

Commissioner Kellner: Alright, so with that, I will call to order the meeting of the Commissioners of the State Board of Elections. I'm Douglas Kellner. To my right is Commissioner Kosinski, and we're joined by Commissioners Andy Spano and Commissioner Casale. The first item on the agenda is the approval of the minutes from August 30th. Is there a motion?

Commissioner Casale: So moved.

Commissioner Kellner: Second? Any comments? Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? Alright, next we go to the unit updates. You may recall at the last meeting I had suggested that we change the order of the unit updates and I believe everybody agreed that we would do Executive and Election Operations, then Counsel, Enforcement, Public Information, and Information Technology. So if that's okay?

Commissioner Kosinski: Sure.

Commissioner Kellner: So we'll start with our Executive Directors, Kristen Zebrowski Stavisky and Todd Valentine.

Kristen Zebrowski Stavisky: Thank you, Commissioner. We've been fairly busy since our last meeting on August 30th. Later that day on August 30th through September 2nd, we attended and presented at the Election Commissioner's Association Conference in Albany, many of you were there. Our staff members participating including counsels Brian Quail and Kim Galvin, Deputy Counsel Nick Cartagena, Operations Director and Deputy Tom Connolly and Brendan Lovullo, PIO Mike Moschetti, John Conklin, IT, and the Secure Election Center Bill Cross and Ben Spear. A variety of topics including redistricting, election law updates, case law and legislation, lessons learned, CD 22, absentee candidate's reform, Cybersecurity regulations, and grants. We instituted a biweekly meeting schedule with the Division of Budget which I think was mentioned earlier in the previous meeting, and we continue our biweekly meetings with OGS. We also internally meet biweekly with our IT unit. We've had a very good working relationship since Michael Johnson has come on and we are meeting biweekly with Enforcement. We also instituted biweekly Public Campaign Finance Board meetings and will likely increase that cadence as we get closer to launching the actual program. Working with OGS, we finalized space plans, which is very exciting news to renovate the 5th and 1st floors and add space for Enforcement on the 10th floor of this building. We are currently waiting for the cost estimates to

move forward and once those plans are finalized, we expect construction will take approximately thirty-two months. So, the expansion is critical to address our growth, and specifically the launch of Public Campaign Finance. The OVR and AVR projects, Online Voter Registration and Automatic Voter Registration continues, we have several milestones since our last meeting. Bids were returned, and are currently being reviewed by our evaluators, and we also sent out a memorandum to our Automatic Voter Registration agencies to identify liaisons so we can move forward in a productive way working with them because they will have to make system changes to accommodate Automatic Voter Registration. We also continued to meet with shareholders most recently with the State ITS members to talk about how they will support several of the AVR agencies. As you know, we testified on September 21st at the Senate hearing on Elections. We presented a very united front and supported the importance-strength and the integrity of the bipartisan election administration system. And last week we held our monthly meeting with the Election Commissioners Association. I also do want to make a specific thank you to our staff. Recently, we sent to the counties written guidance on acceptable absentee ballots, absentee ballot cures, parolee voter registration guidance, and we are currently finalizing COVID guidance for in-person poll sites. We are also finalizing guidance on manual recounts. And I really want to commend the bipartisan staff for their work developing these guidelines. Having come from a county, it's very important to get that guidance from the state. It's a very useful thing to have that document as they go forward and make sure that they fulfill their statutory requirements.

And I will, probably, I guess, we met with our Center for Technology and Government to prepare the final report for envisioning an elections future, exploring the technology policy management and legal environment in Voter Registration, and I met with the Center for Secure and Modern Elections to discussion advocacy related to automatic voter registration and other reforms. They are very interested in pushing for sustained funding for elections and would like us to give them some estimates on what we think in the future it will cost the state board and the county boards, especially as they look to have to replace much of their, many of the voting machines are coming towards end of life, and what that will look like without HAVA funding.

And we continue to meet biweekly with the executive branch. We had a very productive meeting last week; I think we're working very well with the second floor, and with members of the legislature, and are working to streamline the processes so that we can do our work here at the State Board. And I'll ask my co-executive director if he would like to add anything?

Todd Valentine: I'll only add in two things; one is obviously it was referenced before in Public Campaign Finance Board we have not received a call about the budget yet, but we do anticipate it to be a zero growth budget which, as we have already alluded to both the Chamber and the Budget that's not what we will be submitting, because obviously we have a growing program, so we need to address that. So, we'll work on what our actual needs are, and that is what we'll submit. And we expect to do that. They haven't given a date yet, but with the transition to the new administration there's been some delays in outreach, so we'll update you as that goes forward. Then obviously, now that we've crossed into October, we're going to begin our preparations that the counties have already done for early voting meeting on the 23rd of October, so we have a secure group that meets with regards to a number of our stakeholders on the other state agencies, ITS, State Department of Homeland Security and Emergency Services, as well as

the Public Service Commission, to be prepared in the event that something happens, that we can then marshal the resources we need to, so we do those meetings just before we start the election cycles, so that's when we're going to ramp up is.

Commissioner Kellner: Anything else? Alright, thank you, then we will move to Election Operations, Tom Connolly, and Brendan Lovullo.

