

Peter Kosinski: Meeting of the State Board of Elections, it's October 13th, I'm Peter Kosinski co-chair. To my right is Doug Kellner the other co-chair. To my left is Greg Peterson and to my far right is Andy Spano, the four Commissioners of the Board. So we'll start the meeting today with the minutes of September 1, 2015. Do I have a motion to adopt?

Andy Spano: So moved.

Peter Kosinski: Second?

Douglas Kellner: Second.

Peter Kosinski: All in favor?

[Chorus of ayes]. Opposed? Those are adopted. And then we have...

Bob Brehm: Just to be clear that includes both the minutes and the confidential...

Peter Kosinski: No, it does not. We'll do a separate vote on that. And then we have minutes of the Executive Meeting of September 1, 2015 as well. Is there a motion to adopt those?

Douglas Kellner: So moved.

Peter Kosinski: Second? All in favor?

[Chorus of ayes]. Opposed? Those are adopted as well.

So, next is unit updates and the first unit is the Executive Unit, Todd Valentine and Bob Brehm.

Todd Valentine: We're preparing for our submission for the State Budget. We got our call letter and it's a zero growth budget so it's the same as last year's. It's something we need to consider going forward and raise the budget probably before the end of the next fiscal year with it's completing of the NYESS Voter Refresh Project and CAPAS FIDAS project and something we may need to consider is what our staff is to support that going forward. It may include additional people both in the IT area, Human Resources for additional people as well as clerical support for the Compliance Unit and just general support. So it's something that we may need to consider going forward. Again it's a zero growth budget and at this point and at this time it's due on the 16th. So we basically update the narrative language of the story as to what we're doing. Change the year to this year and that should be all ready to go on the 16th. And then once it's submitted, of course the Governor will come out with his budget in January. So this is what we do, and then he does what he does. We'll see what happens after that.

Late on Friday, just a point of order, I got a copy I don't know, we really haven't had a chance to discuss it at the staff level, we did get a response back from New York City and were pressed to our asking about their poll site management issues. Again, we just got it very late on Friday and

we really haven't had a chance to go over any of the things that they raise. I think they e-mailed a copy to everybody. I just wanted to let you know that that was there.

Looking ahead, we had a meeting with the County Election Commissioners to help plan their agenda for their winter conference meeting in January, I don't remember what the dates are off the top of my head, it's usually the third week in January. And not to jump too much on litigation but the one thing that is still active are at least 2 appeals on challenges to the women's equality issues. None of the ones the office has decertified. There were challenges to local offices in Warren County there's an appeal in the third department scheduled for tomorrow, and there's an appeal in the fourth department for Onondaga local offices that were ruled off. But there's been no appeal taken to the 52nd SD or the 19th SD which were the offices that we ran.

Bob Brehm: I think on the project the only issue that I think is still one that we spoke with our Deputy Secretary, I think at the last meeting I might have told you that we were informed that we might be getting a new Deputy Secretary because they were reevaluating the portfolios. The Deputy Secretary that we had, Elizabeth D'Leon Begarve and we had our bi-weekly call with her on Thursday and we reviewed some of our concerns about the budget and putting it together. The budget call letter just came out a week ago and it's due on the 16th. So I think on those issues that Todd raised, we would look to do a budget side letter as we've done to make the case for what those other pressures are and where we seem to think that they will come to bare. Usually that doesn't necessarily be done by the 16th that because that usually comes out a little bit after the budget, but it shouldn't be too much further behind because if we're going to make the case that we need additional resources, now is the time to do it, get it in the Executive budget, earlier the better. And then we still have to work through Elizabeth in order to make the case why we think we need the additional resources. So, I would think if we're heading in that path and there's a good chance that we will that we would want to get that out to her next week sometime if the budget is due by the end of the week.

Peter Kosinski: Okay, anything else? Any questions for the Executive? No? Okay. Next is Counsel Compliance, Kim Galvin and Kathleen O'Keefe.

Kim Galvin: Thank you Commissioner. Just by way of explanation, I just wanted to thank everybody. My father died less than a month ago and the outpouring support from the Board and the staff almost without exception has been very supportive and I would just like to thank the people for that. And in my absence, Bill and Todd I think have done most of the work on our side of the unit so maybe Bill can just give a quick sample of what he's been working on and then I'm sure Kathleen can add to it.

Peter Kosinski: Sure.

Bill McCann: Thank you Commissioner. Just on the Compliance Unit front, they're working right now on the 2015 Primary and General Election Reports and amendments as they come in. The unit did recently celebrate going over 25,000 total reviews in the last month which the staff has really been doing a bang up job on that and so they took time out to have a cake, a pretty big milestone, 25,000 reviews. And that's moving along very well. Related to that, we've been

working on the CAPAS FIDAS update for our Campaign Finance Disclosure Process Management System, also the Candidate Management System and Petitions. The Steering Committee which is made up of senior staff working with IT directly on some major issues relative to that project and then also at the staff level there are a variety of staff working groups that are working on doing the interface with the public, etc. and how they filings would work, etc. So that's all proceeding very nicely. Towards that end, the Boards have established several user groups. I know the Commissioners are concerned about interaction with the public and in the variety of capacities so in October and in early December, we're going to have our three working groups coming into the agency to work with staff and to go over the system as it has been currently developed. There is a consumer group and a treasurer group that will be coming in in late October, and then in the first week of December there's going to be a county group which will be made up of representatives from the County Board's of Elections who have direct interaction with obviously candidate tracking and also some aspects of campaign finance compliance. So we're excited about that development. We're looking to get some good input from those variety of working groups with some crossover but we think that will give some tremendous input into what our process is so that ultimately we have a system that's robust and people are satisfied.

Peter Kosinski: Would you let us know the dates of those?

Bill McCann: Sure. I think its October 27th I think is the consumer group and October 29th is the treasurer group and then December 3rd is the County group and we can certainly forward you the list of the folks and those dates as their solidified. Those are the dates as I am currently aware of them.

Also, an exciting development, I know we've talked about this in the past but just to give you an up-to-date on it, our Education Outreach and Training Unit Mary Ellen, Lorraine and Mark, have been working with St. Rose. They have a communications department and working with their director and students for free, we're developing a 3-part campaign finance webinar. In essence that will be a permanent video tape that will go up on the web. They are currently recording that now. It's kind of interesting. We just have to make sure they wear the same clothes every week when they go to do the shooting. It's like, why are you wearing that again? Whatever the day of the week is they come in and wear the same outfit so that the recording is seamless. But it's going to have 3 parts. It's going to be the law candidate compliance and registration, and then the second part will be, as well as contributions, it will be filing reports which will be the software, and then ultimately compliance. So they are going to break it into three parts. They'll be static but yet they can be all watched together and the idea is they'll be on our website and up 24X7. We can direct people there. We can modify them as necessary. It won't replace the public outreach as far as doing the public seminars and the CLE's and things like that, but it will just be something we'll have permanently placed. It will be a nice snapshot and I know the Commissioner's have expressed interest in that. So we're excited because there's no charge. It's professional staff that's assisting with us at the College of St. Rose as well as their students. So it's a win-win proposition. So that's in the production stage. They're going to do what production involves and then hopefully soon we'll have something to take a look at. But we're excited about that as well.

And also as Todd mentioned, there's a lot of activity going on in the Women's Equality Party. We have taken no positions as has been our stance providing the courts, there's over a dozen lawsuits around the state of providing them with the documents, etc. that they need and then tomorrow the third department will be meeting and then the fourth department will be meeting on Thursday and so hopefully we'll get some clarification on the issues that are pending on that. And then we have a few things that will come up in old business and new business. So with that, I'll turn it over to Kathleen.

Kathleen O'Keefe: Thank you Bill. We have our Campaign Finance deadlines, October 2nd was the 32 pre-general, October 23rd is the 11-day pre-general and November 30th is the 27th day post general. So people should keep that in mind. I just want to reiterate what Bill said about the St. Rose project. That was a staff initiated idea which I thought was really fabulous and its going to be top quality, very professional. They were all excited about the real cameras that were being used and so forth. So we're looking forward to that. Perhaps when it's done, we can have Mary Ellen and Lorraine come and maybe let the Commissioners know how that turned out.

We have our Compliance Specialists Bob and Cheryl participated in an FEC webinar for Candidate Committees. That was after Bill and I went to Chicago for a similar type of thing trying to really better understand how the federal rules work with our state rules. The staffing situation is that we're at full capacity. One compliance reviewer will fully transition over when her replacement is hired. Other than that, we have everybody we are supposed to have. On the FIDAS redesign, we have conducted reviews of other campaign finance software. CSMART, CACCESS, EPICFILE, ARISTOTLE, NGP. We're trying to see how they will work with our new system. What kind of glitches there may be that we can address up front. We have discussed buying desktop scanners for the Compliance Unit in order to be able to immediately process the types of original documents that come in. Right now based on a contract that happened a number of years ago when there was a lot to be scanned, we are still using that vendor and it's \$500 a box so we're trying to figure out ways to not only save money but also to be more efficient. So we're hoping to move forward with that at some point. We are in discussions with the staff to do that.

