

Douglas Kellner: Good afternoon everyone. I'm calling this meeting to order. I am Douglas Kellner, Co-Chair sitting next to me is Peter Kosinski Co-Chair, to my left is Commissioner Gregory Peterson and to my right Commissioner Andrew Spano. The first item of business is approval of the minutes and Executive minutes from July 25<sup>th</sup> and the minutes from August 28<sup>th</sup>. Does anyone have any corrections?

Andy Spano: So, moved.

Gregory Peterson: Second.

Douglas Kellner: Those in favor of approving those minutes say aye. (Chorus of ayes; 4-0) Opposed? So, the minutes are approved. We'll move to our unit reports and we'll start with our Co-Executive Directors Robert Brehm and Todd Valentine.

Robert Brehm: The work is very much been around getting ready for this meeting, in addition, early voting and the presidential primary is starting to heat up as far as calls and activities which is typical as we go into an election. With regard to our group of legislation that we have been monitoring since our last meeting, we have seen the Change of Enrollment Bill approved and information shared with the County Boards. On what that does to the pending changes in addition to what is the new period of time that a Change of Enrollment would not become effective immediately. But one other law that was signed by the Governor related to the time and the manner in which our election workers can receive their special ballot before an election. It used to be within two weeks of an election. It's now during any time that an absentee ballot can be available to them. We had earlier had a Chapter Law with regard to victims of domestic violence; both a victim of domestic violence and a special worker for elections are on the same application. The instructions for when they are available are on the application. We waited for the amendment to the application and the amendment to the special ballot envelop as long as we could hoping we would only have to amend them once. The Governor's office did ask us what that deadline would be. And the Co- Executive Directors reached out to the print vendors in the counties and we determined that was mid-September. The Governor signed the bill by mid-September so we provided that instruction to all the voters too. There are now 26 chapters; there are 24 that are still pending that we are waiting on. I haven't heard anything new with regard to that list lately and I have not seen any of them moving to go from the legislature to the Governor. And I do check that mailbox a couple of times a day just to see. So, I think that's where we're at with regard to the new legislation. Certainly, we'll have to figure out the lay of the land to come up with what our recommendations will be for next year. What needs a clean up maybe that might not have happened with all of these bills and what's left that they didn't do that was on our list that maybe we could try and encourage them to do if they're still on our list next year. So, it's starting to move in that direction – what do we want to get ready for next year?

Paying the bills, budget is another major time consumer of the Co-Executive Directors and others in the agency. We continue to meet regularly with the Deputy Secretary and

our staff to review spending. We are working with the Deputy Secretary. Our hosted partners at OGS with a meeting scheduled for tomorrow to go over our notes as how do we project spending through the end of this fiscal year, and also what do we expect to project into the next fiscal year. We have not yet received the budget call letter that usually comes out soon, and we anticipate the budget will be due somewhere by mid October. So projecting what we have available to spend this year, what our projections will be, and what our projected short fall might be is still from our planning purposes within the numbers that we gave you in the summer when we asked you to encumber the funds from the State Cyber Account. We asked you for \$1.2 million. Based on our estimate today we estimate that we will need to use about \$800,000 of that based on where we see the trend so we hope to have a more finite number for you at the December meeting in case we need to ask you to go above that number if for some reason the trend goes farther along than we anticipate. But I think we're on track for the recommendation we gave you based on what we know now.

The other ask would be what do we envision that we would need for Cybersecurity going into the next year? Our original plan that we were asked to produce in relation to Cybersecurity for the election infrastructure had recommended a state commitment of \$5,000,000 each year for three years. We received the first-year funds but not the second-year funds. We did receive \$19.5 million in federal funds. From our calculation all of about half a million dollars of that is encumbered for particular projects to either make greater security, risk management at the county boards or the state board for projects. So, part of that major effort was the report from Grant Thornton to do the risk assessments of the county. I think at last I saw we're at 39 or 40 county reports, 16 that are finalized recently that we are working to get those reports to the county. But we also have a draft trend report that we just received earlier in the week, we're looking to review that to be able to share that information as a basis for asking for next years' budget. So we're analyzing what they see as a pattern, and more importantly, with our secure election staff and others based on the patterns that are being identified, what would be the best approach as far as resources, people, time, money in order to close the gaps that we identified and how best to accomplish that. We hope to have that finished in time to submit the budget request by October is our goal. It's probably something that will continue as we see other reports. If we have to make adjustments, to it anyway. But that's our goal with regard to the budget.

Staffing, I think we've had a number of changes because of a retirement or reshuffling people to deal with the retirement but one other, Donna my secretary and yours, announced she's retiring so this would have been her last day but she's home taking care of her grandson who's sick today. Her last meeting. Her last day will be mid November. So, we certainly will miss her. She's worked here for 20 years and at least 3 directors on our side so we wish her well. We know from all of our retirees who come back to visit with us they smile a lot and they're very happy. But we wish her well. So that's another change we will be seeing shortly. Other than that, we are getting a lot of calls as we begin the presidential cycle as far as getting information out on that process. We have the political calendar out for the presidential cycle. We are starting to get phone calls

from people trying to figure out as typical, who is running for president but more importantly how does it work? Whether it's coming from the county boards of election. There were a lot of changes in four years at the county boards of elections so there are a lot of local administrators who haven't lived through a presidential cycle, worked through it, they've lived through it they haven't worked through it. So certainly, we're doing our best to try and answer those questions. But they're just starting to ramp up.

Todd Valentine: Again, you know we wish Donna the best in retirement. She was here, its hard for me to remember a time when she wasn't here although I was here before her, it's just hard for me to remember that so. She will definitely be missed and the transition we'll work on.

The only thing I wanted to add on the budget was you may have seen in the media that the federal government is considering putting in additional Cybersecurity funds. One house had \$650,000,000 and the other house had \$250,000,000. So, they have to go to a conference meeting to try to settle it out. We expect it will be somewhere in that range so that if they follow the past practice as they did with the prior cyber money, we got that the \$19.5 million it will probably be in the nature of 10 to 12 million dollars. Right now, we have very little authority to spend it. They gave that to us at the beginning of their fiscal year. we only have an appropriation available to spend that so only for like a million because we didn't know how much we were going to get the last time so that was actually incorporated into our plan, what will we do with that so.

Early voting is what we were working on the in most of the counties and certainly looking into the presidential year. We started that with the county's communication at the conference. We will continue with that in January and as things start to happen towards the beginning of January officially start things. So, we can wrap that up.

Douglas Kellner: Alright thank you. Any questions? Alright then we'll turn to the Counsels, Kim Galvin and Brian Quail.

Brian Quail: Good afternoon Commissioners, just to begin with a little calendar item, Friday is the deadline for the 32-day pre-general report. I just want to underscore that for our filing community. I'm pleased to report that here we are on this day in early October and from the perspective of the State Board of Elections all ballot access litigation actually has been concluded. We don't have any hanging issues out there that would cause ballot changes. So that is ultimately a good thing and a point of some relief.

Douglas Kellner: And the first time in 45 years.

Brian Quail: It's been a while; there was always at least one thing that is still pending so we feel really good about that.

With respect to our cases, we had a couple decisions come down both favorable. In the DeRosier case, Judge Sharpe accepted the Magistrate's report with respect to political

appeal and New York's electioneering laws not being in violation of the federal constitution - that was welcome news. In the Upstate as we colloquially call it the Upstate Jobs 2 Case, the Fourth Department ultimately came to the same conclusion that the Third Department came to in the Cahill v. Kellner case with respect to the constitutionality of §7-104 and the placement of independent bodies on the ballot because of consolidating their line with another placement for a candidate who already appears – also welcome news.

The unit has been exceptionally busy with the Counsels Unit with fielding telephone calls as we move into the fall. We provide a significant amount of support to County Boards of Elections and with all the statutory changes and early voting, that call volume has ramped up substantially. I think we're meeting it pretty well. If there are any detractors out there who are watching and I haven't gotten back to you on a call, let us know because I think we're caught up. As far as the other work of the unit, we've been very busy with ongoing litigation.

And as always, I would like to talk about the cumulative effort of the Compliance Staff in terms of what they're doing. They are up to 132,482 filings received. The review on 118,329 of those has been completed. So that differential is quite acceptable. We're keeping up with the incoming workload and managing very well.

With respect to filings for the July periodics, we have, as of today, we have outstanding nonfilers of 2,674. With respect to the January periodic, the outstanding number is 2,134.

Paid internet digital ads, we haven't gotten any new ones of late so the number of filings in that category stands still at 113 of the 93 Independent Expenditure Committees that are out there, 18 have filed at least one paid internet digital ad.

Douglas Kellner: Anything else Kim?

Kim Galvin: No, just the vacancy in the congressional district out west has sparked a lot of attention too and specials and the timing if there is one.

We are also getting a lot of calls, its kind of a controversial topic but the LLC law that was passed, if you recall the stakeholders of the owners had to be reported to us by December 1<sup>st</sup> but the committees are taking filings all along and there's been a large volume of calls where they reach out to the LLC, they won't tell them who the stakeholders are. They don't have to file the report with us till December 1<sup>st</sup>. There's a whole contingent of problems swirling around with that particular timing of filing and taking contributions that we're working through the best we can.