Tom Connolly: Thank you, Commissioner. In addition to the guidance that they discussed, we developed materials to be distributed to the counties along with the certification for the general election. These materials included sample ballot layouts for the various judicial districts, access to the audio translations of the proposal language for use of the ballot marking devices, and guidance providing boards for the voter friendly access which went into effect last year. We have continued to receive and review the early voting security plans, the network security checklist for E-poll books, and the procedures for the prevention of early release of voting results from all counties. We're currently just awaiting from two of some of the parts, but we hope to get them sooner than later. And also, we've been continuing our collection of candidate notices and sample ballots as we receive those. We do review them internally and provide feedback to the counties if there's anything that they need to change. With regard to voting systems, we do continue to have discussions with the various vendors who have expressed interest in submitting systems to the State Board, that includes Dominion, Clear Ballot, Hart and Democracy Live, ES&S. We did hold a conference call with our testing lab SLI last week, just to kind of go over our expected timeframe with some of those systems coming in-house, so there'll be simultaneous testing going on. We did receive a formal application from Dominion for new voting system to be submitted. We are working with them on some documentation in order to kind of get the application to be a complete one, and then it will be our expectation that we would have a testing resolution to present to you in which you would consider approving the unit to go forward with testing of that system.

Commissioner Kellner: What system did they submit?

Tom Connolly: So, it will be a whole new set of software and hardware the new EMS software, Election Management System software will be running on Windows 10, which I know will be a welcome thing to hear for certain county IT folks. There will be-as far as the hardware goes, there is the ICP which is the current Image Cast Precinct scanner. There is the ICP 2 which is the newer version of that. There is the ICX which is their successful ballot-marking device. They also have the ICC which is the Image Cast Central which is the central count system, and I do believe that is the total of what they're submitting.

Commissioner Kellner: So the ICX is a standalone ballot-marking device?

Tom Connolly: It is.

Commissioner Kellner: And the ICP is the um Image Cast Precinct which is...

Tom Connolly: The scanning tabulator.

Commissioner Kellner: And it separates the ballot marking device from the scanner system?

Tom Connolly: Correct. And just remember that the ICE, which is one of the newer hardware's that, pieces of hardware that Dominion had introduced, will also be included in this release.

Commissioner Kellner: Thank you.

Tom Connolly: Sure. We're also looking sometime in early November for Clear Ballot to come and provide us a demo of their new Clear Mark and Clear Design systems. Clear Design is their kind of backend election management system which you designed the ballot for their precinct systems, and Clear Mark is a whole new system that they've been working to submit for New York which will handle the accessible ballot marking. With regard to the E-poll books, at the last Board Meeting, the Commissioners approved a couple of configurations. However in the world that we live in, with connected tablets and the use of iPads, there's ever changing landscape of new software and sometimes we do receive fold ins, security balloons from the Multi Information Sharing and Analysis Center. As that information comes in, we always check with the vendors to make sure that none of these vulnerabilities apply to the functioning of the systems that are approved, because it's obviously, we're very specific about the configurations that we test here, and we approve for use by the counties, so it's difficult to kind of expect the county to roll out last minute changes, especially without testing. So we will at least confirm with the vendors that any of the information that we receive is not something of concern. With regard to E-poll book systems, I will say that we also continue to talk to counties and work with the vendors on options for ballot on demand printers, most of the systems that we have in place now in the state use Lexmark printers, I'm sorry that's not right, Okidata printers, right, and they announced that Okidata was basically going out of business in the United States. They were still going to carry some of the consumable but some of the counties were worried about availability of those consumables and additional printers, especially as we go into the expected expansion of early voting next year, so we've been working with the vendors to make sure they are getting ready to provide options to the counties. Some of them are looking at Lexmark printers or brother printers, but we will continue to follow with them that they at least have options to purchase off of.

With regard to just general technology Projects, we continue to work with IT on the receiving and processing of Candidate and Contest data from the counties, that we displayed on our website. We did meet with IT to discuss data requirements for the proposed absentee tracking system that the State Board is expected to have to build once that law gets signed. We've been in coordination with ITM the testing of the next Voter Registration System against our new requirements. As of Friday, all the technical test cases have been completed. We would be preparing an executive summary of the testing that we did against the three different categories of requirements. We would provide that to you and with some hope that we might be able to have a short web meeting before the next scheduled meeting in December so that we could provide the counties who are interested in moving to that new different system the time they need to kind of plan for that and to do the data migration.

As Kristen mentioned, we did have an OGS kickoff meeting for the programming for the OVR/AVR. I am one of those, and so is Brendan, some of the evaluators so we are currently reviewing that documentation, and then lastly myself, Ben Spear and Bill Cross will be attending NYSLGITDA which is the New York State Local Government IT Directors Association conference in Syracuse for presentations on Wednesday and Thursday. We do this so we can continue to foster our relationship with the County IT Directors so that they can properly support the county boards of elections. Brendan, did you have anything to add?

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

Commissioner Kellner: Could you report on the status of the investigation that I requested with respect to Westchester?

Tom Connolly: Yes, I apologize, I actually did write that note for myself. So the State Board, the Operations Unit had sent a letter to the Westchester County Board requesting additional information, as we discussed at the last meeting. We provided them with, they provided us that information by the close of business this coming Friday. We have not received anything yet, but hopefully we will be receiving something by then, in which we will review and then revise our report.

Commissioner Kellner: And is the State Board going to have anyone monitor the pre-election testing?

Tom Connolly: Yes, I spoke with Tom Wood of our staff and he's available to kind of go down and attend their pre-election testing.

Commissioner Kellner: Alright. Alright if there are no other questions, then we'll go to the Counsel report Kim Galvin and Brian Quail.

