

Douglas Kellner: Alright well good afternoon everyone. My name is Douglas Kellner, Co-Chair of the State Board of Elections. We're joined by our other Commissioners Peter Kosinski who is Co-Chair, our new Commissioner Anthony Casale and Commissioner Andrew Spano. We're also joined by Public Campaign Finance Commissioner Ekow Yankah. So I want to start by especially welcoming Commissioner Casale, we're very happy that you have joined us, and you come with great experience in government and we look forward to working with you.

Commissioner Casale: Thank you very much. I look forward to working with all of you.

Commissioner Kosinski: Commissioner if I could just take a minute, I'd like to welcome Tony as well. I've known him for some time and glad to have him along. As you know, it took quite a while for us to get another Commissioner on the Republican side and I think they made an excellent selection with Tony. I've known him for I don't know Tony how long, many years.

Douglas Kellner: The first item on our agenda is to meet as the New York State Board of Canvassers to certify the elections for the Statewide positions of Presidential Elector and those contests that cross county boundaries. Is someone going to deliver the report which has already been sent to the Commissioners in writing?

Bob Brehm: Tom do you want to do that for Operations?

Tom Connolly: Sure. So thank you Commissioner. So yes, we've aggregated all of the results that we received from the statements of canvass that have been provided to us by each of the counties of New York, and we have provided the documentations to you that shows those results and the winners of each of those contests for your review and certification.

Douglas Kellner: Alright and my understanding is that there is one contest that we are not certifying, that's the 22<sup>nd</sup> Congressional District between Brindisi and Tenney which is in court and the margin is too close to determine a win at this time. Is that everyone's understanding?

Tom Connolly: That is correct.

Douglas Kellner: And there are several contests where we have received certifications from the County Boards and the margins are less than the number of ballots remaining outstanding to canvass so we are doing this certification because there's no doubt who the winners are but we anticipate there will be amended certifications from those counties. Tom do you want to briefly summarize which counties are still engaged in canvassing?

Tom Connolly: Anything that would affect candidate totals I believe we're still looking, obviously you mentioned CD22 which affects one of our counties, but otherwise we are still waiting on some additional information from Suffolk County. I think a couple of the other

counties owe us information but that largely affects blanks and voids, so that would not affect the outcome of any race.

Douglas Kellner: Alright so with that understanding, is there a motion to certify on the State level the canvass that's been circulated to the Commissioners?

Peter Kosinski: Sure, I'll make the motion.

Douglas Kellner: And is there a second?

Andy Spano: Second.

Douglas Kellner: Alright is there any other discussion relating to the certification of the canvas? Alright there being no other discussion, those in favor say aye.

All: Aye (Chorus of Ayes: Casale, Kellner, Kosinski and Spano; 4-0)

Alright so it is unanimously adopted, and I believe that is all of the business before the Board of Canvassers so now we'll move onto our regular meeting of the Commissioners of the Board. And the first item on our agenda are the reports from our staff. We'll start with the co-executive directors, Todd Valentine and Bob Brehm.

Todd Valentine: Well actually we have the minutes from the September 8<sup>th</sup> meeting.

Douglas Kellner: Oh I'm sorry, yes. Alright so is there a motion to approve the minutes?

Andy Spano: So moved.

Peter Kosinski: I'll second.

Douglas Kellner: Those in favor say aye.

All: (Chorus of Ayes: Casale, Kellner, Kosinski and Spano; 4-0) Alright, the minutes are approved. And we'll now go to our reports.

Bob Brehm: Just so I can write it down right I heard 3 do I...

Anthony Casale: Do I vote on that because I was not at the meeting?

Bob Brehm: That's just I wanted to be clear that there was no doubt what we were doing.

Douglas Kellner: It's your call Commissioner, you're entitled to vote but you don't have to vote.

Anthony Casale: Well yes, I vote yes. I'll take your words for it.

Todd Valentine: Bob, do you want to start?

