to Enforcement of people not filed reports, and the information about every single committee and its filing status is available on our website, and there is a bulk download of all reports that is also available on our website. So, I don't, specifically, I don't know whether or not there is a desire to provide this information to the public in some other format. That may be deemed more helpful, but the totality of everything that we do is available to the public, and the status of any given committee that they want to look at is available, and the bulk download provides them with the ability to see totally into our system. I don't remember all the niceties, but I think there were some changes to the bulk download process and what is included there to help them get what they actually want to get out of it. And I know that in terms of the Compliance Unit staff, in working with PIO and people who have commented on the new system as it has rolled out with perspective of the outside user, a number of modifications have been made and continue to be made to make the system more robust and allow people to get information that they want on it. But, I'm not sure I actually answered your question.

Commissioner Casale: I am not sure if I understand this. So, if someone wanted to see the list of non-filers, they can go to the website and just pull up that separately? Or do they have to go through the system and check committee by committee?

Brian Quail: If they can see who has filed by doing a bulk download report, and they can go committee by committee to see how any given committee has filed.

Commissioner Casale: Following up on Mr. Kellner's question, why can't you just publish monthly a list of non-filers?

Brian Quail: If that is something the Board wants us to do, that is certainly something that we could look into.

Commissioner Kosinski: Well, it is not a static list though? This is a constantly changing, I mean, if you produced a list today of these non-filers, would that be accurate tomorrow?

Brian Quail: No.

Commissioner Kosinski: No. My concern is that, my concern is that we create a list that is good for that snapshot, but it is going to change rapidly because filers are going to come in, and you are going to have, I mean, we could do it, but I just am concerned about the accuracy of it, how long it is accurate, if you pick a day to do it, it is going to be accurate that day, but

not the next day. That's all. I don't care if we create it, I just think people should understand what it is.

Commissioner Kellner: Go ahead...

Commissioner Casale: You made reference to the non-filers and then those who do not comply. Do you still have any difficulty reaching some of these committees because lack of valid email addresses?

Brian Quail: There are definitely some issues with that. One of the things that we have recently begun doing is in taking the information from local boards and from our filings and seeing whose filing ballot access documents. There is a process that is imperfect, but there is a process by which they endeavor to then match the candidate records that various parts add with the existing campaign financial records. These people are matched up, and then, so they are okay, and they are filing what they need to be, and if there are any forms they need to update, then communications go to those people. But there is then a group of people who don't match, so there is a candidate record for them, and there is no campaign finance record, so we follow up with those people, that universe of people, by letter or other means. If we have emails, we certainly can use email, but typically, it is written correspondence, and then we have taken to providing that information to the Enforcement Unit as well, so they can see people who maybe completely outside of the campaign finance rubric that they may plan to look at or follow up with because they have not registered or filed with us in any way, and they may need to file, but they have not, so we are trying to be sensitive to that issue.

Commissioner Casale: Do we require new registrants that they must provide an email address?

Brian Quail: Yes. So...

Commissioner Casale: It is a requirement?

Brian Quail: It is a requirement because the system for making the filings, etc., etc., it is contingent on having that. It is necessary. It's a critical component.

Commissioner Casale: Thank you.

Commissioner Kosinski: I don't know. Did we resolve that issue about creating this list? I don't recall.

Brian Quail: I don't think we resolved the issue.

Commissioner Kellner: I guess my thought is that there should be a process of referring items to Enforcement, and then following up to see whether Enforcement has done anything with respect to those referrals. And I get the impression now that there is no formal referral process between Compliance and Enforcement, and so, it is difficult to monitor what's happening with Enforcement and whether Enforcement is being successful.

Brian Quail: There is a process by which the Compliance Unit generates lists of nonfilers and other data and provides that to Enforcement. And there is a process by which a dialogue takes place back and forth about that. And I think an important piece in all of this is paying attention to the number of people who have actually come into compliance ultimately providing the data that Enforcement needs to send out, the ten-day letters, which they are doing, and then ultimately having a feedback loop with Enforcement, which we do have, to better and more timely identify that the committees, and things like that, committees for compliance to do the determination process. All in all, communication in the back-and-forth with Enforcement now is definitely much better. I will be honest with you we have been hamstrung by system limitations and system problems that both Enforcement and Compliance are working through together. And certainly, we can do a deeper dive and report to you for next month if you'd like, or whenever the board next meets, to discuss these sorts of things in a very granular way, but it is in a much better way right now that it has been. Now we don't technically have a mechanism of when we send something over to Enforcement and then that particular committee doesn't come into compliance and they don't file, it's a number that's recorded. We know the residual number of committees that haven't come into compliance, but we don't have a next step after that with that with them. So, it has been treated, and I think correctly, that once those records are passed to them, we don't have robust feedback on the progress, unless they come back to us and indicate, we talked to this committee, and we think there's this problem or we think this committee is a good candidate for termination. And those communications do happen. They are quite good about that. I'm not sure if that answers your questions.

Commissioner Kosinski: I have a follow up one. So, you're saying that there's a date certain on which you decided this campaign, or these campaigns haven't filed this report that was due two weeks ago or whatever the timeframe is, and we're going to now create a list and send it over? This is a question, is that correct?

Brian Quail: Yeah, more or less.

Commissioner Kosinski: So, there's a certain time period you give committees to file. So, if I'm due on July 15th, you give them sometime afterwards to file before you refer them to the Enforcement Unit is that a two-week window or what is that?