Brian Quail: Good afternoon, Commissioners. It has been a busy interval since the last meeting, in particular the Counsel's unit has received a number of telephone calls and inquiries from county boards of elections and has continued to provide support to county commissioners. In terms of the work with the unit, many of the guidance documents along with other units the Counsel's Office worked with the co-executive directors on their issuance. In terms of case activity, there have been some significant things to report in three cases since the last meeting. First, in the case of the Brooklyn NAACP vs. the New York State Board of Elections, we were served with a complaint challenging the application of section 17-140 of the Election Law, which we have until October 13th to answer. We've asked the Attorney General's Office for defense and indemnification and are continuing to work with them on that.

John Conklin: Brian, can you just speak up a little bit?

Brian Quail: Yes, I certainly will. In the Upstate Jobs case, we received a ruling from the district court that essentially ruled that the Upstate Jobs party was entitled to party limits even though they're an independent body and we again, asked the Office of the Attorney General to take an

appeal in that matter, and we are working with them. And then in the Hernandez matter I'm pleased to report that while we are not finalized, we are making excellent progress and are on the cusp of being able to settle that case. That case deals with the accessibility for persons with disabilities to absentee ballots. The Compliance Unit has also been exceptionally busy in the last interval. They're up to having processed 172,784 reports, financial disclosure statements, sorry that's the number received 172,784 number processed was 159,637. Significantly, the unit has been functioning substantially understaffed for a number of reasons, for some time and at the last Board Meeting, it was my understanding that between both sides we have advanced offers to fill out the necessary paperwork to effectuate 6 hires, 4 auditors and 2 clerks and onboarding those people sooner rather than later will be exceptionally helpful.

The unit participated in issuing guidance on the changes to the law of Felony Forfeiture of Voter Registration which included the guidance to the counties that the co-executives mentioned but also posting guidance on our website aimed toward the people who are impacted by those statutory changes, and policymaker and personnel that are implementing them.

And that is it for me. If there are any questions, I'd be happy to answer. To entertain them.

Commissioner Kellner: Does Kim want to say anything?

Kim Galvin: I have nothing to add.

Commissioner Kellner: Alright, so do I understand from the Compliance report that we have a backlog of 13,000 filings that have not been processed?

Brian Quail: Yeah, that backlog number is not atypical. It is a little bit big, but in terms of the number that come in after July and the amount of time it takes to process them, there is often a lag, and that would also include all of the filings for the October election related report which was just due on October 1. So, in terms of unit functioning, that size of a backlog is a little bit concerning, but it's not terribly off of sort of the in and the out, the yin and the yang.

Commissioner Kellner: And has there been a recent nonfiler's report?

Brian Quail: There has been, we have not run the report for the election related filings, we're working on issues with that. We did issue a July periodic report, which I reported on the last meeting, and the Enforcement Counsel asked for an update to that report. We updated it on September 23rd, and the original nonfilers on that report initially it was 4,439 and then the people that were on that report committees 988 had filed, which left 3,451 that had not filed.

Commissioner Kellner: That's a huge number.

Brian Quail: It is, and it isn't. Actually looking back historically, the amount of improvement from the initial run to the subsequent one related to committees is quite remarkable, by historical terms and recent filings, certainly reflects the efforts both of the Compliance unit and particular the Enforcement Unit, and we are obviously working on doing better, including engaging in

processes that will remove from that list potential deadwood. To the extent that that number because of that number, Enforcement historically, not recently, there may be committees on there that ought not even be on the list. We are finally, truly working on that, in a productive manner.

Commissioner Kellner: So next up is Michael Johnson.

Commissioner Kosinski: I'm sorry, I have a question. Brian, you mentioned two court cases, I think Upstate Jobs and the NAACP of Brooklyn, and you mentioned you were working with the Attorney General on them. Is the Attorney General representing the Office on those two cases, is that--has that been agreed upon? Is that the process?

Brian Quail: Yes, so what typically occurs is we send a defense and indemnification request to the Office of Attorney General, and theoretically they can say no, they almost never do, and theoretically they can say in lieu of us defending you, we authorize you for outside counsel. And sometimes, we end up saying to them, we ask them essentially for defense indemnification, but really, we just want indemnification, because we intend to handle the case entirely internally, for example what we're doing in Hernandez. So we have sent the defense indemnification request to the Office of Attorney General, background information, legislative history on 17-140 and have not heard an answer yet back from them what they're doing. But it's in process. And that is also not untypical, for the amount of time it takes on these sorts of things, particularly when there's no, at this point preliminary injunction application or TRO application out there. In Upstate jobs...

Commissioner Kosinski: But you did say an answer is due October 13th right, correct?

Brian Quail: That is correct. And assuming there isn't an extension, oftentimes there is an extension but as of right now, it's due on the 13th.

Commissioner Kosinski: So I guess my question, I don't want to get into litigation strategy, so stop me if I am, but I mean if the Attorney General refuses let's say for some reason, not to represent us in that particular case, would we be representing ourselves would we seek outside counsel? Has there been any discussion about that particular option or opportunity?

Brian Quail: I have not engaged in a discussion of the what if opportunities, but I would say now that both of those things would be possible if that scenario came to pass. Typically, in terms of the last two times this occurred, they authorized outside counsel, and we got an extension of time to answer typically on what would occur, and certainly, if the agency wants to press the case without the Attorney General, we obviously can and have the capacity internally to do that, and represent the agency, and either answer timely or get an appropriate extension.

Commissioner Kosinski: And the same goes for the appeal of the Upstate Jobs case? You don't have an agreement yet on whether they'll take the appeal?

