

Douglas Kellner: Good afternoon everyone we'll call the meeting to order. My name is Douglas Kellner co-chair.

Peter Kosinski: I'm Peter Kosinski.

Gregory Peterson: Gregory Peterson.

Andy Spano: Andy Spano.

Douglas Kellner: And would the staff introduce themselves please?

Todd Valentine: Todd Valentine.

Kim Galvin: Kim Galvin.

Bill McCann: Bill McCann.

John Conklin: John Conklin.

Risa Sugarman: Risa Sugarman.

Tom Connolly: Tom Connolly.

Mark Goldhaber: Mark Goldhaber.

Brendan Lovullo: Brendan Lovullo.

Anna Svizzero: Anna Svizzero.

Brian Quail: Brian Quail.

Kathleen O'Keefe: Kathleen O'Keefe.

Bob Brehm: Bob Brehm.

Bob Warren: Bob Warren.

Douglas Kellner: And would our guests introduce themselves please?

Rick Carlin: Rick Carlin, Times Union

Bill Mahoney: Bill Mahoney, Politico

Jennifer Wilson: Jennifer Wilson, League of Women Voters.

Douglas Kellner: Okay thank you all. So our first order of business is to approve the minutes from October 13th.

Andy Spano: So moved.

Peter Kosinski: I'll second.

Douglas Kellner: Those in favor say aye.

All: Aye.

Douglas Kellner: Opposed? The minutes are adopted. We'll ask our co-executives directors to give their report, Bob Brehm and Todd Valentine.

Bob Brehm: There have been a number of issues most importantly of course is Election Day. Certainly leading up to and after the tremendous number of questions from the public, etc. Election night reporting worked again very smooth we think from our perspective, the special elections for Senate, Assembly and the Supreme Court choices are the ones that we posted. I think largely we've had very good results throughout the night, traffic, etc. A number of other items you voted last meeting to submit to the Federal Court our proposal for the Federal calendar for the Federal Primary that was done so Judge Sharpe signed it immediately which was nice. We posted it on the website. So at least that information is out for people to start planning and to know what the calendar looks like.

Peter Kosinski: Has Justice signed off on that?

Bob Brehm: They had signed off before it was submitted we reached out to the same person we'd dealt with last time. We followed the same process and we only changed one small thing and identified that for them. So it really moved quickly. So, yes we have our calendar posted and we did send it out. Todd and I did a letter to at least the Congressional Delegations just to put them on notice that complying to the MOVE Act this is what we've done for the next federal cycle so that they would at least see that we've met our obligation.

We also had a public hearing last week, Todd and I went to a round table discussion in Rochester, Senator Funke Chair of the Senate Election Committee, the proposal that he has a bill introduced which was to make general election day a noninstructional day at school. It's a proposal that is in the legislative packet of the Election Commissioners Association and the New York City Board of Elections. It was a nice meeting. We spent about two hours discussing with a number of people who the Election Commissioners Association was represented, School Board Association was represented, PTA group was represented, League of Women Voters and Common Cause. Some of the concerns about using schools in general, security issues mostly. And we had done a survey preparing to go to the round table Operations did for us. How many election districts in the state of

New York, the poll site for that election district is in a school and we looked at both New York City and Upstate and about 60% of the election poll sites in New York City vote in schools, its a little lower maybe 31% upstate. But there are about 5,000,000 people on Election Day vote now in a school out of our 11,000,000 voters who are eligible to vote. So schools do play an important role for being accessible, parking, and room within that school. So we the State Board don't have a position in general but we did discuss the kind of issues that we get from Commissioners who select schools. But I think it was a very worthwhile activity.

Peter Kosinski: How many schools close right now on Election Day?

Bob Brehm: New York City are closed. We did do a follow up letter and I know Anna and Brendan sent it out. We didn't get the answer back yet but we are just leading up going to the meeting wanted to get that information. But the counties were still counting ballots so it didn't get back as quickly as we would have liked. So we'll have that number. A lot of counties it some and even Dustin Czarny was there, he's the Chair of the Legislative Committee for the Election Commissioners Association and they already have 4 teacher conference days on the school agenda and one usually falls within or around the 2 week period of election day. In his county they had ½ a day of school on Election Day because the teacher conference day was the day after an election day. So it was just kind of, if they had just put it Tuesday that would have helped them so much more. The resources officers at schools need to put near the door to get the voters into the right room.

Kim Galvin: And New York City also has a problem that they're open for breakfast and lunch regardless if the school is being closed, for the kids.

Peter Kosinski: but they're closed on Election Day right, New York City schools are right?

Bob Brehm: So if you look at like a Presidential year where you need that space because so many extra voters come out for the presidential election, you need that space so it helps not to have, one either use a gym or an area of public assembly or even some of that area that they usually have near a doorway. That's harder to do if every 45 minutes the bell is going to go off and a bunch of kids are going to run through the hallway or at arriving time with the buses, etc. during the day.

Kim Galvin: That was one of the school board's points. They have the ability to make the schedule and to choose that day for Superintendents day or whatever and they just for whatever reason don't do it in making their school schedule up.

Todd Valentine: Well there are 4 in-service days that they're supposed to provide each year and one in all 4 quarters, so they can schedule and they start their schedule for next year in the fall so it's certainly something that they could build into their scheduled, in-service day on Election Day. They don't really need a statute to do that but one of the

issues that the schools were raising was, well unlike other publicly owned buildings that can be chosen as pole sites which is a preference of the Election Law, those publicly owned buildings have an ability to appeal that determination by the county board of elections. Public schools under the statute don't have that option. So that was something, we're not even being treated the same as other publicly owned buildings and no one is even raising our issues. So I said well that's something to consider. And you know this is not an insignificant problem because we surveyed the number of county boards, we didn't survey the counties which we presented to the Senate of how many county boards us school districts and I forget the number but the number of voters were approximately for 11,000,000 voters about 4.9 million vote in schools. So it's a fairly substantial population. Now there are a number of counties that had zero and we suspect that somebody should follow up is that the reason they don't vote in schools is because the schools pushed them out or they found another spot. So it's not an insignificant problem. Is there room to compromise? I don't know if it's our job to compromise that but our job is certainly to raise finding polling sites, you can't just move it. This is not an answer and these are great sites for size, location, location usability and accessibility. They meet the 3 criteria that you need for a polling site. And there's clearly a statutory preference for that. So we recognized that a long time ago. But I think having a round table with these parties there to actually discuss that was a good idea on the Senate's part.