Brian Quail: Ideally, it's in a 10 day to 2-week period. This is also further complicated by the fact that the way the system is set up so Enforcement could also draw down their own lists to use whenever they want. As the system has flaws, there is a certain amount of manual intervention that should be applied to the list to make sure that is accurate and that there were not works in the process of pulling the data that caused problems. But, yes, and in fact, the Enforcement Unit has indicated to us in Compliance the timeframe that they would like to fall on, which is in keeping with the statute, getting those 10-day letters out and things like that, and while I don't have the granular dates in front of me, they proposed a scheduled and we attempt to meet it. It involves giving them an initial list that they e-mail to, and then they wait an increment of time and then do certified letters pursuant to statute (garbled) and then and that is largely where what happens after that we don't really continue to track other than when

they receive responses to e-mails, they receive responses to letters that require Compliance intervention, that information comes back to us. And in fact, a significant amount of the communication is a result of the Enforcement communications to the filers coming directly to Compliance, doesn't filter through Enforcement and back to us. The correspondence that Enforcement provides is the filers who are looking to come into compliance, directly giving information that they need in Compliance that have those communications and come into compliance. To the extent that Enforcement receives communications or Enforcement gets information from a filer that suggests the committee should be terminated, etc. etc., then they are communicating that directly back to us.

Commissioner Kellner: And what happens with the committees that don't respond to the 10-day letters?

Brian Quail: That is probably a question that is better posed to the Enforcement Counsel. Enforcement activity would certainly be what should be happening at that time.

Commissioner Kellner: And how do we monitor whether there is Enforcement activity?

Brian Quail: I will be honest with you; I have not received that as the role of Compliance. If that is something that you're asking Compliance to do we can certainly take on that mandate, but I think Enforcement Unit has certain responsibilities and they talk to you about their responses. I don't really know Commissioner what role Compliance has to further follow up with that but if there is a further role...

Commissioner Casale: Maybe it's not a function for Compliance but it might be a function of someone else, Executive Directors, Commissioners but there's no way anybody can follow up if they don't know what was referred at first, that's the point I was making.

Brian Quail: No, we absolutely do know what was referred.

Commissioner Casale: Who knows what was referred?

Brian Quail: I know. The system tracks it.

Commissioner Casale: Are the Commissioners notified as to what is referred?

Brian Quail: It's online. If they haven't filed, they've been referred and if you want the lists of what we've sent to them, certainly you can have them.

Commissioner Spano: We should have that at every meeting.

Commissioner Kellner: Except I think it's a later stage of what we're really interested in right? So, the July 15th report was due two months ago, presumably 10-day letters have gone out to the July 15th nonfilers?

Brian Quail: Yes.

Commissioner Kellner: And presumably some people responded to those 10-day letters and others did not.

Brian Quail: For sure.

Commissioner Kellner: And then my question, and I agree with you, it's where Enforcement, what has Enforcement done with those who have not responded?

Commissioner Kosinski: They're next on our agenda.

Commissioner Kellner: Except...

Todd Valentine: He has a medical procedure today.

Commissioner Kosinski: Oh, Michael is not here fair enough, because I think that would be more appropriate. I see what Brian's point is. Because I agree with Commissioner Kellner, I think there should be follow up and I agree we should be part of that about what happens after the 10-day letter is sent? X number of committees come into compliance based on that letter. X number of committees don't, what happens to those committees that done? There is a process in law as I understand it for a hearing and for a process to pursue these noncompliance committees. I don't know if that's being undertaken or not. I think it's done by the Enforcement Unit if anybody, but I don't know if they're doing it.

Commissioner Spano: Here's my question, what is wrong with getting the names of the committees that were sent to him, just have them here at the Board meeting.

Commissioner Kosinski: I have no problem with that at all.

Commissioner Spano: It would answer a whole bunch of questions.

Commissioner Kosinski: No, I have no problem with that Commissioner, I'm not saying that.

Commissioner Kellner: And we're talking 1,000 committees?

Brian Quail: No, the number would be larger. I think as of right now, I'm advised that the July periodic, there's still around 1900-ish that have not filed.

Committee Kosinski: I agree, that's a lot of committees and if there's no follow up, I agree we should know because there should be, I think.

Commissioner Kellner: This system, in my view is completely broken and it's not your fault or Michael Johnson's fault, it's an incredibly disorganized statute that doesn't provide for accountability or for a workable process to follow up on these committees.

Commissioner Kosinski: We used to have a process, as you know, where we did sue people if they didn't comply, you'd get a judgment against them, they would have to pay a fine at least at some point for failure to comply. There was at least some follow up.

Commissioner Kellner: And it was public record.

Commissioner Kosinski: A public record, was it adequate? I don't know but it was better than nothing. I just get the sense the last 5 or 6 years since the Enforcement Unit has been created, there has been no follow up. I certainly know that the previous Enforcement Counsel, there was zero follow up. I'm not sure what Michael is doing these days as far as follow up. I know he's doing the 10-day letter, which is an improvement but is he following up after that with more? I don't know.

Brian Quail: I think so.

Commissioner Kellner: Well, let's get specific. Has there been a criminal referral?

Brian Quail: There has not because they would have to come to you.

Commissioner Kellner: Exactly. And we haven't had one in three years...