Brian Quail: Yeah, Upstate Jobs is slightly different. Because it happens in the context of an appeal, and whenever the state takes an appeal the Attorney General's Office has to approve it

which involves the line staff at OAG producing a report for their superiors. We've been checking in on them regularly, and participating in their process, as recently as this morning. We made an inquiry at the end of last week. We made an inquiry and were told that they're closing in on it and...

Commissioner Kosinski: what's our timeframe there, Brian?

Brian Quail: The timeframe there is we have to file the notice of appeal by the 8th of October.

Commissioner Kosinski: I guess, again, I don't want to get into strategy here, is there any downside to just filing a notice, and then making a decision later whether you want to defend? I mean we could do that ourselves. I just wondered if that is being entertained just to protect our timeframe. Because you know today is the 4th.

Commissioner Kellner: Well, I think we're committed to filing the notice.

Commissioner Kosinski: Okay I just didn't know...

Commissioner Kellner: but technically filing the notice early is not necessarily needed.

Brian Quail: Yeah, we will not let, You will never hear from us letting a filing period lapse because OAG decided not to represent us. There are multiple of us that are admitted at the Second circuit.

Commissioner Kosinski: Okay, so we're intending to appeal that, though...

Kim Galvin: All the indications from the Attorney General's Office, line attorneys, and the people that handle it are, they agree that it should be an appeal, it's just a process to get it up through the appeals and opinions bureau, I think in that one.

Commissioner Kosinski: Okay, thank you.

Brian Quail: Thank you, Commissioner.

Commissioner Kellner: Okay, so Michael Johnson. You've had a busy month.

Michael Johnson: Yeah yeah unfortunately, we've been a little bit busy, things are starting to ramp up. As far as our numbers, in terms of what we've done for the month of August; we've received 41 e-mails that came in and I in particular try to get responses out within a day or two from getting the e-mail, as opposed to just letting them sit. So we get e-mail responses out as quick as we can. There are none pending as far as complaints. Received for the month: we received 14, FOIL requests one, and media contact we've had like two. As far as cases that remain open.

Commissioner Kosinski: I'm sorry, Michael. Can I just interrupt? I'm looking at your report and I really appreciate it. So according to this it says e-mails received 41 and then complaints you

received 14, so within those 41 e-mails you're saying 14 of them were complaints and the remainder were something else? Is that how I am to read this? I'm trying to understand how to read this.

Michael Johnson: No because some e-mails, the e-mail number, a lot of them are not complaints. 41 is a combination of just e-mails, the complaints that came in, some came in through e-mails, and also, we get a lot just you know people calling in and sending a hard copy.

Commissioner Kosinski: Okay.

Michael Johnson: So that is that number. Cases remaining open 49, inquiries remaining open 48.

Commissioner Kosinski: I'm sorry Mike let me stop you there. What is a case and what is an inquiry?

Michael Johnson: Good question.

Commissioner Kosinski: I know, I asked it.

Michael Johnson: It was a distinction that the Enforcement Unit had come up with prior to me getting there, and what they did was anything that came in basically was handled as a case. Sometimes they were handled as inquiries. Why? That's not something I really can speak to, because that happened prior to me. When there was no Chief Enforcement Counsel, what the unit did was since no one could determine and designate it as a case, they all just came in and were designated as inquiries. So, that's what that number represents, inquiries remaining open. Now that we have me, we're back to determining whether or not it's a case or it's an inquiry. An inquiry can be just a question, well what about this? And it may not turn into a full-blown investigation that would require it to turn into a case. An inquiry can essentially just be a question that can take a day or two to answer so that's the distinction between the two.

Commissioner Kosinski: So, in your office you're telling us that you have 49 complaints that are pending and then you have 48 inquiries that are pending...

Michael Johnson: yes

Commissioner Kosinski: and there are some inquiries, as you know this is the first time, we're seeing anything like this, it's been six years so, so you're telling me that you have inquiries that have been dismissed and dealt with, and are gone before you came, I'm assuming, that the prior Enforcement Counsel just dismissed for some reason, and they don't show up here, so they're not left there, they're done.

Michael Johnson: Right.

Commissioner Kosinski: You still have 48 that have not been resolved and you are still looking at them to determine what to do with them?

Michael Johnson: Right, and with cases remaining open, I'm still looking at the history of the cases in the unit, because there are cases that should have been closed...

Commissioner Kosinski: right, I'm assuming, because we're seeing some of those, and I appreciate that too, so you're saying over the six-year period that this office has existed, there have been 49 cases open by the office. Is that a fair reading of this or am I missing something?

Michael Johnson: Put it this way, that's the numbers that remain open. How many cases in total did the unit actually take in, I don't know.

Commissioner Kosinski: We have not seen until you arrived any closing of cases, just so you know, so we had seen nothing from the Enforcement Counsel saying, "I'm closing case X." So that implied to me nothing was closed during that 6 year or 5 year period that she was in charge. So I'm assuming again, and you tell me, but those are all still there open, never got closed, because if they did, there should have been noticed to the Board like you are saying I took this in on whatever date and I closed it on today, and I have to let you know that by statute.

Michael Johnson: Correct.

Commissioner Kosinski: So, my assumption is nothing like that ever happened in that five or six-year period that previous Counsel was there, because we never saw it. So, again, I'm assuming that these are all the cases that that office received from day one until today, except the ones you brought to us to be closed.

Michael Johnson: Right, and that number that says cases remaining open, there very well may be a lot of cases still that I'm going to bring to you to close because they've been, again, like you said they've been there for a very long time.