Peter Kosinski: Well have the school raised security issues? I assume they have some security concerns about allowing lots of people who are not part of the school into their schools while children are there?

Bob Brehm: well school in general, they raise that we don't like nonschool elections in school buildings, but they really admitted that they don't like school elections in school buildings either because of the security reasons.

Kim Galvin: Well a lot of the school now actually have metal detectors where they'll ask you for ID which they can't do if you're there to vote, so they don't know who's coming into the building. It's a real issue.

Bob Brehm: They did have a representative, a school resource officer; I think it was a correction officer. It was a police officer who serves as the school security officer in that region, they do use the driver license screening for school visits in those schools in that area on days other than election day to make sure that the strangers in the school district aren't on some kind of a list not to be in the school. Or just to keep track of who is in the building. So that's why I think from a point of view from a legislation, in order to make sure that we protect the security of the students, just make a teacher instruction day. They have one in a 2 week period anyway, it made sense if we could take the risk away by putting the, you know, the kids are going to be home one of those weeks anyway, just make it that day.

Anna Svizzero: Just to add to what Todd said the counties that have walked away from schools whether they're closed or not on Election Day or whether they would be they

weren't closed on primary day. So if you're designating a site, it works for one day and it doesn't work for the other and in the counties that usually can plan on having primary elections, they've experienced all of those problems twice. And they didn't want to hear it from voters anymore that they were, as Kim pointed out going through metal detectors, asked for ID and that kind of things. So rather than fight the good fight, they just walked away and had the ability to find other poll sites. Some counties don't have those other alternatives available to them. so that is one question that came up from the county boards in response to the survey was would that mean just general election day or is there is a possibility that it would include the primary?

Kim Galvin: And the federal and the state and the run-off.

Bob Brehm: The one thing we do agree with the democrat proposal and the republican proposal for a unified primary date is while we don't agree on both dates we do agree it should be on a day outside of school. So if that were to happen and we had a noninstructional day for the general election and the primary were held somewhere between June and August it would not be an instruction day also, so that would solve the primary issue. You're going to have issues of Special Elections or the Presidential primary once every four years, but there's such a learning curve around that for students anyway. Because that's one of the things that schools, the teachers try and education people around and it's easier to get their arms around running for president. But certainly those are lower volume primary day and half the state is noon so it's not as a problem for schools as a full day. So there's a number of issues. We can't solve them all but I thought it was a very helpful discussion. Certainly we will have to hear from the schools, what are their concerns, and I don't think this is so insurmountable that putting that on the table we could have a conversation we couldn't come up with something that works. Other than that, I think it was kind of a good experience.

Todd Valentine: Do you want to talk about the legislation that was signed, I could find were 3 pieces that were signed, one on changing the terminology for veterans' hospitals, the inmates, now they're to be considered patients. There is a piece of legislation which now recognizes for postmarks those services that are listed under the IRS for delivery services but that also has a component where it allows the State Board to analyze that list and see if we want to add or take away the ones that don't work. Like FedEx, UPS. We've been recognizing them under pursuant to a court order for a number of years but now this extends that statewide. And a small piece of legislation which impacted just clarified that ballots can't contain pasters because they will clog the scanner. So if there's a change in the ballot, for write in you can't put a sticker on the ballot. It was already something that seemed obvious but it clarified that under the new world that we're living in.

Bob Brehm: The last bill is the use of the tool for auditing, post-election auditing under 9-211. That bill went to the Governor just last week so it will age out soon. I don't know the exact date here if anybody else does but probably by the end of this week due to a 10-day deadline. So all 4 of these are part of our annual program bill so we sent over a letter

back in the summer when they had passed the legislature. So we are hopeful that does get signed. It certainly has an effective date of immediately. We will send that out to the counties. When we drafted the bill and also drafted the small change that we will need to make to the regulation to allow a tool. Because the regulation right now mirrors the statute but we can't change the reg until the statute changes.

Peter Kosinski: I'm sorry, what's the change?

Bob Brehm: Well right now it's a manual audit so it would allow the use of a tool as long as it is vendor neutral.

Peter Kosinski: A tool?

Bob Brehm: Clear ballot type of a system that allows the machine to assist in the audit.

Douglas Kellner: It's not as simple as you suggest for changing the reg. At least I will insist that there still be a full set of procedures because you still have to verify that what is being scanned, in other words, right now we conduct an audit by hand counting the ballots. Instead of having to hand count the ballots for the audit, we would scan the ballots for the audit but it has to be by a system that is completely software independent of the system that counted the ballots in the first place. So that it serves as a proper double check. But there's still additional safeguards that have to be put in place to make sure that the second system that's doing the audit is doing an accurate count.

Peter Kosinski: Can I ask, what prompted this change. Were the manual recounts a problem for somebody? Too time consuming.

Bob Brehm: Well New York received a grant from the Federal Election Assistance Commission to look at. We submitted an application for grant to look at would something like this help. It's a mandatory thing we have to do, would it help? And I think that Anna did the analysis and the report and I think our recommendation at the time was put the legislation in because we thought it would help. It would help especially in 3% of audit in big counties; it does take a certain amount of man-hours just to get through that board. The tool does assist in some of that work. It doesn't replace the entire work but it certainly, where we tested it we did a sample I believe in Rochester and in Saratoga, I don't remember if there were others.

