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**Douglas Kellner:** Good afternoon. My name is Douglas Kellner, Co-chair of the State Board. I'll ask my fellow commissioners to introduce themselves.

**Jim Walsh:** Jim Walsh

**Gregory Peterson:** Greg Peterson

**Andrew Spano:** Andy Spano

**Douglas Kellner:** And would the staff introduce themselves please?

**Bob Brehm:** Bob Brehm

**Kathleen O'Keefe:** Kathleen O'Keefe

**Brian Quail:** Brian Quail

**Anna Svizzero:** Anna Svizzero

**Joe Burn:** Joe Burn

**Tom Connelly:** Tom Connelly

**Risa Sugarman:** Risa Sugarman

**John Conklin:** John Conklin

**Bill McCann:** Bill McCann

**Kim Galvin:** Kimberly Galvin

**Todd Valentine:** Todd Valentine

**Douglas Kellner:** Mr. Warren

**Bob Warren:** Bob Warren, Elections Operations

**Douglas Kellner:** And we ask our guests to introduce themselves please.

**Female:** Elizabeth Mowrey, State Board

**Male:** Shaikh Aman, State Board of Elections

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**Casey Siler:** I'm Casey Siler with the Times Union

**Douglas Kellner:** Alright our first item of business are the approval of the minutes of September 26, 2014 meeting. Does any move?

**Jim Walsh:** Second

**Douglas Kellner:** Those in favor say aye?

[Chorus of ayes]

The minutes are approved.

We'll do the unit updates. We'll start with our co-executive directors Bob Brehm and Todd Valentine.

**Bob Brehm:** It was a very time with the elections and many late minute litigation leading up to Election Day and a few since. But I think we are down to a small number now in post elections that we are continuing to monitor. I think we had a very successful election night reporting effort. As we had talked, there was a little bit of a capacity issue that generated at the primary and the staff worked hard to test it and to try and diagnose what caused it at the primary to make sure that it did not repeat at the general and it didn't and I think we had a very, you know if you consider the amount of information that this was the first time that we've collected that much. You remember last year was our pilot, we really collected on election night 6 statewide propositions yes or no x 62 counties. So this time we collected all of the data related to the statewide candidate's propositions, the state candidate's congress judge. So it was a significant greater effort and it was a great success. We had a lot of positive comments so a number of people worked on it. But from that point of view it was very successful.

We continue to work with an agency to fill a number of positions. I think most of them, since we're also giving the IT portion all covered at that part of the day and also on Election Day I had a chance to travel to Syracuse. They were doing a pilot program in Syracuse for electronic poll books so Commissioners Ernie and Walsh had a chance to meet with them. I hadn't been to their new Board since they moved to that facility so they gave me a nice tour quickly because they were very busy that day and we did get to go to the site. It's a similar system that Commissioner Kellner and Aquila and I went to in Orange County. So it's decision support partnering with MTS and I was happy to see that some of the issues that I identified or thought were of concern at the Orange County facility, they seem to be working to accommodate what the statute requires if during my period of time at the site I think the only criticism I heard was, Why do I have to sign twice? Because they still had to sign the original paper version. But it seems to be working. Commissioners were happy and it was an interesting...it is when you see the progress that's its going through and working to meet the statutory requirements. Other than that I don't know that I have anything particular.

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**Todd Valentine:** Ah now as Bob said it's the post election wind down. I mean we have other things we can report on so typically get accused of taking their thunder. But the other units will report on, I mean our budget, we've submitted, it's a flat growth budget so it's the same as last year. Not surprise, flat growth and you know administratively we still have to get Design and Construction to come back and still do some other follow up work for the staff which relates as a challenge when we talk, when we get to the IT portion about some of the people we've had added to that, finding homes for them is getting challenging. But we'll work it out.

**Douglas Kellner:** Alright. Any questions? Then we'll ask Kim Galvin and Kathleen O'Keefe to give the report for the Councils and Compliance Unit.

**Kathleen O'Keefe:** Thank you Commissioner, since our last meeting we've had our 32-day pregeneral report, our 11-day pregeneral report, and our 27-day pregeneral report. So a lot has come into the Compliance Unit. 24-hour notice was in effect October 21<sup>st</sup> through November 3<sup>rd</sup>. This included Independent Expenditure 24 hour notices for certain contributions over 1000 and expenditure over 5000. We had approximately 42 Independent Expenditure Committees that were established in this cycle. These filings obvious generate additional phone calls to our call center and the Compliance Unit. The Compliance Unit sent out early letters to the filers who the Board did not receive their 32 day pregeneral or 11 day pregeneral report. Essentially we find that the Compliance Unit is getting a lot of calls based on these reports that may in the past have gone to the call center. So we're sort of in a place where long-term, you know a year from now we'll be able to see where the workflow is possibly shifted based on the existence of the Compliance Unit itself.

The primary general itemized electronic reports have been assigned to auditors and the permanent report reviews have been completed.

With respect to the Public Financing Pilot Program, Compliance was in routine contact with the participating candidates, treasurer and as of Election Day the Committee had not met the eligibility requirements to actually get any public matching funds. The Compliance Unit continues to work with IT Unit and we are anticipating and hoping for a robust Case Management System for Compliance. I almost had to promise the staff that I would say that. Our case management needs are very serious.

The call center, we have a vacancy and an offer of employment has been made and accepted so we're hoping to bring that person on board very quickly. Council's Office had a number of cases that arose during the pregeneral time period. With respect to ballot configuration, State Board's position that the Board had voted on with respect to the ballots prevailed or these cases were withdrawn. There is one case currently pending in the second circuit. We hope that that will be resolved quickly. The Hispanic Leadership Fund case is over. The appeal of that case from the trial court has been

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withdrawn. Apparently we have 3, I know Bob referred to this, we have 3 recounts going on in Assembly races. One other thing that I wanted to just mention are numbers with respect to where we are with the Compliance Unit. Our total received as of November 12<sup>th</sup> was 12,172 filings. The total reviews that are complete is 6,429 and the total compliant out of that 6,429 is 42,014. So once again we are moving forward. We have about half of those reviews done. Obviously there still a lot more work to be completed.

**Kim Galvin:** Yes it seemed like the cases never ended to be quite honest. They went right up to just before election day and then the appeals and then the court of appeals and then the impound orders, it was really, since I've been here, its only been 7 or 8 years, I lose track but it was very, very, very matigious[sounds like]. Then the impound order started. As you know most of them fell away because the margin victory was such that they were no longer required. Just for the people that can hear the sound of my voice, I think Kathleen misspoke when she said recounts as opposed to counts, they're just counting. I don't want anybody to think we're recounting everything. We're just opening the paper on schedule. And Compliance has been very busy. We had a staff meeting. We tried to cross train some people so that there wouldn't be a hole, some go on vacation, get sick. And I think, as Kathleen stated, ops and the Council's Office had quite a lot of conversations regarding ballot changes and whose on, whose off, whose up, whose down, wherever they are. But it all worked out in the end with regard to the interaction amongst the units so that's all I have to add.