Commissioner Kosinski: You mean for failure to comply, failure to file.

Commissioner Kellner: Right. And then hearing officer procedures, they're supposed to notify us when a hearing officer procedure is commenced, and I believe that I've only received notice of five this year.

Brian Quail: It's about a half dozen.

Commissioner Kosinski: I think that's where the system breaks down.

Commissioner Kellner: Well, if its more than five, somebody hasn't notified me, and they're supposed to.

Commissioner Kosinski: Yeah, and I haven't seen any of that either, and I agree that's where the system seems to breakdown, there is this component now that the hearing officer to look at the stuff, I don't think that's happening. I think you have to do that before you go to court in order to pursue a judgment.

Brian Quail: Yes.

Commissioner Kosinski: That's not happening. It used to be we could go directly; I mean the system is broken in that sense to me is that additional step which I think is unnecessary and just sort of clogs it up. We used to be able to go directly to court, get a judgment, refer it to the D.A. which we did frequently not that the D.A.'s ever did anything with it, but we did refer to D. A.'s. I don't think that's happening anymore. These hearing officers have gotten

in the mix because the legislature thought that was a good idea for some unknown reason. It's not a good idea. But it just clogs up the system and makes it more difficult to pursue these committees that do not file. So, we're sitting here now with 1,900 committees not filed in July, no follow up is happening. They are able to get away with it. It's ridiculous. You go after guys that file because they did something wrong and then you let the guy that filed nothing get away. That's a terrible message to send there. I mean the message to the committees is you're better off filing nothing than giving us something that we might find a flaw with, and we pursue with you. I mean what kind of a message is that? It's ridiculous. But that's the message I believe that's out there now and has been really since the Enforcement Unit was created 6 years ago. So, it's a very bad process, I agree. I don't blame our people at all, I think they're doing what they can but there's this breakdown now in the Enforcement component of this that part of it's the system itself, its just too convoluted anymore to try to pursue.

Commissioner Kellner: So, my solution is that we, the State Board of Elections needs to draft proposed legislation and write a report. And I know that's a lot of work.

Commissioner Kosinski: No, I'm fine with that, if you think they're interested. That's fine with me.

Commissioner Kellner: I think we...

Commissioner Casale: Does anybody know roughly how many active filers there are in the system, just a rough number?

Brian Quail: I have a mental block with that number.

Commissioner Casale: Is it 4,000, 5,000...

Commissioner Kosinski: It's 12,000...

Brian Quail: It's north of that.

Commissioner Casale: I think we have an obligation to more than 10,000 who do it honestly and work hard at it to ensure that those scofflaws are being at least made public if not penalized.

Commissioner Kellner: But Commissioner, my thing is that the statute is flawed...

Commissioner Casale: Absolutely...

Commissioner Kellner: ...but we have to, I have indirectly tried to get good government groups interested in this and to write it. Some of them have written reports and agree with changes. But I think we have to, you know we have to come out and say, "This is what we need to do."

Commissioner Kosinski: I'm all for that. I think it's a great. I think we should. I certainly feel the system is flawed, big time, in its structure and its just something we've had to live with.

Commissioner Kellner: But we need to put people on it to see that it gets done. You know there's more than one way to do this. We could simply tell Counsels to write it up and obviously, they should work with the Enforcement Unit in drafting that. Or to appoint our own commission and to have independent volunteers to try to prepare, I'm just brainstorming here, but I think the status quo is unacceptable.

Commissioner Spano: Let me ask something here. We have the Enforcement Counsels, when you've got these judgments, you were able to get the judgments against people you want and to have the staff...

Commissioner Kosinski: Oh absolutely. Bill McCann did this all by himself, frankly. I mean for years, Bill was the guy that put the lists together, schlepped over to the courthouse here downtown and presented to the judge, made the case. Judge rendered a judgment, nobody showed up because they were all guilty...

Commissioner Kellner: With maybe a half dozen exceptions out of 10,000...

Commissioner Kosinski: Maybe, right and we'd have a judgment, we'd file the clerk, and we had a judgment against these people when they tried to sell their house or they tried to do some transaction, we would collect. It would go to the D.A.

Commissioner Spano: So, my point here is that to me that function seems inconsistent with the role of the Enforcement Counsel. Considering the fact that we have the staff that could do that, it's a larger function focusing strictly on criminal matters that may be higher than their position. We should take that function back somehow.

Commissioner Casale: Talk to all of your best friends up on the hill.

Commissioner Spano: And then we get a judgment, it's in the judgment and we'll let them go after the charge.

Commissioner Kosinski: I don't know if we have the authority to do it, I would have to defer if we still have the authority.

Commissioner Kellner: We don't have the right to get a judgment now, we certainly have the authority to propose legislation.

Commissioner Kosinski: Oh, of course.

Commissioner Kellner: But I think we need to write a bill and say, "Here, this is our position" and if they don't do it, it's not on our plate. But right now, I feel like...

Commissioner Spano: We have the ability to contract with an outside source when we want something done.

Brian Quail: The agency does yes. I think the issue right now is you have to go through this hearing officer process to get a finding that there's the likelihood of a violation for the Enforcement Counsel to do something. So, it is certainly something that could happen more routinely with a different process that has more steps in it than...

Commissioner Kellner: Well, and a different process would be to make the hearing officer determinations judgments without going to court. Subject to an appeal.