Douglas Kellner: So, what happens if an LLC will not inform the committee to which they've made the contribution who the principles are?

Kim Galvin: Well, that's interesting. The law doesn't tell you what to do with the money. Some have returned it; some have sent us letters showing us the letters that they've sent the LLC for the breakout of the ownership. But I guess when we get to December 1<sup>st</sup>, we look at who's filed. Some are starting to file now, and then cross check them and make them available to the candidates to see if their LLC is one that's filed and then deal with their residual people that their LLC didn't file, and they were given an otherwise legal contribution.

Douglas Kellner: And what does that mean, deal with the residual people?

Kim Galvin: Well, I don't know we haven't worked through it specifically yet. Maybe they'll have to return the money. It seems to be more of an enforcement unit if they don't file their filings as required by the law by December 1<sup>st</sup>. But there's a lot of calls on that. It seems like it should have been reverse, like the filings be made January 1<sup>st</sup> and then you can give the contributions instead of giving the contributions all year and file on December 1<sup>st</sup>. But it's a little juxtaposed so we're trying to work through that. But that is a big concern. To a whole group of filers from the very small to the very large.

Peter Kosinski: So, when a filer files and they got money from an LLC, what are they reporting on? Do they say LLC so and so gave me \$500?

Kim Galvin: Yeah then they have to break out on [Schedule] "O" who the owners are.

Peter Kosinski: So right now, they're just saying LLC?

Kim Galvin: Some they get. You're running into a lot of problems too at a very local level. Like the owner of a pizza parlor for example that's incorporated as LLC and they let you hold an event there, but that's really an in-kind contribution for the place and the pizza owner doesn't know they're supposed to file this report with us. So, we've done a lot of outreach. We've posted directions on the web but those types of questions, they're taking a lot of time for the staff so we're trying to work through, come up with suggestions for a statute modification or a regulation modification or something like that.

Peter Kosinski: So, the LLC's are notified by the recipient typically, that's who tells them they have this requirement? I mean how do they know they have this requirement.

Kim Galvin: We sent them all a letter that this was a new change in the law.

Peter Kosinski: Who sent that?

Kim Galvin: The Compliance Unit to the LLCs.

Peter Kosinski: Which LLCs? All LLCs?

Brian Quail: No.

Kim Galvin: I think the ones... We didn't? The one's that were filed?

Brian Quail: To all LLCs? No. We posted it online and we sent it to filers...

Kim Galvin: Right.

Brian Quail: ...but this is very similar to the way partnerships work.

Kim Galvin: Yeah.

Brian Quail: Partnership makes a contribution and they're supposed to provide the information that would be necessary for the sub-breakout of the contribution. LLCs now fall into that place and the treasurers of the committees that receive LLC contributions in the first instance are responsible for gathering that information from the LLCs. And then what happens as Kim elucidated is what if the LLC doesn't provide the information? And in some instances, people have informed us that they would like to wait until the filing in December by the LLC at which point, they're going to have what they need to amend their filing. So, they're kind of putting a placeholder out there saying, "Well we can't get it, we don't have it, we're going to get it in December." But fundamentally, it seems to me that the obligation is on the treasurer like it is when the treasurer sees a contribution from...

Peter Kosinski: So how does the LLC know they have to do this December file?

Brian Quail: What we've posted on our website and then the statute.

Peter Kosinski: So, it's just assuming LLCs will look at...

Kim Galvin: And the candidates reaching out.

Peter Kosinski: So, we're relying on the candidates to reach out to these LLCs to let them know you have this filing obligation with the State Board of Elections by December 1?

Brian Quail: In the first instance to gather the information that the treasurer needs to make for the disclosure, but we have not done an outreach to all LLCs in the state.

Kim Galvin: Well, we can't.

Brian Quail: I don't know what that would entail, there are so many. It's the most numerous entities that there is that's out there.

Kim Galvin: But we do check to make sure I mean there's obviously a \$5,000 threshold so these aren't the huge donations that you used to see the LLCs giving. They fall under the threshold one and some of the interesting - Brian is going to kill me - some of the interesting things that we're seeing is the LLC law is written in such a way that people

say, they haven't fixed it but really, they have. Because when you break out personally, it goes to the individual limit so the entity itself, unlike a corporation, can't give \$5,000 it's broken out and attributed to that individual as you break it down. So, a lot of questions are, okay is that's to identify the people if it's under a certain amount do, they still have to break it out, if it goes into housekeeping do, they still have to break it out? There's a lot of questions from a lot of people on this law.

Bill McCann: One of the issues we have pending is related to this is the issue of how the \$99 itemization rule applies to the threshold. So, for instance, there is one school of thought that says the \$99 itemization is the general rule and that when you breakout as we historically did with partnerships on Schedule "O" where the LLCs would be, that same \$99 rule would apply. So, you would only put itemization if you were the substrata of the LLC to the extent that any portion of it you know in essence exceeded the \$99. So that's one of the things we're wrestling with.

Kim Galvin: There's a lot of questions about them.

Douglas Kellner: Anything else? Well thank you. We'll now move to Election Operations, Tom Connolly and Brenda Lovullo.

Tom Connolly: Thank you Commissioner. With regard to elections, since the last meeting we did prepare the General Election Certification and we distributed that and sample ballot layouts to all the counties.

As Kim mentioned, there is now a vacancy in the 27<sup>th</sup> Congressional District and so we have prepared the documentation that went out to the 8 counties in that district letting them know that a vacancy was created.

We did receive judicial assignments from the OCA for early voting and Election Day but just for New York City. We've been working with OCA because they kind of break it up into the New York City and outside of New York City, so we've been working with OCA on getting the judicial assignments for early voting on Election Day for all the other counties. We provided them with the list of all the times that each county is going to be opening and closing for early voting. Each county they usually break it down by judicial district and then by individual county so they know and can be sure that they have 100% coverage for each county.

With regard to voting machines, on the ES&S front, we reviewed the draft secondary source code review with NYSTEC. We are awaiting, we should be receiving the final version this week and then would be working with the company as far as whatever those findings in that review report was. We anticipate probably some potential software changes and we are aware of at least one other one. Brendan and I did discuss, we were shown the functionality at the summer conference that comes from software that we have not yet received. And our understanding from the company is that they were waiting to see what was going to come out of the secondary source code review and then submit any

software changes that were necessary from that in addition to this new software functionality which I could provide copies of it, but basically in the past on the ballot cards what they're printing, is they print out barcodes and sometimes there would be, there's three to a row and depending on how many races were being voted in, there were blank spots and there was a concern that theoretically there would be overprinting later on and fill in those blank spots. The software they're going to be submitting whenever there is a black spot, they put in a square with an X through it so that no barcode could be printed on top of it or even if one was, it wouldn't be readable. So, we were told that we will be receiving that software after they get the results from the secondary source code review.

With regard to Dominion, we did complete the functional...

Douglas Kellner: So, what is the status of the secondary source code review? Which is with NYSTEC?

Tom Connolly: NYSTEC kind of found a vendor to do the secondary source code review, that company is called ATSAK. We had reviewed with NYSTEC late last week the draft findings and we were told that we should expect to receive the final report I believe today in which case we would then share those findings with ES&S and also their testing lab in case there was any additional information that we wanted to see as a result of that.

With regard to Dominion ICE, we did complete a functional testing for Dominion Counter upgrade, there was a public test that was held on 9/24 for that and there are documents that were prepared and provided to the Commissioners. There is an agenda item later on for consideration of that upgrade.

Clear Ballot, the last meeting Commissioners certified version 1.1.6, that was distributed to the counties who use that system. We did also receive notice that they were going to be submitting an engineering change order for some end-of-life hardware, largely it was just some of the computers that were being used, the model of the servers that's becoming newer because some of the older servers were just end-of-life.

There are also two new companies that are interested in possibly submitting systems or at least components of systems for review. Hart InterCivic will be coming to the Board, we have spoken to them in the past, they did bring some equipment and show it to us previously. They are going to be coming to the Board on 10/16 to talk with the Ops Team about the certification process and possibly submitting one or more of their systems for consideration.

In addition, Democracy Live also has an ADA ballot-marking device that is very compact and fairly inexpensive that we have looked at a couple of times. We did also speak with them; they have been in touch with our team as possibly moving forward with submitting that device for consideration.

Lastly, on the voter machines, from the current voting machine contract, the state contract ends in January 2021, so we've been working with the Office of General Services on trying to get the new contract moving only because it usually takes that long to get all the different moving parts in play. Brendan and I have discussed with those internally and also discussed with OGS the possibility of engaging some of the stakeholders just to see if there is any feedback they would want to provide that might inform us in moving forward if we wanted to change any of the provisions or language or add certain protections in from either a security standpoint or just to get the feedback from, let's say, the counties on their experience with the current contract just to see if anything should be done differently in the next contract.