**Bob Brehm:** Since we look at Election Night, I think it's clear and will make valid issues going forward. There will be 8 parties looking at the initial numbers. Election Night there are 8 parties already over 50,000 votes so we will pick up 2 more parties. So once we get to the December 15<sup>th</sup> certification we will have to make changes to the order as well as the names of parties to prepare the NYESS voter or the NBRA voter registration applications, the regular applications and get those turned around in a reasonable period of time and whenever we add new parties we have the burden of trying to figure out the party that was on the ballot and then wait until they change their name if that should happen, it's happened in the past after we've ordered a certain number to distribute and have on hand then they come back after their first organization and say, we changed our name to something, anything different, then we have to start over again. But the fact that there are 9 rows on the ballot and we have 8 parties, that means all of that debate as to where to put the independent candidate that we had this year should go away cause there's only 1 row left. They'll all have to be on the 9<sup>th</sup> row. So what that means, for wrapping or whatever it will certainly be different. But we are at 8 now.

**Jim Walsh:** Do you know what they are? I don't recall seeing anywhere the names, I know some obviously. Do you know the names of the 8 parties?

**Bob Brehm:** Well we had 6 and if we try to do it in order of lateness but it clearly, you know Democrat, Republican, Conservative, Independent, Green, Working Family and then we have Stop Common Core and Women's Equality, I think that's 8.

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**Douglas Kellner:** Women's equality and Stop Common Core.

**Bob Brehm:** Well I know I missed the order. The only ones I know for sure are the top two, and conservative is 3.

**Douglas Kellner:** Alright I just want to add one comment to that. Although we had a large number of impound orders that it seems that the policy of not acquiescing in court orders that change the rules for conducting the canvass has seemed to have taken root. This year we didn't have to have any showdowns on the issue that we were consulted on a routine basis and everybody's in agreement so.

**Kim Galvin:** Notice too.

**Douglas Kellner:** So again, I want to thank the Commissioners because that was a change that I think we initiated several years ago and by sticking to our guns and having a uniform policy that everybody seems to have come around finally to it and I think the key is that we've agreed to be uniform about it.

Alright next report is from Election Operations, Anna Svizzero.

**Anna Svizzero:** Thank you Commissioners. We do not have a written report for you as the other units. We have been very busy doing pre-election work with Bob Warren and his team and just general responses Joe and I spent an awful lot of time on the phone with county Boards and again disgruntled candidates wondering why they were not having all the ballot appearances that they thought they were entitled to. We have been working with and will continue to work with the IT Unit and their consultants on the Candidate Management System that's being completely revamped, and hopefully will be interlaced with the finance system so that candidate information can be shared a little more easily.

We have completed testing on, if you recall the last meeting, we had a couple of Diminimus changes that we simply advised the Board about. One of the changes that was in that package required testing and Bob and his team just completed that testing. We'll have the report and a resolution for you at the next meeting.

Clear Ballot Central Count Certification testing we expect will start in about 3 weeks. The initial source code review is done. There's a follow up call on that on a couple of small outstanding issues and our test cases should be done in about 2 weeks as well so that is moving forward. As soon as we get a schedule together we will let you know and there will be a public component of that as well.

We continue to respond to phone calls, resolve complaints as they've been referred from Public Information Unit and from Risa's Unit Enforcement. I don't have anything else to

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add. It's been pretty post election routine if that is not an oxymoron. Joe do you have anything?

I did want to share with you just one item. We had sent out to the county boards earlier about a week, week and a half ago a bit of a count down schedule so that they could keep dates straight. We have boards that still think that they have until December 15<sup>th</sup> to certify their elections even though that's when we certify them. So we sent them a bit of a count down clock and today they're going to get a reminder. Today is the last day for military ballots and special federal ballots to arrive at boards so that that canvass can begin. There are 2 days left to complete their recanvass. There's 1 day left to complete the canvass, 2 days left to do their post election audits, and they have 12 days left to certify their election results. And after they have done that which is November 29<sup>th</sup>, the last thing that they have to get to us by December 10<sup>th</sup> is the vote for governor by election district which is massive. It comes in CDs and memory sticks and any number of ways. We don't compile it. We've never been asked for it. It is something that we collect and we store here but that would be due December 10<sup>th</sup>. And that's all I have.

**Douglas Kellner:** Thank you. John Conklin for Public Information.

**John Conklin:** Thank you Commissioner. Well, just like everybody else, Public Information was very busy with lots of media inquiries, from the general public as well on the general election, where is my poll site? Voter Registration. Candidates on the ballot. The different core challenges. Who the candidates were. As Kathleen mentioned all the financial disclosure statements that are made, there's lots of questions about those. All the things that come around a general election. So we had lots of inquiries about that that Tom and I were able to take care of.

As Bob mentioned we had the election night reporting system for results. It did go very well. We had one issue during the day with the website where we had a router fail, but the IT Unit was able to fix that in very short order and it had no impact whatsoever on election night reporting set up. So as Bob said we had some informal compliments about the website and the reporting results. So that was generally well received and we're going to have some follow up adjustment, we had some follow up adjustments in the days after the election and we're planning on doing a postmortem meeting this week to discuss improvements going forward. The notices for the ballot propositions were put in the newspapers. I should be receiving the affidavits and the tear sheets next week. The final total was just under \$262,000 for the 3 ballot propositions.

We're also working with IT on the CAPAS FIDAS updates and changes. We had 62 foils in September and 48 foils in October. Greg and Patrick visited Cattaraugus, Delaware and Sullivan Counties to check their poll books and do a nice voter review. And that's everything I have. Do you have anything you want to add Tom?

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**Tom Connelly:** The only thing I would just add upon is as Anna said today doing the deadline for the receipt of the military ballots and special federal ballots I did send out to the counties the last batch of surveys that we need completed for our federal reporting requirements. Beyond that we will be working on getting all the new forms that we need to change based on the party order. Anything else that needs to be changed and like John said, we'll be working the postmortem to just to identify some of the things that came in on election night for the election night reporting that we need to kind of mitigate in the future just to make sure everything continues to be smooth. And that's it.

**Douglas Kellner:** Thank you. For Information Technology, Bob or Todd going to add anything?

**Bob Brehm:** Well we don't have a printed report. I think basically at our last meeting we had identified a bit of a risk to the calendar because we started 2 major IT projects, the NYESS Voter Refresh Program got a slow start because of contracts in August. We were a little busy running the election and all of the litigations so any of the policy people were either dealing with litigation or dealing with spec checking with all of the staff. So it was not the best time to start a program. But they have done a great job at least from an IT point of view of getting their technical team lined up. We had identified several empty positions but now we can at least say that I believe we have filled and we just made a further Senior Programming position they tell me today. They had completed the interviews. They made the offer and the offer was accepted. We will hope when they walk through the door that that will have completed that issue. But the technical lead positions, the team that we needed are all in place and they've tried to do as much work behind the scenes so that while the policy people who need to help give them some direction were busy with the election, now that it's post election we can put them together. And we don't really believe going forward we should experience much more of a creep of the deadline. But from a number of people we're all onboard. We all have our people sitting at the table identifying what we think the scope needs to be. There's a technical team to convert our non-technical jargon into technical speak and we do have a lot of experienced people who know how to translate for both sides. I'm very much guilty of that. I don't speak technical talk and they wonder if it takes an interpreter to kind of make that work. So Risa has a new person from a technical point of view to bring that enforcement component to the CAPAS FIDAS system operations and dedicate more time to what we need to make the Candidate Management site work. Compliance people can help to identify what will make this whether it's a case management system, etc. that we need to change the way we're doing it.