Brian Quail: That would be an option. A reversion back to the status quo and with respect to failures-to-file so, that on failures-to-file, which is pretty binary, it's yes or no, true or false, you could skip the hearing officers. The hearing officer process, I think in the statutory schema was to put an independent set of eyes on the accusations and allegations that were made, and say yeah, this warrants going forward. It would greenlight the Enforcement Counsel's process. It is difficult to imagine why that greenlighting process is necessary with respect to failure-to-file. It's just binary administrative, true, false...

Commissioner Kosinski: Well, particularly with our history and our experience which was, when we went to court as an agency, as Commissioner Kellner indicated, we'd have 2,000 committees on the list, 1 or 2 would show up. Nobody contested this. It wasn't like you needed a hearing because you had this other, you know you had the committee come in and go, "Wait a minute, I shouldn't be on that list" nobody showed up because they were guilty frankly. They were on the list because they hadn't filed. There was really nothing more to say.

Commissioner Kellner: And on top of that we had a system, an agreed bipartisan system, that to get off that list once the court proceeding started, you had to pay a small fine. And we agreed what the fines were depending on at what stage they would do it, so that virtually everybody who was not filing who cured prejudgment still had to pay something as a consequence. And, of course, Peter (garbled).

Commissioner Kosinski: But Bill McCann did that all by himself. I mean he didn't create all the lists by himself the staff did that, but he did all the legal work, yes. It wasn't that complicated.

Commissioner Kellner: And Michael Johnson was Counsel for a while.

Commissioner Kosinski: He knows all about this. He was here when we were doing this 20 years ago.

Commissioner Kellner: So, do we have a consensus that we can ask Brian and Kim to meet with Michael and give us at least an outline of proposed legislation for the next meeting? And I certainly want to keep Michael as part of the loop, although I'm disappointed, he didn't send a deputy today to at least be present. But we need to go on record.

Commissioner Casale: Michael has been here long enough he may have some suggestions on some of the technical problems he faces, and the obstacles he sees in the process.

Brian Quail: I think he is very committed to making this process better. I think the Enforcement Counsel is very committed to making the process work better. He is very amenable to working with Compliance. The relationship is very good. It can be difficult at times because of mutual frustrations, but he and his staff are great.

Commissioner Kellner: So, I'm suggesting, I hope my colleagues agree, that we're giving you sort of a target date to move this forward with respect to the legislation. That we'll ask for at least a report at the next meeting.

Commissioner Spano: Yes, I want to posit something here, I don't know if its legal or what but in certain government it was. You can make an independent subcontractor. He contracts with us to do something, bypasses the legislature.

Commissioner Kosinski: We can look at it. That's an option.

Commissioner Kellner: Alright, well I thank everybody for having this discussion. So, we noted that Michael Johnson is not able to join us today so, we will now go to Public Information with John Conklin and Jennifer Wilson.

Jennifer Wilson: Thank you Commissioner. In the month of August, we processed 124 FOIL requests. We have also been working with Counsel and the Co-Executive Directors on providing guidance to the counties regarding a number of repeat requests they've been getting.

For the primary and special elections, the PIO staff were on call for early voting and on election day. We fielded many phone calls from voters about whether or not they were eligible to vote in the primary and special. We also responded to a lot of inquiries about the new districts for redistricting and where voters were actually expecting to be placed and what their new districts were, and we monitored their early voting totals and responded to processing increase regarding that.

Post-election, we ensured that counties have uploaded their voter histories to the statewide voter database, and we also collected information regarding military and overseas ballots processed in the primary and special elections ensuring that they were processed properly and that any federal write-in ballots were also processed correctly.

For the general election, we are now collecting preliminary surveys regarding compliance with federal deadlines to send military and overseas ballots and working to ensure that the deadline is going to be met on time. And we're also working to ensure that early voting poll sites and election day poll sites will be updated for the general election since there will be a number of changes.

We also participated in a hearing that was held regarding the Cyber policy that the virtual policy rather, that you will be reviewing today. We did not have any comments on that, and we did not have any participants in that hearing, but we did post it. We posted the rules, and the notice to the website and the webcast actually available now if anyone wants to watch.

For the ballot proposal, the ads, we're still waiting for the final quotes for New York Press Services. We do actually expect to have that in hand this week.

And on our social media, we informed around election day for the special election and primary election. Right now, we're looking ahead to the general, planning around the different voter registration and absentee deadlines and we will also be participating in National Voter Registration Day next week.

On grants, very exciting. Our postage grant was finally approved, and contracts were sent out. This is our \$4 million prepaid postage grant for return envelopes on absentee ballots and also on absentee ballot request forms. So, those contracts are going out. This covers a lot of different things related to that from the postage and envelopes, also to staff as well as to help increase the number of absentee ballots that may be going out. And we have a number of other grants that are still in effect right now, but I'll save us some time and not go over those totals today unless anybody is interested. Thank you.

Commissioner Kellner: Okay, no questions. Then we'll go over to Information Technology, Michael Haber.

Michael Haber: Good afternoon, Commissioners. I'll begin with an update on the online voter registration automatic voter registration project although most of these substantive updates were mentioned in the Co-Executives' report. I'll simply add that as was mentioned in parallel with the ongoing contract efforts, we have begun the process for development of an interim solution to ensure that OVR is available as planned by May 2023. Further updates on that will be given at future meetings. In terms of space planning and expansion, IT continues to work as part of a team with Exec and Admin and others as required on the state's leads for the agency. The build-out was indeed completed to our previously existing space on the first floor and our IT development teams have been back into that.