Bob Brehm: Sure, you know it's certainly been an incredible year. I want to thank everyone for their cooperation. There's been a lot of twists and turns from how to get ballot access completed through, any number of events, so I think our staff and the county board's of elections and the voters in general, um and the candidates who had to reach out and get information on how to conduct an election under these circumstances really did an incredible job. So I really want to point out that from you know, it really was incredible. In light of that also, with the numbers that we have sent in so far, we have over 8.6 million voters who voted in this cycle. It's 873,000 more than 4 years ago, so to be able to deal with those kind of numbers with everything else that was going on with social distancing and the pandemic, etc. was also very heavy turnout from a state perspective. Also we've been working to prepare for today's certification is no easy task. Any number of our counties have had to deal with either the litigation making sure everybody had a seat at the table but a bigger table and a little distance between them in order to be able to transparently see what was happening and to come to a certification that they did. And that's not easy when you look at COVID hot spots that broke out in Suffolk Board of Elections and in the Onondaga Board of Elections and others that also had experiences with that also. But certainly they've had an impact on the ability to canvass that'll add a little bit to the delay in preparing for today but both of those I understand, had over in Onondaga's case 12 staff members had COVID exposure and Suffolk I think is in the 10 or more from a staff member point of view. So it's certainly impacted their ability to get this work done but somehow we came together and got it done and it was no small task for that to happen.

With regard to the budget, we will discuss some items in there in a little while but we did submit the annual budget. The call letter came out late I think it was October 29<sup>th</sup> and it asked for the budget on the 13<sup>th</sup> but we were able to submit it on the 30<sup>th</sup> of November. There is nothing extraordinary in there per se other than the new program for the Public Financing but hopefully we'll get the funding we need and once we get the funding in the budget, hopefully we'll get the authorization to spend it.

I think also PIO will touch on a program that we were able to run this year but I wanted to thank the Center for Election Integrity for their grant money to us. Sorry Center for Election Innovation and Research New York received a \$5 million grant to try and get information out to voters how they can safely vote in this past cycle. I think we were very pleased with the vendor we selected and in the message they were able to deliver throughout the state in a nonpartisan, just simply here's the voting options that you have, pick one and here is how to safely do it. So I really wanted to thank the team that worked on that. Having never had any resources to do that in my 29 years of doing voter administration, it was new to us, but it really came together and the team here at the State Board supported by Office of General Service and others really made that a success. And I know PIO will give you some of the details of that program. Other than that, I think we will recommend the change to the Voter Registration form in light of the parties that are qualified at a Presidential Election and a Governor's Election, so we make that new change after a President so that is on the agenda

today. So the results of the certification require that change to the Voter Registration form, the affidavit form, notice for the confirmation notice is in there also. So we recommend later for you to make those form changes so we can get those into the process. On that I think that covers the larger issues. Todd.

Todd Valentine: Yeah and just briefly on the election stuff, and not so much education for the Board is familiar with this, but you know obviously we're meeting today, the Board is meeting today as a result of the process set forth in the legislation. We have to meet in timeliness in order to produce results necessary for the Electoral College to meet. So this is all set forth in that and a Presidential year is always a long year and actually begins well before this year. It's not a one day event, it began back in the spring of 2019 when we started the process for getting on the ballot, but then overlaying the legislation were 20 executive orders out of the 76 that were adopted by the Governor for the COVID response in addition to four special chapters that were passed and a fair number of court cases; a couple before the election, then quite a number afterwards so it's a lot that has to come together for this to happen. So, obviously the credit goes towards obviously our county boards for doing that work and it's a process that we're always working with them on to refine, and this was certainly a challenging year so we certainly appreciate the work that they have done under their circumstances of the pandemic. And we're hopeful that there's always fine tuning done but we like to think that we've met our obligations as the statute has laid them out, so I think that's very helpful. Then the next election cycle has already started because the village election petitions are out already for the March village elections. So we're rolling from one election right to the next.