But also the NYESS Voter Component that is in there that has a deadline and a project plan that will be done before CAPAS FIDAS and our goal is to have it completed and tested by September of next year so that as soon as the election is over we would be in a position to roll it out to the counties before the Presidential or the village or the other elections that have to run. So we think from a programming and working out the issues that we should be in a position to have completed it and then its just a matter of

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scheduling the roll out, not knowing when the federal calendar will really begin. We still think it will fit in to what we hope the federal calendar will look like. I think that's, we're still working Todd and I with the units on a weekly, with the IT Unit on a weekly basis until we get a full-time replacement of Dave Loomis' position. That is the next critical one in that unit that needs to be completed. We've had a number of preliminary conversations with Division of Budget and with Civil Service as to how best to move beyond the list that is available to us to hire from because we have come to the conclusion that that's not the best approach for the agency. We've interviewed that group of individuals now twice and several of the people that are within that reachable zone are the ones we did not select when we picked Dave Loomis and we are, it's not the right mix for where we're at. So we're looking at what our options are going forward. Especially during the next 2 years while we are managing these 2 major projects in the Unit is to perhaps do it as a project position until we get the conversion and really know what we will need long-term as the right skill set for that.

**Todd Valentine:** Yeah just to remind in case there's some jargon in the reports, cause like jargon and acronyms. The two things that we reference, the two major projects the one is called CAPAS/FIDIS which is CAPAS is Candidate and Petition Administration System and FIDAS is Financial Information and Disclose Administrative System. CAPAS is how we get candidates taken in put on the ballot with the petitions, FIDAS is the financial disclosure system we use. It's not what the candidates file but it's what we use when the filings come in. Both of those date back to the 1980s. Well built at the time I'm sure but that's why it's a rebuild project to look at what we need now and we need to change the, we need to migrate to a new platform to go into technical jargon and for that we have, that's where we have the technical program. We have 3 technical project manager, a technical lead and then a programmer that we've used the funds that were allocated in the budget to support that. That's on a 2-year cycle. That's going to take us a couple of years to redesign and rebuild that. That's pushed out to 2016 at this point. Again, we were delayed getting started but they have been working in the background on some of the platform related stuff that's not related to business rules and how they operate.

The second major project, and we always call it NYESS Voter because we're so used to calling it that but that's the New York State Wide Voter Registration database and that too is also being, we call it a refresh project but its actually be upgraded to a more current status with the platform. That's on a one-year project. We expect to have that completed by the end of next year. And that is under contract. We have a consultant from the company that assisted with the original design has migrated through several people. It's fairly straightforward because we're not rebuilding it, we're just bringing it up to the current standards for the operation of a database and that's, that only dates from the 1990s so it's not quite as out of date but it's getting there. And you know we've been a little hamstrung with replacing our chief information office so to speak. I mean Dave still comes back, Dave Loomis the former to help some of that assistance and Bob and I are filling in with that, and we're using a group committee right now of the lead technical



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people on our own team, but that doesn't mean that we're not going to continue to try to come up with a way that we can get somebody, an individual here on a day to day basis either short-term or long-term they'll run that. But it's been challenging at best through the last 3 to 4 months just because of the nature of the elections. So.

**Douglas Kellner:** Thank you. Last but not least, Risa Sugarman for Enforcement.

**Risa Sugarman:** Thank you Commissioners. As Bob said we have hired a person who is going to help us with our computer systems and we are working with the CAPAS and the FIDAS and working to give information that will help us in our investigations and in building that system so that Enforcement can use that system to the best of the ability in our investigations to give input so that when we do our investigations we can use the systems in the best possible way. So we're going to have our person that we just hired become part of that group to give the information that we would need to best use the system as it's being built to develop as the system goes on.

We're also under the statute in Section 3-104(5) when investigations that we conduct in the Enforcement Unit are determined to go civilly, the statute provides for hearing officers that are appointed by the Commissioners and Todd and Bob and I are working on the process by which we would come to you and have those hearing officer's appointed. Todd and Bob have been in touch with Civil Service and they have put together the process of the credentials that those hearing officers would have. We discussed the process by which we would ask you to appoint those hearing officers and I have put together a preferential set of expertise that I would want for those hearing officers when we bring those civil cases to you for appointment. So that is moving forward and we hope to get that finished before the next meeting.

We had some series, one of the members of I think Anna's unit Bob gave us a little primer about how the new machines work so my staff was able to see how they worked. So we are working together as best we can. Todd, Bob and I, we meet weekly to discuss issues that come up.

**Douglas Kellner:** Risa, my understanding is that prior to the new statute going into effect, the Board of Elections would, several weeks after each filing deadline would just automatically bring an order to show cause to get a judgment against everyone who was a non-filer and you know procedures have basically evolved where it was pretty automatic in terms of getting the judgment for funds or settling the cases up until that point.

Now, with the new statute, those cases have to go before a hearing officer rather than by order to show cause?

**Risa Sugarman:** The process is that my unit would conduct those investigations. If it's determined that they should go civil, well there are certain things that happen first.

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**Douglas Kellner:** Well you said investigation. If somebody hasn't filed, as I say, in the old days there was a list of people that hadn't filed and they just went on the order to show cause which went out usually what about 8 weeks after?

**Risa Sugarman:** What happens is the Compliance Unit first deals with the case in terms of the filings in attempts to, that's what the statute determines that a Compliance Unit should determine whether or not they're in compliance with the statute. If they don't comply then it's referred to my unit.

**Douglas Kellner:** So there are really two parts to that, that one of the people who just don't file so automatically they haven't complied.

**Risa Sugarman:** I believe if they don't file the Compliance Unit is supposed to get in touch with them and bring them into compliance and then if they don't comply after they've been contacted by the Compliance Unit, they're referred to my Unit. Then we can either determine whether there are criminal charges that can be filed because of their noncompliance, or if the case should be handled civilly. If the case can be handled civilly on determination that there are no criminal charges, then the case comes to the Board to refer it to a hearing officer. That's what the statute on 3-104 says.

**Douglas Kellner:** So since September, basically we've stopped doing the order to show cause or just to show cause for people who haven't filed, am I right?

**Risa Sugarman:** Yes.

**Douglas Kellner:** And so that process has sort of, so what happens now in terms of people who haven't filed, done their filings for say the primary calendar? Which in the old days, those orders to show cause would already have been in process.

**Risa Sugarman:** I'm rooting for the Compliance Unit to send me those cases to make the determination. And we've been in discussion on how that's going to happen. We have to work out that process by which the Compliance Unit sends those matters to me and then I would review them and sometimes it would be just a call from my unit to say, you need to process these cases, you need to file. And if they file, they come into compliance then the determination is made whether they're in compliance and nothing else needs to be done. If not, then the case might go criminally if there are several years' worth of noncompliance, then the case may be treated criminally because that could be a criminal charge within the statute. If not, then when we get the hearing officer process, then the cases would come to you for assigning of a hearing officer. And the conversation that we've had is to have a two-tier hearing officer process. One for just non-filing which could be done on papers and the hearing officer would get a report from me that would go through you to have a hearing officer assigned. And then the hearing officer could determine on papers and give the committee, the treasurer, the candidate an opportunity to be heard and then decide that case on papers. Or if their case is more

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complicated and needs a full-blown hearing under the statute, then the hearing officer would schedule a case for a hearing.

**Douglas Kellner:** So it strikes me in this one area we may have, in general the enforcement process seems to be much more thorough and substantive but in this area of people who just don't file, it strikes me that we're lagging compared to the situation under the old law.