Several updates are in progress to the Public Reporting site to enhance usability based on user feedback working with PIO and Compliance units. In terms of Public Campaign Finance, it was also covered somewhat earlier, I'll simply add that as you know, we have EFS that's the Electronic Election Filing System updates to get on the support of Public Campaign Finance as an interim solution until the final solution has ultimately matured. The final solution, of course, is contingent on the RFP being approved and going out through OGS.

In terms of security, IT staff completed security scanning of E-poll books and provided the results of those reports. As was also mentioned earlier I believe during the August primary election cycle, we continued our normal practice of daily touch points with our various security partners both state and federal, and coordinated, as is standard practice, to have

comprehensive IT coverage on both Election night and throughout the early voting time frame. We are making similar preparations to do the same for the upcoming general election.

The New York State Board did participate in the Tabletop the Vote national election exercise which was conducted by the federal Cybersecurity and Infrastructure Security Agency (CISA) over the course of three days in August. The State Board including Co-Exec, Operations, PIO and ITU participated all three days, along with our state and federal partners at CISA and the State Intelligence Center at State Homeland Security and Emergency Services Department and ITS and 23 counties and New York City also participated.

Our Secure Election Center staff continued to review cyber regulation submissions and follow up with county boards and IT staff as needed. There has been positive progress made on the adherence of those regulations compared to last year's reporting. The average compliance so far has increased from 15 out of 21 to 18 out of 21 regulations that the average county has completed. And again, we continue to follow up as necessary. Based on some feedback we received on the cyber regulation where we are exploring doing a seminar for the counties on completing their data classification systems.

Commissioner Kellner: What is that? What is Data Classification?

Michael Haber: It is taking a review of the data that an organization maintains and determining how classified it is based on a low classification, is it a medium or high in terms of protection.

Commissioner Kellner: Are you talking about security classification? Like confidential, secret, top secret?

Michael Haber: Not to that level. I don't think our counties typically deal with top secret information. However, it would be for doing an analysis of, if this data were to be released or somehow compromised, what would the result be in terms of actual impact, is someone going to do something negative with it? Is it going to simply look bad if it ends up being out in the wild? Or is it a low potential impact? It is something that we require counties to do as part of cybersecurity regulations, and it is something that admittedly is a little complex. So, that's why we're exploring some seminars on that topic to educate the counties on how to best maintain them.

In addition, I'll just say that we are continuing to review options for continuing and enhancing our intrusion detection and managed security service contracts that we also provide to the county boards. Those have been renewed and we're now in the process of exploring how we want to further provide them for an upcoming period of time.

And, finally, I would like to mention that last month saw the retirement of a longtime employee of the IT Unit, Bill Ryan. Bill served during his time here at the State Board as acting IT manager, Chief Security Officer, and Acting Deputy CIO to both myself and my predecessor. His contributions were not always visible to those outside of IT, but they were

certainly significant. And we are grateful for all the support and assistance Bill Ryan provided to our unit and to Elections. That is the end of my update. Questions?

Commissioner Kellner: So, your report said that counties compliance with the security regulations are improving but that also suggests that there is still substantial noncompliance.

Michael Haber: Yes, on average, the average county is in compliance with 18 of the 21 regulations. That's an improvement over last year when the regulations were first rolled out.

Commissioner Kellner: So, what, first of all, do you have prioritization of issues that counties need to address in order to come into compliance and to avoid problems in the future?

Michael Haber: Yes, there are some regulations that are more significant than others, and certainly prioritize those in reaching out to counties that are non-compliant in. Data classification, as we discussed earlier, is one of the areas that several counties remain noncompliant in and some others, there are a couple of other common weak areas that we are reaching out to counties on.

Commissioner Kellner: So, what happens if they don't come into compliance?

Michael Haber: Well, currently, they receive guidance from us, this is what we've been doing so far in assisting them to come into compliance. I don't know that we've had significant discussion on a specific action beyond that if they remain out of compliance. The way the regulation is structured, they're required to report yearly on their compliance to them. They reported last year when the regulations had just been rolled out, and this year, is the first full year period in which they had to come into compliance on them. We are also having discussions both internally and with some of our state partners potentially performing additional risk assessment. As you may recall, there was a risk assessment done on county boards a couple of years ago and it's probably a good time to do another one anyway. And so, our intention most likely is to perform a risk assessment that's focused primarily on how well counties are in compliance with these regulations. And from there an additional remediation.

Commissioner Spano: Are there any costs involved with them coming into compliance?

Michael Haber: The short answer Commissioner, yes.

Commissioner Spano: Significant costs?

Michael Haber: Potentially, and we have been working for example, well there is one regulation that I know a couple of counties have mentioned, if you wanted to perform it correctly, you have the proper scans done by an external vendor, it could be costly. However,...

Commissioner Spano: When you're saying you get with the county, are you talking about the IT director or the Commissioner of, you're not talking county executive or the head of the Board or anyone like that who controls the budget?

Michael Haber: Typically, no, not in our purview...

Commissioner Spano: Has anyone mentioned that's a budgetary problem and they can't get the money?

Michael Haber: I'm not sure with the counties. Have done a map in terms of their own...

Commissioner Spano: No, but none of these people you've talked to have said that to you?