With regard to electronic poll books, we've continued to work with counties. A lot of them have been working on procuring the electronic poll book systems. We've been working with the Office of General Services on any kind of documentation they need either from us as we approve the systems or revisions to the systems also, with regard to some additional peripherals like ballot-on-demand printers and charging racks and things like that. We've been trying to facilitate the conversations that need to happen between the vendors and OGS so that those items can get put on state contract so the counties can buy them with enough time to kind of put them out in the field and get their poll workers trained.

Douglas Kellner: Could I just follow up on that issue. So, right now are counties able to buy Ballot on Demand printers through a state contract?

Tom Connolly: Yes, two of the three E-poll book vendors have on their price list ballot-on-demand printers.

Douglas Kellner: And are all three E-poll book vendors available through state contracts if the counties wanted to go in that route?

Tom Connolly: Yes.

Douglas Kellner: So, if a county board, is it appropriate...I want to phrase the question properly. Would it be valid to say that a county board, I'm sorry? Is it accurate if a county board says, "We are not using E-poll books because there is no contract available for us to purchase it"?

Tom Connolly: I don't see how that would be a valid statement.

Douglas Kellner: Okay alright. Thank you you've answered my question. Go on with your report.

Tom Connolly: In addition, as part of the law that allowed for the use of electronic poll books, the State Board was tasked with a number of different responsibilities, obviously one of which was evaluating and approving systems for use. One of the other things that

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we were tasked with doing is certifying the networks that are used by the E-poll books making sure they follow our security requirements. To that end, we did provide the counties with a checklist of 11 different security protections that they should be putting in place where applicable for any of the networks that are going to be used by the E-poll book systems either during Election Day or the early voting period. That survey was due back to us yesterday. We have more than half the counties have responded, so our step will be following up with them today and the coming days to make sure we get surveys from everyone who is going to be using E-poll books. Obviously there are counties that will not be using electronic poll book systems this year but we had asked them previously on the Statewide ECA call, as well as some numerous e-mail reminders, that even if they weren't going to be using E-poll book system, at least let us know that so we can mark them down and not continually nag them for something that they're not going to give us.

Brendan and I also did go out, I guess a month or two ago, to Madison and Onondaga Counties. They were using the KNOWiNK system for some small elections. I think Onondaga was a town election and Madison was like a water district, I believe. So Onondaga we actually got there a little early cause we didn't realize they weren't starting the election till noon so they did have all the machines set up so we were able to kind of go over it with them and kind of talk to the Commissioners about their experience with the system. Madison we were able to see the backend system that the Boards can see, they had a large TV set up with sort of a little portal with dashboard different metrics. They were able to receive communication directly from the poll site from the workers while we were there. And then we also went out and visited the poll site and spoke with the poll workers about their experience with the system and how voters were interacting with it so that seemed all very favorable, so it was nice to see that actually out in the field in practice.

In addition, we presented at the Summer Conference for the Election Commissioner's Association. We've been continuing our work, working with counties and vendors on updating procedures for early voting. We did perform acceptance testing for counties that received new Dominion ICE machines in Sullivan, Tompkins, Rensselaer, Westchester and Orange, New York City and Erie Counties received some new DS-200s from ES&S so we did acceptance testing there and we also did county asset visits at Schuyler, Tompkins, Tioga, Niagara, Erie, Genesee, Livingston, and Yates. Brendan?

Brendan Lovullo: I'm good.

Douglas Kellner: So, you provided the Commissioners this morning with this very interesting chart on where the counties stand in complying with the reporting requirements with respect to implementation of early voting. And I see that virtually all of the counties with the exception of New York City have provided their accessibility surveys. You have communications plans submitted by almost all of the counties. I see Suffolk and Nassau and Cattaraugus and Albany are the only jurisdictions that are missing. And at least with respect to Nassau and Suffolk, I've seen a lot of things in the press with respect to them. But on the other hand, with the security plans, virtually none

of the large counties have submitted their security plans. I think Ulster is the largest county that's actually submitted a security plan. So, what's the story with that and what are you doing to follow up with those jurisdictions that haven't submitted their security plans?

Tom Connolly: I don't know if the Co-Execs want to handle this one solely because a lot of different columns in this are being handled by different units because some of the documents that are required by the county boards have to be reviewed by the Co-Execs. I know PIO has been receiving some of the documents like the Communication Plans. The Election Ops we've been dealing largely with the network surveys for E-poll books and then we also have the last two columns as far as ensuring no double voting and the second to last one which escapes me but the premature publication of election...

Douglas Kellner: So, for your network security plan, I see that New York City has given you a network security plan.

Tom Connolly: For the E-poll books, right. They did submit something to us. We had a question about it this morning that we saw because we got it last night?

Brendan Lovullo: Yesterday afternoon.

Tom Connolly: So, we're just waiting on a clarifying response from them, but we have received documentation from them for their network security for their E-poll books.

Douglas Kellner: But then the next largest and you have Westchester has given you a plan, but Nassau and Suffolk have not. And Erie has not. So those are pretty large counties without network plans; what's going on with them?

Tom Connolly: Right, so the deadline for the network plans was yesterday so that's why today we were going to be starting to harass anyone who hadn't yet submitted one to us.

Douglas Kellner: And what does that mean? I mean what...

Tom Connolly: Well, I mean basically we're going to reach out to them and try to understand a couple of things. 1) Are you using E-poll books? If so, can you fill out this survey for us? Because we try to make it as easy as possible. It's really not a survey per poll site; it's a survey for configuration. So in the case of New York City, if they're going to be using the exact same hardware and software network setup for all of the different poll sites, they have to submit one survey that tells us how its being configured and then they would have to attach a list of the poll sites for which that configuration applies. So, we would just...

Douglas Kellner: And what's the point of that submission to the State? What is our role in reviewing that?

Tom Connolly: Right, so it's part of like I said earlier, the language in the law that allowed for the usage of E-poll books tasked the State Board with doing a couple of things and one of them was, the language I believe is, certify the networks to which the E-poll book systems are connected. So, we obviously certified the hardware, we certified the software when we approve the systems, but they can be kind of implemented in different ways. They can be implemented either using cellular iPads where they're connecting directly to the network. They could be implemented using WiFi or cellular hotspots. They could be implemented using WiFi routers or they could even be hardwired into a system somewhere. So, we can up with 11 different security requirements around the network aspect of the larger E-poll book system and for whatever configuration they end up using, we just wanted to be sure that they try to put as many of these protections in place where possible. Some of them aren't always possible because whereas if you have either a wireless hotspot or a cellular hotspot, you have the ability to kind of log onto a control panel and set certain configurations. If you're using the cellular iPad it's going directly straight to the network, so you don't obviously have the ability to say, enable logging or to not broadcast the network name because there is no network name in that situation. So a lot of these were just to the extent possible depending on how you were going to configure the network aspect of the E-poll book system, we wanted them to try to put in as many of these protections and to at least tell us that they did so.

Douglas Kellner: So early voting starts in 3 weeks...

Tom Connolly: Just over...

Douglas Kellner: ... and our role at this point is really just as an extra set of eyes to make sure that this network...

Tom Connolly: Yes, it's not okay for them to come back and say, "No, we didn't implement any of these things" unless there's a really good reason why and the only good reason why would be its not possible with the configuration that we're using.

Douglas Kellner: Alright, now on the other hand with the security plans, virtually none of the large counties, as I say Ulster is the largest county that submitted a security plan, so what's happening with that and what are the consequences of not having a security plan submitted to the State Board?

Bob Brehm: We, the Office of the State Board covered that topic on a call with all of the counties on Thursday last week was our monthly call, reminding them that these were due, and we followed up after the call with a list. Because as you can see, there's several in addition to the security plan. You know, where in the regulation does it require them to either give us a procedure or plan, and there are different units in the agency taking the lead on receiving them. So, we provided a reminder by e-mail following up on the phone call what are the specific requirements in the regulation. Here's the regulation. Here's the requirement. Here's the unit to send that answer to. Just to make sure we are

onboard what people are giving us. There are some when they have given us some counties might have given us a communication plan, label it a communication plan, might have one of these other factors in there. So, the staff has been looking to make sure whatever we got from counties labeled as something it doesn't also include something else that they didn't label that information. There weren't many of those but there were one or two.

Douglas Kellner: I'm not sure you're really answering my question.

Bob Brehm: But we did ask...

Douglas Kellner: So the legislature wanted security plans understanding that there was a new layer of complexity with early voting, especially because you have to close down each day and you have questions about what's going to happen to the ballots and to the records with the overnight process. So, what is going to happen if counties do not provide a security plan? And it's a requirement that we actually approve that plan and they put a time limit on the Executive Directors to approve or reject the plan within 14 days of submission. And, of course, every county that hasn't submitted a plan is out of compliance with that statutory mandate. So, what are the consequences if a county simply ignores us and does not submit a security plan?

Bob Brehm: We have not discouraged anyone from not giving us a plan. We have encouraged them to give us a plan. We will have staff calling those, I mean we did a phone call reminder and an e-mail reminder to get the plans and the next would be a phone call reminder to the individual counties, "When will we get your plan?"

Douglas Kellner: But this is a statutory mandate. It's not something voluntary on the part of the county. They are required to do this, and they have not complied with this statutory mandate. And virtually all of the significant jurisdictions in the state are out of compliance with respect to this. So, it seems to me that we need a more detailed policy on what we are going to do to obtain compliance with this mandate.