Douglas Kellner: Well thank you Todd. Does anyone else have any questions for Executive Director?

Peter Kosinski: I do. I thought maybe somebody could spend a little time explaining, I know we caught a lot of discussion, criticism, attention I'll say this year in the elections community for why it takes so long to count ballots. I think there's been some criticism that's been leveled around the state for why it's taking our county boards so long to count ballots, to come to a conclusion on some of these races. I think it would be helpful if someone I don't know Todd or Bob could explain the process that the Boards have to go through when they are faced with such an enormous number of absentee paper ballots that were submitted this year. I believe we were up about a million and a half if I'm right in this general election of absentee ballots that were submitted to our boards which is far in excess of what they've ever faced before. But you know the time it takes to count these ballots is institutionally determined in large part because of the nature of how absentee balloting works in New York State and it's not a matter that forged the way unnecessarily coming up with results but they have to go through a process of assessing the ballot, making sure that it was legitimately cast, that the person that voted did not vote on election day or early voting at a poll site. They have to verify that the person who got the ballot was the person who applied for the ballot, and there's a whole process involved. So I think it would be helpful to just kind of walk through that and I know there's a process we go to double check that people who have submitted ballots did not vote in any other jurisdiction around the state and our counties have to wait for

that kind of check to go on. But again, this process takes time and it's not a matter of boards just arbitrarily delaying getting results out to the public. I know everybody wants to get results on election night and we're used to doing that around the state and even around the country, getting results immediately where this year because of the enormous number of paper ballots and New York State absentee voting, some of these results were delayed, some of the counting did not occur until later in significant numbers. It wasn't the small numbers we normally face. So I think what's normally the case we see this happen but because the absentee numbers are so small, they generally do not affect results as much as they did this year so there's been just a lot more attention on this. So I don't know if you could just walk through that briefly just so people understand the process the board is going through.

Todd Valentine: Well I think you actually covered quite a lot of it. The absentee ballot process adds time, because obviously the board when it receives the absentee effort issues the absentee ballot which takes its own process because the voters have to apply, then the ballot has to be issued to the voter, and obviously there it's not the only way that people can vote. They certainly can vote absentee if they are eligible for that but obviously if circumstances change, they can either vote early or on election day in person. So part of the process that we do immediately after the election is to collect the information of everybody who has applied for an absentee, compare that against everybody who voted early on a statewide basis, and then obviously compare that to any voter who had shown up and wasn't in the poll book with the so-called affidavits we do, and actually we run a check statewide and provide lists back to the counties for any potential matches. And then they are able to at least verify that. Obviously if you vote in person, I'm not going to vote absentee and we did that pursuant to one of the executive orders where counties were obligated to give us their affidavit list within 48 hours after the election and most were pretty close to the 48 hours. I mean that was kind of a rough number but by that Friday after the election we had provided the matches to the counties, so by the time they got that back on Friday they were then able to do that analysis and then they could provide again, it's a transparent process so the counties have to provide notice to the candidates or their representatives to come in and be part of the canvass. They have a right to do that.

Peter Kosinski: Just so for people that don't understand the terminology an affidavit ballot is for a person who arrives at a poll site, their name is not in the poll book and they for some reason either they're not registered, they moved there can be numerous reasons, but the person insists on voting at that poll site and so the poll worker gives them a paper ballot called an affidavit ballot that the voter fills out rather than voting on the voting machine.