Michael Haber: I don't know if that's a fair assessment, I apologize, I'm not certain of that level of detail of all the communications. I do know that we are trying to, where possible, work on defraying those costs. For example, there are state partners at the State Department of Homeland Security have been looking at providing some additional services to counties in general, which would help to meet some of the cybersecurity regulations potentially with no cost to the counties. So, those are ongoing conversations that we're having as partnered with our meetings on compliance with the regulations.

Commissioner Kosinski: But we don't have a grant program like Jennifer was talking about to help defray costs here for the implementation of these security measures?

Michael Haber: Not directly. We do have a previously existing cybersecurity remediation plan which is still active which is based on the remediation plans that were developed in the beginning of 2020.

Commissioner Kosinski: So, we have provided some funding for the counties for this purpose?

Michael Haber: Yes.

Commissioner Kosinski: So, money should not be a reason why a county is not coming into compliance, is that a fair statement or?

Michael Haber: I would say that's a fair statement. If there are additional funds or difficulties, they're having in relation to funding and we're certainly happy to discuss those with them, there are quite a few services provided by ourselves, by state partners and by some federal partners for that.

Commissioner Kellner: Well, I'm just thinking that ordinarily when people aren't in compliance public shaming is sometimes a good way to move them along, but when it comes to cybersecurity that may not necessarily be a good thing.
(Everyone talking, laughing)

Michael Haber: Yes, I would agree.

Commissioner Kellner: But do think about whether there are additional steps that we should be taking. And again, I recognize that New York is probably one of the toughest jurisdictions in setting up a security system.

Commissioner Kosinski: You mean New York City?

Commissioner Kellner: No, New York State.

Commissioner Kosinski: Why is that?

Commissioner Kellner: Well, just that Governor Cuomo made this a priority and set up this...

Commissioner Kosinski: You mean it's tough in that our standards are tough or tough to implement?

Commissioner Kellner: No, our standards are tough.

Commissioner Kosinski: Oh, I'm sorry, I thought you meant tough to...

Commissioner Kellner: I'm sorry.

Commissioner Kosinski: When you say tough, you mean we're tough.

Commissioner Kellner: I misspoke. But the Governor's office made this a priority and put a lot of money behind it.

Commissioner Kosinski: Well, it should be a priority. I mean I agree with that. I think election security should be a priority for everybody. So, I think we should do whatever we can to try to bring these counties into compliance because I think it should be a priority. I think it is a priority in the public's mind, should be a priority in our mind and whatever we can do to get these guys in compliance, we should be doing this.

Todd Valentine: Yeah, and it's not only working with the IT Department, to answer your question Commissioner. We have been working with the County Association, NYSAC (NYS Association of Counties) to alert them of the issues as well as the funding availability that's in there for the counties. So, the problem is the funding that we have has to go to the Board of Elections. These issues are larger than just the Board of Elections in security. So, they may have other needs that, well, we only pay for so much. Our dime only goes so far but correct, I don't even know the dollar amount at this point that's been quite a number of resources that elevated the county security and as far as the State is concerned you know from reports that we heard from our federal partners, we are pretty far ahead, taking a lot of steps that other states have not done yet. We're not there...

Commissioner Kellner: I've had the same feedback from the Standards Board that we are way ahead of most jurisdictions, but that doesn't mean...

Todd Valentine: I don't always feel that way.

Commissioner Kellner: Well, it doesn't mean that a Michael pointed out, that there's still issues outstanding that we need to follow up with. And I'm interested in your thoughts in the future. I mean you can think about this over what it is that we should be doing to force our regulations. Public shaming may not work, but it may be something where we should talk where we address to the County Executives or the County Legislatures or make a general list of who's not in compliance or...

Commissioner Spano: I think a confidential letter is the way to go, a confidential letter to the head of the county and just saying we have some concerns, and these are concerns in the particular area. Now it's in writing but no one has seen it.

Commissioner Kellner: And if something goes wrong, you've got a letter now.

Commissioner Spano: Absolutely correct.

Commissioner Kosinski: That's fine with me. I've got no problem elevating it to the County Executive position if we're dealing with the Board and they're not getting into compliance, I think if we can help to elevate it, maybe that's a helpful process.

Commissioner Spano: In reality, on the ground you've got someone who has to do something. Sometimes that's not always the case. In these counties, I mean the IT is in charge of everything, so they've got other things to do. So, just focusing I think is a good idea.

Commissioner Kellner: Alright, well, anything else for Mr. Haber? Thank you very much, Michael. So, we have no Old Business. We'll start with our New Business, Resolution 22-16, Upgrade to Electronic Poll Books. I think Tom already reported on this that Election Operations has reviewed these three upgrades and recommends this. So, is there a second?

Commissioner Spano: Second.

Commissioner Kellner: All those in favor say aye.

Commissioner Casale; Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Kellner: Opposed? Alright, so that Resolution is adopted. Next is the Resolution on the Open Meetings Law. Brian were you and Kim the ones who put this together?

Brian Quail: Not in the main. I'm happy to talk about it though. Actually, Nick Cartagena and Brian Connor, Logan Smith...

Commissioner Kellner: All from Public Campaign Finance...