Todd Valentine: Well...

Douglas Kellner: Are you suggesting that the State Board is not going to do anything if the county does not give us a plan in time to be approved for the opening of early voting in 3 weeks?

Bob Brehm: The wording of the regulation, I know we've had some questions about it and the questions we've had from the counties has in the regulation identifies that the ballots, the portal memory devices, and the poll books be secured and brought back to the Board of Elections each night or that they have a security plan that is approved by us if they're going to do something other than that. So, considering there are about 34 locations that are at county boards of elections, many of the ones that we've seen are at the Board of Elections and their plan has been...

Douglas Kellner: You're deflecting from my question. I'm talking about the large counties not the smaller counties.

Kim Galvin: I don't think anyone knows what they're going to do. We haven't discussed it.

Douglas Kellner: Well I think we need to...

Peter Kosinski: Was there a mechanism put into the statute for us to enforce this? Was there some...

Todd Valentine: There is no separate mechanism for enforcement with regards...

Peter Kosinski: I mean sometimes the problems with these mandates, and we've had this before is they mandate the counties to do something, it's our obligation to enforce it, but we're given no enforcement mechanism. We don't have a hammer so to speak. We don't for example provide funding to our county boards of elections that we could say, "If you don't do this for us, we are going to withhold your funding" which is a common mechanism that governments use to enforce...

Douglas Kellner: This sounds like Risa Sugarman's explanation on why she doesn't prosecute nonfilers. We could go to court and compel each of these county boards to provide the plan.

Peter Kosinski: I guess that's it. I mean as far as I know that's probably the only enforcement mechanism that might exist is us going to court and having a court order and then if you don't do it, I guess you're in violation...

Douglas Kellner: In contempt.

Peter Kosinski: ...and contempt and that's the penalty. But we as an entity do not have that administrative mechanism that I'm aware of it enforce this mandate. Now tell me if I'm wrong.

Todd Valentine: I agree with that.

Peter Kosinski: But we've been in this tough position before as an agency where we're supposed to make a county do something, but we really aren't given the mechanism.

Douglas Kellner: My concern is that I have a sense that there is we have not shown sufficient commitment on the part of the State Board to fulfill this part of the statutory mandate. That we're sort of complicit at this point with the county boards that are ignoring it.

Todd Valentine: I don't know that I agree with that.

Douglas Kellner: I guess I'm in favor of commencing a proceeding in Albany County Supreme Court against each of the counties that hasn't got a security plan unless they get it to us say by next Tuesday which is 2 weeks before the commencement of early voting. I mean I think it's serious that they're not submitting these plans in a way that we can review them, and I guess even more so that the public can review them.

Andy Spano: I agree with him and I think the more, we're given responsibility to try to make this happen and it doesn't happen, and nothing happens. I think that's a disaster going forward with any of these things whether its been in the past or that's why people don't ask for it. And I think a warning and then an action is appropriate.

Gregory Peterson: That could be part of the problem. I don't know the tenor of the correspondence that has transpired regarding this. My experience in life and as an attorney and everything else is that if I get a letter that says, "By the way you have to do this" I said, "Okay fine" I put it under here and I move onto something else. However if I get a letter that says, "Here is the statute" boom, right in bold print highlighted or however you want to do it, "You are now out of compliance with a requirement and if this is not corrected immediately blah, blah, blah, we will pursue this in court." Something along those lines, a real strong letter, holy crap. All of a sudden, it's back to the top of the pile and something happens. You can certainly do that by faxing it directly to the Boards who are delinquent. You sent it out today, tomorrow, boom they get it. Let's see what kind of feedback we get. And of course, as Commissioner Kellner has said, also bingo, if you don't, we're going to embarrass you by suing you in court to enforce this.

Douglas Kellner: I would like to do that and I think that we need to have a kind of follow up, perhaps a standby meeting for the Commissioners to meet by telephone to discuss what to do, you know, in the middle of next week if this isn't...

Gregory Peterson: We should get our toughest letter writer here to write something that's really tough send it out...

Douglas Kellner: You did a good job there dictating it, Commissioner.

Gregory Peterson: When you get something like that, all of a sudden it catches everybody's attention. It's can't be la-di-dah.

Douglas Kellner: And I think that we as a Board of Commissioners should be prepared to take action if, in fact, it appears that the counties are not meeting their statutory responsibility here.

Peter Kosinski: So, just for a minute Bob, could you go over that statutory requirement again? You just read that about when the counties have to file a report with us, the situation where they don't. Is that correct that if they do it a certain way...

Bob Brehm: [Part] 6211.2(a) All ballots cast during the early voting period by any method allowed under law shall be canvassed and counted as if canvassed on election day. At the end of each day of early voting, all voted and unvoted ballots shall be reconciled and along with any portable memory devices containing voting information and registration poll records returned to the Board of Elections or otherwise secured pursuant to a plan approved by the State Board of Elections, excuse me, to the State Board, at least 60 days before the first election at which such plan shall be applicable.

Peter Kosinski: So are you reading that that if they return all of the ballots to the Board of Elections each night and the sticks each night, they don't have to submit a plan, its only if they're going to do something other than that, that they have to submit a plan. Is that the way we're reading that regulation? I should look at the attorneys for this more than you Bob, what do you guys think?

Brian Quail: I admit that the language is subject to some ambiguity but that is the way that I believe we have articulated it to counties.

Peter Kosinski: So, it could be that the counties are anticipating to do that and that's why they're not submitting plans, or do we know?

Brian Quail: I believe that is possible.

Bob Brehm: Some are doing that and submitting plans. You know the ones we have received, that is what they're doing but they still gave us a plan. I don't know if there are others that are doing that, thought they didn't need to give us a plan also because of the way this is worded. I don't know that anybody has said, I haven't heard from a county that said, "Do I need to give you a plan?" But when we discussed this when we were in Saratoga at the Conference, it came up, we basically read this. If you, you know the need is certainly security with regard to ballots, accountability and a bipartisan way of the opening and closing that you can now cover 9 days of opening and closing and then election day, but that language. So, it's possible we didn't get a plan from people because they read it too, I'm bringing it back to the Board, I don't have to give you a plan.

Peter Kosinski: But then we should hear that, at least.

Andy Spano: That should be the plan.

Peter Kosinski: Or at least they should respond I agree but ballot security is a high priority here so we need to be sure that the counties are providing adequate ballot security

and if we don't have assurances of that I agree we need to take some action to make sure that's happening out there.

Andy Spano: Well any letter you send out, you say, "If you are doing X, Y and Z, we want to know that."

Peter Kosinski: We can say it that way, sure.

Andy Spano: After you say what you said.

Gregory Peterson: Catch their attention.

Andy Spano: That's right I agree.

Douglas Kellner: Okay well there's a consensus...

Peter Kosinski: I know the staff is talking to these counties all the time and I hope they would share with them our concerns if they're not watching today that you know the Commissioners are very concerned about this and we would like to see it happen. If not, we're prepared to take further action.

Douglas Kellner: Yeah, my goal here was to ramp this up as to not just a discussion with the counties but something to make it clear that this is not voluntary. They're not doing us a favor by sending us the plan, that this is mandatory. And that we are in fact supervising this. And I say this with the recognition that our staff has worked very, very hard with respect to early voting and it's been a very difficult and time consuming process to get this done on such short notice, and I'm sure that's the case at the county boards too but...

Bob Brehm: I mean we do hear that from our staff at the county level I can say with clarity if there's any doubt, because they are on-boarding new equipment, policies are being fine-tuned as they now are actually getting the equipment and training inspectors and learning things they didn't know...

Douglas Kellner: But they should send us what they have. And if its still not finished, first of all early voting starts in 3 weeks so they should send us what they have so that we can comment on it and the public can comment on it.

Todd Valentine: Just on the counties we have, from my conversations and discussions with them, I'm not aware of any county that is unaware. They're securing their ballots. They have long before this, so this is not a new requirement for them to secure the ballots, the timeframe for the remote sites is the twist on this but all of them to a T, and in my conversations they are fully aware of their need for that. Now whether the plan has been filed or not I quite understand that they need to do what we've asked them...

Douglas Kellner: And whether it's satisfactory is a big issue though because I've heard suggestions of what some counties are planning to do that in my view are completely inadequate. So, for example, I've heard of a proposal that they would hire an off-duty police officer to overnight with the ballots. I don't think that's sufficient because that's basically trusting one person with custody of all of these materials and that that alone is not a sufficient security plan. And I think we need to have these articulated so that people can comment on the adequacy of the security.

Todd Valentine: Are you saying a police officer would not be sufficient security?

Douglas Kellner: In my view, absolutely not because that police officer is a target. All you have to do is compromise that one police officer and now you have access to compromise that and seals, as I've said several times previously, in my view are just security theater. So, seals are a good thing to have because they remind everybody of the need for security, but the seals themselves don't provide security because they can so easily be defeated by anyone who is familiar with the process. And that's what I mean by saying it's just theater. Should somebody trust having me have all the ballots? And the answer is no. You need a system that has checks and balances built into it to provide adequate assurance that there's no way to compromise the chain of custody of the ballots. And having one person overnight with the ballots...