Todd Valentine: Right and that's more critical now as with the law that passed previous year which allows voters to what we call the Statewide Transfer where they can move and then that affidavit can be used to update their voter record and then that ballot can count in their new county. So we need to make sure as far as the matching criteria that they didn't inadvertently had previously applied for an absentee ballot in an old county that doesn't get counted or were concerned about you know making sure their vote counted and voted in person. So we want to make sure before that affidavit ballot is canvassed that it's reviewed. And again, notice has to be provided to the candidates when those ballots are being reviewed

and in an open transparent process that they're allowed to be there. And many candidates do take advantage of that. Obviously, court actions do occur which can alter the schedule somewhat although it shouldn't because notice was provided and by in large it didn't really impact the schedule. But it still takes time to go through each of those ballots and validate that yes you did apply, no you didn't vote previously and that every voter followed the procedure that's required under statute for being eligible by their vote absentee or affidavit. So that takes time and the statute is designed for that. The counties have 25 days after the election to do their work, to complete that process and by in large most boards were able to meet that requirement. Normally now we would not certify until December 15<sup>th</sup> except in a presidential year the time for us to do our work gets truncated, in order to accommodate the meeting of the Electoral College. So it's a process that's not something that counties really drag their feet, it's with the share volume of the ballots that you alluded it takes time to go through each one.

Peter Kosinski: Well then there's a process where absentees typically aren't counted until at least 7 days after the election and I think the reason for that is that allows all of the ballots to arrive before they start counting because they have to be at the Board up to 7 days after the election or I believe 13 days for military. But most boards as I understand it wait for all of their ballots to come in so that they can count them by ED rather than piecemeal. It's I think easier for them to wait and then they can see how many ballots arrive from a particular ED and they can do those all at once rather than doing them piecemeal which they'd have to do if they started early. And I think it's easier for the boards to do that and it's frankly probably more efficient for those people that want to come in and see what's going on at the count to sit there when all of the ballots are there rather than having it done piecemeal. And again, I think it's part of the transcription process to allow observers. We've read a number of stories about how some states there's allegations of not allowing people in and I think New York's very transparent about that, that it does allow people to come in and oversee what's going on at the board as far as the counts go to make sure that it's being done properly. But these delays are again, it not just because the board's want to delay or can't get it together, there is a delay for a reason that it's a more efficient practice to wait until everything's in and just start counting than to try and do it piecemeal because I think if you do that you can easily lose track of what you've counted, what you haven't, what EDs are done, which ones aren't and I think it's just an easier process. So again, there is some built in delays here and they're not done just to delay results but they're done with a legitimate purpose in mind which is to make sure that they validate the authenticity of a person casting the ballot as well as the ballot itself.

Todd Valentine: Yeah, that's correct and New York is also among a small number of states that allows voters to return their ballots after the election, still have to postmark by election day. We do have that post election receipt date that gives ample time for voters to return their ballots so that they can be counted.

Peter Kosinski: Okay again, I just wanted to go through this a little bit because I know I've read a lot of the stories, I'm sure a lot of people have criticizing. Now there's the other aspect which I'm sure Kim or Brian can speak to which is some of these races go to court then you get court intervention, you get a judge involved, you get delays based on court orders and

court intervention to delay counts or that kind of process as well which also delays the counting at the board, that's something really outside the jurisdiction of the boards themselves and that can also lead to some delays. So beyond the regular statutory practice there is also judicial intervention that can cause delays in some of the counting around the state. And I think there was quite a bit of that this year.

Todd Valentine: Yes, quite a bit.

Andy Spano: I'd like to say something. All these details are important for the public to know but probably in the scope of things, this is not going to be unique to this year. That this will be something that may occur in other years because we have a number of things that people have to deal with in this election. And as you were speaking I was listening to all the complications and trying to jot things down. You had early voting in a Presidential election that's the first time we've ever done that in the State of New York. You had a pandemic which raises all kinds of problems but out of the pandemic came Executive Orders from the Governor...

Peter Kosinski: Andy, we can't see you now. Andy?

Andy Spano: It's a little Italian movement.

Peter Kosinski: That's alright.