Brian Quail: Right. They and this Board both need a policy. They took the lead on putting this together and then when the hearing occurred it was for both the State Board of Elections and the PCF. They in my view did an absolutely outstanding job. So, what the new statute requires is that the Board have a policy with respect to remote appearances before the Board when the remote appearance is not at a location where the public can also go. So, the best way to sort of understand this is that the prior requirement that when there's a remote appearance, so pre-pandemic when these requirements were in full effect and not relaxed by the government, you can have remote meetings where so long as at each location where a commissioner is present, the public would be potentially capable of attending at that location. That remains. And theoretically, if all four commissioners in four separate locations as long as public is able to attend, there is no specific forum requirement for any one location, it's fine. But the new requirement adds on an additional possibility which is so long as there is a quorum either physically present in one or more places where the public can attend, a commissioner can appear remotely from a place where the public cannot be in attendance. And the new statute requires that each board that may view such a video conferencing policy adopt an absent policy for that purpose and to do so after a hearing is actually held. So, at the last meeting the Board authorized staff to hold that hearing on the policy. That hearing did occur. There were no comments and there is in your packet a write up on the hearing and the process that followed pursuant to the Board's direction at the last meeting. And then for commissioners again, the procedures that were subject to that hearing that were previously reviewed are provided as backup to this resolution which if there is a majority vote in favor, would actually adopt this.

Commissioner Spano: I want to say something. This bothers me. Not because, I'm going to vote for it. And I don't want to be remotely at the meetings. I like coming here. So, what you're saying is if we're all here, as long as people can come here it's okay. But if I go somewhere else and I call in and only two of us are here and people can't come to the other two places, why can't they just come here? It's the same thing as all of us being here and they come here.

Commissioner Kellner: That's what the statute says.

Brian Quail: Exactly, I think you make an excellent point, Commissioner. You and I have discussed this on other occasions. I think it's an excellent point and I think it is remarkable that in response to the pandemic and the fact that meetings are much easier to have and much easier to include the public in than they were before. In some ways we have a policy designed punitively to expand the ability to have such meetings that actually in many respects

contracts. And I find it rather frustrating myself. But Commissioner Kellner, of course the answer to your question is simply, I took a lot of words to not say anything additional which is what the statute requires.

Commissioner Casale: The only reason we're having difficulty is because we're obviously a very small Board. Are others having the same issue of having to get everybody in the same room?

Brian Quail: I think so, because there are many, many state entities that have four members and there are many larger ones as well.

Commissioner Casale: One has only three members.

Brian Quail: Sure, absolutely, some have two.

Commissioner Spano: I think someone was ticked off that someone didn't show up, that's all. It makes no sense at all.

Commissioner Casale: It took such an effort to become a remote society and now we're going backwards. Not for here but I'm curious, what harm was done in the last 18 months to 2 years where something happened that dramatically changed the course of events because somebody wasn't physically present at a meeting?

Commissioner Spano: Productivity went up.

Brian Quail: Hopefully, you'll all vote yes.

Commissioner Kellner: I didn't call for a second yet but is there a second?

Commissioner Casale: I'll second. It is what it is.

Commissioner Kellner: So, I think we're ready to vote. Those in favor say aye.

Commissioner Casale; Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Kellner: Opposed? The resolution is adopted.

Commissioner Kosinski: Is it proposed this will be the same policy for the PCFB?

Brian Quail: Commissioner, I believe they will take it up at their next meeting also, so it will be adopted by both boards.

Commissioner Kosinski: Well, we are they so, I'm just curious.
(Everyone talking)

Commissioner Kosinski: So, it will be the same exact policy?

Brian Quail: Yes.

Commissioner Kellner: And if it isn't we can change it.

Commissioner Kosinski: I have another item here.

Commissioner Kellner: Clear Ballot. We are onto Resolution 22-18 which is to approve the upgrade to Clear Ballot. I'll ask for a second and then, discussion. So, is there a second?

Commissioner Spano: Second.

Commissioner Kellner: So, on Friday night, we got the reports of our testing consultants with respect to this, and I note that the reports do not give an unconditional endorsement for certification but note that there are six open functional findings and eleven open, I'm sorry seven open security findings. And these are on items 4.4 and 4.5 of the SLI report. So, ordinarily I would send it back and say, we're not yet ready for certification but I understand that there would be negative consequences by rejecting certification at this time and that there are acceptable workarounds... What's the term of art?

Tom Connolly: Compensating controls.

Commissioner Kellner: Yes, compensating controls, that would offset the potential problems here. So, I'm proposing additional language in the resolution that would direct the Operations Unit to prepare formal procedures for implementing the Clear Ballot upgrades in a way that address the open items that are identified in the SLI report, and to report back to us with specifics at our October meeting, so that counties that need to implement the upgrades for the November election will be able to do so, but that it will be clear in our own documentation that it's conditioned on the counties following the procedures that would address the outstanding issues.