Kim Galvin: What if, for example I've heard the same issues you have but what if all the ballots go back to the Board and they're just protected through the shell of the machine and seals?

Douglas Kellner: Well maybe, I'm assuming that the Board itself has adequate security.

Kim Galvin: Like, I've heard New York City for example, they have to at least bring their ballots back and forth and I believe their plan is, from watching their board meeting, is they're going to bring all of their ballots back each night securely and then the police officer would guard the machine, the sealed, empty machine.

Douglas Kellner: With the PMD or without the PMD?

Kim Galvin: I don't know, I don't remember.

Douglas Kellner: Well that's an important detail...

Kim Galvin: I know all these details make a difference.

Douglas Kellner: And all I want them to do is to put it on paper so that we can look at it.

Kim Galvin: I agree.

Peter Kosinski: Well I'd be willing to entertain it. I'm not sure I agree with the Commissioner on the concerns I have about the police agency being involved, because I know they already are, the New York City election process, police have been involved with city ballots for decades. Frankly, as a security measure in New York City they trust the police more than anybody and I do too. So I'm not as concerned maybe about that aspect but I do agree that this is a very important issue – generally – security of ballots and that I think this mandate was put in there to get some assurance that everybody's comfortable with the way the counties are doing it. And does that mean we have to see what they're doing? Yes, it does. And then we should have that opportunity. And so, I do agree with that.

Gregory Peterson: Well I think one of the messages that is given to the county boards that there is a consensus among the Commissioners and this is coming straight from the Commissioners so I would strongly urge, blah, blah, blah and let's see what happens. I would say that 99% of them will come back immediately. As we've said here, that has some sympathy for the county boards because they're under a tremendous amount of stress, everything is new. They're running around trying to get everything correct so that we don't screw up on Election Day or the time 9 days ahead of time. So, all this has to be done yes, but it's also we have a certain amount of mandates and sorry about that but gotta do it.

Douglas Kellner: Thank you.

Andy Spano: Yeah but this is only a plan, they don't have to do it they have to submit a plan.

Gregory Peterson: Submit a plan as to what you're going to do.

Peter Kosinski: Well, what you're going to do.

Douglas Kellner: And, we have to approve or reject it.

Andy Spano: I'm saying the submission is all in the plan.

Kim Galvin: That's like what I would say.

Douglas Kellner: But every county, I mean we know New York City, Westchester, Suffolk, Nassau all have plans they just have to sit down and send them to us and if it's only a draft, it's only a draft but at least we can look at it and the public can make comments or criticisms with respect to the plan and time is short. Alright, I think we're all agreed on this. And I've accomplished my objective which is putting a little bit of a match under the feet of our own Executive Directors to make this a priority. Thank you.

Gregory Peterson: PIO.

Douglas Kellner: Alright, yes, so John Conklin and Cheryl Couser.

John Conklin: Thank you Commissioner. The Public Information Office continues to be busy. We've had a lot of questions probably the most asked question we've had since the last Board meeting is the question about to change one's enrollment to qualify for the primaries for next year so we've had conditional answers, unless the statute changed, which just recently changed so we're answering lots of questions on that. The political calendar, the presidential primary calendar, the date for the presidential primary next year. What if there's a vacancy in an office because the date moved from September 20<sup>th</sup> to the first week in August, whether there was a vacancy would it go on the ballot for this year? Lots of questions about early voting. The electronic poll books, the always popular topics of campaign finance and to a much lesser degree than before, we still get a few questions on the time off to vote law.

So, the unit's also participated in the monthly ECA calls in July, August and September.

We processed 87 FOILS in July, 78 in August, and 62 in September.

We issued two press releases since the last Board Meeting, September 24<sup>th</sup> was the National Voter Registration Day, we did a press release on that and we also had a staff member, Jeff Baez, present at the Second Annual Cybersecurity Summit Conference down just outside of Washington.

We're updating the Voter Registration form in compliance with the change regarding 16-year-olds. All the forms have been translated. That change goes in effect January 1<sup>st</sup>, 2020. We expect to do a drop shipment in the middle of December in preparation for the January 1<sup>st</sup> effective date and we are currently canvassing the county boards to determine what number of forms they're looking for in the shipment.

Some of the items that PIO is tracking, this was all part of the conversation we just had in terms of the communication plans and the poll site accessibility surveys, so we're tracking those. We continue to press the 6 counties that haven't given us a communication plan yet and that was mentioned on the ECA call again last week as well.

We worked with IT on the second-year requirements for the launch of SANS training. Last we checked about 45% are in process or have satisfied this year's requirements, its taking a little longer than the first year for people to ramp up and complete those.

With regard to the website, we posted the 2020 political calendar, the 2020 president political calendar; we had a couple of updates to the 2019 political calendar. We posted the webcast for the July 25<sup>th</sup> and August 28<sup>th</sup> Board meeting. We also did the transcripts for the June 27<sup>th</sup> and the August 28<sup>th</sup> meeting. We posted a notice to the calendar of events for the public demo last week on the Dominion Image Cast Evolution Printer upgrade. We also posted information on the universal postal union issue for overseas voters that was resolved favorably, and we did some updates to the MOVE Act information page as well.

With regard to NVRA we did some trainings. On the 21<sup>st</sup> of August we had a training with the Department of Health in New York City, 80 people attended that. There was another training in Syracuse on the 27<sup>th</sup> for the Department of Health as well, 55 people attended that. September 17<sup>th</sup>, we did an NVRA training for the Human Resources Administration in New York City, 370 people attended that.

With regard to Board visits, in August we visited Delaware, Dutchess, Columbia and Onondaga and in September we did Westchester, Niagara, Erie, Genesee, Livingston and Yates. Michael and Patrick would like you to know that they traveled 2450 miles for those Board visits. So, at this point, we have visited every county Board required within the two-year cycle. We only have one Board left which is New York City and they asked for their review to be scheduled for after Election Day which we accommodated them on that. So, we will be done before the end of the year and then start the cycle again.

With regard to grants, the Aid-to-Localities grant was approved by the Division of the Budget since the last Board Meeting. Cheryl and I did a presentation at the ECA Conference on the Capital Grant. The Aid-to-Localities Grant will be substantially similar in terms of processing, but we will do a webinar in regard to that tomorrow. So, with regard to the Capital Grant, which was the first one, we approximately have 49 counties that have returned their contracts, that's about 84%, 16 of them have been finalized and are in place and we're waiting on 9 more to submit theirs. With regard to the Aid-to-Localities contract we received them from OGS on September 24<sup>th</sup>. They have been sent to the counties that was on September 27<sup>th</sup> and as I said, we are going to do a webinar tomorrow.

With regard to the website accessibility coordinator position, or responsibilities I should say, we're in the process of drafting the first report that is due to the plaintiffs under the final settlement agreement. We've had internal meetings with the IT to discuss other parts of the website that require action before the end of the year and to date, we've remediated nearly 1800 PDF documents on the website.

Lastly, the MOVE Act transition from the outside vendor Scytl to an internal application we did, Tom did a webinar on August 9<sup>th</sup>. We participated in that. We helped do some stuff on the user guide for the county boards. We assisted in credentialing the county users. We updated the State User Guide Procedures and did an FAQ or helped with an FAQ. That went live on September 13<sup>th</sup>. All the counties uploaded their absentee ballots by September 20<sup>th</sup> which was the final day. The last one was around 6:15 on that day which was much earlier than their usual practice in the past so that has improved greatly and that's largely due to the work of IT and the Election Operations Unit and we've gotten very good feedback from the counties on the new system. They liked it. So, in terms of fielding calls on it from the public and the counties, the PIO, it is being transitioned to PIO to answer and respond to those questions. So that's the end of my report.

Douglas Kellner: Any questions? Alright thank you. So, Information Technology, Bill Cross.

Bill Cross: Good afternoon Commissioners. We've had a very productive couple of months since my last report. For projects particularly around CAPAS-FIDAS I'm happy to report we've accomplished a major milestone in terms of EFS to the beta test group on September 11<sup>th</sup>. Overall feedback has been very positive. The issues that had been reported have been pretty minor in nature. We are also continuing to develop a ballot access portion to the system which is nearly complete in FIDAS as well as significant progress on the data conversion effort in bringing Legacy data into the new system. The timeframe has not changed for that project from what I reported previously. Obviously, a lot will depend on feedback from the beta test group but that's been very positive.

Douglas Kellner: So, what is the timeframe now?

Bill Cross: The same we'll have completion this year and ready for beginning of next.

Douglas Kellner: So, we're talking about the January 15<sup>th</sup> filing will be on the new system or that will be the last use of the old system?

Bill Cross: We're anticipating we can use it. We have to finalize, obviously, the beta testing but that's the major piece that we need feedback on and we're still finalizing data exchange with the third-party filers.

Douglas Kellner: You're not answering my question.

Bill Cross: That is the target yes.

Douglas Kellner: So, the target is, the goal is that all filers will be using the new system for the January filing or that, go ahead...

Bill Cross: I believe that's where we are at right now. But I am footnoting that there is some significant work to be done still between now and then that could affect that but that is our target.