Commissioner Kosinski: I'm just trying to get the universe, you know what I mean, so I'm trying to get a universe so it's telling me that in the course of the existence of this office, I'm assuming remaining open doesn't include the ones you've closed, so you've closed maybe ten, so there's a total of 59 cases that have been brought to the attention of the Enforcement Counsel in the entire history of the Enforcement Counsel's Office.

Commissioner Kellner: Which is obviously not the case.

Commissioner Kosinski: Well that's what I'm trying to figure out. Is that a fair reading or is that not correct? I'm just trying to grasp.

Michael Johnson: I don't necessarily think that's a fair reading.

Commissioner Kosinski: You don't, okay.

Michael Johnson: Because there are things that I'm coming across that are sort of just there they've not been acted on, they're just there.

Commissioner Kosinski: So they're not in these statistics?

Michael Johnson: Exactly.

Commissioner Kosinski: Okay they're neither a case nor an inquiry, they're something else?

Michael Johnson: Exactly, and those like I explained to you guys previously I'm taking the task where I'm sort of starting from the middle working this way towards stuff that comes in and stuff that's recent, and then starting from several years ago and working this way. So that's the numbers that we've come to know.

Hearing officer proceedings, right now we've not sent anything to the hearing officers yet. There is one that's being worked on and hopefully within the next maybe month or two there may be some resolution on that one. As far as settlement agreements for the month of August, we've taken in \$916.00, monies taken into date since the beginning of the year, has been \$6,446.00. Money collected from judgments prior to the creation of the Enforcement Unit, this month we took in \$13,927.00. And monies collected to date is \$43,499.00. As far as the Failure to File, well the deficiency referrals, we just recently got the deficiency list from Todd and Kristen. We're in the process of putting together a whole methodology in terms of how it's to be handled, because in asking the staff in the unit currently, and I said, "Okay what have you guys done with these efficiency referrals, and the disks?" Basically I was pointed to a file cabinet and all the disks are sitting there. My understanding is, they did this-they sent out letters I think one time maybe. So we actually have to-I have to create a whole new process to put in place, so we can actually start acting on the deficiency lists and sending out deficiency letters. So that's something else I'll have to do.

Brian had mentioned earlier, I asked for an updated list of the filings, once we've got people to make their filings, what did that number look like? And he said, it was 3,451. So said, "What we're going to do, is that number, we need to reduce that number, because that's a very large number of cases to send to hearing officers. That's just, to call it a "Herculean effort" is an understatement. So we need to figure out some way to get that number down a little bit. What we're going to start doing is instead of focusing on committees that have failed to file a specific report, we're going to start looking at headers of nonfilers by committee. So say for instance, they're supposed to keep their stuff five years right, within that five-year period time they should've filed ten Periodics. If you've not filed no periodic reports, or if you've just filed all nonactivity statements, we're going to start looking to see if those committees can possibly be defunct, inactive, or maybe even nonoperational. Depending on what that universe looks like, I want to be able to go to Brian and Kim and say, "Here's this, we've got, I'm going to guess and say off the top of my head because the unit actually did it for these lists from July filers." That number was roughly about 550 committees. I'm going to have them run it again and see what that number looks like. Hopefully, this 3451 will go down. Once that number goes down, then we'll have to figure out our next step in terms of trying to come up with some sort of way because like I said, let's say for arguments sake, this 3451 we're able to knock off let's say 1000, that leaves us with 2451 of nonfilers. To try to present that many to our hearing officers, I don't

see that, I don't know how that's really workable in terms of number 1, the steps that the unit needs to do to prepare all the information to go to a hearing officer. And if you've got 2400 cases that go too, you've got to figure out how many hearing officers and even if we have five hearing officers to disburse that amongst five hearing officers, it's just I don't-I just don't see how it's going to work. So we're trying to figure out the best case scenario how do we do this? Now it may not be pretty, but we'll get something done. And one of the things that we've done is we've purchased, I don't know when we're getting it yet, because they have to deliver it, we've ordered Pitney Bowes machine that can handle the types of mailing that are going to be coming up as far as nonfilers go. I mean with this machine we need to mail 3,000 letters; we're going to be able to do it certified, on the machine that we're getting. So, between that, we have, there's a job description out, we're looking for one attorney, once we get an attorney then there'll be another investigator analyst, special investigator, because the process is now, okay this is a work in progress, like I've explained to the unit. This is a work in progress. We need to make certain that by January, when Periodics are due next year, we have process in place that's seamless and we should not be still scrambling to try to figure out how to get this stuff done. Now I know it's not been done in the past, but that doesn't mean that we need to continue that kind of an effort.

Commissioner Kellner: I want to second that last statement, that the fact that it hasn't been done in the past, is it's an outrage, and it cannot be an excuse for not addressing it going forward. If there are even 2,000 nonfilers you need to have a system in place for dealing with those 2,000 nonfilers. We had a system in place several years ago for dealing with 2,000 nonfilers. We filed in order to show cause, well we didn't have those kinds of numbers because of the lack of Enforcement, the numbers doubled, but we had enforcement proceedings as you know Michael because it was your job, then with a thousand nonfilers on the court proceedings in Albany. If the current procedure is unworkable, then we need to brainstorm with the legislation to rewrite the law.

Michael Johnson: I agree 100%.

Commissioner Kellner: But...but...

Commissioner Kosinski: Yeah, we've had 3 intervening events that have changed the way we do business in this particular regard. 1) we created the office of Enforcement Counsel. 2) we started accepting local filers as well as State filers. 3) we created this hearing officer process we never had before. So we have a lot more stuff to deal with, and a more laborious process to deal with them. So I agree, I think we need to look at this again, because what we did seven years ago, we can't do anymore because of the numbers, and the process have both changed. So I agree we need to look for a different way of dealing with this, certainly not throwing up our hands and saying, it's too big.