Tom Connolly: The issues that were found on the functional testing, were largely categorized as insignificant or informational by the testing partners. Either it's a matter of something as benign as they used the term scan server instead of the term count server in two places in their documentation, so they never actually changed it. So, we will make sure that the TDP gets updated. Some of the were kind of edge cases where if you tried loading files a certain way that only Clear Ballot engineering uses, it could throw an error but under normal operation by the county boards, they would never encounter that error. So, we would address all of those in a write-up as far as the functional cases. With regard to the security functional testing and

the seven discrepancies that were left open, three of them have to do with really physical access to the system and the harming of it which existing compensating controls and procedures that we'll just refresh, but that we have used before for central count systems, largely around bipartisan custody and physical security and storage of the system itself are sufficient enough as a compensating control to mitigate any risks that could be perceived. There are also some that surrounded the encryption that is actually used by the system, which again our testing partners agreed that the physical security and the other compensating controls that we typically have in place for our central count system would suffice. The last one was actually a piece of hardware. There is a network switch that is currently used with Clear Ballot that needs to not be used with the newer version as there was an issue with configuration for security settings. So, Clear Ballot's "workaround" was they would have to utilize this new switch which can be configured in that way. So, we would make it clear that any Board that currently had hardware, if they wanted to upgrade to the new system would have to utilize a new switch and the old one would not be able to configure. So, we will document all of that, we will get that out to all of the Boards that currently use Clear Ballot, should they want to upgrade, and we will report back at the next meeting.

Commissioner Kosinski: So, you're suggesting that our certification be contingent on compliance with these fixes, I guess you've identified.

Tom Connolly: I'll use this example, so one of the things around physical security would be the seal plate switch on the machine. So, obviously that's very dependent on the hardware itself, where the ports are located, where the panel is located, and normally, when we would approve a new piece of hardware, we would have a new seal placement document because obviously this new piece of hardware has new ports and new panels in different locations. So, we would do similar things where we would take some of the procedures that we have in place now and we would have to refresh them for this new modification. Normally, we would have it done by the time we'd ask you for the vote, we only received the testing reports last week. We've had conversations with our testing partners about the outstanding issues and we think that we can certainly get the documentation finalized and out to the counties in time. We didn't want to push out the vote towards the next October meeting, because the upgrade will certainly benefit New York City with regard to the number of ballot files and other counties with regard the ability to do more robust reporting. And so, we kind of want to get it on the agenda sooner.

Commissioner Kosinski: But how do we ensure that these fixes are being implemented?

Tom Connolly: Well, these fixes for the most part are all like procedures that need to be followed just like we have now and so what we would typically do is, as we would go out to Boards, whether Operations would go and do Board visits, we also know we now have staff from the Secure Election Center in Operations focus on this as they would go out and do Board visits as well, they would kind of do the same thing where they would say, okay let's review some of these procedures. Show us how you're doing, handling them. Show us any kind of documentation or artifacts that we may be requiring you to kind of keep.

Commissioner Kosinski: So, it's part of a Board visit? You would require the Boards show you how they complied with these fixes...

Tom Connolly: We would have someone review with the relevant staff to make sure that they're aware of the procedures obviously sometimes staff does change, and number 2 anything that requires any sort of artifact, if we're not already collecting it, like we will take 3% audits or other things, we would probably ask for it while we're on site.

Commissioner Kellner: So, I'll ask for a second to the proposed amendment.

Commissioner Spano: Check.

Commissioner Kellner: Those in favor of the amendment say aye.

Commissioner Kosinski: I'm sorry can I just review this again. So, we can condition use of the system that we've certified if the Board meets certain requirements. That's within our authority?

Tom Connolly: We typically do that now with the poll site systems cause one of the things is it is contingent upon the number of voters that are allowed to be used and we would set that at the same time we would approve a poll site system, but this is a central count system. So, this is just the understanding that any of the systems that are approved for use, the county boards are supposed to be following our promulgated procedures around security and/or specific use of a given system. You know, as I mentioned before, there are certain documents that are specific to a system with regards to seal placement, so the expectation is that when a county board will use a specific piece of equipment, they would be following that procedure for sealing all the proper ports and paths.

Commissioner Kosinski: Okay, I support that.

Commissioner Kellner: So those in favor of the amendment to Resolution 22-18 say aye.

Commissioner Casale; Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Kellner: Opposed? The amendment is adopted. So, then we will vote on the resolution itself. Those in favor say aye.

Commissioner Casale; Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Kellner: Opposed? So, Resolution 22-18 is adopted. That's the last item on our agenda. Do we want to talk about the date for the next meeting? Is there any news on the Public Campaign Finance Board?

Commissioner Kosinski: We're talking October?

Todd Valentine: October, third or fourth week.

Commissioner Kosinski: 17th works best for me. That week?

Todd Valentine: That week. We would prefer not on a Monday.

Commissioner Kosinski: That's what I mean, does that mean any day I could do.

Commissioner Spano: No, I would prefer the next week.

Commissioner Kosinski: Oh, sorry.

Commissioner Spano: The 24th through that week.

Commissioner Kosinski: 25th, you're not available that week.

Commissioner Spano: It's just that I'm getting back.

Commissioner Casale: How about the 25th, a Thursday or Friday of that week?

Commissioner Spano: The 25th is good.

Commissioner Kosinski: Do the 25th?

Todd Valentine: Tuesday the 25th.

Commissioner Kellner: That's good for me.

Commissioner Casale: Nothing in November at this point, right?

Todd Valentine: Not typically, no. Just December.

Commissioner Kosinski: The 14th I've got.

Todd Valentine: You said the 14th because we have to certify by the 15th. You have one day just in case.

Commissioner Casale: Okay, that would be the certification date.

Todd Valentine: Correct, all statewide offices.

Commissioner Casale: Sounds good.

Commissioner Kellner: So, I think we're finished.

Commissioner Kosinski: I move we adjourn.

Commissioner Spano: Second.

Commissioner Kellner: All in favor?

Commissioner Casale; Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.