Douglas Kellner: But I'm suggesting you need more than one sentence change in the regulations. Peter to be fair, the system is partly vendor driven in that a vendor came up with a better idea for doing the audits, arguing that it would be more efficient and less expensive and more accurate. And so we got this federal grant and pursued it. And I think that all three of those are in fact the case. One of the remarkable things about doing a hand count audit is that almost always the machine, virtually always the machine is more accurate than the hand count.

Peter Kosinski: I believe manual counts have their own error rate.

Anna Svizzero: The subjectivity, that was one of the problems, not problems but one of the issues that county boards pointed out was that you can have several teams, you can bring in poll workers, get resources as long as you have money but each team is still going to look at a ballot differently. There isn't a consistency as opposed to an independent system that moves to review those ballots and report to the Board that's conducting the audit the degree of how much of the oval was filled in? They can rate those so that you know that most dense mark to the least and that kind of thing. There's a lot of intense reporting that is available now other than a team of people hand counting ballots and they all walk away.

Peter Kosinski: So are we going to have certain tools that are approved by us for counties to use, is that how it will work?

Anna Svizzero: We did suggest that the system has to be approved by the State Board. The system that we used in the pilot testing for audits and in the AC report that we did that Commissioner Kellner mentioned under the grant that we were awarded was Clear Ballot. Clear Ballot is also being certified, hopefully at the next Board Meeting, for use as a central count system. So we need to come up with some criteria for approving a system for audit that is not as intense as approving a voting system. But still bring some functional testing to bear on whatever system some firm might want to submit and then prepare reports for you, a demo or whatever else the Board might want to see for that approval which is short of certification.

Douglas Kellner: And it's also interesting that Clear Ballot because they are being certified as a central scanning system. Counties could purchase a Clear Ballot system to use as their central scanning system for their absentee and affidavit ballots and then use that same system for their audit of the Dominion Ballots but they can't use the Clear Ballot system to audit the Clear Ballot Count.

Peter Kosinski: So is there only one system out there that we know of?

Anna Svizzero: So far, we used it for the grant but I think once it's acknowledged in the media and election community that there is ability now in New York to...

Peter Kosinski: Are other states doing this that we know of or no?

Douglas Kellner: Yes, Florida and Colorado are actually a little bit ahead of us and they're

Greg Peterson: That's embarrassing.

Douglas Kellner: We're in the top 3. And there are a couple of vendors that are looking at going into this market. And any of the vendors who have central scanners could theoretically do that already.

Anna Svizzero: I don't know how comfortable the Board would be using an ES&S system to scan the Dominion ballot for an audit or vice-versa so that's something to think about down the road. Cause they all have central count systems.

Douglas Kellner: It's not a question of; I mean we have to be objective.

Anna Svizzero: Yes, it merits discussion by the Board consideration.

Douglas Kellner: As long as it's completely software independent but you see there are other factors that have to be done. You still need to have the very small hand audit to verify that what's going into...

Bob Brehm: You could do a hand ballot because you still are scanning them in bundles and Clear Ballot can identify the mark that this is bundle #16 sheet #22. So I think we can accomplish that kind of a review. Just is the system working check with a very small percentage of randomly selecting a few to check to say with my eyeball examination equals the machine examination. And I think we can accomplish that without the labor that we currently have just because we still are bundling them in groups of something and the system is at least keeping track. So if we randomly select 5 throughout this cycles in order to know if the system works. And if we do that kind of randomness, usually a lower percentage gives you a similar high probability of...

Kim Galvin: And just for clarification, bundle 3, ballot 12 is separate and apart from who voted bundle 3. There's no tie there.

Bob Brehm: Right. We're just using our eyeballs to say is the system we're using really, there's a fewer number of eyeballs on the paper that give you the same higher level of confidence that the system is working as opposed to you would probably have to do like 76% of the paper ballots to get that same percentage level of confidence that the system would. So the tool allows us a flexibility that we never had before without a lot of labor.

Peter Kosinski: Do we have a sense right now of how many audits have resulted in errors that have caused an acceleration of the audit process?

Kathleen O'Keefe: But I can just speak to this idea of getting into the bin. There may have been some discrepancies that have occurred but as far as I'm aware, there's been no court case where a court has actually ordered because of a close margin and discrepancy that the bins are open and that there's a full recount. So I don't know if the discrepancy has actually caused escalations.

Anna Svizzero: In all the years that we've been doing them I think you can count them on one hand.

Bob Brehm: The only thing we've seen...

Douglas Kellner: Escalation from 3% to 5% and I'm not aware of any escalation above 5%.

Peter Kosinski: Oh really. So there's only been one? Is the next 10, is it 5 to 10? But there's lesser.

Anna Svizzero: Three escalations and then you go to full hand count.

Peter Kosinski: So you've never gotten to 12 even?

Anna Svizzero: No, not that I know of.

Peter Kosinski: So it's not a big issue out there about the audits resulting in inaccuracies which then have to be hand counted right now?

Bob Brehm: Not because the machine did not function the way the machine was designed to function. The only thing we've seen is in New York City where they, in certain close races, $\frac{1}{2}$ of 1% is the divide or 10. So they do a hand count. They had seen only once where they resulted what was in the barrel change and I think that their system reported that they had, I think they were within 2 votes in the primary election and that changed the winner based on what was in the barrel. Because that was their own policy which our regulation already allowed discretion if they wanted to have that kind of a model to use it. What is more interesting is the $\frac{1}{2}$ of 1% statement that they use is it's proved in their testing because they've done it now, they did it in the congressional race. They've done it in other races, it proves that that $\frac{1}{2}$ of 1% is probably a little too high if they really wanted to make a stand. Because they're needlessly doing that, they're really close where you might have signed your ballot and it's really void and it's in the barrel. Something that the machine was never designed to identify anyway. But if there's ever a question, did the right person win, that's what they use in New York City and their $\frac{1}{2}$ of 1% is too high a number. If they're going to follow they could lower that and still only do audit just based on past experience, its not going to change the results.