With respect to litigation, the LLC case has been fully submitted to the court. Commissioner's Kellner and Spano file an Amicus brief and the petitioners in that case have asked for oral argument. We have not yet heard from the court if that will be granted.

With respect to the Women's Equality Party challenges, as Bill mentioned, we've taken no position but the records were pretty demanding to try to get to all these courts. It was all within a very short period of time. I know Brian spent one whole day just doing records. I think there are approximately 16 cases at this point and different stages of litigation. There were three prior appeals, two without certificates, and as Bill mentioned, two appeals are now pending. The third department tomorrow and the fourth department on the 19th.

We have another federal case that has been brought by Mr. Sloane. He has named Commissioner Kellner as well as Kim and I as defendants. The Attorney General is representing us. We asked for representation and they are doing that.

Peter Kosinski: Who is Mr. Sloane?

Kathleen O’Keefe: Mr. Sloane is a gentleman that last year brought a case in state court. Supreme court, appellate division and then up to tried to get into the court of appeals, and then went to the federal courts, the second circuit and tried to get into the supreme court. So he’s raising some similar issues that he raised last year.

Douglas Kellner: This year he was a candidate for judicial delegate for the Bronx Democratic Convention.

Kathleen O’Keefe: Last year he was on with a statewide ticket with a few other people.

Peter Kosinski: Are these like constitutional challenges or something?

Kathleen O’Keefe: A central part of his argument is that the State Board of Elections is unconstitutional. So the Attorney General is representing us, I’m happy to say that because I’ve been named. I’m hoping for the same outcome which was a dismissal last year.

Douglas Kellner: His complaint alleges that Kim and Kathleen actually run the agency on behalf of the two political parties. I thought that was pretty amusing.

Kathleen O’Keefe: Yes, Commissioner Kellner mentioned how amusing he thought it was. I was not that amused.

With respect to the issue that came up at the last meeting having to do with maintenance and the support contract that the local counties have with the machine vendors...

Douglas Kellner: Kathleen, I’m sorry but I just can’t help mentioning that I was co-defendant in a lawsuit that alleged that I was conspiring with the Pope in order to hide Obama’s birth certificate. And it took almost 6 months to get that dismissed.

Kathleen O’Keefe: So you’ve been down the road? So a question came up about the maintenance and support contract at the last meeting and whether or not changes required by law or regulation would be covered by the vendor. And I have the original contract that I was able to obtain from OGS through Anna, she was able to get that for me and I also have the current contract. I have obtained a copy of the current side contract from Schenectady County which is ES&S. I am trying now to get a copy of the Dominion side contract to see what’s in there. So we are engaged in this issue. I don’t really want to express a legal opinion at this point until I see the other side contracts so we’re dealing with both of the machine companies, but I will be able to bring, I hope a conclusion or at least a legal opinion to the Board at the next meeting on this particular issue.

With respect to compliance, there's been some discussion and maybe we'll have further discussion in Executive Session with respect to how holds are handled here at the Board. There have been various types of holds in the past that was used in the Enforcement Unit is the prior Enforcement Unit and we are in discussions about how those holds, whether they should or should not still be used and at some point it may be an issue that comes to the Commissioners. And I believe that's it.

Peter Kosinski: Any questions?

Andy Spano: What's the economics on the scanners?

Kathleen O'Keefe: The scanners are about \$700 a piece. We're sending out banker boxes that cost us about \$500 a piece. There are a few other benefits besides the financial aspect to purchasing these scanners. Efficiency is one, basically when we sent out a box to get scanned, we lose it for a couple of weeks and anytime we are asked for materials, obviously we have to go through what we have and sometimes its just not available when we need it. The other thing is that it could be right on somebody's desk and when say an original document comes in, it gets scanned right into the cabinet and everyone has access to it right away. We've had an incident recently where some origins were sitting in a desk for a year and a half and were not scanned in. So these scanners would address that issue as well as save us some money and make it available immediately for everybody that needs to access the material.

Andy Spano: How long is the duration of the present contract?

Kathleen O'Keefe: The present contract was renewed last year but what's interesting about the contract is we have no minimum requirement so if we stop sending these boxes we don't lose anything. In other words, we're paying per box and we have this contract for X amount of time but if we don't actually send any boxes we're not getting billed for anything.

Andy Spano: So what's the impediment to doing this?

Kathleen O'Keefe: Well we've had some discussions. Kim and I originally thought it was a good idea but there has subsequently been some other concerns raised about it. I have no concerns about it, I think we should do it.

Andy Spano: I don't have any concerns about it either. I mean it's just going to help I understand that. I've dealt with this for years in other jobs, it makes a lot of sense.

Peter Kosinski: I really don't know much about this to be honest with you. You know what I mean. Anybody else?

Douglas Kellner: I was going to raise this in Executive Session as a personnel matter.

Peter Kosinski: Okay well then we can talk about it then if that's okay. Any other questions then for the Counsel's Office, Counsel Compliance? No? Alright. Next then is Election Operations, Anna Svizzero.

Anna Svizzero: Thank you Commissioner. We have certified this year's general election. Unfortunately we had to amend it almost on a daily basis for a while because the deadline for holding judicial conventions for nominated Supreme Court Justices occurs after our certification date. So we're forced to deal with those documents. They're mailed in. They're timely but it does take them a while to traverse the certified mail route. So in any event, we have certified the Supreme Court contests and the 52nd Senate District and amended as was necessary. We did process 36 certificates of nomination and 85 candidates for Supreme Court were nominated in those documents. We received 3 declinations and 1 substitution and we did receive several objections in that filing period. We have our staff working on wrapping up the clear ballot certification testing for their central count system. We'll be doing a public test here in the front office in the public viewing area Friday, and we hope to have those reports and a recommendation for certification to the Board at their next meeting.

We continue to work with County Boards in the Comptroller's office to reimburse boards with their remaining HAVA money for expenses that are appropriate to that purpose. So that's an ongoing project and it varies from month to month.

We are continuing to work with County Boards dealing with issues that came up in building ballots this year with the additional two state parties and it being a local year with a lot of independent lines filed at the local level, there's just not a lot of real estate left on the ballot to accommodate all of the independent party filings that occur at the local level. So we've been fielding a number of questions, Brendan and I and Bob Warren and his team on how to help Boards build those ballots.

We are collecting sample ballots and also the notifications to candidates of the opportunity to be at the testing of the system prior to its use and then also the post election audits and those other aspects of the election that any candidate may be involved in.

We are continuing our work with the IT department as other units have mentioned, working on the updating in CAPAS to reflect needs that we have and also look at ways to incorporate the local County Board filings so that we can have a better handle on everybody that's filing throughout the state not just offices that file with us.

We prepared a resolution for the Commissioner's consideration today to move forward with the testing of the ES&S upgrade. It's a significant project. We did hear back from New York City concerning the upgrade. The other counties that are ES&S customers did not raise any issues with us and we did advise them that if they didn't file written comments, we assumed that they were in favor of the changes that were...

Peter Kosinski: We're going to talk about that later in the meeting right?

Anna Svizzero: Yes.

Peter Kosinski: Alright, let's save that because I have some questions on that.

Anna Svizzero: No problem. I just wanted to let you know we had that conversation. And I don't have anything else. Brendan do you have anything to add?

Peter Kosinski: Can I just ask a question about that build a ballot issue you raised? So are we ending up with counties that have, I'm assuming issues then fitting everybody, all the parties independent bodies on their ballots? Are they having to wrap around or?

Anna Svizzero: Yes, we haven't seen the ballots. We've been talking to them and they're just starting to send their ballots in now. They're building them only because we stop certifying on Friday. So we haven't seen those samples yet but they will be sending them to us and that's certainly an issue. They're going to have to vote for one contest that have to wrap further down ballot and that's going to be a huge issue for us next year and I don't know how else to deal with it. I mean the ballot is a fixed size and the rows that are available are fixed. So we may be looking at that perforated ballot that everybody's been fearing for next year because of the wrapping that would be involved.

Peter Kosinski: Do you think that's going to happen this year?

Anna Svizzero: I think it might happen in some of the bigger counties but without seeing the work that they've done and seeing the end of their ballot certification process too if there have been any declinations and sometimes that happens when people know they have to get wrapped, there's a declination that gets filed and as long as its timely then sometimes that problem goes away. But it's definitely going to be an issue that we have to content with next year and then we'll take a look at the ballots we do get this year to see how big a deal it was for the County Boards and those local offices.