Douglas Kellner: Alright understood and I appreciate it and I'm sorry if I was a little aggressive.

Bill Cross: That's fine. I'm as anxious as you are, trust me. NYSVoter, we continue to work with the vendors and the county boards to prepare for early voting, specifically reporting voter history into NYSVoter. The vendors are making changes to their systems to accommodate information related to early voting and we provided a template to the county boards about affidavit reporting and then the process will be they will provide these lists of affidavit voters via the template we provided. We'll do matching on it and turn it around to them so they can prepare for duplicates.

NYSBallot, also happy to report that we finalized development as John said for the new NYSBallot application went live on September 13<sup>th</sup> and replaced the Scytl system for military and overseas voters and feedback has been very positive on that as well.

Online voter registration particularly around new legislation working with NYSTEC and have developed and presented at least a preliminary project plan to budget and have started analysis for the new system including doing research on other state solutions and documenting the current "as is" process.

Douglas Kellner: On that subject, on the online voter registration, so we've heard suggestions that the New York City Campaign Finance Board believes that they have a turnkey system that could be used. What has been your reaction to that proposal?

Bill Cross: We have not yet seen that system. It is on the agenda for us to look, we are looking at existing systems and mapping out, we've reached out to other states. We have talked to New York City's NTier vendor, we will be reaching out to the Campaign Finance Board for that conversation to see if there is any applicable use in the process.

E-poll books, IT continues to participate in that effort internally and with OGS and will be involved in the network security validation efforts for verification. Legislation and budget as Co-Executive Directors had mentioned, IT has been participating in those discussions and issues and impacts of the new legislation. Of course, accessibility, John already covered but we are on track to meet the requirements that we need to meet for the year for the settlement.

For security, we've added a new election security specialist, Courtney to our Security Election Center team. She joins us from the State ITS and has over 12 years Cybersecurity experience along with a Masters in Cybersecurity and multiple certifications. Welcome to Courtney.

For the county board Cybersecurity efforts, of course we presented at the conference, but we're also now in the report phase for the county board risk assessments. We finalized an additional 11 reports, we're working with Grant Thornton on drafts for several others. I think there are about 15 that we're currently going back and forth with, with those

including New York City and the overall trends report. Since our last report, an additional 15 county boards have been covered by the Managed Security Services offering that's Sedara bringing the current total to 20 county boards covered by that offering. We've also had additional discussions with OGS and other partners on how best to move forward with mitigation and remediation phases past the risk assessments. And our Secure Election Team has issued two newsletters to the county boards, one on Cybersecurity trends that we've identified from the reports that we received as well as another on ransomware and we will be presenting a webinar to the county boards on Monday to follow up on the ransomware message. We've also been in contact with the FBI from the Western District of New York regarding a presentation from the county boards in that area and work with them to see if there is a potential to expand that effort for the remainder of the state.

We ourselves have completed our risk assessment with Federal DHS here, two-week engagement which involved both external and internal scanning and on-site. The results confirm that a lot of things we've done over the past three years have been very effective but also, they identified several areas where we still have work to do. As mentioned above in terms of budget planning, we've been in discussions with Budget and Executive Deputy to ensure that we are able to make these needed improvements.

We continue to work on the NYSVoter data project with the SUNY Center for Technology and Government, an anomaly detection of NYSVoter data, a nice report out from them and they've done some very nice graphic representations of the information from that system. We are also working with them to develop a scope for envisioning elections future which would be what would the next architecture of elections look like from an end to end perspective mainly in the area of security but overall architecture.

And as always, we continue to work on multiple security improvements in our own infrastructure. This period in particular we made some significant improvements, refreshing our Legacy environment, improving our security posture which of course I really can't go into details, but very good progress on that, and in terms of the website it's normal levels for a nonelection period an average of about a quarter million views per month on our main website.

Douglas Kellner: Alright then we go next to Enforcement and I do not see Risa Sugarman present let's just go over the statistics for her unit. We have how many outstanding nonfilers?

Brian Quail: The aggregate number I don't know I covered the numbers in the last two.

Douglas Kellner: I recall it was a little over 2,000 was the current number of outstanding nonfiler referrals.

Brian Quail: It's vastly more than that but for the last for the July periodic alone it's 2000, close to 3000.

Douglas Kellner: Okay and I noticed that this month, Ms. Sugarman brought one enforcement proceeding and that's the second year-to-date is that correct?

Brian Quail: There are two year-to-date hearing officer proceedings that have been commenced.

Douglas Kellner: So that's two out of many thousands?

Brian Quail: Yes.

Douglas Kellner: Okay and referrals for deficiencies?

Brian Quail: The numbers are basically the same as they were the last time around. It's nearly though I don't remember the exact number it's the same.

Douglas Kellner: And there have been zero proceedings to address deficiencies year-to-date?

Brian Quail: That's correct.

Douglas Kellner: Okay and then criminal case referrals, zero year-to-date correct?

Brian Quail: That is correct.

Douglas Kellner: And subpoenas for investigations, zero year-to-date correct?

Brian Quail: That is correct.

Douglas Kellner: And reports on closed investigations, zero year-to-date. Okay. I think alright, that shows what's happening.

Gregory Peterson: Not happening.

Douglas Kellner: Alright so that concludes our unit reports. Next item is on Old Business, the resolution on the use of force for peace officer's policy pursuant to chapter 55, Part ZZ.

Bob Brehm: This issue, just before your last meeting we received commends from the Enforcement Counsel with regard to the draft policy meeting. We've had two meetings at the Co-Executive – Enforcement level to try and get a track change you know exactly what a melding of the two plans together. We provided a soft copy of the written proposal that we presented to you to Enforcement. Just yesterday we received a response back from Enforcement. It wasn't necessarily in track change, but we can do a compare version. So, we ask you to lay this aside till the December meeting because we just got the comments, we'd like to review them and also Risa has asked for a period of time to

talk to us about, once we received her comments and since we just got them within the last day or so, it's not possible to make a recommendation to you at this meeting. So, we'd like you to move it to the December meeting. It doesn't seem to be a, per se, pressing issue, but we can certainly...

Douglas Kellner: Alright do all the Commissioners agree?

(All indicate agreement)

Alright so then we'll go to the next item which is Fair Campaign Code matter 19-1.

Brian Quail: This issue was discussed at the last meeting and was carried over because the underlying issues were involved in litigations that is related to some of the central issues that are alleged in the complaint. That remains true. So, this is here as a placeholder. The litigation does remain, and we ask that it continue to be held over.

Douglas Kellner: Okay so we'll move on to New Business. We have regulations for final adoption, two of them, the first item is the amendment to Part 6210.18 on Audits for Early Voting. Did we receive any additional comments on the final proposal? On the audit?

Bob Brehm: No.

Douglas Kellner: So, I'm prepared to move that for adoption.

Gregory Peterson: I'll move it.

Andy Spano: Second.

Douglas Kellner: Those in favor say aye.

(Chorus of ayes; 4-0) opposed? Alright so that reg is adopted.

The next is the final adoption of regulation 6210.19 on the Minimum Required Voting Machines for Early Voting. And in this the final reg is revised from the original proposal to clarify a situation that we overlooked on the number of machines required if a county uses the vote center approach so that they don't have to staff every single voting location as if it were the only location for those voters. Are there any additional comments that should be brought before the Commissioners? So, is there a motion?

Peter Kosinski: I'll move it.

Gregory Peterson: Second.

Douglas Kellner: Those in favor say aye. (Chorus of ayes; 4-0) Alright so that regulation is adopted.

Next is...

Kim Galvin: Excuse me, just about that regulation we are running up against a hard deadline there too just to point out that a request for the reduction of the machines shall not be made any later than 20 days before the early voting period begins so perhaps we should do a little forced...

Douglas Kellner: That means they're not going to reduce the number of machines.

Kim Galvin: Or they have to ask us.

Douglas Kellner: I understand, and if they haven't asked us then they have to provide all the machines.

Brian Quail: Actually, if they're using vote centers under the amendment in 3, the distribution of machines amongst the vote centers "as they see fit" so the provision that Kim is referring to is if they want to do a reduction for some other reason. So, I think we're in good shape.

Douglas Kellner: Good, I'm glad you're looking at it. Alright so now we're on the Ballot Accountability temporary or emergency regulations which are 6210.7 and 6210.10. And these are the emergency regulations that provide for how they're going to track the number of ballots in lieu of using stubs right?

Bob Brehm: On both of these emergencies they will age out before our next meeting. It has been our intent to look at the experience in this early voting to make sure in both of them that we are comfortable with the wording and we also think we'll get other comments as we are in the early voting period.

Peter Kosinski: I'm sorry Bob, age out?

Bob Brehm: Well the emergency will expire so by asking you to renew them today they won't expire, and I didn't want to have an expired regulation in time for the November election or at least until...

Douglas Kellner: But we don't want to do final regulations until we can review what happens in November.

Bob Brehm: We have a couple of comments, we think we'll get more. We think our own experience we might want to look at things to make sure its worded as clearly as we want.

Peter Kosinski: But it will be the regulation in place for this fall?