Douglas Kellner: Alright, well thank you very much. We'll turn to the report for the Council and Compliance Unit. I want to note that this is probably the last report that Kathleen O'Keefe will be giving. Kathleen has been appointed as Council to the Speaker of the Assembly which is a very significant promotion and we congratulate her on that and we certainly will miss you. You have really worked very hard and have given us an outstanding effort in getting the unit together and of course, with Kim's help and we'll still have Kim here. But I certainly wanted to acknowledge and thank you.

Peter Kosinski: Congratulations.

Kathleen O’Keefe: Thank you Commissioners, thank you. I just want to say the staff here is really phenomenal and it’s been a pleasure to be here when the Compliance Unit was getting up and running with the idea of promoting transparency and accountabilities. It’s been a real privilege to be here. Thank you for your good wishes.

The Compliance Unit, the last 2015 general election report the 27 day post general is due on November 30th. Compliance reviews have been ongoing with respect to the election reports. The unit has, as of today, reviewed over 30,000 filings. It’s a pretty amazing number. The 2014 over contribution audit is underway. There will be a series of winding down campaign seminars and webinars in December. This is when people are very interested in that because the election is over. People can check our website for more information and dates. We’ve also had some requests for seminars on the responsibilities of political clubs and we are trying to set a schedule for those. The Compliance folks continue to meet with our IT unit with respect to the FIDAS redesign. The meeting for 2 user groups were held already. We received feedback from the CFB and NGP as well as comments and I believe that Mark may address that additionally in his report. Staff will present a user group presentation to Civic New York on Friday November 20th. This is a technology group and I don’t know if Tom intended to talk about that but I assume after that’s done, the Board will get a report about that.

With respect to the Council’s Office, we have some post election litigation that is happening now but is primarily for local races. The Women’s Equality Party Litigation took up a lot of time. We were named as necessary parties. We didn’t take a position in these cases but there were approximately 16 cases around New York State in the Supreme Court which resulted in 4 different appeals. There were ultimately 2 holdings; one in the second department, one in the third department on the merits that were raised in that case with respect to the party rules itself because there were some tangential issues as well. And essentially the committee chaired by Rachel Gold was held to be the true interim committee of that new party so next year will be the second year of that party and there’s all kinds of additional steps that need to occur with respect to that second year.

The LLC lawsuit from the Brennan Center is still pending. There has been a request or an argument but that has not been scheduled and I’m not clear that that will be scheduled but may just be handled on the papers. We have not heard. There is a continuing piece of legislation from Mr. Sloane that I mentioned at the last meeting. It is still pending. The Attorney General’s Office has since agreed to represent the Board which is named in the lawsuit as well as myself, Kim Galvin and Commissioner Kellner who have been named personally. So I don’t know what that lawsuit will mean when I leave here. But the Attorney General’s Office is handling that.

Peter Kosinski: What’s the suit?

Kathleen O’Keefe: It’s a redo, it’s a redo of a suit from last year where a gentleman that has brought the suit wanted to be on the primary ballot and he was not so he’s suing...

Peter Kosinski: For what?

Kathleen O’Keefe: Last year it was Governor, this year it was not governor this year, it was in New York City.

Douglas Kellner: A judicial delegate.

Kathleen O’Keefe: So, he is suing to be on the primary ballot and the primary was over 2 months ago. So we went through this last year where a certainly amount of motion practice occurred and the case last year was dismissed. Many of the same arguments, including one that the State Board of Elections is unconstitutional. So we are handling that lawsuit a little bit differently because the AG has agreed to represent us because of the personal nature of us being named in the lawsuit. So that’s where that is.

Douglas Kellner: Kathleen and Kim were named, at least according to the pleading, because they are the real brains behind the operation and they make all decisions on who is going to be allowed to run for public office.

Kim Galvin: Well, everybody gets a little part right?

Kathleen O’Keefe: Oh that’s great. So obviously we’re hoping that that will be resolved soon. We had fielded many, many phone calls. It’s amazing, we get a lot of phone calls anyway from the public and commissioners and the press, the month leading up to election is always very busy with phone calls about the election.

And then I just want to point out to the commissioners the other calls that we’re getting increasingly are about the personal ban use of campaign funds. The statute election law 14-130 was amended not too long ago and folks are really paying more attention to that which is good and we’re getting calls and answering those on a continuing basis. So that’s about it. I just want to thank everyone for my time here and I wanted to thank the Compliance staff who are incredible professionals. We’ve very lucky to have them. That’s it. Kim?

Kim Galvin: No, I have nothing to add. The other issues that we’re discussing are on the agenda for discussion and also that just in passing I guess we’re going to set up a meeting with Risa’s staff on hammering out the hearing officer administrative processes to make sure they’re in place for when she needs them. And that’s it. That’s all I have to add.

Douglas Kellner: Alright, for Election Operations, Anna Svizzero.

Anna Svizzero: Thank you Commissioners. We don’t have much to add aside from the written report that we’ve provided. In summary, we are working on 4 certification

projects. We hope to have 3 if not all of them at your next Board Meeting. We are in the process of collecting certified election results from the Supreme Court contests around the state and also for the 3 Assembly and 2 Senate seat vacancies that were on the ballot for this November. So those will be for your December 15th meeting for certification.