Peter Kosinski: Now counties go to the back of the ballot for props?

Anna Svizzero: Yes.

Peter Kosinski: But only props?

Anna Svizzero: Only props. Sometimes instructions. We urge them to remove the instructions from the ballot to give them a little more space. It doesn't buy them much space but it can. Our concern is that certainly when these districts cross county lines, which isn't happening this year except for Supreme Court and we managed that end, we didn't have independent filings for Supreme Court but the other contests will create that dynamic.

Peter Kosinski: What's our print size these days for the minimum?

Anna Svizzero: The minimum is oh god, it varies. I mean we don't have a font size. We've recommended them in legislation and we certainly work with Boards to use the largest font size possible for the ballot grid that they have. The Boards are doing a lot better with that. They're removing the emblems from the voting squares. They're creating some white space. They've stopped for a large part using all capital letters. So they're following to some extent the usability of proposals that we put forward and some of those that we even suggested in legislation. Legislation hasn't passed yet but certain the right ideas are there. We can get some samples. I'm not aware of the specific font size that they have.

Bob Warren: Well there is a minimum of 8 point.

Anna Svizzero: Nothing smaller than 8 point?

Peter Kosinski: 8 point is the minimum which is pretty small. I mean how many counties go to 8 point? Do a lot of them use the 8 point or are most of them above the 8 point?

Bob Warren: It depends on the size of the ballot. They'll use the minimum that they can to fit everything on one sheet. So whatever that turns out to be. There's not, most of them will use 8 to 10 point but there are some that might shrink it down to 7 point if it's going to fit everything on one sheet instead of going to the perforated ballot.

Peter Kosinski: I mean I think there's issues there of course because of readability.

Anna Svizzero: Definitely. We have to, I think, look at that perforated ballot and what happens to it on Election Day. That I think is the County Board's fear. The voter tears it and doesn't tear it properly they'll have to revote their ballot. It won't scan. You have the public counter issue, it's going to count 2 ballots for every voter. If a voter only wants to vote one-half of their ballot is that going to be an issue? So those are the concepts that we're looking at now to come up with ways to deal with those issues and have a process procedures recommendation best practices in place before this happens next year. We don't want to get into it at ballot building time next year and have to raise that report. They need to train their inspectors. If we do see that we're going to a perforated ballot that certainly needs to be incorporated in their training which they do usually in May and June. So we want to make sure that's part of that process.

Douglas Kellner: The legislature passed the bill providing for machine assisted audits and I don't think the governor as signed it yet.

Bob Brehm: It hasn't gone to him yet.

Douglas Kellner: Right. But have you started planning on what we are going to do in terms of our regulations and procedures to implement the law?

Anna Svizzero: We are working with NYSTEC to draft some procedures so that we can get a handle on it. We were looking to speak to the Boards that were part of the pilot project so that they're actual use of those systems in the audits brought forth some ideas that could be

incorporated in that process. I know that that vendor has been meeting with some Boards at regional meetings to explain how the product can be used in that way to just introduce Boards to it. I haven't had any feedback yet as to anybody that is desperate to move forward with it but there was a lot of support from the pilot committees and the County Boards when we first explained what was going on with it.

Bob Brehm: I think the regulation issue when the study was done to look at it and the legislation was drafted, Anna also provided a draft of what we would need to do with the regulation which was pretty much making the same word change that's being made in the reg but we've been waiting for the statute to pass to move the regulation along. So I think with regard to are we ready? Yes, whenever it passes we can then bring the regulation forward for either emergency passage or the regular passage. It's not about word changes in general. The procedures are the helpful part.

Peter Kosinski: Any other questions? Okay, next is NVRAPIO John Conklin.

John Conklin: Thank you Commissioner. Well the Public Information Office has been pretty busy. We've had a lot of inquiries around the Voter Registration deadline which was last Friday. Campaign finance filings, local elections, the 2016 Presidential Primary. We've had 60 FOILS in the month of September. Tom and I participated in the ECA monthly call for September. We also continue to participate like everyone else in the NYESS Voter Refresh and CAPAS FIDAS project meetings. Tom assisted the County Boards in sending out the military absentee balance on the 32 day deadline which was October 2nd. We've had a couple of meetings with the IT Unit for election night reporting which we'll be doing on November 3rd again on the general election. We posted a candidate list for the 2015 General Election. As I said we're having election night reporting. That will be the Supreme Court races and the 5 legislature elections to fill a vacancy. And lastly for NVRA Greg Friosio had his annual training in New York City at the end of last week.

Andy Spano: The 60 FOIL, is that normal?

John Conklin: That's probably a little bit high for a local year but I would say overall our average is probably between 40 and 50 every month. So a lot of it is voter registration information. That's the vast majority of all our FOILS.

Peter Kosinski: Any other questions? Okay. I'm sorry Tom did you have something?

Tom Connolly: No, actually I was just going to say just in following up on what John said all the counties did get their ballots out or some ballots to the military voters by the deadline. Obviously with some of the litigation that Todd had mentioned initially with the Women's Equality Party as those ballots change we work with the counties to upload their updated ballot so that the military voters have access to the most current ballot that they are eligible to vote. Obviously Bill mentioned the user group of meetings that we'll be working with like IT to get the invites out to and develop a contact for the structure of those meetings. And the only other thing I was going to mention was that I'll be attending along with one of Mark's staff on

Thursday, they're doing a New York.gov agency redesign for websites and technology and stuff just because with the whole new branding initiatives and different things that they're pushing. So for more of a stand point since John and I oversee the website just going to get an understanding of what they're pushing.

Peter Kosinski: Okay. Next then is ITU. Mark Goldhaber.

Mark Goldhaber: Thank you Commissioner. Well most of what I've got has already been mentioned. We're all set for election night reporting we've got all our staff scheduled for what they're going to be handling. We've been conducting the internal CAPAS FIDAS feature set meetings and getting some specific requirements. We've got the focus groups that are coming in. We're looking forward to getting that input before we finalize the feature set for the initial release. As I mentioned last month, we're going to be having ongoing releases now that we don't have to send out new software every time we change it so once we get those requirements, we will determine what's the optimal feature set to have in our initial release and still make our deadline and target other features for subsequent releases. And finally, we've made some good progress in the last month on our infrastructure upgrades to support the new CAPAS FIDAS and NYSVoter Systems. We are nearing completion of the platform and we should be able to start bringing up some test services in the next month or so. So we're moving ahead well there. And that's all I've got this month.

Peter Kosinski: Okay. Any questions for ITU? Alright and then Enforcement, Risa Sugarman.

Risa Sugarman: Thank you Commissioner. We are also getting calls every day about complaints from candidates and members of the public about either opponents or candidates that are going to file their either periodics or their election cycle reports and those are being assigned and investigated by my staff. We are working with Mark and with the Committees on the CAPAS FIDAS updates. One of my investigators has received a substantial promotion so he left. His last day was Friday so I will be looking for a new investigator. I haven't decided whether I'm going to post it or look first at the initial applications that I received initially with my first posting. We are preparing reports for the Hearing Officers I believe on the agenda today is the resolution to approve the regulations so we are preparing reports for the Hearing Officers. So we'll be up and ready to go once those regulations are approved and we're preparing letters to send out to candidates and committees in anticipation of those reports and reviews for possible criminal review of failure to file.

Peter Kosinski: Is that it? Any questions? Okay. That completes the unit updates then. Next is old business and we have an update on the FOIL Voter Registration Records from Brian who I notice is not here today. Is there someone else that's going to?

Kathleen O'Keefe: Yes, I will address that Commissioner. Brian is not well today so he's asked me to just give you a summary.

Peter Kosinski: Well this is from the last meeting where there was an issue about FOILS be filed at County Boards...

Kathleen O’Keefe: And whether or not you can get a copy of the signature.

Peter Kosinski: And getting copies of voter registration.

Kathleen O’Keefe: Right and what Brian has discovered in doing some research on this is that there are 30+ committee on open government opinions on voter registration type material. So he wants to have an opportunity to look more closely at that as well as issues that sort of are tangential to that issue. Like for instance, providing poll books to a third party like a village but still comply with election law 5068 so there are other little wrinkles that come up in this. And the charging for voter data, and a definition of what is actually subject to disclosure.

So he’s actually done a pretty sizeable amount of initial research but he has discovered these additional issues, he wants to pursue that a little bit further and hopefully have something for the Commissioner at the next meeting.

Peter Kosinski: Okay. Anybody have any questions?

Douglas Kellner: I move that we lay this over so it stays as old business and come up at the next meeting.

Peter Kosinski: It will come up at the next meeting under old business again. And then the next is update on the Independent Expenditure Regulation Revisions and that’s Kathleen and Bill.