Andy Spano: You had the pandemic which had Executive Orders changing dates, changing the way we had to do things when we had to do them, plus you add the pandemic which affected older people more than younger people, that affected a lot of the volunteers and people working the various commissions and so on. So we had to get a whole effort out there to get people to man the poll. Then you had the absentee ballots where I think we had a million more than we normally had, and they had to be counted exactly and went through all the details that you just went through. In the background we had training going on an ongoing basis for months in Cybersecurity to make sure that no one interfered with the election. All of those things were done I think beautifully by the people who worked in our system in New York State and rather than apologizing for anything, I think we should be promoting an attitude that we did a great job. Now I'm not saying "me", 'cause I don't do that much. But the people who work in the system, taking all these things into effect, did a fantastic job in New York State.

Douglas Kellner: Here, here.

Peter Kosinski: Agreed.

Anthony Casale: Agreed.

Douglas Kellner: Alright anything else for our Executive Directors? Then we'll move onto our Counsels Kim Galvin and Brian Quail.

Brian Quail: Hello Commissioners. I think the best way to proceed with the Counsel and Compliance Unit report today is to give a little update on the various cases that the unit has been dealing with, and then we'll transition into the discussion of the Compliance Unit report information. So, quite a few things have happened since we last assembled or near then. In the League of Women Voter's case, this is the State League of Women Voter's case in which the Board had been sued to extend the voter registration deadline closer to the election. On September 25<sup>th</sup>, the motion for preliminary injunction in that case was denied at the trial court level and on December 1<sup>st</sup>, the First Department of the Appellate Division affirmed the lower court decision. So the statute remains as is. Of course, I should note that the legislature is in the process of adopting same day voter registration and that may actually be on the ballot, should be on the ballot in November of this year.

In the other League of Women Voters case related to their constitutional right to cure certain defects, the board arrived at an agreement to implement the legislation that the Governor and the House of the Legislature had adopted in a way that satisfied the concerns of the plaintiff in that case. The case itself is going forward and there's a preliminary conference on January 26<sup>th</sup> but we are hopeful that it may be able to be settled.

In the Hernandez case which dealt with the accessibility of absentee ballots, there had been a motion for preliminary injunction similar to the one that was in effect during the primary. The court found in favor of the board's remediation plan and we implemented that in November but the case in chief will be continuing. We will be having discussions on behalf of the Board with the plaintiffs in that case.

In the, what we refer to as the SAM Party case in which the Board was sued over the implementation of the law related to party thresholds, the trial court, as the Board knows, ruled in favor of the Board's position. The plaintiff's took it to the second circuit, been fully briefed and its on for oral argument on December 15<sup>th</sup>. I would also note that there is a very similar case which has been deemed related involving the Green and Libertarian parties. That case is still in the discovery stage and the discovery stage in that case will not end until February.

And since the last time we met, we were sued in the Deutsch v New York State Board of Elections case seeking an injunction to extend the receipt deadline for e-mailed UOCAVA ballot applications. The court upheld the application of New York's statutory deadline and the case has since been voluntarily discontinued.

In Harley v Kosinski, that was a case related to seeking electronic return of UOCAVA ballots among other things and the PI application made in that case, and judge Brian Kogan issued a decision on October 13<sup>th</sup> denying the preliminary injunction and the case was withdrawn as moot at that point so that case came and went since our last meeting.

In Sugarman v New York State Board of Elections, as the Board knows the regulations of the Board related to Enforcement activities related to subpoena being granted by the Board and



other matters, we prevailed at the trial court level but Chief Enforcement Counsel took an appeal to the Third Department. It's been totally briefed an oral argument is now scheduled for the December term of the Third Department on December 16<sup>th</sup>.

Also in the Gallagher case, there was a preliminary injunction motion made for the November election to that which had been sought and upon which the plaintiff prevailed related to the primary and the court declined to extend the injunction to the November election and hopefully that case will be finally resolved.

In the Upstate Jobs case related to an independent body seeking the right to have housekeeping and limits on par with political parties, that case has been fully briefed on competing motions for summary judgment, and we will see where that goes.