We are continuing to work with IT as is just about everybody in the building on revising the Campaign Management System that we have so it can be integrated with the Campaign Finance System and collect all the local filer data that is happening in this state so that both programs can be more robust and more effective in providing a single source for that information for stakeholders and whoever might be interested in that information. We had been providing support to county boards prior to the election and in some post election issues. There are a few new Commissioners that were serving in the general election for the first time so there was some varying degrees of intensity as far as support for those Commissioners and we expect that there will be a modest number of new Commissioners coming in at the first of the year. So we'll be doing new Commissioner training on the two travel days that bookend the conference that is going to be held in January. I think the conference starts on the 11th here at the hotel right next door to our building here. So it's convenient for Boards to come in on that travel day and spend some time here with us. Also on those two travel days, we do EMS refresher training or problem resolution. We do central count support for County Boards if they have issues in using their systems. Whether they're new Commissioners or they're bringing tech people with them so we try to make the most of the time that the Commissioners have here while they're in Albany. They spend a lot of money to get here and the more we can give them by way of that kind of support we're happy to do that.

I don't think I had anything else. Brendan did you?

Brendan Lovullo: No, I just got the spreadsheets we have for the school listing that I can give you guys to take a look at as well.

Douglas Kellner: We got a response from the New York City Board of Elections to our request for their plan with respect to coming into compliance with the 30-minute waiting rule. I think that's relevant to stay on top of that and it looked like considerable thought had gone into that process so that the City is paying attention to that guideline.

And I noticed yesterday that the PEW center released a very detailed report on cueing theory as it affects election lines and I would appreciate it if the Operations Unit would distribute that to the County Boards and especially to not just the Executive and Deputy Executive Director of the City Board but all ten Commissioners so that hopefully that will assist them in providing more formal theory on how to analyze lines and address the staffing issues that are required to optimize line performance with the staff available.

Anna Svizzero: We'll see that that goes out this afternoon.

Douglas Kellner: Thank you very much. Anything else? Alright, Public Information, John Conklin.

John Conklin: Thank you Commissioner Kellner. The Public Information Office has been busy with media and public inquiries regarding the general election. There has been a lot of questions about the voter registration deadlines for next year's elections, particularly the Presidential primary. A lot of attention paid to the Campaign Finance filings during the fall, and again, the Presidential primary in 2016. We had 62 FOIL requests in October. The unit participated in the ECA monthly call for October. Tom and I continue to participate in the NYSVoter Refresh and the CAPAS FIDAS project meetings. As another unit mentioned we had two user group meetings with the consumers and the treasurers. We held several meetings, again, another unit mentioned this for election night recording with the IT staff in preparation for the general election. That went very well. We attended a voting machine demonstration for Vote Right Voting System. For the website we've updated the recently approved regulations and moved them to the election law page. We posted the results from the primary election. We posted the court order from Judge Sharpe on the Federal Political Calendar for next year and we posted the election night results for the Supreme Court races around the state and the three Assembly elections and the two Senate elections to fill the vacancies. Do you have anything to add Tom?

Tom Connolly: Yeah, just 2 things, 1 is going to piggyback off what Kathleen had mentioned. On Friday Civic Hall with conjunction with Reinvent, Albany is having a meeting with both myself, Cheryl Couser from the Compliance Unit and there will also be staff from the Campaign Finance Board. Basically we will be covering a lot of the information that was presented in the 2 unit groups that we already presented. The meeting itself largely has to do with civic technologists. So basically people who would be utilizing the data. It would be kind of forming the data from our website and then doing analysis on that. So we'll just be covering a lot of like I said what we've covered in the user groups as far as potential upgrades to the system as we go forward and then also last week we did get DOJ did come out with a proposal for some amendments to UOCAVA and the Move Act luckily most of which we kind of already do so I don't think that there will be a substantial impact on New York with regard to the changes. The only one that was kind of new was any ballot sent after the deadline would have to go by express delivery and any ballot sent out after 41 days before the election would have to be able to be returned by the voter by express delivery. But like I said, those are just proposals so we'll see what happens with that.

Douglas Kellner: Expensive penalties.

Bob Brehm: I think the big issue right now its 46 days which is a Saturday and the deadline now to transmit and be timely is 46 days which is a Saturday, they're proposing 45 days to make it a Friday. And I think their argument since it falls on a Saturday arguably people are pushing it to Monday because it falls on a weekend. We in New York never, we've consistently told the counties that that does not bring us into

compliance pushing it to Monday. Saturday is a Saturday deadline. But there are many counties that do transmit on that Saturday and meet their timely transmittal. So I can't tell if we move it one day earlier whether or not they still would be in compliance or not. We may need to be safe, want to start one day earlier to at least make sure we cover the same window. Under the federal calendar we try to have the certification 54 days before so that the counties can certify theirs 53 days and then make the ballot and transmit it on the 46-day deadline. So we may just want to make up that one-day try to make up that one day on our own calendar. Because there are significant jurisdictions that do come into compliance because they do need that Saturday to finish what they're doing. So I mean that's my only concern. If you can transmit on a Saturday I still think we should just leave it alone. We proved from our experience we need that Saturday to come into compliance.

Peter Kosinski: Have we seen an up tick in military ballots being returned with the earlier date for sending?

Tom Connolly: For me it would be hard to speculate on that because I kind of came into his as this was all really the Move Act so that kind of instituted the 45 day so we only really started having to track it when we were sent the decree at the time and still. So I don't know if we really have the data from prior to really beyond just anecdotal. But obviously their goal is obviously the return rate for military voters and overseas voters is equivalent if not greater than the civilian absentee population. So what I've seen in the years that I've been here and we've been tracking it is that we're getting up there but we haven't quite attained that. So I think that we do see improvement year after year after discussing with the counties, making sure that they're getting done what they have to get done. Helping them with the online systems, calling them incessantly to make sure that they're actually getting out the stuff when they need to get it out. But that's our part of it which is getting the ballots out. Obviously returning, it's harder for us to kind of facilitate the return of the ballot because those voters aren't anywhere where we can reach them. so I do, sometimes we have discussions when I attend various conferences with regards to military and overseas voter about what the military can be doing specifically the AFVAP the Federal Voting Assistance Program which is part of the Department of Defense with regard to the training for their voting assistance officers and the various activities that take place either on bases or away to kind of ensure that the military voters are taking part in the process and getting their ballots back. But sometimes just logistically it's difficult. The example has always been when you're in a submarine or on a battlefield being able to kind of take time out to vote a ballot and make sure it gets back in time. Sometimes it can be a little challenging.