Kathleen O’Keefe: I have started a draft. The coordination piece is tricky as we discussed at the last meeting. I’m not done with my initial draft. I hope to get that done this week.

Peter Kosinski: I’m sorry let me just for a second. So let’s go back, so these update as I understand it is both to include the coordination issue and also to address the changes in the statute that occurred this year that were not in the original regs? Is that correct?

Kathleen O’Keefe: That’s exactly right. And in fact as we discussed last time the coordination piece may be more challenging. Maybe we’ll just get the other piece done first. But what I thought was an initial matter was just to take a stab at doing the initial draft on both and then see where we are. So with respect to that, I haven’t talked to Bill in details, my thoughts were just to do a draft, give it to Bill then him and I will have a chance to sit down and talk about it. I anticipate that next meeting we will have at least the easier piece done which is just the changes that have been in 2015. But hope springs eternal that it maybe the whole piece. So that’s about it on that.

Bill McCann: You raised a couple of the issues at the last meeting on some definitions that are in the regulations that we had drafted and clarify those as well so that will be part and parcel of that.

Peter Kosinski: So, we should expect something at our next meeting on this topic?

Kathleen O’Keefe: Yes.

Peter Kosinski: Is that fair to say? So this also will be held over and under old business at the next meeting. Okay. And the next well it’s actually Board opinions. There was a request as I understand it for a Board opinion on rent which I believe then led to a discussion on fair market value. So as I see it there are two opinions here; one on the rent itself and then secondly on the fair market value issues. So I think we’ll take them in that order.

So the first one is the rent opinion and that at least in my packet it’s the one that has two pages...

Bob Brehm: And it says *Advisory opinion* at the top?

Peter Kosinski: I’m sorry and it says *Advisory* as opposed to formal. So this one is 14130 and I assume there’s someone here that’s prepared to speak on this whoever that will be.

Douglas Kellner: Just for the record, I’ve recused myself from this.

Peter Kosinski: Commissioner Kellner has recused himself on both or just the first one?

Douglas Kellner: I think the Fair Market Value is a formal opinion that’s not really related.

Peter Kosinski: Okay so just the first one. Okay then let’s discuss the first one a little bit. So this is an opinion that was requested about a candidate who is renting space in a building that he owns?

Kathleen O’Keefe: He owns with a partner.

Peter Kosinski: He owns with a partner and he’s renting to his campaign committee and the question was, what is the amount of rent that should be paid by that? Is that appropriate I think?

Kathleen O’Keefe: Right it wasn’t the amount, it was is it appropriate the way that we’re handling this? And basically what the opinion says is that it is appropriate as long as you are paying a fair market value amount for that particular rent. We don’t have the ability or the resources here to do real estate comparative analysis of what is a fair market value in this particular instance but we did, in order to try to help folks have a better understanding about that issue, that’s where we have that second opinion.

Peter Kosinski: Right. So, I have a question about this. I just want to get it clarified in my own mind. So the analysis in here has basically the amounts of money, this is fact specific, so there’s a mortgage on the building and there are 3 tenants in the building and each tenant then is going to pay 1/3 of the mortgage payment for their rent as I understand it.

Andy Spano: Well the fair market value...

Peter Kosinski: Well that's for their rent.

Andy Spano: No but if the units are different sizes, the rent would be different, it wouldn't be 1/3, it would be based on square footage or whatever.

Peter Kosinski: Well I don't know, is that clear?

Andy Spano: I don't see that in here, I'm just saying...

Peter Kosinski: No, that's fair enough Commissioner, I think that's one of the reasons I just wanted to sort of talk about this for a minute because I think you make a good point. I think this opinion appears to presume that each of the spaces involved are equal. Because each of the payments is equal. So I guess there's a presumption although it's not stated here that this analysis would presume that each of the entities that are renting are renting an equal amount of space. If they weren't then I would assume that there would be a different analysis that the rent should be commensurate with the amount of space.

Andy Spano: Depending on the floor, etc. etc. That's why you just have to say fair market value.

Peter Kosinski: Fair enough. But the analysis here basically breaks it out so that each entity is paying 1/3 of the mortgage.

Bob Brehm: I think those were the facts that were given to us in the letter. We didn't add our own analysis. We took what was presented in the letter as that basis. So I didn't want to make it sound like we were picking one, that's what they gave us to start with.

Peter Kosinski: What did they give you?

Bob Brehm: They had laid out what was the dollar amounts.

Peter Kosinski: Yeah, no I got that I just think the Commissioner raised a good point though that this is fact specific. But I think if the facts bore out that there was different space being rented by each entity...

Andy Spano: Just say fair market value.

Peter Kosinski: But its how you get to fair market value Commissioner I think that's the point is how do you arrive at a fair market value? So I think you make a good point if there was different amounts of space being rented by different entities that would have a bearing...

Andy Spano: And depending on the floor, depending on the context.

Peter Kosinski: Fair enough.

Risa Sugarman: Commission may I ask a question? The facts look like each of the apartments are paying the same thing but that's not the total amount of the mortgage.

Bill McCann: Well the partnership pays 2 portions and the committee pays the other portion that's what it says.

Kim Galvin: It's not written like that though.

Risa Sugarman: Well I understand there are 3 apartment units, each pays equally and then the partnership pays the rest of the mortgage so they're not dividing the mortgage they're not each equally paying the mortgage they're equally paying the same amount for each apartment is paying the same amount but they're not dividing the mortgage by 3.

Bill McCann: Well there's \$130 overage.

Peter Kosinski: Yeah, that's not the way I read it. I read it that they're paying more than the mortgage.

Risa Sugarman: No, there's \$130 more that is raised by the 3.

Peter Kosinski: Right, so they're paying more than the mortgage, that \$130 which is more goes towards this upkeep and repair.

Risa Sugarman: The mortgage for the building is \$1145.

Peter Kosinski: Yeah, and they're paying \$425 each and that comes to \$1275. So they're paying more than the mortgage and the overage, the \$130 is going towards repair so they're actually paying more not less that's the way I read it.

Kathleen O'Keefe: And just to clarify the issue that the different sizes of the apartments, we were not given those facts, the square footage type of things. If we had been given that and they were different then it might have raised some additional questions. I think the caveat here is based on the facts you did give us, it looks like its okay but the caveat is it has to be fair market value.

Peter Kosinski: No, I understand that but I think to be fair to people reading this, they need to understand that those are presumptions and that this opinion relies on the facts presented, I agree with that, but it doesn't take into account all the possible permeations as Mr. Spano raised, size would make a difference. I mean for example, the last sentence saying that, this opinion for purposes of presuming making factual findings that the rentals described represent fair market value. I mean I would think as I look at it that the fair market value might not be determined by a mortgage but would probably be determined by rent that one could get for that space in that area. So that while this case, they're using the mortgage as a basis to divide who pays what, the fair market value might better be represented not by the mortgage but by what the rents are in

that area for that type of space. So it seems to me that if I was looking at this and trying to give someone advice it would be more along those lines than to say take your mortgage and use that as your basis for determining fair market value. Because typically mortgage is not a fair market value. It's less than fair market value most likely because the mortgage is not going to reflect the entire worth of the building.

Andy Spano: My comment was only on the basis of if you're paying fair market value, whatever that is, it's like prevailing wage, it's a number. If you're paying fair market value and you say that's what you're paying, fine. If that's what you're doing it okay. That's the advice.

Peter Kosinski: But Commissioner I think to be fair we're trying to give them some advice and the second opinion I think is important because if it goes to that issue of how do I determine fair market value? Because just to say to somebody, you have to pay fair market value, isn't sufficient. You have then give them some advice as to how do I determine that fair market value and I think it's our obligation to try to give candidates some guidance as to what, how that should fairly be determined. And I think that's what we're trying to do. So I think your point is well taken as far as the space issue. I was trying to raise an issue as far as rents in the area and I think that should be taken into account when reviewing this opinion and I just wanted to raise that. I'm not going to say I have a problem with the opinion but I thought it was important to clarify.

Andy Spano: I just thought the discussion was good enough.

Peter Kosinski: Fair enough. Okay is there anybody that wants to say anything else about this or has any other comments? Okay Commissioner Kellner is not, so is there a motion to adopt?

Andy Spano: I move.

Gregory Peterson: Second.

Peter Kosinski: Any further discussion? All in favor?

[Chorus of ayes]. Opposed. And Commissioner Kellner is recused himself.

Okay the second opinion it goes to that issue of fair market value. Does anyone, again I'm not sure who prepared this. Does anyone want to speak to this from the staff? Nope? Well I have a couple of issues so I'm just going to raise those here as well.