**Risa Sugarman:** Well I think Commissioner that one of the reasons, and I don't want to take the place of the legislature, but I think that one of the reasons that perhaps they set this up was because the legislature might have felt that people who are uneducated or unschooled in the process were entitled to some kind of hearing before they were given or taken to court and a judgment was entered against them. I think that's what I heard when I went through my confirmation hearings that people, that the members of the legislature felt that people who were trying to participate in the system and were perhaps not schooled in how to file or what to do or were just neighbors becoming a treasurer for someone who was running, perhaps needed more of a chance to come into compliance before they had a judgment against them. And I think that perhaps if I had to just gather why they set this in motion, and it is cumbersome how they set it out for us to do, but I think that they felt that people should be able to come into compliance with the Compliance Unit and then if that didn't work to have another chance to come into compliance with a hearing officer.

**Male:** So basically until you get the hearing officer nothing happens.

**Risa Sugarman:** Well we've been working on it with Civil Service and that's one of the things that we hope to have done before the next meeting.

**Kim Galvin:** But there is a provision that if there are no hearing officers, you can go directly to court.

**Risa Sugarman:** But we didn't want to do that without giving them the opportunity. I mean the decision that we made Commissioners is not to go forward without giving you the opportunity to select hearing officers. If you want to tell me today that it's not necessary for you to select hearing officers to go forward with this process, then we certainly can try to do that. But we didn't want to have the perception that you didn't have the hearing officers set up because it was just since September that we didn't give that process a chance to be set up for you to appoint them. And that's why we haven't gone forward because we didn't want that perception to be made.

**Douglas Kellner:** So when do you anticipate there will be a proposed candidates for...

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**Risa Sugarman:** Well we're hoping to do it before the next meeting. I don't know that we can get that list together but we are very close to going to Civil Service with the process that we have.

**Douglas Kellner:** Well you said going to Civil Service isn't going to get candidates back right away.

**Bob Brehm:** Well they're not permanent employees, they're contract employees and even talking to Civil Service, there are existing, what Civil Service provided to us in our conversation was an existing 3 titles related to hearing officer duties and responsibilities. They can either be full-time employees or appointed people and our conversation with Risa it's a new program none of us know yet what to expect for the amount of work hearing officers will have to do, so we are starting with the premise that they will be contract people paid for through NPS budget and we will identify the requirements, peplum will respond, we will recommend to you lists of people. It does require a random number, it's not like one person. It's a number of people because...

**Andrew Spano:** That you can pick from?

**Bob Brehm:** For many reasons because we don't know the repetition, you know when Risa is ready to need one, if there's only 2 or 3 people they might not be available or they might not be available to take that many days depending on what she needs them to do. So there will be a list of people that people will be able to call, are you available and will go through a wheel like that. And since it's new to us, we've been meeting and discussing what are the requirements? Finding people to be hearing officers is probably the easier skill set. It's the extra, the preferred qualifications. A good example is having some knowledge of the Election Law. How many hearing officers have that part so that we can at least get people who are helpful to the process if they are reviewing. Or, what training do we need to bring to this table so that the hearing officers have a clue what it is they're doing in the first place? So Risa at least identified a preferred which makes a lot of sense if they have some understanding of the Election Law as one of the skill sets. It's also required SAPA by statute and in the Civil Service...

**Douglas Kellner:** Administrative procedure. You love jargon.

**Bob Brehm:** Oh sorry.

**Andrew Spano:** In getting the approval to appoint new people on staff, it's a very cumbersome process getting them from point A to point B when they actually function. So we're going to put contract workers on. What is the process? Are we going to go through a similar kind of cumbersome process so that if we present the names or if we present things and then we say yes, how long before they get on?

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**Bob Brehm:** I don't think that's the bigger issue because we're paying them different. They're not employees. So I don't have that path to take. It's just a matter of identifying individuals. I think where we are at now with the list is we can get it posted, give a period of time for people to respond. We have a few other questions that we discussed with Risa we need to finalize so that we don't get a million phone calls from people saying, how many days? How much notice, etc. The salaries, there's already a title, there's already a salary range for these individuals. Civil Service doesn't need to create anything new from that point of view so it should be a lot faster. The big issue is coming to you with whatever the acceptable list of people and say, here are the people we're recommitting you appoint to be hearing officers and then once we do that, Risa has an available list to pick from. It is new to us so we did get, Civil Service was very helpful in pointing us in this direction, we just have to put the final preferred qualifications, do a few FAQs so that

**Todd Valentine:** Frequently asked questions.

**Bob Brehm:** So we don't get a million phone calls to our HR our Human Resource person to answer those questions. So I think we are getting there.

**Gregory Peterson:** Those hearings would take place here in Albany?

**Todd Valentine:** That's one of the questions we need to get answered.

**Gregory Peterson:** You've got some poor schmuck in Buffalo or something that's gonna schlep in here or even worse.

**Risa Sugarman:** Yes I think the hearing would take place here.

**Douglas Kellner:** Historically all the orders to show cause were in Albany.

**Todd Valentine:** Well yeah presumably but its still one of the questions. Because you know would you have some flexibility for setting up a hearing officer system that might go quicker if you set it statewide. I mean I don't know the answers to the questions but that's one of the issues for determining.

**Andrew Spano:** Or you can do by phone or have teleconferencing. Why don't we do something like that?

**Todd Valentine:** That's also a possibility too. Yeah, no, no, those are all possibilities and in that instance you have to figure out, do we need extra phone lines? We probably want depending on how many appearance may occur at any given point in time. Do we use our existing rooms? Do we use other rooms? So the logistics to that dictates a lot of determining what you're going to pay the hearing officer and how you recruit them. Because the range from the hearing officers books from \$40 an hour to \$150. The \$40 an

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hour people just basically come in, do the hearing, they get the report and then they come in for an hour or two and how much notice do you give them? The \$150 an hour people have to do a lot more preparation before that work. They do their own scheduling, they have their own administrative support. And then travel if you're going to recruit from this area vs. statewide where they can teleconference, again how you set up that pool and how you recruit to fill that stable of pools, it's a little hard to tell people well we want you as a hearing officer but I can't tell you how many hours you're going to work. I can't tell you how much notice I'm going to give you and I can't tell you exactly how much work you're going to do but we'd like you to be in on it. So that's where the challenges come in trying to identify what do you anticipate the workload to be? Because then at that point, technically for Civil Service, those pieces are already in place. The titles exist, not a problem. They're not what we call non-statutory positions so they're not off of the Civil Service list. You can recruit anybody who meets the basic qualifications. So recruitment is probably the easier side of that. But to figure out the logistics of what you're going to recruit to is the harder part. And now admittedly this has not been our primary focus for the last 6 to 8 weeks because we've been trying to run an election, but that, as we said we didn't put it on the true back burner. We have taken assessment with Civil Service. Try to get Risa to focus on what you think they're going to do and then we can get it up and running. Short order is a relative term in state.

**Andrew Spano:** Given the history with non-filers who don't comply, that becomes a significant number.

**Kim Galvin:** It is. You're talking about that don't file at all.

**Andrew Spano:** Yeah right.

**Kim Galvin:** Versus the compliant intricacies of the agency.

**Andrew Spano:** So this process makes it more cumbersome than the previous process which is you got an order to show cause correct?