Bob Brehm: I think the military ballots, specifically the first final sending or receiving the close proximity is either a greater location they can drop the ballot into but getting that lifted back up and out is the hard part for a group. And we have so many more federal ballots so they're not necessarily the military people where FVAP does have a greater presence with the mail system in the military and the military families to help move it through the process. But if you are a US citizen living overseas in general

whether you're a Peace Corps or just in general, that group of ballots, that's about 40,000 of our people are in that category, a little over 14,000 are in the military category. So we have a huge number compared to other states of the federal ballot. And we haven't seen a huge change in that percentage I think.

Tom Connolly: No, the ratio is usually the same.

Bob Brehm: A little bit better on the military side because of all the efforts of the military. But on the federal side I think it tends to, I mean we always see on the federal ballot and even in the military ballot the higher up the office the more they pay attention to it. So in the president year we see a lot of activity than a local election cycle we held. And they are younger people mostly in the military so if you are comparing as FVAP likes to do they like to compare the category to how all absentees come back. Where as in the military they are generally a very young population and that young population is not equal to the population in general who votes an absentee.

Anna Svizzero: If I may, Tom raised a good point about the express delivery. Right now that new law that Todd mentioned requires that we use the firms that are identified by the Secretary of the Treasury I think which is only, yes, IRS which is FedEx and UPS. Knowing how Commissioner Spano loves acronyms. Owing to the clientele that would be accessing those services either whether its county boards going out or voters sending back, there are a couple of firms that specialize in overseas express delivery such as DHL and Purolator that are not on the IRS list but the statute that was signed says that the Board has the ability to expand that list or remove firms from the list if they're not meeting the needs of the State Board of Elections. So we'll have to look at that criteria if indeed there was any and perhaps get some additional firms on that list so that voters and boards have more options available to them. It's not cheap overnighting mail overseas.

Bob Brehm: When we sent a copy of the legislation out to the counties with the list that are in the legislation of approved services, we also asked the counties to give us feedback if there are other services they are used to using that's not on the list and I don't think we've heard back from any of them.

Anna Svizzero: We didn't hear. I happen to be familiar with these two, its just something that Brendan and I had been talking about so we may bring that back to you.

Bob Brehm: And it came up in the middle of the election and I know when they're that close to Election Day are they really focusing on our e-mails but we hope to cover it again by the winter conference when we have their full attention.

Douglas Kellner: Can you tell us what the status is of the Annual Report?

Kathleen O'Keefe: The Annual Report. As it turned out the Annual Report had pieces that were reflective of the old configuration of the Board. So when we thought we had addressed what we needed to do, it turned out that there were many other additional

pieces that had to be incorporated in. so I've actually done quite a bit of work on it already and I'm hoping, before I leave that that will be my last piece of, my last project that I can share with at least the other side of the staff. Kim did a piece of it already. But like I said, the Board has changed so significantly with the new Enforcement Unit as well as the new Compliance Unit that its not, and by the way we have all the statistics that we need. Compliance has put that together. But its not as simple as it had been for many, many years where you're updating basically the same framework of a report. It's really a whole new thing. So hopefully I'll be able to share that with Kim before I leave and then I'll pass the torch to Brian presumably.

Douglas Kellner: Okay, so I was directing it Public Information because it's really their report. If its compliance where the hang up is then well...

John Conklin: That's the only unit we're waiting for.

Douglas Kellner: Compliance has done so much else that I can't give them a hard time over the report so Brian that's on your to do list. And it would be a good idea to get the report done...

Kathleen O'Keefe: Before 2016.

Douglas Kellner: Right and then maybe you can do two at a time.

Kathleen O'Keefe: Which is actually justified now that you mention it. Because the Compliance Unit and the Enforcement Unit did not get created until the middle of the year so I mean there might be a benefit to incorporating statistics through this year.

Douglas Kellner: Two or three months but let's try to get it out before the end of the year. Okay, Information Technology, Mark Goldhaber.

Mark Goldhaber: Thank you Commissioner. As many others have already said, we did hold two focus group meetings at the end of October with the consumers and the treasurers. We got some good feedback during the meetings and we did receive some afterwards. One was focused on the structure of the new file transfer and one was focused on a variety of aspects. We are discussing the with the internal user groups to determine how we're going to address each of those issues. One of the things that was of interest that we have not determined the final configuration of is how original filings and amendments will all be represented on screen when people are doing inquiry and we're still working what that's going to look like on the screen. So we have accepted all of the input we got at the meetings and we'll be considering it as we go forward with the design. The systems are being referred to externally as candidate tracking and campaign finance rather than CAPAS FIDAS or ease of user identification because if we say CAPAS FIDAS to a consumer they may or may not know what we're talking about. So we're going to call them Candidate Tracking Campaign Financing we'll still call them CAPAS FIDAS in-house. Right now, based on the pace of development we're currently

anticipating a production date of March 2017. We are looking to see if there's anything that we can do in the development process to bring that date back, but at this point we are projecting March 2017 and we're going to try to keep that from creeping any further forward.

Last Tuesday we did have an incident where we had a hardware failure that took longer to repair than anticipated and NYSVoter and Election Night Reporting were unavailable for about 24 hours. We've worked with the hardware support company to ensure that the series of events that led to the repair delay will not happen again. The subcontractor at fault has been removed from our account and will not be servicing us again.

We are moving forward. We expect to begin design work on the County VPN upgrade shortly. We are hoping to have the initial rollouts take place sometime in December if all goes smoothly so that we can test and make sure that everything is functioning as anticipated. We expect that we will be able to get the new devices to the counties. They will unplug the old device, plug in the new device and it should just work as long as our design process goes as expected. So we are hoping to get that started soon. The procurement for the assistance I believe is moving forward as of today so we're hopeful on that.