And again I don't really have a problem but in the first paragraph and I'm looking at the second page which is the back page. It says, in determining fair market value for in kind of contribution factors to consider could include, I think it should be would include costs for similar items. I don't think it's just a could, to me, it's more of a would include costs for similar items.

Douglas Kellner: Just strike the word could.

Peter Kosinski: I just think it should be stronger than that because the word could is so hedging that I think it doesn't give anybody really any guidance. So you think striking it is the way to go?

Douglas Kellner: Striking the word could.

Peter Kosinski: Does that work? Okay I'm fine with that. Could we strike the word could. Are we amended to strike the word could and just make it stronger. And then in the third paragraph it says, if the candidate or officer is the individual making an in kind, his or her share would not be subject to contribution limits, which I agree with. I guess I want to clarify that they must report the in kind contribution. So while they're not subject to limits, because it's the candidate themselves, I thought it should be clear in here that you have to report it however. So I would just add some language.

Kathleen O'Keefe: But it must be reported?

Peter Kosinski: But it must be reported.

Bill McCann: If I could just clarify there are several paragraphs that talk about the in kind contributions so maybe we could just do a standalone sentence that says, all such in kind contributions must be reported.

Peter Kosinski: Well I'm okay with that too. I mean I think it just should be clear to people.

Bob Brehm: So after that 9 bracketing period, add all is that what you wanted Bill?

Bill McCann: No, I would do it as a standalone.

Bob Brehm: But after that period is that where you want to insert the sentence?

Bill McCann: No, it's going to be a standalone.

Andy Spano: Where would you put it though?

Bill McCann: After the third paragraph.

Bob Brehm: Oh you want a new paragraph.

Kim Galvin: After the paragraph and limit. Then another sentence.

Peter Kosinski: Okay.

Bob Brehm: All such in kind contributions must be...

Peter Kosinski: Disclosed, reported whatever the words you want to use.

Bob Brehm: Okay.

Peter Kosinski: And then in the next paragraph it says, if a determination of fair market value for an item or service indicates the value is below, the excess would not be permissible. And as I understand it, it would not be permissible because it would convert it to personal use. Is that the reason it's not permissible? Am I correct? I think that should be put in there myself to be clear that's why it's not permissible because that would make it a personal use. So just add some language.

Kathleen O'Keefe: Because that would constitute a personal use.

Peter Kosinski: Something like that would be fine with me.

Bill McCann: As it would constitute a personal use.

Peter Kosinski: Attach it to the fourth paragraph.

Bill McCann: Such excess would not be permissible as it would constitute personal use.

Bob Brehm: As it would?

Kathleen O'Keefe: Because it would?

Peter Kosinski: As it would constitute personal use.

Douglas Kellner: As is not good.

Kathleen O'Keefe: No, because it would constitute a personal use.

Peter Kosinski: Those were my comments. Does anybody else have comments?

Douglas Kellner: Those were good. Do you want to send it back to...?

Peter Kosinski: I don't know do you want to take it back and bring it back to us next meeting? Would that be better than to try to do it right now?

Andy Spano: I think it's pretty clear.

Peter Kosinski: I don't care.

Gregory Peterson: Make a motion to amend it.

Kathleen O'Keefe: We're taking out the could at the top there. We are adding in a separate sentence after the third paragraph, all such in kind contributions must be reported or disclosed?

What did you say? Doesn't matter. Reported. And then at the end of the fourth paragraph, would not be permissible because it would constitute a personal use.

Douglas Kellner: A personal use or just personal use.

Risa Sugarman: Personal use?

Peter Kosinski: Are you okay with that?

Douglas Kellner: I'm fine.

Peter Kosinski: Okay that's all I have. Anybody else have anything else? I'd entertain a motion to adopt.

Gregory Peterson: I move we adopt.

Andy Spano: Second.

Peter Kosinski: All in favor?

[Chorus of ayes] opposed? Alright so that's adopted.

Alright, so that's the end of old business unless there's any other old business that needs to be brought up at this time? Nope. Alright, then onto new business.

Okay we have a number of regulations here that are poised to be adopted and I just want to make sure that we're following along here. So the first one is part 9, 6203 which is the Administration of Oaths and I note Brian is on these two. Is somebody else here...?

Douglas Kellner: These have all been published and we talked about these before.

Peter Kosinski: Do we need any comment on them or is everybody okay?

Douglas Kellner: So I'll move the adoption of the amendment to part 6203.

Peter Kosinski: Do I have a second?

Andy Spano: Second.

Peter Kosinski: All in favor?

[Chorus of ayes] opposed? Alright so that's adopted. And we have 9, 6218 which relates to Civil Enforcement Hearings.

Bob Brehm: There was one comment that we had a typo in the citations. It appears on page 5 and it should have been cited to 307.1. So in your copy we point out that change and Brian had checked with the Department of State that said that was a de minimis change that would allow us to do a full approval without having to go back out for public comment. So I just wanted to point out that you're also making that typo change in addition.

Douglas Kellner: Did we receive any public comments on these regulations?

Bob Brehm: That was the only comment, that we had a typo.

Douglas Kellner: I move the adoption of the regulation.

Andy Spano: Second.

Peter Kosinski: All in favor?

[Chorus of ayes] opposed? Adopted. And then we have Designating Persons to File Notices of Adoption.

Bob Brehm: This is a question when they do the formal regulations in order to sign them to be clear who has been authorized to sign them, either the co-directors of the agencies and I think we're just trying to make it clear that the Counsels can also do that work in case one of us isn't around and we can just get it done. But they asked to make sure that you authorize the staff.

Peter Kosinski: This is from the Department of State?

Kathleen O'Keefe: There's a requirement in the Regs that if the head of the agency, and obviously we're a unique agency, is not actually doing it and there's a place in the form where it literally says, "Who prepared the form" and we're not going to have the Commissioners prepare the form and submit them. And then upon inquiry, it turned out that there is a form already filed apparently for Bob and Todd. So this would expand that group to allow more of us to be able to do it without having to come to the Commissioners and have you do it yourself.

Peter Kosinski: Okay is there a motion?

Douglas Kellner: I make a motion to adopt the resolution.

Andy Spano: Second.

Peter Kosinski: All in favor?

[Chorus of ayes] opposed? It's adopted. We are now on B which is the resolution HAVA complaint. And that would be Bill McCann.

Bill McCann: Yes, Commissioner is this a longstanding relationship with NYSDRA concerning having...

Peter Kosinski: I'm sorry, with whom?

Bill McCann: New York State Dispute Resolution Association. We are under a statute obligated to have a vendor with a contract for HAVA alternative dispute resolutions. We've had them in place. This is to continue that and they did modify their cost structure to reduce the administrative costs and this is to have that in place for the year. So that's where we're at.

Douglas Kellner: How many years has this contract been in place?

Bill McCann: Probably 10 I guess, 9.

Bob Brehm: I think its lower this year.

Douglas Kellner: I think its 8 years. How many disputes have been referred to the agency?

Bill McCann: None.

Douglas Kellner: And how much have we paid over that 8 year period?

Bob Brehm: It's \$10,000 a year that we paid and the additional was in case we had an excessive filing that needed additional training. This year that 10 is reduced to \$7500.

Douglas Kellner: And now we have hearing officers which we didn't have at the time. So wouldn't it make more sense to not renew this contract and switch to having our own hearing officers hear the overwhelming number of HAVA disputes that are brought to the agency?

Bill McCann: Well, number one this really takes care of the year that was essentially $\frac{3}{4}$ complete and number two, I don't believe based upon the statutory language or construct that our hearing officers would fall into the language of this stat.

Douglas Kellner: What the section?

Bill McCann: It's 3105 I believe it's the provision.

Gregory Peterson: At the very least, it seems to me that you certainly can open it up for others to compete to come in. If somebody can do it at a lesser price, from what I understand this group is high quality, you pick up a little bit of a lesser quality for something you don't need, seems to make a lot more sense than paying \$7500 a year for nothing.

Bob Brehm: I think a better word than lesser quality might be...

Gregory Peterson: Please excuse me.

Bob Brehm: I think this was the only group that was statewide and I think that we went with that at the time because they were statewide in order to make sure that we had coverage. But the risk of not having a firm statewide maybe is something we could live with now since we have never had one.

Peter Kosinski: This is a HAVA requirement?

Bill McCann: It's a HAVA requirement that defined a state statute.

Kathleen O'Keefe: Well as Bill already pointed out we're already well into that contract year so we should at least pay what we owe and it gives us a little bit of time if we want to think about what Commissioner Kellner has brought up.

Peter Kosinski: What's the contract year?

Bill McCann: It's a calendar year.

Peter Kosinski: So you mean they started this contract in January and we're not doing this until October?

Bob Brehm: Well we've had the issue, its annual appropriation by the Commissioners and Bill has reached out numerous times trying to get them to offer us a cheaper price.