Michael Johnson: No, that won't happen.

Commissioner Kosinski: Then we've got to deal with it. So I agree with that.

Commissioner Kellner: And that's the point, is that your predecessor couldn't care less about it. She basically said I'm writing this off, it's not important. And I think we all agreed that

something should happen with every nonfiler, and yes, for the time being you made need to triage cases, and write off 2,000 of them as old and something that's not going to be able to, but write them off, so that you can start and evaluate how we're handling the new cases that arrive, and at the same time I think that there's still some hope that your office will go after the big investigations, not that your predecessor has done any in the last two years.

Michael Johnson: For me, the nonfiler list and that whole process is critical because if you don't do it, you don't know who hasn't made their filing, and that's part of what one of the responsibilities of the Enforcement Unit is, is to deal with people who have not made their filings.

Commissioner Kosinski: Let me just say, in that regard, since we've taken the local filers now which is relatively new to us, and I think it's important, that we know we have a grasp on that, because I think that's been a difficulty getting a grasp on all the local filers that are necessary. Like if they don't file their petitions with us, they file them with the local board. So getting a complete list I think is important because I think equal application which has been one of my criteria here, is that we have equal application of this failure to file, and I am just trying to make sure that we have a full grasp of all the local filers that should be filing so if we pursue them we are pursuing all of them, and not just picking and choosing the ones we happen to know about, and we've got a whole other body that isn't getting pursued because we don't know about them for whatever reason, so we need to make sure the locals are giving us all the information that we need in order to understand who these local filers are. We know if they're filing, they filed with us, but just finding out who they are who's running for office, who's got a committee who doesn't? That to me is a task I don't know how we undertake frankly, because I think we're relying on the locals to give us that and I just want to know we're getting everything we need to do that.

Michael Johnson: And you touched on a critical point because there are things that didn't exist back when I did this previously. So the steps were a lot easier. Adding, for instance, the hearing officer process and the steps needed to get to the hearing officer is simply another layer that creates a whole other dynamic. And I personally think that that's a process that needs to be reexamined again, because maybe it would work if we had a couple hundred filers, but I think now with the universe we're looking at, it just doesn't seem very sustainable to me. I mean the idea of writing off thousands of people who haven't filed honestly doesn't sit very well with me because I mean, for instance if I look around...

Commissioner Kellner: I'm not sure I don't understand why you can't just run the copy machine and bring 1000 proceedings.

Michael Johnson: What do you mean?

Commissioner Kellner: I mean if you have...

Michael Johnson: If I pass the hearing officer is that what...

Commissioner Kellner: No, no, no you have to do the hearing officers, but most of the hearing officer proceedings are defaulted anyway, so it's just a question of in the old days with the old supreme court proceeding, you would put 1,000 committees on it, well, many hundreds.

Bill McCann: I can address that, I mean, I think the primary issue of this is that the lack of doing the 5 day letter, what we call the 5 day letter which everybody knows is required by statute compounded over seven years of her not doing it has made it clear to the people that file or who are supposed to file, that there are no repercussions for failure to file. So in the old days on a periodic for instance which would be the largest group of people, we might end up sending out dunning notices to maybe 500 or 600 people, and then we might end up with 300 or so on the order to show cause and then that would whittle down to judgments that might be full judgments for maybe 200 and something on that. But that has now exponentially grown over 7 years. But I think at the time the legislature implemented it, which was supposed to be a check on the Enforcement Unit say, before we go out and bang on a committee failure to file, they have an opportunity to be heard, because there may be circumstances by which they shouldn't receive the penalty. If you had the numbers that were in place at that time, back in 2014, where you would literally might only have to send a hearing notice, because again, the 5 day letter and the application of being able to get banged would bring people into compliance. So they would file. So you might ultimately at that juncture back in 2014, only have to commence maybe 200, 250 hearings for a periodic and then your universe, because we didn't sue local filers for election reports, we only sued them for Periodics. So your election reports for the primary and general election, that universe the primary was always very small and then the general election would get a little bit bigger, but there would be a fraction of the periodic. Had that been implemented then, that would have been totally sustainable. I mean right now we have seven hearing officers. I agree that several thousand would be at least initially a project, but I think with Enforcement, we've already seen the results as Brian reported, that even their initial steps to send people notices and bang on them and say, "Look there are things that could happen to you" has had a result of about 25% of the people that were on the initial list have come off already, just in that short time period. But I think ultimately when he gets his machine and sends out a regular cadence of certified mailings as a result, that number should shrink. And I think at some juncture rather quickly, the number of hearings that you might need under the process, would be a tenable number.

Commissioner Kellner: Well I guess I'm just saying that I'm prepared to write off the old ones, the first Enforcement Counsel failed to follow up on, and how do we get to a position where in a couple of years we will be bringing enforcement proceedings against every committee that doesn't file. And I understand that there may need to be a transition to get to that point, and what's not acceptable is to say it can't be done. Because if it can't be done then we have to write a report to the legislature and get them to change the law. That's my view of it.

Brian Quail: I just wanted to add if I may, I think there is a shared sense of exigency, as between both Compliance and the Enforcement Unit that has heard loud and clear the message that the Commissioners have been saying for the last several years that this needs to be done and implemented and that there is, as I was listening to you talk, I was in my mind hearing conversations that we've had outside of this room, and am very happy to report that those

messages are incredibly resonant. And we are in the process of moving through this as a joint endeavor, also things that Compliance needs to do different and better in order to support Enforcement activities, and that we are 100% committed to getting there and doing it as quickly as possible.