**Todd Valentine:** Yeah okay the complete failure to file yes.

**Kathleen O'Keefe:** Commissioner, you can go straight to court or the Enforcement Officer can, or it can be done on the papers and I'm a hearing officer. So in fact you wouldn't have to have an actual presence of somebody showing up in Albany or elsewhere. So those can be handled by hearing officer on the papers and then a recommendation goes to Risa and then she decides, am I going to court? Am I making some kind of deal? There's factors in the statute that talk about for instance a Diminimus problem or how many times have you failed to file before? Of have you made an attempt perhaps since it all start to cure it? So there's all kinds of factors that the Enforcement Counselor can take into consideration as well as the hearing officer. So some of those can be streamlined and I think possibly it's just a matter of seeing how they actually work

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in real life and figuring out what is fair to the person that's subject of this Enforcement matter but also efficient for purposes of the Unit.

**Andrew Spano:** I'm just looking for a wedge to promote teleconferencing. So many people running around the state training, looking for the treasurers in the campaigns and doing that. It seems to me that if we had a robust system that had just dealing with the Boards of Election in each county and us that we could accomplish an awful lot and save a hell of a lot of money.

**Kathleen O'Keefe:** You know that's a really interesting point that you bring up because there are some, there is some effort out there with respect to local groups trying to get together and actually promote more compliance with the same kind of, not exactly the model that we have in our Compliance Unit because obviously we have a full staff and everything but really using the same type of approach in order for local Commissioners as well as political leaders to promote compliance at the local level so that they're not going to get in trouble here. In other words there's a real understanding out there in New York that Risa is now in place and that they maybe want to do locally what we are trying to do here at the State Board and we're pursuing that. We're tyrant to see how we can promote that kind of joint effort.

**Kim Galvin:** Commissioner I also think there's a large differential on the type of hearing that you're having. So for a failure to file, probably isn't that big of robust of a hearing. Did you file on this date? Yes or no. No, why? Do you have a reason? Versus somebody that may want to come in with their treasurer and their documents on a compliance issue and show why they believe they complied on these papers or this or whatever so. To me it seems like it could have 2 parallel tracks but I haven't been involved.

**Bob Brehm:** And that's one of the issues that we kind of work it out. Once we get this set up is when Risa understanding what we've done in the past with our own order to show cause process where once the 5 day letter went out, if someone came into compliance before we received the order or to request the order then we discontinued, we didn't do anything against them. Yes, they were late but they came into compliance. Once the order was presented to the judge and served on everyone, if they came into compliance there would be the level of review if they were a repeat offender and they we would discontinue by the end if they came into compliance before the judge signed...

**Kim Galvin:** Say they come into compliance just for purposes as you made the filing...

**Bob Brehm:** made the required filing.

**Andrew Spano:** And paid a reduced penalty.

**Kim Galvin:** Not necessarily a compliance filing. Right.

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**Bob Brehm:** And we've had those conversations and I think now that we have this new melded family kind of situation that we are trying to work out, we have to work out, that's the way we used to do it, is that going to be acceptable? How do we bring it together? Do we, even though the statute says shall for hearing officer is there understanding between Enforcement, Compliance and the Commissioners and we put together a program that allows the same kind of concept. We've allowed a streamlined process for people who did file but late if they weren't repeat offenders and with a reduced fee. If that comes into place then they can consider that as a streamline process. It still meets the statutory requirement and your guidance as to what you want to see happen. And I think that's kind of where we're at. You know which ones, especially failure to file seems to fit into that category because as Kim said, either you did or you didn't. In some instances we think you need to and you prove to us you shouldn't. You didn't run maybe or something happened that you didn't need to come into compliance, that's a different story. But most of the real hearing officer work will probably be that next type of work that we really didn't have the resources to do before, Risa is now resourcing up so we don't how much it will be used. That's the real challenge to us. How do we get that done? What works for her? What works for us? Are they traveling all over the state? Where will it happen? But failure to file seems to be the easier part of the component. We should be able to come up with something really quick. It's the other component we will work over it together over many months as we learn and go.

**Douglas Kellner:** Alright, interesting discussion. Thank you. So we'll move on with the agenda for old business and we have a resolution to extend emergency regulations on Independent Expenditures and Public Financing. The text of the resolution has been distributed. I think it's pretty self-evident. Does anyone want to discuss it?

**Jim Walsh:** I move for a vote.

**Douglas Kellner:** Those in favor say aye?

[Chorus of ayes]

Opposed? Resolution is adopted.

Then we have also the text of a resolution that's been distributed appointing members of the Division of Election Law Enforcement as Special Investigators. Again, the text of the resolution is in our packets. Does anyone want to discuss it?

**Gregory Peterson:** Just a comment on it. I think we had this discussion previously and I was frankly dead set against it reason being we do have special investigators is that right? I've been dead against it because, in a majority of cases you have Enforcement for Special Investigators going out to places frankly where I don't think a firearm is necessary. It could go into some place that poses no danger to an investigator then I don't think there's any reason to have one and frankly have carrying a firearm becomes



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intimidating to those who witness it or see it. Now, the situation here is a little bit different in a sense that a lot, I think, of what special investigators will be doing will be going to areas perhaps in the metropolitan areas where they may be faced with an area that is not safe. In which case, obviously I wouldn't want to see one of our people going into an area and putting themselves at risk. My experience in as a local public official that sometimes the issuance of firearms was not always necessary and not always the wisest thing to do because there's a certain sense of authority that a firearm carries with it. And that can be very intimidating and when you're talking about a violation of election law or compliance with election law or serving a subpoena on somebody, do you really need a firearm present to do that? And what kind of face do we put on the Board of Elections going in there to do that? The one thing that mitigates that of course, is the quality of the people that would be carrying a firearm. When you have experienced law enforcement officials who have spent years if not decades in law enforcement, I see that I would have no problem with them carrying one because they're not the type that they're going to whip back their coat to show I've got something here and it's a Glock or whatever the heck they might be carrying, which would be very intimidating. If it's a matter of carrying for public safety, I really don't have an objection to that. But it's my understanding that we as a Board as the ones who will give the authority to these specific individuals correct?

**Todd Valentine:** That's correct.

**Gregory Peterson:** So if we have Joe Bagofdonuts coming along and he has like wind up in this position sometime in the future, do we really want to have him carrying a weapon? And I may say, no, I don't. Or maybe he has no experience but he would kinda like to have a gun. You know I just want to make sure that we as a Board have that authority to say, no, we don't want that. In the instant case, I don't have objection. And I know we talked about it.

**Todd Valentine:** We want to clarify exactly what you're pointing to basically in the resolution as opposed to, not to interrupt so I apologize. I mean what we want to make sure is the section that she's referring to under the resolution still has to work in conjunction with the statute visa via because there's only one line in here makes numerous investigatory tools available. I mean there still has to be within the constraint with regards to subpoena power and there's a reference to arrest power. I don't know that we're conferring, I don't know if we can't end run the subpoena approval process to the appointment under 3107 can't go back and replace that. They can be the ones to...

**Risa Sugarman:** I think that's why operation of the laws of the sections in the new part of the statute that require me to come for permission to obtain subpoenas and to obtain the immunity of the, to obtain immunity for individuals if I needed that in my investigation. That's why operation of law I could not do that unless I asked for the permission from the Board. So I think that that's why operation of one section of the new statute limits the part of the 3107. So I think that by operation of law it limits the ability

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to do that. Now the operation in terms of the arrest, the only thing that I think that that gives the opportunity to make an arrest if an investigator was during the course of an election saw that something was happening at a poll and it was a misdemeanor. I think that that would be an ability to make an arrest at that point but not any kind of arrest based on an investigation because that is limited by statute through the referral process. Because I have to come to the Board for a referral permission to refer to the District Attorney or the Attorney General. So, I think by operation of the new statute it limits the section of 3-107.