Bob Brehm: Correct. So, we're recommending that we keep them as emergency and then we'll look at them at the December meetings.

Douglas Kellner: So, there is a resolution to extend the accountability regulations is there a motion to adopt it?

Gregory Peterson: So, moved.

Andy Spano: Second.

Douglas Kellner: Those in favor say aye. (Chorus of ayes: 4-0) Alright so that regulation is adopted.

And then similarly there is a resolution into extend the emergency regulations on the procedures for early voting which we did discuss at some length earlier. So is there a motion to adopt...

Andy Spano: So, moved.

Gregory Peterson: I'll second it.

Douglas Kellner: Those in favor say aye. (Chorus of ayes: 4-0) opposed? Alright so that regulation is adopted.

Peter Kosinski: Just so I understand those two sets of regulations will come back to us again for final adoption. This again is extending the emergency. Okay.

Bob Brehm: If we make changes we'll have to go back out for more comments.

Douglas Kellner: Alright so next is the resolution approving the certification of the Dominion upgrade for Dominion ImageCast 4.14.27. Tom do you want to briefly just explain the procedures and the recommendation of the Operations Unit?

1:27:48

Tom Connolly: Sure, so this kind of came out of our conversations from a few months ago about doing a deeper look at the printer functionality of the ICE. Since the machine itself is kind of a scanner and BMD hybrid. One of the things that Dominion had to do was they submitted the firmware upgrade which would allow for a couple of different data points to be extracted from the system and then be generated on the tapes that are produced by the machine so that the Board of Election staff at the county level would be able to read that data to make sure it's matching up the way it should. So, you have the hardware for the printer itself, which tracks how many times it actually engages and that's stored in one set of onboard memory. And then you have the software which tells the printer when to print. So, it's another data point. In addition, since the printer really should only be engaging during accessible voting session, the software is also tracking how many accessible voting sessions are being engaged and how many ballots are being cast out of an accessible voting session. The idea being that when the zero tape is produced at the beginning of the election, you're going to have your starting numbers as far as, cause one of the counters would be zero for the number of times that software has told the printer to print, and the other one, the actual number that's generated from the hardware is kind of like a running tally. So, you would know what number you were starting with from the beginning of the election. As part of the 3% audit process on the closing tapes those numbers are also then printed and you would be able to determine did the printer print as many times as the software thinks it told the printer to print and obviously those two should always add up. In addition, they should also add up with the number of accessible voting sessions that there are and the number of times a ballot is cast. There are times in which those latter two numbers could theoretically not match up if I went through the process of doing accessible voting session and I didn't actually print anything on a ballot, well then the printer would never have been engaged but there would be one extra accessible voting session. So the idea was to kind of get more information out of the system that was impossible before so that the beginning of the process you know what you're starting with, at the end of the process you know how many times the printer was engaged so you can make a determination that it did perform the way it was supposed to. So, we had gotten that software. We did our source code review as we normally do with any of the upgrades. We consulted with NYSTEC our partner in doing security reviews. We did functional testing on that. We did a public test on 9/24 and we submitted all the reports and the findings of those tests and the reviews to the Commissioners for approval. If approved, then we would distribute that upgrade to the counties who currently have the ICE machines in place.

Douglas Kellner: Now one of the parts of the point of this is that the audit procedures should be revised to use this function. So where is that in the resolution?

Tom Connolly: In the resolution, I don't believe that it's, I don't know if we've typically had a Commissioner approval of revisions to procedures, but I did provide the proposed revision to the procedure in the packet of information that I provided.

Douglas Kellner: So that procedure is binding on the counties, am I correct?

Tom Connolly: Yes.

Douglas Kellner: Alright so is there a motion to approve the resolution?

Gregory Peterson: I'll move that.

Andy Spano: I'll second it.

Douglas Kellner: Alright and then I had some comments, if you don't mind, just that I prepared and carefully thought though that I just want to get on the record. So, in my view, the single paper path is a design flaw that's present in the Dominion ImageCast Evolution and the same is also true when the ES&S Express Vote XL and the Express Vote HW2.0 are used as both a marker and a tabulator. These three systems allow a ballot to pass under a software-controlled printer after the ballot has been cast. The printers are not software independent because a change in the software can make an undetectable change to the results. So, this Dominion ImageCast 4.14.27 update does not solve the fundamental problem. The update merely adds logging to the process. The logging is good, it can provide useful data during troubleshooting or investigating but the power of logging as a security measure itself is limited. Software-controlled logging may not provide reliable forensic evidence if the software is compromised. It does not itself assure that the ballot counted is the same as the ballot verified by the voter. However small, the printer logging feature is an improvement over what's certified now. It's added to a dozen other security features that add assurance but not a guarantee that the voting machine is not hacked to create an archived ballot different from the ballot verified by the voter. So, in view of these additional, adding this to a number of other additional security features is a positive factor and therefore I'm voting in favor of this resolution with the reservations that I've noted. Any other comments?

So those in favor of the resolution say aye. (Chorus of ayes; 4-0) opposed? So, the resolution carries.

We've come to the end of the agenda. We will entertain a motion to go into Executive Session. Do we want to talk about dates?

Bob Brehm: We have December 12<sup>th</sup> for a meeting, so we want another pending date.

Peter Kosinski: Do we need anything in between?

Douglas Kellner: Well, if there's an issue over the security plans I think we should be on standby but we're talking about a relatively short telephone conference then. Alright Jaret. Jaret Berg is from New York Early Voting or no, Vote Early New York.

Jaret Berg: Vote Early NY. And I appreciate the opportunity.

Douglas Kellner: And Jaret I just want to say I know you've been putting a lot of time into this and it's almost as if Jaret has been an extra staff member for us and county boards helping them get this enormous project done. Go ahead Jaret.

Jaret Berg: Thanks for the opportunity and I appreciate the kind words. I just want to say at the outset you folks are under enormous pressure, incredible new mandates with budget cuts that I think defy logic so I'm sorry about that I'm doing everything I can to help get the word out about this new program and also make sure it's implemented properly.

I just want to start by sharing some of the lit that we developed and produced along with our partners at Let New York Vote English and Spanish. You folks are welcome to this lit. If any county is interested in this, these are the statewide versions but we're happy to work with any county on a nonpartisan basis to develop local lit. On the back it has the days but the local lit would have the hours too and it directs folks to our site where we mapped the statewide early voting program because that resource doesn't actually exist, not part of your mandate, of course. I do want to hold up, this is what New York City has done, I assume this was somewhere in their communications plan. These "I Voted Early" stickers just flagged for counties, when you move away from a single election day model you create the opportunity to do sort of social pressure engagement over the several days. So it might be a little late for someone if they didn't have time that evening on election day to vote right you see a colleague, oh they voted, I don't have time today but with so many extra days there is that opportunity to get awareness out dynamically during the early voting period. So, with that I just want to mention, we're down to four only four localities that have invoked the temporary exception in this log to assigned sites. That's incredible. If you ask me where I felt we'd be 6 months ago, I was worried that more might invoke that.

Douglas Kellner: Who are they? New York City...

Jaret Berg: New York City, Westchester, Albany has a hybrid model, and the fourth one is Orange County as well. Westchester and Albany are doing what I would call a hybrid where they actually have a sort of local pilot program to do more than one single site. So, we're really excited and, of course, if that goes successfully, we hope they'll expand soon.

I do want to raise sort of generally speaking some concerns about the E-poll book configurations that I think might be right for this State Board to take up on a going forward basis. I think we really need a model standard for configurations for at least each vendor. These vendors pride themselves on giving deference in sort of local flexibility to the counties to put local configurations in there. None of these companies as far as I know are New York based. They certainly are not thinking about New York law when they design the template language that's in there, meaning the workflow of the actual buttons you press on the iPad. They have told counties you can change that on the backend to some extent. I don't think it would make sense to have 62 or 57 different

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varieties of what that means and then you divide that by the three different vendors which have different configurations and workflows. So, it would be really nice to have a standard. And the other thing they might be able to provide to you folks or at least work with you folks on, we are slightly late to this party. These jurisdictions are being, these vendors are being used in other places so there's the opportunity to say to them from a state perspective, we want to know if there's a problem with one of your devices in Philadelphia or some other place where these might have been used either during early voting or on Election Day. There's a set of best practices they've seen from their work across the country in either educating poll workers or how to configure them or the public. I'll need to share that with you folks but I think it's worth asking and you know you folks have leverage to say, "Hey before or as we are deploying these devices across the state, we'd like to have some best practices from you that we can then distribute down to the county level." I'm frankly concerned if different counties coming up with those configurations without guidance from collective wisdom here. Which counties are using which E-poll books? I don't know the answer to that question, and I think this Board deserves to know the answer to that question or at least the ones that aren't adopting and the ones that are adopting what vendor? You folks might have that information. We are building anecdotally but to do everything I just mentioned, that would make sense as something that you folks should have.