Michael Johnson: And I think to the extent that now we share information, and we talk, that's only going to happen that much quicker. That's my viewpoint.

Commissioner Kosinski: Right, well I think you should bring us, Michael if you can, a plan maybe of how you get there? I think there's a couple of options that I see, one is to change the law, one is to add more hearing officers, one is to say we're going to write off some of our older cases that are clogging up the system and preventing us from doing a robust enforcement of current filers. Those are all options I think we should look at, and I would welcome any ideas you have to bring to us as to how you want to get there, because I agree we need to get there.

Michael Johnson: And we will get there.

Commissioner Kosinski: I know we put you in a tough spot because of the backlog that you inherited has created I'm sure a huge workload that may be unsustainable right now.

Michael Johnson: Just so you know, the administrative assistant who's phenomenal, shout out to you Robin, she just text me information in terms of the question you have in terms of cases. The total number of cases inquiries opened by the unit since 2014 to date is 609.

Commissioner Kosinski: Wow.

Commissioner Kellner: And none were closed, technically.

Commissioner Kosinski: I've got 100 you have accounted for here, so there's another 500 in your office that you need to look through and figure out what they are and how to handle them, is that fair to say?

Michael Johnson: Fair to say.

Commissioner Kosinski: Wow, that's a lot more than on here. Well when you look at 14 that came in in August that you reported it certainly doesn't seem that only 100 have come in, in the last six years I agree. Fourteen in one month.

Commissioner Kellner: And we also know that before the Enforcement office was created, we were getting 100 a year or even more, some years I think we reached 200.

Commissioner Kosinski: So you've got a lot of backlog I'm sure to deal with. Not only failure to file, but complaints or inquiries, or whatever you're calling them. So you've got a lot of information that your office needs to be dealt with in some way and I do appreciate that you can't deal with everything maybe as robustly as you'd like because you simply don't have the

staff or the time, you've got to make choices on how to handle it. So I would welcome your thoughts and how you think it's best to do.

Michael Johnson: Okay.

Commissioner Spano: Michael, can I ask you a question? Do you feel that presenting us with these reports, and going through this kind of dialogue inhibits your independence?

Michael Johnson: No, not at all.

Commissioner Spano: Okay.

Michael Johnson: I mean, I actually enjoy the back and forth honestly.

Commissioner Spano: Yeah, I just wanted to get that on record.

All laughing

Commissioner Kellner: Alright well I second everything that Commissioner Kosinski said. I think we've very much on the same page, and want to work with you, and support with you, and Brian, thank you for pitching in, because really it is a joint effort because Compliance and Enforcement, and hopefully they'll work together and address all this. Alright well thank you. So, is there anything else for Enforcement? Then our next report will be Public Information, John Conklin.

John Conklin: Thank you, Commissioner. Public Information Office continues to be busy. We've been answering lots of questions about the ballot props, campaign finance filings, specifically for governor candidates, the July periodic report, dates for elections next year and other significant dates for the 2022 political calendar, how to run for various offices, and continuing questions about write in candidacies.

So, as Kristen mentioned, we made a presentation at the Summer Election Commissioner's Conference. Toward that end, we're working with the five remaining county boards that have not completed their paperwork for the cyber remediation grant, so we'll continue to monitor that, as that's important for this year. The unit processed 93 FOILS for August and 77 for September. As also mentioned, we continue to participate in the automatic and online voter registration projects. We continue to work, or have weekly meetings with IT and Compliance, on the Public Reporting page for FIDAS and pushing out updates. As Brian mentioned, we helped work on the memos for the felon registration law. We posted the two notices that he mentioned, and both of those were sent on to the Department of Corrections and Community Supervision and also the Sheriff's Association, which had inquired as well.

We participated in the monthly ECA call, with the counties, which was last week. And we are working to finalize the publication of the legal ads for the five ballot props. Commissioner Kosinski, in the end there were only 3 papers that charged extra for separate online legal ads for

a total of \$92.87, so we're going to go ahead and pay for that. Our total quote from New York Press was \$63,227.73. The translations cost \$2,213.75 for a total of \$65,627.22. So we're just waiting for sign off from OGS, to go ahead with that, and they will be published the last week of October.

We have a staffing issue, which is kind of rare for us. Our longtime mailroom clerk retired...

Commissioner Kellner: John, can I just stop you there. You're publishing them the last week of October which is after early voting has started?

John Conklin: Well that's the statutory requirement is in that week, so we're complying with what the statute tells us to do. I understand the point you're making entirely, so that may be something we need to take up with the legislature.

Commissioner Kellner: Okay, I was unaware of that but, it sure seems like we ought to be publishing before early voting.

John Conklin: Right, I agree completely.

Commissioner Kellner: Alright, thank you.

Commissioner Kosinski: With all of the absentee voting that's going on these days, we might want to go even earlier than that. I mean people are voting right now. And if they're not getting...

Commissioner Kellner: I guess we've been recommending that they repeal the publication provision. But if they're going to keep the publication provision, at least it ought to be timely.

John Conklin: Right, and we posted them to our website immediately after the August meeting when they were approved, so they've been out there for quite a while. And there has been a fair amount of discussion about them, a number of advocacy groups have posted their own positions on it and one of the news media groups did an extensive report on all five of them. So, there has been a lot of talk, but I agree, it's an issue that if they're in the newspapers that late, it's an issue.