Bill McCann: I can speak to that specifically. Commissioner Kellner when we first brought it raised the issue of the cost and could we negotiate a reduction, which we did but in the interim there was a change in leadership at NYSDRA and so there's a new president. So the Executive Director had to go through that process for this. So then once the new president came in place he then offered the reduction in the price and that's why we're bringing it at the next meeting.

Douglas Kellner: The statute says, whenever a final determination of a formal complaint is not made within 90 days or any other longer agreed upon time period, the State Board of Elections shall refer the formal complaint to an independent alternative dispute resolution agency. And it doesn't require that there be a contract in place where we pay the agency to standby to hear the complaints. We could pay on a per complaint basis. I just think this is, I don't know the politics of how this was originally awarded but I have been criticizing this every year for at least 5 years now and I'm not going to support continuing this contract in this format where we're just handing...

Andy Spano: We do owe this year?

Douglas Kellner: It's not clear to me that we owe it.

Bill McCann: I can speak to the issue. I mean originally when HAVA was promulgated we had no idea what the scope and nature of the contract need would be. We then contacted the

Attorney General's Office since they had a program in place and NYSDRA was recommended by the Attorney General's Office because they handled arbitrations around the entire state. They do specifically for the Attorney General all lemon-law cases for instance. And also NYSDRA works for any number of state agencies. At the time of the initial procurement they were significantly less in cost than the American Arbitration Association which we had explored at the time. Because they could do these hearings if you will, across the entire state would be available to that and to do the administrative oversight of the program, we then contracted with them. I understand that there has not been a need for the services and candidly it would be unlikely that we would ever necessarily need their services, however NYSDRA is in place, the benefit that we get is that we have an agency on call because the critical thing is there's a truncated timeframe for when things have to happen under the Alternative Dispute Resolution Process. So if we then had to go get a vendor with no administrative experience in the process, and then have to start

that again, I don't know frankly within the timeframes that are statutorily set that we'd be able to comply with that. There's very short timeframes in the statute as to when you have to get the arbitrator on board, have the hearings, and issue the determinations. I think that it's a modest amount of money to be in compliance with the statute for having that compliance. So I personally don't view it as a lot of money, I agree that over the course of the span of the contract it might seem like a lot of money, but again, I think we're in statutorily compliance. I think they're able to provide that administrative service and I think it's something that we're in compliance with.

Peter Kosinski: What do the Directors think?

Todd Valentine: Well the statute requires us to have an independent agency. They initially set this up we did discuss having our own hearing officers but they wouldn't comply with the obligation of the statute as being independent.

Peter Kosinski: Our hearing officers do not comply with the independent requirement.

Todd Valentine: We didn't have any hearing officers at the time.

Peter Kosinski: No, I gotcha. I'm talking about the current ones the ones we just put on within the last couple of months, would not constitute truly independent under the statutory language.

Todd Valentine: I don't believe so, no.

Peter Kosinski: Because they work for the agency is that the concern?

Todd Valentine: Right. They're still direct employees of the agency. We would hire them, fire them, and appoint them. They would be in our complete control.

Bob Brehm: I'll put it to you this way, I'm assuming when we're using them to deal with enforcement matters they would get paid out of Risa's budget. If they're doing, although I would have to say I know it's come up at one of these meetings, the language on the regulation, because this was done by our enforcement unit, still says its Enforcement Counsel which we have to decide is it really Risa, is it not Risa? And how do we do any of this work?

Andy Spano: What is the expertise required and what would it cost us anyway? So you have to subtract that from the \$7500? If we put on one of our own people?

Bill McCann: I just don't know if we could put on one of our own people.

Andy Spano: Well assuming that they could be declared independent contractors if they're not working for Risa.

Douglas Kellner: It has to be by an alternative dispute resolution agency pursuant to regulations adopted by the State Board. But what's going to happen if we stop paying this money? I think absolutely nothing and I think that this is money that, it's just wasted money.

Bob Brehm: Well, also should we add to our legislative program perhaps changing the wording to allow us to use our hearing officers as a way of going forward so as somebody doesn't file one of these claims just to create an issue.

Bill McCann: The issue here is that if you go back to HAVA Title 3 and read what Title 3 says, and you go into 3105 as it was established by the legislation, the key to the arbitration is that if the matter cannot be resolved within the timeframes that the Board is allowed, and the legislature was cognizant of the timeframes the Board had usually used in the past, they set rather strict timeframes. If the Board does not fulfill it's obligation within the timeframe the idea is that it goes to an independent body. That's the concept. So to the extent that we could have a truly independent body to engage in that arbitration, I think that's what the statute calls for.

Douglas Kellner: And in 8 years no one has ever used that procedure and in the 8 years we have had 1 informal or 2 informal complaints on the same subject.

Todd Valentine: Well I understand that but this again was, remember the genesis from this was not within the state, it was a federal mandate.

Bill McCann: It's still a federal mandate.

Todd Valentine: And the state law mirrors the federal law that there would be for purposes of resolving complaints which could be against this agency, that need to come from an independent body to make that decision. And that's something that certainly many good government groups argue that it should be separated from agency. The fact that we haven't had those complaints is also part of the statute. Because what it pushes the agency to do both on the county level and the state level is to address those issues when they come up instantly and solve them before they get to this complaint procedure. So what you don't see is, its unfortunate because we don't keep statistics on that is the success we've had in addressing any issues that voters have before they rise to this level. So the fact that we have this obligation, its again a small amount of money, it doesn't come directly out of the general funds, it comes out of federal funds and its there for an insurance purpose, if you will in the event that we need it should we bump up against those

timeframes. Because we will not be able to procure somebody in that short timeframe who meets that statutory obligation.

Peter Kosinski: Well my question would be, is there another way to do this? For example, could you do it on a case by case, I mean can they be rather than a retainer which I guess this is, is there a way to just pay them if indeed a complaint reaches that point so they're available, pay them per complaint?

Todd Valentine: Well we can analyze that.

Douglas Kellner: And this hasn't been out to bid in 8 years so this group has had this inside deal and just.

Bill McCann: The other thing is NYSDRA is an extremely reputable company and we're paying minimal amounts. The other thing is there's also a cost benefit analysis that you have to take. To do a procurement is a major staff undertaking. I'm not saying that we couldn't do a procurement. But, again right now for essentially \$7500 you will have a vendor under contract and be in compliance to go out to do a whole bid to, argumentatively I think we'd end up with the same result I'm not saying that we would necessarily, but it seems to me that's a lot of effort when we're paying a de minimis amount relative out of the federal HAVA monies to be in compliance with the statute which we have been.

Bob Brehm: I think we have the statute, we have it is clearly their little need but risk. And the issue is should we cover the risk while going out to bid and perhaps I know one of the issues was do we pay more if we get one filed on a per case basis? Probably. But then the risk is if we get one we pay say \$2500.

Douglas Kellner: What are the potential HAVA complaint issues? They are, HAVA did 3 things, they set voting equipment standards. So I guess theoretically someone could file a complaint that our voting machines don't meet the HAVA voting machine standards. They set rules for provisional ballots that are far less rigorous than the state rules that we have for affidavit ballots already in place. And they set rules for the Voter Registration Database which everybody has now complied with and where there is, I just don't see any conceivable disputes except perhaps on the voting machine standards which would be pretty arcane and we haven't heard anybody raising those kinds of issues, and we've had some pretty rigorous testing. So I think that it is an incumbent on us after 8 years of experience to switch to a contract where we pay on an as needed basis.

Anna Svizzero: Are these groups under contract with the Attorney General?

Bill McCann: Yeah for their specific programs.

Anna Svizzero: Then why can't we voucher against their statewide contract. Like anybody can buy a voting machine off of ours or we can buy a copier off the other state contracts.

Bill McCann: Well I can speculate but it's our administrative process is not the same as the lemon-law. I guess we could ask about piggy-backing. But just to be clear, the \$7500 constitutes the administrative oversight of the program. There is also a schedule that would go into any cost if there is one. But we haven't had the need and I don't anticipate one.

Bob Brehm: That's why they asked for \$5000 more but we never used that portion.

Bill McCann: No, it goes to training and to the actual arbitrations themselves. We did do one training at the onset of the program and there's a list that the Board approved.

Douglas Kellner: So if we don't spend this money somebody could sue us for not complying with 3105 A which says that we're supposed to have this contract in place or they could go to the US Attorney General and ask the Department of Justice to file a complaint against us for noncompliance and I don't see either of those things happening. And I think in the meantime...

Todd Valentine: Well actually that would put us out of compliance.

Douglas Kellner: Pardon?

Todd Valentine: That would put us out of compliance with HAVA. We're already under courts provision for that.