**Kathleen O’Keefe:** There are a couple of points that I think should be made about this resolution and a couple of changes that should be done. In the third paragraph it says Risa Sugarman has appointed, I think it should be, Risa Sugarman has recommended and not appointed. I think the Board appoints.

**Risa Sugarman:** I appoint my investigators. They appoint special investigators.

**Kathleen O’Keefe:** I understand that. If I could just finish a couple of points just to bring it to the Commissioner’s attention and they can do what they want. Also it’s requesting 3 investigators but I think if Risa wants to be a special investigator pursuant to this resolution it should say 4. I don’t think there’s anything in the statute that prevents the Chief Enforcement Officer from being appointed a Special Investigator and I don’t think the statute inherently gives you Peace Officer status, I think that Risa should be included there.

And then the last point that I want to make is the 5<sup>th</sup> paragraph where and it goes to the issue you just discussed Risa which if we could clarify this a little bit by just saying Peace Officer designation makes numerous investigatory tools pursuant to CPL 2.20 and Election Law 3-107 available to the Division of Election Law Enforcement. It would just incorporate the limitations and the grant of authority in those two statutes in the way that I think Risa is suggesting.

**Kim Galvin:** In my opinion this is a very different resolution than was put before you at the last meeting. That was to confirm Peace Officer status on these people to now make it a Special Investigator referred to Election Law 3-107 is a different animal in my opinion which expands the scope directly regarding the Election Law. As I talked with our Commissioners I had no objection obviously personally for whatever it was worth to the Peace Officer status, but this section of the law specifically operation of law or not I haven’t had an opportunity to look at it, allows arrests now to be made which the statute does not allow subpoenas to be issued with the Board notwithstanding an explanation.

**Douglas Kellner:** Aren’t these all the powers that JR had when he was investigative?

**Kim Galvin:** No, he was not a Special Investigator.

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**Bill McCann:** He had Peace Officer status but not...

**Kim Galvin:** No, he was not appointed by the Board as a Special Investigator.

**Risa Sugarman:** Under the CPL he could not have been a peace officer. Because the CPL says in the statute that Election Law Investigators are Peace Officers because they were appointed pursuant to 3-107.

**Kathleen O'Keefe:** The CPL gives a very extensive list of who can be peace officers.

**Kim Galvin:** That's what happens when our side isn't talked to at all. We're not prepared to come in for a change like this, but that was not my understanding. This clearly expands the scope of what was being asked for last meeting when we had the full discussion on it. And we have not, in my opinion, had time to review just exactly what supplants what with regard to the expansion of the authority, with regard to this new resolution. There was no resolution last time. It was asking for a granting of Peace Officer status. We got hung up on the ability to carry a weapon. This is an entirely different issue that's being put forth Commissioners in my opinion.

**Kathleen O'Keefe:** Risa if I could just address this.

**Kim Galvin:** Would you let her address it!

**Gregory Peterson:** Let's hold on a second. You know there were enough questions raised here. You know I would like to take a look at it. As I said, my initial reaction was I didn't want to issue have anybody carrying a gun that works for this Department. That's number one.

Number two, upon review and thought about it since the last time we were here, I have reversed that and said, well you know what if somebody's going into a tough area I can understand that and certainly they should have the right and these are professionals. Again, no problem there. Now we're going into a whole different ballgame and frankly as a lawyer I'd like to take a look at what we're talking about here before I vote yes.

**Risa Sugarman:** May I just say something?

**Gregory Peterson:** You may but just one second, I see no reason however for any exigency here for anybody to be running around with guns. So we put it over to the next meeting. I don't think that's a big problem.

**Risa Sugarman:** Commissioner the part about carrying firearms is such a small part of this. The resolution last time was the same except for the 5<sup>th</sup> whereas and the 6<sup>th</sup> whereas, no I'm sorry the only thing that I added was the designation makes numerous investigatory tools available to the Division of Election Law Enforcement which are not

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available without such designation. It's the only thing that I added. And I removed the part that said that the designation would be contingent on the two sections of the new Election Law statute that limits me to requesting subpoena authority from the Board and request for immunity from the Board. That is the only two differences from this resolution from the last resolution. Now the carrying of the firearms is a very small part of peace officer status. Peace officer status gives my investigators and my division the ability to do background checks, DCJS gives the ability to go to accurate and clear to do background checks for vehicles and persons and locations gives me the ability to do...

**Douglas Kellner:** Risa hold on just a second. Greg suppose we just do this until the next meeting. We do it to expire at the next meeting so it's a temporary appointment. We can go over it and...

**Gregory Peterson:** I don't understand the emergency of this. I mean if there is fine. If you have some reason it has to be done now as opposed to the next time we meet.

**Douglas Kellner:** What happens if you don't have these investigators for the next month?

**Risa Sugarman:** The reason that I need to have at least me be designated as a Special Investigator is that I can't do background checks, I can't do accurate[sounds like] checks, I can't do FINSEN checks, I can't do any kind of, a DCJS check. I can't get information or intelligence from any federal, state or local law enforcement agency. I can't start the others, the investigators if you don't make them Special Investigators on any of their Peace Officer training which will delay their becoming Peace Officers if they can't do the DCJS training.

**Andrew Spano:** Do they have to go through an academy type training?

**Risa Sugarman:** They have to go through firearms training. They have to go through defensive tactics training and they have to go through penal law and CPL training from DCJS. That I can do, one of my attorneys Carla DeMarco is an accredited DCJS trainer for the penal law and the criminal procedure law and I can workout the training with another agency for the defensive tactics and the ballistics. I am already a Peace Officer certified Peace Officer through DCJS. I've already taken that training. So if you designate me as a Peace Officer I can start doing those background checks for my investigations. If you designate the other 3 they can start doing their training. That's why I need to be named the Peace Officer so that I can authorize those background checks. The FINSEN checks the financials checks for my investigations. Without this designation my investigations are hamstrung. We can't do any background checks.

**Andrew Spano:** What is the time consumed by the training?

**Risa Sugarman:** It usually takes about 3 months to 6 months for them to get trained.

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**Andrew Spano:** Not full-time?

**Risa Sugarman:** No, they can do their, well they can do the CPL and the penal law while they're here because Carla can do their training. And they can do the, well it took me about a week to do the ballistics, the firearms because I did it every day for a week and then my defensive tactics, I guess it could take like a month if they did it concentrated. If we break it up I could take a couple of months.

**Andrew Spano:** So, if they're working on something or working on a case and then we say its okay a month from now they have to start that process?

**Risa Sugarman:** Correct but you designate me immediately then at least I can authorize the background checks that I need to do for my investigations. Of if you have a copy of the prior resolution then you can just approve the prior resolution. I don't know whether you have it, I thought that you had a copy of it.

**Douglas Kellner:** So that's, I put in that it expires at the end of the next meeting so it's only good for 30 days.

**Kathleen O'Keefe:** Just to be clear about one thing. The word Peace Officer is not something that somebody is appointed a Peace Officer. You're appointed one of the categories in the Peace Officer Law. So if the previous resolution said Peace Officer, it really was supposed to say what it says now which is Special Investigator.

**Douglas Kellner:** Let's be quiet and let them read it. The last sentence would just make it for the month so they can get started.

**Gregory Peterson:** This is the 17<sup>th</sup>? Yeah a month.

**Douglas Kellner:** And as to all, I have an open mind on the gun issues and how you want to regulate that.

**Risa Sugarman:** Commissioner once they're designated...

**Douglas Kellner:** Let me talk to the Commissioner okay? I just have an open mind that's all that if you want revisions to this we can discuss them. But I don't think, I don't want to hold them up for a whole month especially when they brought it to us a month ago.