And then a rhetorical but it feels like there are many possible answers to some of this stuff but I do want to tell you folks I'm really excited about the backend E-poll book data that these things are capable of, provide some amazing new analytics for you folks and the counties. I don't know who exactly is allowed to have the backend to that at the county level but to give you a sense tells you how many people are checking in. How many people have been challenged? There should be something in there that tells you someone checked in and then was pushed into the provisional affidavit spot. The point is, it could provide a lot of valuable data to the State Board to gauge compliance, how many people are using a given vote center, turn out, challenges, affidavits, check-ins and also how long does it actually take from an E-poll book check-in for that ballot-on-demand printer to output? The vendors have their sales pitch on that, but you folks deserve to know that in real time. What happens when we deploy these things in practice? So that data exists. I'm sure the vendors have it; we know that the counties have it and I think there should be some state analog that you folks have. And I think the campaigns have their own thoughts on how they might benefit from that, it's not my business.

On the security plan, I almost wasn't going to bring this up because I sort of thought this might have been settled by now. All I can say is there's a plain reading of that statute and I think it's really important that we interpret words as they mean. I will not bring up the issue about who's required to file this plan. I will mention that even for those counties with a single site at their BOE as in the majority of ones who have filed, it is different right? They've never kept live untabulated ballots for 9 days so just an explanation on what the plan is there would be good to have, and I believe it's required by the statute.

There're two other creative liberties that I'm hearing about in interpreting these regs and I think it does invite people to not comply with them. So, the reg says, approval 60 days not submission by 60 days, approval by and it also says the first election it was used. To me that's August 26<sup>th</sup> first election it was used is going to be October 26<sup>th</sup>. So, when people talk about elections it the first day of early voting, that's at least what it was intended to mean, frankly it's what it says. If not, we should at least make sure these things say what the folks who fought for them and wrote them and have to implement them believe them to say. And these counties have actually all, the ones who have filed, have abided by the interpretation that I just laid out here.

The last thing I just want to say right, if a voter misses a deadline under this election law, it is fatal. So, we don't have to sit here and come up with excuses for why counties don't file. I'm sure they all have the best intentions. I know they're laboring under deadlines and so are you folks but deadlines either matter or they don't in this business, and they always matter for voters so with that I want to thank you for all you're doing. I want to invite you folks to visit Vote Early NY and let us know how we can help get the word out about this program. Good luck with early voting.

Gregory Peterson: Thank you.

Kim Galvin: Thank you.

Douglas Kellner: Thank you Jaret. Alright.

Lulu Friesdat: Permission to speak?

Douglas Kellner: Yes, but try to keep it brief.

Lulu Friesdat: Thank you so much Commissioner Kellner. I'm Lulu Friesdat: I'm the co-founder and Communications Director from Smart Elections and I'm here particularly out of concern for the Express Vote XL certification that's coming up. There continues to be a great deal of concern about that among security experts and voters. I have voters emailing me on a regular basis saying, what's going on with that, we're very concerned. We really don't want that machine certified. I'd really appreciated Commissioner Kellner's comments about that drawing attention to the design flaw of those all-in-one machines where they can print on a paper ballot after the voter casts it and I just wanted to draw the Commissioner's attention to the fact that the machine does print with barcodes. Colorado has now become the first state to ban barcodes in use for counting votes. They are considered the security leader in the states due to their implementation of risk limiting audits so I know that New York also considers itself as a security leader so I think that's something that New York might want to take note of that Colorado has banned the use of barcodes for counting votes.

And I appreciate also what you were saying Thomas about the making ES&S put that new print in if there is no vote so there is not a blank space where the barcode is

supposed to be that perhaps a malware program could take advantage of. And it's great that we're being as careful as possible. I think the problem with that kind of thinking is that a malware program can overcome that easily. The malware program, even though it's the regular ballot is supposed to print something there that says no vote or some sort of space filler, a malware program can just instruct the machine to leave the space and take advantage of the space when the ballot passes back through. So, I think it's really important that we're taking these safety precautions but it's also important to be aware that they are not necessarily a solution. The best solution is not to certify a machine that experts across the country and other states are considering extremely suspect.

I am also appreciative of the steps that you are taking about the Dominion. My question is, if you do have this reconciliation process and it doesn't add up, what is the remedy? Is there anything in place that tells the counties then what do they do? Are the votes then disqualified? Do they have a new election? So even though again I agree with Commissioner Kellner it's good that we're taking these steps, I do question what is then the remedy if something is you know if something is detected that there is some sort of issue there.

And then the other question that I wanted to bring up before the Board is I'd had several voters say to me that there's new procedures that they're hearing about from the county Board of Elections that voters and people who work the polls are no longer going to be allowed to photograph the poll tapes and that's something that I think traditionally voters and poll workers have been allowed to do and is concerned a common check on the results and I was just wondering if that's legitimate that these county boards, this was in Westchester in particular and I think possibly in New York City although I'm trying to find out more about that but definitely Westchester. Is that something that the county boards are actually allowed to say that voters and poll workers can no longer photograph the poll tapes? So, I think that's very concerning and I would hope that the Commissioners would take action on that and put a stop to that. Thank you so much for allowing me a few minutes to speak. I really appreciate all the focus here on security. It's really nice to see I really appreciate it. I know you guys are doing a lot of work on it so thank you so much.

Gregory Peterson: Thank you.

Douglas Kellner: Thank you. I'd just like to add that I strongly agree with the concept that people should be allowed to make copies of the poll tapes at the poll site, that's the whole point of having the canvass at the poll site, but this is the first I'm hearing of jurisdiction preventing people from doing that.

Tom Connolly: The only thing I can think of is perhaps it's somewhat of a misunderstanding because obviously the early voting allows you to start closing and generating results by 8:00 p.m. on election day but obviously there are a lot of counties who are putting protections in place so that people who can witness the canvass who are legally allowed to be there remain incommunicado exactly as the language says so that

they can't take pictures of something and tweet out results before the close of polls on election day.

Douglas Kellner: For that one hour. So, it may be that this is just with respect to that one-hour period.

Lulu Friesdat: Maybe we can find out about that because the people that I spoke with said that this was specifically training that they were receiving from the Westchester County Board of Elections as poll workers telling them do not photograph the poll tapes and it sounded like it was a more global instruction.

Douglas Kellner: Okay well thank you for calling it to our attention. Alright so the motion is to go into Executive Session for personnel matters?

Todd Valentine: Correct.

Andy Spano: Can we look at January now for a meeting?

Peter Kosinski: Sure, if you want to.

Andy Spano: It would help me out knowing when the meeting was. We can do it...

Peter Kosinski: When would you like?

Douglas Kellner: So, Bob we're looking at January.

Andy Spano: The week of the 15<sup>th</sup>.

Peter Kosinski: You want to meet that week?

Andy Spano: Yes, if you can.

Peter Kosinski: I've got the week of the 13<sup>th</sup>.

Douglas Kellner: So that's the week after the Winter Conference. The Winter Conference is the 6<sup>th</sup> through the 9<sup>th</sup>.

Peter Kosinski: Okay so you want to meet the week after that?

Bob Brehm: Martin Luther King Day is the 20<sup>th</sup> so as long as it's not that day.

Peter Kosinski: I'm okay that week.

Gregory Peterson: I'm okay.

Andy Spano: Okay so whatever day is convenient for you guys.

Peter Kosinski: Just pick a day.

Gregory Peterson: How about the 15<sup>th</sup>?

Peter Kosinski: The 15<sup>th</sup> how's that?

Andy Spano: Wait, wait, wait. No, the 15<sup>th</sup> that's the only day that's not good.

Peter Kosinski: How about the 16<sup>th</sup>?

Andy Spano: The 16<sup>th</sup> is good.

Douglas Kellner: That's okay I have to change an appointment but its early enough to.

Peter Kosinski: Okay, we'll do that.

Bob Brehm: And for the December meeting, we'll have for you with the political calendars set where would be the decision points with regard to certifying the ballot. President is a little different. But if we can give you the dates that we think will require for the state calendar and anything that's related to the federal calendar at least you can consider any of those dates that we really need a decision by in the first half of the year. So, we can have that for you in December. I don't know that we'll need the answers in December but maybe by the January meeting if you look at your calendars and we try and come up with how to get us through mostly making determinations on ballot access challenges so we can get the ballot going on time.

Peter Kosinski: Okay. Now let me just confirm, the December meeting?

Bob Brehm: The 12<sup>th</sup>.

Peter Kosinski: The 12<sup>th</sup>. Okay got it. So, once we go in, we're not coming back?

Douglas Kellner: No, we're not coming back.

Peter Kosinski: So, this is the end of the public session.

Bob Brehm: Do we need everybody for the Executive Session?

Douglas Kellner: No. Do we want just the Executive Directors, or do you want more?

Andy Spano: We didn't vote on...

Douglas Kellner: Oh yeah, we have to vote on it too. But who's going to come into this...

Peter Kosinski: I don't really care I just don't think we need everybody though.

Douglas Kellner: I don't know enough about the discussion to know who should be in and who shouldn't be in. Alright we'll figure it out as we go...

Peter Kosinski: ...and the Counsels I think should be there.

Douglas Kellner: Okay Executive Directors and Counsels. And Ops too. Alright okay all those in favor say aye. (Chorus of ayes; 4-0).

Kim Galvin: Everybody but John and Cheryl.

End.