Douglas Kellner: The federal law simply says that we have a dispute resolution process in place. It's not as rigorous as the statutory requirement. And all I'm saying is that put it out to bid for an as needed basis where the agency is agreeing to do it on a case by case basis if one should arise.

Todd Valentine: Well I would certainly approve this one based on where we are in the calendar year and then cause this will sunset at the end of this December and then calendar year we prepare something that is along those lines.

Andy Spano: Not being a lawyer but I'm familiar with some cases. What about Qui Tam cases? ~~—basis.~~ They don't apply to something like this. Suppose we accept money from the federal government and then we do something that violates whatever the regulation is because we're determining X, Y and Z. Under these particular cases anybody can sue us for 3 times the amount of money that we got from the federal government based on the fact that we fraudulently got into this and took the money.

Douglas Kellner: I'm not suggesting that we not comply, I'm suggesting that we comply in a less costly way.

Peter Kosinski: Okay so how about this. We pay this bill. It seems to me it's October we've contracted with these people to be fair. We should not in October walk away without paying our obligations. However going forward we need to revisit this in the ways that have been talked about here which I think specifically is to see if we can do it in a case by case basis rather than a retainer concept. Because our experience is we simply don't use this which I understand. We

have 90 days to resolve these issues if they do come up and they get resolved as they should. You should never get to a dispute. These should get resolved. So with that in mind, would anybody move that?

Andy Spano: I move what you said whatever it was.

Peter Kosinski: I like that and we have a motion and a second. Any discussion? All in favor?

[Chorus of ayes].

Douglas Kellner: I just want to add the word and be it resolved to the words 2015, to the 2015 annual administrative cost.

Kathleen O'Keefe: That's a therefore?

Douglas Kellner: Just so that it's clear that this is not going forward.

Bob Brehm: It's on the third line down on the last paragraph in the middle. To the 2015 annual administrative.

Kathleen O'Keefe: Just that number Doug? 2015.

Douglas Kellner: That's all so that's my only change. There whereas also I think makes it clear that this was for...

Peter Kosinski: So let me also clarify, are we looking to rebid this or have just open discussions with this organization to see if they will change the structure of the contract?

Todd Valentine: Because of the size of this, this was not done on an RPA but a purchase order so our research was to look for a company. Try to set up what the parameters are and so we'll analyze the parameters are different now going forward and then probably end up talking to the same company. Research the market and see if there are other agencies that are available.

Gregory Peterson: And see if we can piggy-back with the Attorney General.

Todd Valentine: And that's certainly what we can do.

Douglas Kellner: Or just make some phone calls to some other people and say, look will you do this on a stand by basis and we'll pay you on an hourly basis.

Todd Valentine: Researching the market. You have to ask them the same question though. You can't compare apples and oranges.

Douglas Kellner: Yeah but I'm proposing language for the question so that we are not spending money on something that we don't use unnecessarily.

Peter Kosinski: And I would also request that you get back to us before the end of the year so that we can revisit this before next year's contract.

Andy Spano: We've got to take the second on the...we need a new motion on this. I'll make it.

Peter Kosinski: What is it?

Todd Valentine: Insert that wording.

Peter Kosinski: Oh insert that word in 2015. Oh so that's the motion is to insert the year into the annual so the annual 2015 administrative costs. Okay so that's the motion on the floor.

Gregory Peterson: Second.

Peter Kosinski: All in favor?

[Chorus of ayes]. Opposed? Okay that is adopted. So we will expect to hear something back by the end of the year on the progress. Alright that would be C now is the proposed federal calendar for next year. This I understand is the calendar that has to be approved by the federal court pursuant to the case that MOVE Act case which requires us to have a federal primary in June and the calendar needs to be set then by the court and I understand this is the proposed calendar that would be presented to the court for adoption which would then create the calendar for all candidates who wish to run for congressional seats next year.

Bob Brehm: Federal office correct. This is federal.

Peter Kosinski: So it's Senator, House. Okay so that's my understanding of what this is. If there is any other, is that it?

Bob Brehm: I just want to make one thing clear. There's a number of documents, the resolution, the draft calendar which includes the federal side and also a draft for the state side to see how it fits in. The court is not being asked to set the state side but just so you could see what the calendar would look like. And then a 10-page document which is similar to what we presented to the court before where we identify those sections of the New York State statute that need to be superseded so for your reading purposes, we have them numbered with like a CO in the left hand column for the change that we're asking the court to order. So while this 10-page calendar lists many items, there are only fourteen that we're asking the federal court to supersede and because it's a Presidential year with independent petitions, the only difference that we've done from the one that was presented to the court 2 years ago was to add an additional week time for independent petitions for federal office. We had gone to a 2 week difference from state candidates. This is proposing a 3 week difference because we found that it takes an awful lot once we get independent positions for just congress which is 3000 signatures. But if you add president or United States Senate that's 15,000 and we've been getting a lot of them and its taking an awful lot of time for us to process in order to get the work done, the objections done,

the hearings done, so that we can still meet the deadline. So we proposed this year because of President and statewide independents for federal office that we add an additional week because it was a little tight last time. We got it done but it was really tight. So just so you know, that's the only difference that we're proposing.

Douglas Kellner: I'll move the adoption of the resolution. I would suggest that our website post this as the proposed draft so that people can look at it now and not wait until Judge Sharpe actually signs it in December and that we promptly send this as we have in the past year we send it promptly to the Department of Justice, ask them...

John Conklin: Commissioner I'm not aware of us ever posting a draft of the local calendar before.

Douglas Kellner: Correct and I think at least I got a lot of negative feedback because of the change in the independent period the US Justice Department had our draft but nobody else knew about it or could have known about it until Judge Sharpe had already approved it and it's really not fair. So we should post it as a draft that will be submitted to approval through Judge Sharpe so that if people want to comment on it they can. The process is that it immediately, Counsels immediately send it to the Department of Justice and it will take 4 weeks or so for the Department of Justice to review and say they don't have any objections. Or, if they have objections, to let us know what those objections are. And then it gets submitted jointly where we get to submit it to Judge Sharpe with the representation that the Justice Department has already reviewed it and has no objection and Judge Sharpe the last time signed it 2 or 3 days after it was submitted. So the idea is to post it publicly so that if people have comments they can give them to us and the Justice Department now.

Peter Kosinski: Yep, I'm fine with that.

Douglas Kellner: Alright so I made the motion.

Andy Spano: Second.

Peter Kosinski: Any discussion? All in favor?

[Chorus of ayes] Opposed? So the calendar is completed.

Last on this list is the resolution regarding ES&S Voting System upgrades and the approving testing for those. This I understand is somewhat similar to what we did 2 meetings ago with Dominion who also requested upgrades and we're testing those currently. Is that fair to say? Those are currently under testing. Now these are a little different as I understand it and I would defer to you guys but I understand these are really nationwide changes that ES&S is seeking to do to standardize their machines across the country so they'll all be the same state to state which is a much different concept as I understand it from Dominion who I believe has state specific machines. These will be then or the effort here is to make them standardized across the country. Is that right? So some of these are deemed on pursuant to request of New York State. Some of

these are being done pursuant to request of other states but we have to test them all to make sure they work even though we're not using them? Is that fair to say?

Douglas Kellner: No, we will be using them.

Peter Kosinski: Well in a sense. I don't really understand them. But I guess some of these are things we don't really do in New York.

Anna Svizzero: If it was something that we didn't do or use we need to test to make sure that that doesn't disaffect something that we are using.

Peter Kosinski: So the testing will be more rigorous in a sense than it would be if it was kept to New York State request because there will be more things to test but that's what ES&S wants to do? Okay. As I understand it the vendor pays for this testing not the state so it's their dime that they're doing this on. Alright so I think we should just, and I know there's a lot of changes here so I don't think it's probably useful to go through all of them because there's just too many but I would ask that you give us some...I guess one other thing I'll say is as I understand it, that the changes will not impact voting. They will not impact vote counting. Is that a correct statement or am I incorrect?

Anna Svizzero: I don't know what you mean by voting. They don't impact how a ballot is counted, how the oval is read and to whom it's attributed that kind of thing.

Peter Kosinski: It doesn't affect me as a voter. I will not see any changes when I go to the polling place in my machine?

Anna Svizzero: I don't recall that there were any voter impacts like screens that were different, but Bob would know and Brendan.

Bob: Thank you. The screen is changed slightly and the welcome screen. The welcome screen has been changed to give the voter a better perception of how to put the ballot in. They were finding that people were sticking the ballot in incorrect places not into the scanner so they enhanced it so it has a better view. So that's probably the single change that a voter would see but it's an enhancement for the voter.

Peter Kosinski: And when they say it's an enhancement Bob do they do some sort of studies where they put these out there for people to use and come to some conclusion that this presentation is an enhancement. I mean how do they come to that conclusion that this is actually going to be better for the voter?