**Andrew Spano:** Here's the way I see it. I see it that if we don't do anything until next month, they get started on things and then we say its okay for them to do this and then it's a whole series of things that come into play. It disrupts what they're doing. So at least

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this way they get started on it. If they get it completed and then they're in a continuous mode. And if we don't like it, we take it away next month.

**Gregory Peterson:** Alright let's take a 5-minute recess.

**Douglas Kellner:** Do you want this? Make copies.

**Andrew Spano:** I usually say, what's wrong with the way I said it?

**Douglas Kellner:** Okay so Commissioner Peterson has marked this up so that we would just be appointing Risa Sugarman until the next meeting.

**Andrew Spano:** Until we can redo this section here and make it...

**Risa Sugarman:** Is that the only change you made, the three names you crossed out.

**Douglas Kellner:** And then 4 is crossed out. I'll read the whole thing again.

Whereas the State Board of Elections Chief Enforcement Council established pursuant to Election Law section 3-100 shall conduct all investigations necessary to enforce the provisions of the Election Law and whereas Risa Sugarman has been chosen by the Governor and confirmed by the New York State Senate and Assembly pursuant to Election Law 3-103a and whereas Risa Sugarman has appointed 3 investigators to assist her in the investigations conducted in this division. We're going to cross that out Commissioner Peterson?

**Gregory Peterson:** Which the 3?

**Douglas Kellner:** The whereas has appointed 3 investigators?

**Todd Valentine:** She has that's true, she has.

**Douglas Kellner:** My apologies, alright so that stays in. whereas Election Law 3-107 states that Special Investigators shall have all the powers of a Peace officer as set forth in Criminal Procedure Law section 2.20 for the purpose of enforcing the provisions of the Election Law, and whereas Peace Officer designation makes numerous investigatory tools available pursuant to CPL 2.20 and Election Law 3-107 to the Division of Election Law Enforcement which are not available without such designation and whereas Election Law 3-107 confers upon the State Board of Elections authority to appoint Special Investigators to take charge of the investigation of cases arising under the Election Law now be it resolved that the following person is appointed Special Investigator pursuant to Election Law 3-107 Risa S. Sugarman. This resolution shall expire at the end of the next meeting of the Commissioners. Okay? Alright. So those in favor say aye.

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[Chorus of ayes]

Opposed? Alright. Who is going to do the minutes? Is that John? Alright so the next item of business is to go into Executive Session I had a few editorial comments regarding the last election and it's some personal observations that I made but I don't know that there is a resolution for it, or there could be a resolution for it. I know that obviously rolling out this kind of a system over a period of years and there are adjustments that have to be made, but I had an experience in the 17<sup>th</sup> Assembly District where there was under voting. That people choose whatever 3 judges instead of 4 or whatever it would have to be and was told by the election inspector and this happened not just in this area but in several areas and I got the complaints that they were told, no, you have to fill out the whole thing. And you have a senior citizen, oh they get a little shook up. They take their ballot back, they fill in something that they didn't want to fill in and throw the thing into the machine to be counted. I know that we had specifically said if you under vote you under vote, the thing bounces out, you just say yes and boom, in it goes again. Election inspectors should either be trained or it should be something in bold that they are not to do this unless asked by the person that's voting. That's one part of it. And one of the things, as far as elections in the United States of America, secrecy is paramount. It's sacrosanct. So if somebody in the old days would go into the voting booth, you pull the curtain behind you and nobody knew how you voted. I oddly enough had an instance where one of my law partners who lives in Brooklyn was told make sure that you've made this out right. Actually took her ballot and looked at it to make sure that all of the dots were filled in the right way. And I said to her, you're a lawyer for crying out loud how could you have let somebody look at your ballot? This is secret. She said well that's what they were doing. I said, that's what they were doing? You can't do that. Next time around open your mouth and say, no, you can't look at my ballot. That an egregious part of this totally out of whack. So I'm looking at this and I go holy mac is this possible? Meanwhile when I voted, it didn't bother me but I should have opened my mouth and said something. The Elections Inspector is standing at a 45-degree angles, could see everything, my vote as I put it in and I think that's wrong. They should stay, stay the hell away. We don't have the curtain anymore, all you have this is 3-sided box and they should be away from it so they can't see. The other part of it is they have a folder which you have half your votes hanging out as you go. They give you the folder, you have this sheet which they now see because you wave it around sticking it in the folder. We go and vote in secret. So the secret part that is so much a part of our democracy, in my way of thinking, in the state of New York is going by the boards. It's very dangerous. This is something that I think should be drilled into the county boards should be drilling this into their Election Inspectors. Granted I know that the qualification for being an Election Inspector is normally you have to be over 90. So some of these people are not quite up to date on what's going on, but that being said, there should be something put into effect that during the training, that these are the things you cannot do. Let's see did I cover it all, yeah. That was basically the things that I observed A personally and B some of the complaints that came to me which I thought holy cow are you kidding me? And that's I guess really a matter of training more than anything else but its something certainly that one way or another our Board has to make it

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clear to the county boards that this is going on and you really have to watch your people. When Election Day comes around there's nobody there to correct them and that's a problem.

**Andrew Spano:** See I agree with you that that's a problem. I didn't notice it at my polling place but I was aware I tried to hide my stuff and looked at what was happening with everyone else, but I see where it could occur. One thing that bothers me is as you went through it, what the woman in Brooklyn bothered me. That's very overt and whether that's purposeful or not is another story.

**Gregory Peterson:** Well again, somebody going in there, this is a lawyer that it happened to. An older person going in, oh, okay boom. That's not right.

**Andrew Spano:** But I really think that we should address that somehow.

**Jim Walsh:** I'll put my 2 cents in also. I think the, my first vote not this year but the same thing, the person who was giving me the ballot and gave me the booklet to put it in. Then after I voted they got a peak at my ballot and he stood there, I could see him just sneaking over to get a peak at it. And then this time I go, it wasn't myself but I see the workers hanging around those booths and they were in excellent vision, they could see who you vote for, how many you vote for, what you vote for and there's no one corralling these employees to keep away from the voter. And this is the best book is dedicated to giving you a secret ballot to our people and we spend a fortune on all the other things we do to ensure a secret ballot and these people are wandering around looking at ballots. Here's a case, people think someone is in authority and they say, let me see that, they give it to them. And they've just given away the secrecy of their ballot and that could lead to other kinds of complications as we know. If someone knows how you vote we can imagine where that can go to in employment.

**Andrew Spano:** Yeah the simple thing is forget about the election inspectors. Give something to the voter before they vote as they come in that says,

**Gregory Peterson:** That says you're not allowed, yeah...

**Andrew Spano:** They're not allowed to reach it, better watch it, dah, dah, dah. And let them, it will take care of themselves.

**Jim Walsh:** It's almost like a warning in an airport if anyone leaves a basket or anyone tries to give you something, this guy tries to take anything from you or look over your shoulder.

**Andrew Spano:** You know in the old days, people would do those things on purpose.



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**Anna Svizzero:** May I? The under voting in Nassau County you're going to have to help us with because no matter how many times the Boards have been told going back to when we first went to scanners, under voting is not supposed to be a warning message to the voters on the scanners, but in Nassau county they insist on turning it on. So every time somebody under votes in Nassau County the machine stops the voter gets asked a question, the ballot comes back out and that's when the inspectors step in to try and figure out what went wrong.