Web traffic, not surprisingly traffic has been up with everybody doing all of their inquiries against the system prior to and during Election Day. One thing that we found interesting while we were monitoring web traffic on election night was the percentage of hits on the website from mobile devices which out numbered PCs for most of the evening. Apparently everybody at their campaign headquarters or their receptions or whatever were using their SmartPhones and their Tablets to get the results and it wasn't until we got close to about 11:00 or so that we started seeing the PCs take more of the traffic. So I think that that really helps us to reinforce our focus on the redesign of the system being more responsive based on whatever device people are coming to the website on. So if they're coming with a phone, the display will be optimized for a phone. If they come with a tablet it will be optimized for a tablet. If they're coming with a laptop or desktop it will be optimized for that. So I think that that really helps to reinforce that it was a good decision to make sure that we incorporated that into our design even if it did take a little bit of extra time. Especially moving forward we would expect the percentage to kind of increase. That we'll have more and more traffic from the mobile devices. And that's all that I have.

Douglas Kellner: Alright, thanks very much Mark. So Enforcement, Risa Sugarman.

Risa Sugarman: Thank you Commissioner. On October 16th the division sent out 602 letters to both committees and the list of authorized candidates for failure. These are "A" filers, state files for failure to file. They included both failures to file for the January and July 2015 periodics. The mailings included 351 individual committees that were identified. There are approximately 223 active committees that are on an audit hold for various reasons. Those were not included in the mailings. Of those mailings, we're still

getting back a couple of letters. Committee letters that were returned were 45 to this date. We've identified new addresses for 38 of those 45 committees and we're still investigating 7 of those addresses trying to get better addresses for those committees. And of the candidate letters 32 have come back so far and we have identified all but 7 new addresses and we're looking for 7 for better addresses for those candidate letters.

Of the 351 committees that received letters, 110 have now filed their missing reports. So of the 196 which includes the 45 that have come back, 162 were missing both the January and the July periodic. So we're going to be examining those committees to determine their history; whether their history includes more than the 2015 July and January periodic. Whether they include election cycle reports as well and whether they should be candidates for hearing officer reports, or whether they should be reviewed for criminal referrals and to be brought to this Board. We're looking at the next mailing for the local filers, the C filers, that's a much bigger mailing and it's a much more calculated mailing to see whether those candidates and those committees should have been filing. Whether they were candidates, whether they just have to file the periodics. So that's a more intense examination of those candidates and those committees as to what the mailing should be and how we're going to approach those mailings. So that's what we've been doing including our investigations and we've also been working with Bob and Todd to determine how we're going to go about the administrative as Kim mentioned, the administrative process of the hearing officers and wheel and how we're going to go about that. We're going to be scheduling a meeting with Bill and Brian and two of my attorneys to work out that process and then begin those hearing officer report and proceedings.

Douglas Kellner: Anything else? Okay great. Alright old business. Update on the previous information law voter registration records requested issue.

Brian Quail: Thank you Commissioner. This issue came up a while ago and there seemed to be an emerging consensus on the Board to issue policy guidance or directive to counties on this issue. A draft of a guidance or directive document has been shared in the building along with a memorandum in support of the elements that are included in it. In all fairness, that was shared on Friday and the staff has not actually met on it. I do feel confident that once we do we will be able to move the process along and certainly if you'd like there to be a discussion into the details certainly I'm sure both sides are capable of taking that up. But I think that's in the discretion of the Commissioners how much you want to get into it.

Douglas Kellner: So put it on for December? Okay alright thanks very much. Let's keep moving it forward.

John Conklin: Can I just ask a question? There was an element earlier when this was discussed about it being circulated to all the county boards.

Brian Quail: Yes John that is an excellent point to bring up to get clarification from the Commissioners and I think the question is that at the point in time that the staff believes we have a document that's ready to share, should we share it directly with Commissioners for feedback, county commissioners that is, for feedback before coming back to this Board, or should that step occur after it comes back to the Board?

Gregory Peterson: I think it would be somewhat incomplete if you don't get some feedback from the commissioners. These are the people that are going to be affected by it and they're the people that we refer people to when they have questions about FOIL and things. So because the counties it ends up being their responsibility so they should have some input I would think.

Brian Quail: Right. I think the question is just whether or not it happens before it comes back to you first? You wouldn't formally approve it before it went to them for comments but you would look at it first. So I think the question is just whether or not you're okay with it going to them before it comes to you.

Gregory Peterson: Well it's a question of perception really, if it comes to us first and we decide something then goes to them for comment, it's like we're telling them what to do. On the other hand my attitude would be, well, I'd like to hear what they have to say and then tailor what our response would be for them.

Kathleen O'Keefe: I think what Brian is talking about is your reviewing it not necessarily any action on it but just the idea do you want to review it before it goes out to the county boards?

Peter Kosinski: I don't mind getting feedback from the counties myself. I don't know how the other Commissioners feel. I'm interested in their thoughts.

Douglas Kellner: Alright that's fine. So once you have staff agreement you can send it out to the counties for comments. Hopefully we can have that process so we can take it up at the next meeting which is December 15th. Alright, then we'll move to the next item which is the update on the Independent Expenditure Regulation revisions.

Kathleen O'Keefe: Well Bill shared a draft a week or two ago. His draft is addressing the two issues that Commissioner Kosinski...

Peter Kosinski: Kathleen it's a good thing you're leaving.

Kathleen O'Keefe: I almost said Commissioner Peter and I knew that was not right. On that high note so at least it also addressed the new piece.

Bill McCann: Yeah that's all addressed. It was really plugged in for temporary measure the April amendments.