Bob: Well in that instance they received a lot of feedback that voters were sticking the ballots in the...

Peter Kosinski: Well I think we know that's true so I'm just trying to understand how this fix will make it better.

Bob Warren: It's the visual. We haven't seen it yet but it's the visual on the screen that's going to help show the voter where the ballot gets directed into the scanner.

Peter Kosinski: But is there some sort of user study where they actually put this, they actually put it on a machine and then let voters use it and find indeed it does do what they say it will do?

Bob Warren: I don't believe so.

Peter Kosinski: I'm sorry, does that not make sense. Is there not some use to saying rather than some vendor saying this is an enhancement to actually have voters use it and tell us, yeah that's an enhancement, that's better now".

Douglas Kellner: Our Regs require that they do through usability testing first.

Anna Svizzero: They do a certain amount of that kind of testing on their own in house with user groups especially with the disability components. They've brought in groups and as a matter of fact we were even asked to give them contact information for different groups to bring in. So there is some of that. Since the bulk of this is internal, they get their feedback from technicians and whoever else around the country is actually building these ballots and that constitutes their user group. These issues have been brought up in our own user groups that they hold at the conferences in January and June so that they can explain what they want done and who it impacts and get that feedback face to face with our own county boards. I don't know that they do that nationally. But they've certainly done that with us.

Peter Kosinski: I guess I'm just trying to understand how they come to the conclusion that we're going to make this change and that this change will be helpful. That's all. I mean who tells them that?

Anna Svizzero: I think people like us.

Peter Kosinski: So its election professionals not necessarily votes themselves.

Anna Svizzero: Right from varying degrees. From the administrators through the technicians through the poll workers, through the on-site different states call them different things, on sites, certainly in New York maybe they're coordinators or they're just scanner attendants that say that these attendants have to help voters put their ballot in. People keep misfeeding them so that feedback come back to them through poll workers and other state people.

Peter Kosinski: I don't think its news to any of us that there are issues that you're identifying. That there are issues with voters not properly feeding their ballot into the machines. That's not the issue, we know there's a problem, the question is how do you fix that problem and is this going to actually fix it? And how do you know this is going to actually fix it? That's my question. Rather than the vendor saying, this is going to fix it.

Bob Warren: Well I think like I said we haven't seen it yet. The vendor is here this week he's going to install the system for us and we'll start taking a look at it. I think seeing it is going to give us an indication of yes this is much better than the old screen. We can put them side to side and...

Peter Kosinski: I mean is part of the testing do you have votes come in and try to use the new system to see how it works?

Anna Svizzero: At our public testing we do and we certainly let them. I mean we use people in the agency. We've had support staff vote ballots, tromp on them, test them, and scan them themselves. It's not just Bob and his team. We've asked other people to help out in the public testing, anybody that shows up is allowed to vote ballots and scan them so that we can confirm any questions that we have or that the voters or the county personnel that show up, and we have had them come from time to time to that public testing. I mean we can certainly ask more about what they do. I think Commissioner Kellner is right, they do have to do usability testing on their own before they submit for certification and the labs do look at those reports so how they get their feedback I think feeds up from the users, voters, the users of the system administratively at the poll sites and then those get reported to their counties. Counties report it to the state. The state gets a hold of the vendor and tells them that this is an issue that needs attention. And again, with the disability groups I know they reach out to a lot of them to get their feedback, a lot of the advocacy groups for voters with a variety of disabilities.

Peter Kosinski: Is this helping disabled voters specifically these changes or are they just generalized changes.

Bob Warren: Just generalized. The Auto Mark has no changes in the subgrade and that's what the disability people use.

Peter Kosinski: Are there any other changes that would impact how voters interact with the system?

Bob Warren: No.

Peter Kosinski: And are there any changes that would impact how voter counting is occurring in the machine?

Bob Warren: No.

Peter Kosinski: Then are there any other significant changes you think should be mentioned here? I mean are there significant changes here that...

Bob Warren: Well there is significant change to the DS850 Central Counts Scanners and there's a change in the EMS that allows you to create header cards that are then used on the DS850 so that counties, it's a specific request from New York City but any county using 850 they can create their absentee ballots by style instead of by ED and then utilizing the header card

they can get their ED level counts by putting them in stacks of ED with the header card on top. So that's a significant enhancement and it cuts down on the cost of the absentee because they don't know how many they're going to give out.

And on the EMS side, the EMS side really is a lot of usability type things for the user. They can see the results, take text size in the EMS system now instead of by machine basis. So they have to go to each machine to set the text size. Once its set they're going to leave it most likely the same but now they can set it in the EMS system and then when they load the election it gets set on every machine. They fixed some field length issues where they didn't have a limit to the field length, you could put in as much text as you want but then it would get cut off on reports and screens and different things.

They give the ability now to export log files that come from the scanners to a text file so you can do a better analysis of those logs. It makes it easier to do the analysis.

Again, like I said, you can create custom thank you screens if you want now to load onto the scanner if it wanted to go to that length.

So it's mostly usability type things within the EMS, nothing specifically for creating a ballot exchange.

Peter Kosinski: Usability by the Board of Elections not the voter.

Bob Warren: Exactly.

Douglas Kellner: I do note that in 2.16 they are changing the way they we're updating or the way the cast vote record is developed in the election counting software. They are positive changes but they actually do directly affect the way votes are counted.

Peter Kosinski: Do you want to explain that a little bit then Bob, that specific aspect? It's under 2.16 the cast vote record.

Douglas Kellner: The cast vote record is the watermark that is put on the memory device that shows how the particular ballot was counted and so these two are minor changes to the cast vote. It says, updated to include under voted contest indicators in the cast vote record report. So right now the report that's sent out doesn't show how many under voted contest indicators there were so that it's easier to reconcile the totals when they do that. And then it adds an indicator to distinguish between write in votes with marked ballot targets and those without the cast vote record window and reports. And again, that simply enhances the level of the reporting. But if they're changing how the cast vote records are aggregated which is what it appears here, then that's a significant piece of code that has to be carefully reviewed because it affects the way the votes are counted.

My reaction to this is that these are very positive changes and that this is going to be very extensive testing. That our usual abbreviated procedures for updates are not going to apply to

this, that this is a comprehensive set of changes that will require a complete set of testing in accordance with the regulations. Is that your view Bob?

Bob Warren: Yes. And right now this is going through federal certification also. So we get the ability of adding the federal certification, go through all their testing besides the testing that we're going to do.

Douglas Kellner: And the feds have significantly changed their testing program since 2008 mainly because of us where we had pointed out all these deficiencies in the federal testing program so that now we are in a position that it's much more likely that we'll be able to use many of the federal tests so they won't have to duplicate the federal tests. But they'll still have to independently show us that the testing meets all the criteria in our regulations which are extensive.

Peter Kosinski: Okay, any other questions on this topic? Nope. Alright, well then I guess our motion or our proposal before us is to authorize testing of the ES&S software upgrades. Is there a motion?

Douglas Kellner: So moved.

Gregory Peterson: Second.

Peter Kosinski: All in favor?

[Chorus of ayes] opposed? It's adopted as well. Alright that concludes the end of the open session unless there is any other open business.

Douglas Kellner: We usually talk about the dates of our next meeting and then I'll make a motion to go into Executive Session.

Peter Kosinski: Alright. So next meeting, let's take a look.

Bob Brehm: We need to meet on December 15th or as close. Not later than that to certify the general election for those state certifications. We usually go to the last day to give the counties as much time as possible.

Peter Kosinski: So you're looking at December 15th.

Bob Brehm: Whether or not where you want to put one between now and then.

Peter Kosinski: Okay well let's just get that one in so I have that.

Douglas Kellner: Well that's a month that sounds like a good date.

Todd Valentine: That's two months.

Douglas Kellner: Oh sorry wishful thinking.

Peter Kosinski: I don't know what people's schedules are but I am open. So December 15th we'll set a meeting is that okay with everybody. Okay. Then we need to talk about next month and whether we have a meeting in November and what date that should occur. So from a staff there's no necessary date I presume in November?

Bob Brehm: Probably the third week might be better. The election is the 3rd, we have Veterans Day the 11th, and I don't know what that will do.

Peter Kosinski: Are you open? The third week they're talking about.

Bob Brehm: Tuesday the 17th?

Andy Spano: 17th is okay.

Peter Kosinski: Is that what we're looking at? You people okay with that?

Bob Brehm: Tuesday, November 17th.

Peter Kosinski: Alright the 17th. And I'll entertain a motion to go into Executive Session to discuss...

Douglas Kellner: Enforcement cases and personnel.

Peter Kosinski: Motion. Is there a second? All in favor?

[Chorus of ayes] opposed? We're going into Executive Session.