**Kim Galvin:** It's a setting.

**Anna Svizzero:** Unless there's a directive from the Board I don't know how to get Nassau to stop doing that. They have a mind of their own when it comes to under votes and numerous other things as well.

**Risa Sugarman:** We did give them...we got sued over it.

**Douglas Kellner:** We give them a binding directive.

**Gregory Peterson:** So give them a binding directive, that's ridiculous.

**Douglas Kellner:** We can do it for the next meeting and we simply instruct them, you must turn off the over voting, the under voting.

**Bob Brehm:** In the next version of that software can we lock down the setting if you don't want...

**Douglas Kellner:** Anna and Joe will you have a resolution, it could be very short but just have a resolution and circulate it in the mail so Commissioner Peterson and the others can see it.

**Anna Svizzero:** The other issues, we talked at conferences our curriculum, the statewide curriculum that we've given out does say that inspectors should be near the scanner, near the privacy area but in an overt way but close enough so where a voter doesn't have to be embarrassed if they do need help that they're not yelling across the room. We have overly helpful inspectors. We've been fighting this fight all along, we will continue to work on that in our presentations at the conference and we'll take another look at that training manual and see if we can word it a little bit more forceful.

**Kim Galvin:** The Commissioners, I think, at the local boards do impress it upon the trainees that they're training too because they get the most complaints of privacy. You know, stop doing it.

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**Kathleen O’Keefe:** I know where I vote too it’s an extremely small space with a lot of people and a lot of booths. The voting poll site is just too small, everybody’s on top of each other.

**Bob Brehm:** Even the privacy sleeve, if they’re using for lack of a better term a legal size file folder, it’s not going to fit a 22-inch ballot. And we have requirements, the statute the regulation for privacy sleeves and where people rely solely on this type of a sleeve it doesn’t accomplish. But the whole concept of how to...

**Kim Galvin:** Well a lot of the harm emanates because they panic so much because if you do jam that machine, they’re in a whole world of trouble and those inspectors don’t know how to fix it so they’re so afraid that you’re gonna shove it in wrong, they’re like, I think it’s more preparation so you don’t jam the machine than it is I really want to see who you voted for. At least from my experience.

**Gregory Peterson:** I don’t think there’s any bad intent, I just thing...

**Kim Galvin:** So I purposely I’ll say, you know I flip it upside down. The person is like you can’t do it that way and I say yes I can. So you have to, after I did break it.

**Bob Brehm:** For the next conference is the week of January 12<sup>th</sup> at the hotel for the Election Commission Association. Certainly they look a lot at what we would like to cover and we will certain take your recommendation and cover privacy.

**Anna Svizzero:** Beef up the training issues so that inspectors get a little more assertive message about not taking ballots and how you can only vote in one party line. In New York City we had that complaint even though they spent all last year in training, resolving it from the complaints we had from the year before.

**Kim Galvin:** They tell them they have to fill in all the bubbles on one line.

**Anna Svizzero:** I don’t know where those messages come from but they don’t come from us. I just want you to know they never came from us.

**Todd Valentine:** And there is the question of scale too. We had approximately 15,000 poll sites with 4 inspectors each that’s 60,000 times so the training we don’t always get the training time that we’d like because there’s so many things they have to know and again we have reiterated this has been part of our training...

**Kim Galvin:** We’ll do it again.

**Todd Valentine:** We’ll do it again. We’re not going to let up on it because it is one of the consistent issues that you along with a lot of other voters say, hey that guy keeps looking at my ballot. It’s like well probably just trying to figure out how he can help you

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when something goes wrong as Kim said because they do panic because they don't always have that regular experience. It's hard to get that regimented training. This isn't the military, I can't keep drilling them day in day out for 13 weeks at a Basic Training. We'd love it but you know...

**Bob Brehm:** I like the recommendation we come up with relating to a private ballot cause we can post that to our website and give it to the people as distribution to the public. Once they know, just like your lawyer friend in Brooklyn will know, besides we've got a bit of a council now.

**Anna Svizzero:** We can print it right on the privacy sleeve, don't give your ballot to anybody. You insert it into the scanner. If you have trouble ask an inspector for help.

**Kim Galvin:** It's going to take a lot of money and the counties are going to have to do this. We'll have to all sit down and figure it out.

**Bob Brehm:** Distributed in the worldwide web distribution and go for a freebie first.

**John Conklin:** From my small world in the Public Information Office I think those complaints have gotten fewer and fewer as the scanners have become more familiar to the voters since we started. So while there are still clearly problems out there and training that needs, the complaints have gotten fewer and fewer from when we started until now.

**Douglas Kellner:** Alright well thank you Commissioner Peterson for starting that valuable, very good discussion. So do we have a date for our next meeting?

**Bob Brehm:** December 15<sup>th</sup>, Monday is the date for certification of the general election, then the meeting after that we don't have yet so if we want to look at January.

**Douglas Kellner:** So we're talking about meeting on December 15<sup>th</sup>, the last day.

**Bob Brehm:** That's what we said 2 meetings ago but, yes.

**Douglas Kellner:** That's fine.

**Andrew Spano:** Before the 15<sup>th</sup> of January.

**Douglas Kellner:** No, we're going to meet on the 15<sup>th</sup>.

**Kim Galvin:** Of December.

**Andrew Spano:** Oh I'm talking about January.

**Douglas Kellner:** January...

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**Bob Brehm:** January the Election Commissioner Conference starts, they drive here for the 12<sup>th</sup> I believe and they're meeting days will be 13<sup>th</sup>, 14<sup>th</sup> and then their departure day is the 15<sup>th</sup>. So if you're coming to Albany to attend that session, do we want to try a meeting in that area?

**Gregory Peterson:** That's always cumbersome for the staff cause you've got a ton of things to do. You have to prepare for those meetings.

**Bob Brehm:** Then don't pick those days.

**Gregory Peterson:** Next week or the week after?

**Andrew Spano:** I won't be here that part of the month.

**Gregory Peterson:** Which one?

**Andrew Spano:** Second part of January.

**Bob Brehm:** So if we do it the first week of February, the second week of February there is the Election Center Conference in Washington that Todd and I try to attend. He succeeds more than I do just cause of my own schedule.

**Kim Galvin:** What about one of those travel days the 12<sup>th</sup>, nobody's in town yet.

**Bob Brehm:** The 12<sup>th</sup> would work if you wanted to do it on the arrival day.

**Andrew Spano:** The 12<sup>th</sup> is good for me.

**Kim Galvin:** Yeah there's not a lot of people here yet.

**Bob Brehm:** We just have like committee meetings at the end of the day and they get ready to start at like 9:00 the next morning.

**Douglas Kellner:** Well it's actually more convenient for me then.

**Bob Brehm:** Well if you're here. The first day is better than the last day I agree, especially if you're not going to be here that would be even more problematic.

**Kim Galvin:** 13<sup>th</sup> is a bad day.

**Bob Brehm:** 13<sup>th</sup> and 14<sup>th</sup> are bad days.

**Kim Galvin:** Do you know...

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**Douglas Kellner:** Can we tentatively say the 12<sup>th</sup> and we'll make a decision next month. Alright then the motion on the floor is to go into Executive Session to discuss Enforcement cases. Those in favor say aye.

[Chorus of ayes]

Okay we are in Executive Session and we do not expect to reconvene in public session.