So, I was just saying...

Commissioner Kellner: sorry to interrupt, John.

John Conklin: No problem at all. So, I was just saying that our longtime mailroom clerk retired so we are in the process of posting that job. Mike Moschetti is basically pitching in to take care of that while we can find a new person. In addition, we're also bringing in some temporary staff to help with the backlog of data entry materials for NVRA which falls under the umbrella of that position. So we should be filling that hopefully quickly.

For the website, we posted the political calendar for the special elections that were called in Assembly District 86 and Senate district 30, that are scheduled for election day November 2nd.

As Brian mentioned, we posted the two notices on felon registration. We've also posted the webcast for the August 30th PCFB meeting and the August 30th and September 2nd SBOE Board Meetings. And the regulations for part 62-17 on New Voter Registration Systems.

So if there are any questions, that's my report.

Commissioner Kellner: Thank you. Alright, so we'll go to Information Technology Bill Cross.

Todd Valentine: Bill Cross is not here today, he had a doctor's appointment, so he was unable to be here, he provided Kristen and I a list of his major projects, and I've crossed off the ones we've already covered, but projects he's still working on obviously update the CAPAS and FIDAS. They're still doing biweekly updates to made any improvements to the system or fixes, issues they've identified. They've also scheduled their first meeting with Enforcement to incorporate their requirement. I don't know when that will be.

Michael Johnson: Tomorrow, actually.

Todd Valentine: Okay. It was mentioned before on the Online Voter Registration/Automatic Registration System they are evaluating four RFP responses that we got, and those are being scored. We did send out as of Friday from Kristen and I, a letter to the agencies that have been identified for the Automatic Voter Registration to request contacts to begin the project process with them, so they understand the timeline that they have to work with. He's working with space planning and obviously in support of Public Campaign Finance. On security, we had asked for the counties to complete a checklist of reporting tools, to see what their status is, and as of right now, 39 of the counties have returned checklists. So we're going to continue to follow up with those and when the checklist comes in, we do review it as well. Tom mentioned the meeting with the State and Local IT Directors Association this week. And we are working on finalizing with OGS the contracts for our security systems to counties we already support for them, which is intrusion, protection, and managed security system, to kind of log some of this stuff. So we're extending those that we've already paid for previously.

Some of the counties, there's also contracted for some of their remediation plans that were already put in place, with NYSTEC so we're working with those counties who need the additional systems. Obviously, Tom mentioned the Board of Registration System standard. Kristen mentioned that we test on our future elections project, it's still something we're working on. And as always, he says, we are continuing to work on multiple security improvements to our own infrastructure. I don't have the details for that.

Web analytics, you know for September and August, the website there's been September 147,000 page views of 60,000 sessions, so that's how many people registered onto the website during that. In August was very similar about 94,000 page views of 42,000. We expect those to

increase as we go into the normal before we ramp up for the elections, people are more interested in looking stuff up.

Commissioner Kellner: Alright, well then, the next item is old business, I don't believe we have any, so we'll move to new business. The first is Resolution 21-16 concerning a Fair Campaign Code complaint. Brian or Kim, do you just want to summarize it?

Brian Quail: Sure. The State Board received two Fair Campaign Code complaints in relation to the Rhinebeck Village election held earlier this year. The two complaints basically made allegations that campaign literature or assertions made in the campaign were violative of the campaign code Prohibition on Fraudulent Statements. And having analyzed prima facie the statements that are issued, and the background report that the details were provided to the Commissioners, it was determined that on their face falls short of actual malice even if everything that was alleged was assumed to be true. Accordingly the staff recommendations for the Commissioner, is that Fair Campaign Code complaints be closed without holding a hearing, and that's the upshot of what the resolution would do.

Commissioner Kellner: Thank you, is there a motion to adopt the resolution?

Commissioner Spano: So moved.

Commissioner Kosinski: Second.

Commissioner Kellner: Any discussion? Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? Alright the resolution is adopted.

The next item on our agenda is appointment of members of the Division of Election Law Enforcement Special Investigators, which is resolution 21-17. Is there a motion to adopt the resolution?

Commissioner Kosinski: So moved.

Commissioner Spano: Second.

Commissioner Kellner: Any discussion? Those in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: Opposed? And then Enforcement determinations, do we actually need to vote on any of this? No. And you've already given us your report, thank you. I don't believe we need an Executive Session, and we've agreed that our next meeting is December 14th.

Commissioner Casale: In light of that, is it possible to start moving forward as far as future months, so we can plan our schedules?

Commissioner Kellner: Sure, what do you have in mind? Did you just spring this on Todd now?

Commissioner Casale: Do we have a January meeting? If we need a January meeting for example, we can do it the same time the Commissioners are having their conference in Albany.

Commissioner Kellner: That's good.

Commissioner Casale: It's a thought. We don't always have a meeting every month, correct?

Todd Valentine: Not every month, it averages about 6 weeks.

Commissioner Kellner: I think it's a good point to try to stay...

Commissioner Kosinski: So you want to schedule January's meeting today; is that what you're suggesting?

Commissioner Kellner: But I don't think Todd and Kristen have sat down and are ready...

All talking

Commissioner Kellner: Maybe Todd will work out a tentative calendar.

Commissioner Casale: That's in line with Commissioner Spano's suggestion, put this on our website, so people will know in advance when we're meeting and can get things to us.

Commissioner Kellner: Good point. Alright, now can we adjourn? All in favor say aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kellner: Aye.

Commissioner Kosinski: Aye.