Kathleen O’Keefe: Right ad the issues you brought up about trying to clarify that. What I did and I only shared this over the weekend, I took it home. I wanted to give it a really good look over, it’s a complicated issue with respect to the coordination piece. So what I did was I incorporated the coordination piece. What I also did and it was based on what you had mentioned at the last meeting with respect to wanting some kind of filing made when somebody, in the instance we talked about was a PACS. Then they’re going to do independent expenditures. So I had a slightly different view of the existing reg with respect to how currently the Board and this is to be worked out obviously. Currently the Board has created this Independent Expenditure Committee and that’s not something that the statute requires. The statute really just talks about the independent expenditure itself. Based on our last meeting and the discussion that PAC can do independent expenditures and the idea that if they’re doing that they should file something to let us know they’re doing that, I proposed in this draft a modification to what the existing reg says about Independent Expenditure Committees. We may want to still move in that direction or we may want to with the existing reg, or we may want to do what other states are doing and the feds Independent Expenditure only Committee so that they’re filing, they’re saying, “I’m only going to do this activity but nothing else.” And PACS in comparison can be PACS and then also opt to file something that says, “Now I’m going to participate or have activity in the Independent Expenditure world.” The only other thing that I would like to mention is that, and I didn’t put this in the draft. I thought it would be presumptuous to do that. If PACS are going to be doing Independent Expenditures, it may be worth to think about in the reg defining how a segregated account may work. We know that for instance when it comes to party committees that have housekeeping expenses, they are not required, party committees are not required to have a separate committee for housekeeping. But in general, if you’re using one committee for housekeeping and your hard money that supports your candidate you’re using a separate segregated account so that you can show where you’re getting that money from. So if in fact the Commissioners are comfortable and it sounds like everyone was last meeting with PACS doing Independent Expenditures it may be worthwhile to consider putting some language into the reg about a segregated account just to give a little more direction.

The only other thing in this regard is that the staff, the Compliance Staff, Cheryl Couser in particular has indicated in the handbook which you had asked to be addressed where the references are that are giving erroneous information based on the discussion at the last meeting. so that has been identified I think, at the Compliance level they really need to on both sides to take a close look at that and make sure nothings been missed and I think what they’re prepared to do, at last this was my conversation with Cheryl was to modify those pages and make it clear on the website how things have changed compared to the paper book. Because we’re not going to change the book until we have our new computer program. Print the book, right. So that’s where we are. I think its addressed what your concern was about. Does it answer all the potential questions? No, but I mean I think we’re moving forward where we need to go. Bill did you have anything?

Bill McCann: No, that’s good.

Peter Kosinski: I'm sorry. Should we anticipate seeing something I guess you're going to be gone but at the next Board meeting to approve? Is that the...

Bill McCann: Well if I had my druthers I think the Board should vote to ultimately approve the first piece. Certainly we have to have internal discussions as to what the proposals are because there's any number of options that are out there at the federal level and also other states looking at this. But then also we should have that vetted as well.

Kim Galvin: Coordination is a big issue.

Peter Kosinski: Well I think we agreed on that but I'm hoping at the next meeting we would have at least the statutory changes reflected in our regs.

Kathleen O'Keefe: The downside to that and you know I had some assistance from Jamie Salm from our Compliance Unit doing very extensive research on coordination and what other states are doing and all over the map. The problem I think with doing it piecemeal is that its misleading I think to people that may look at the reg and say, "Oh I can do this" but not realize the pitfalls that are involved because of the coordination issue. So it's sort of like opening the flood gates letting people know PAC can do this without the necessary guidance on how they can keep themselves from getting into trouble. So I think it's preferable to do both, everything at once.

Bill McCann: I don't agree with that only from the standpoint that the regulations, the proposal would be simply to have those additional elements that are mirrored in the statute mirrored in the regulation so at least the regulation has those elements and its complete. I agree in the sense that those other issue a are very important and certainly, I hope that we'll get ultimately consensus on that. But at least just to have the current statutory provisions mirrored in the regulation, I don't know that that's a big lift and I think...

Bob Brehm: I think we only shared the second draft.

Kim Galvin: Just this weekend.

Bob Brehm: No, that draft was on November 5th, our response or addition was only recently. So we haven't had a chance to read it. To the extent there can be agreement would be nice. To the extent that we need to move forward on something, we certainly will talk and meet and have some proposal for you at the next meeting.

Douglas Kellner: I'd like to see that draft.

Bob Brehm: I gave you both today.

Douglas Kellner: Oh today. Pardon?

Bob Brehm: I printed both for you so you had Bill's and Kathleen's.

Douglas Kellner: I'm addicted to the e-mail. Thank you. I don't think we have any new business.

Peter Kosinski: I just have one area I'd like to ask about. I know normally the Board does a legislative packet each year and I'm wondering if there's a way we could get that together sooner rather than later so we could try to get it out of here like at the first of the year. I know in the past its come in in April or something well into session. I think there's a benefit to us getting the packet out earlier if we possibly can. I don't know what exactly would be in it but it just seems to me we should try to get that together.

Bob Brehm: Well we will try and meet and certainly we will, we usually start with our ideas first

Douglas Kellner: Well I endorse that which means have us a draft at the next meeting at least a list of the items.

Bob Brehm: I have to say usually Anna and I share a list with everybody in the building. Its usually the way we've done it and Kim and Todd and others do have ideas to add and then once we make a list of everybody's general ideas we try to sit and talk

Kim Galvin: I already had the idea to recycle the left over ones that we still thought were relevant with the numbers and things so they'll just be adding that.

Douglas Kellner: Thank you Peter. Alright our next meeting is December 15th. So we don't have to discuss that. And for Executive Session we have the one Enforcement case. Do we need to discuss that or are we just going to...you want to discuss it. Alright so the motion is to go into Executive Session to discuss Enforcement cases. Those in favor say aye.

All: Aye

Douglas Kellner: Opposed?