That's the class of cases related to sort of the nonspecific ballot access or post election issues. We had approximately a dozen cases related to recounts or similar issues starting on the eve of the election and expanding just past the election. I am pleased to report that all of those cases save one have been resolved. Commissioner Kellner noted that case the Tenney v Brindisi case is continuing and that is the only one of the cases related to the canvas ballots that is still continuing.

In terms of the other activities of the Counsel's unit, we have been working on drafting at the staff level a set of Public Campaign Finance process regulations, understanding that that process does need to go forward, despite the lack of resources. So we've been working on that. We also have begun work on at the staff level formulating proposals to the Board related to the annual legislative program. We should be able to provide the Board in a timely manner at it's first meeting on or about January. And, of course, the FCC complaint that's later in the agenda we've worked on that. As far as the mainstay of what we actually did which doesn't fit well in the summary on any kind of report, providing assistance to the county boards of elections as they've fought to navigate these very difficult and trying circumstances given the legal backdrop of what they're doing having changed substantially as the process unfolds, providing support to the county boards of elections and the work that they do.

For the Compliance Unit, we have some numbers for you. The number of paid Internet digital ads that were filed as of 12/2 of this year, there were 308 filings made representing 114 different independent expenditure committees, and so we've continued to implement the provisions related to disclosure of those items. As far as the July periodic is concerned, as of December 2<sup>nd</sup>, there was still 3,509 outstanding nonfilers, and the total number of referred deficiencies that remain deficient is 1,411. The work of the committee, excuse me, the work of the unit overall 159,000 reports have been listed, 143,218 have been reviewed and the ratio of deficient training and compliant has remained pretty much the same. And there is not a substantial backlog in the review work that needs to be done, even with the filing of the pre- and post-election reports, related to the election just passed.

And I think that's it in a nutshell.

Douglas Kellner: Great. Kim do you have anything to add?

Kim Galvin: No that about sums it up.

Douglas Kellner: Alright well let me just extend my thanks to the Counsels because with so many, as the other aspects of Election Administration this year, the number of lawsuits has really put a very great burden on the Counsel's Office and they rose to that and I know that there were many late nights in terms of preparing papers for the various court proceedings and I also want to acknowledge that the Office of the Attorney General provided additional resources and representation for the agency that was very helpful and productive. So my thanks to them. Commissioners if you have no other questions, we'll move to our next report from Election Operation's Tom Connolly and Brendan Lovullo.

Tom Connolly: Thank you Commissioner. Obviously, staff has been available and very busy to the county boards throughout the early voting period and Election Day. I actually went out to Chenango County on the first day of early voting as they were in the midst of a cyber-incident which impacted some of their systems. I was happy to report that the first day went very smoothly so they were able to continue operations of the election there. We did obviously work with the other units as we always do on election night to get the results from counties with both early voting and Election Day in order to publish that information on our website. We did collect the information as I said previously from counties on both their affidavits and absentee voters in addition to getting their voter history so that we could do aggregation and statewide matching so that they could start their canvassing early. We collected statements of canvass from general election and aggregated all that data for the Commissioner certification which happened earlier in the meeting. We will obviously go ahead and deliver the official documents to all the appropriate entities and we will be sending out letters and certificates to all of the winners of contests. Also, as part of our continued conversation with New York City regarding ranked choice voting, we had provided them with a draft of what a possible testament plan could look like back in October. We had a meeting between staff here at the Operations Unit and also Executive and Operations Staff from the City Board to look through that plan. We are waiting for some formal feedback from them. They did provide us with a copy of a request for proposal that they and published in the beginning of November which actually is returnable on Monday the 7<sup>th</sup> of December. That document does state that it's required by the State Board the vendor would have to submit any of their software to us for either authorization certification or approval if merited.

With regard to voting machines, we will have a couple of systems to bring before the Board likely at the next meeting. For ES&S, they submitted a full voting system which includes the ExpressVote XL hardware it also includes ES450 which is a new piece of hardware. It includes the existing ES200 and 850 and also updated EMS software.

With regard to Dominion, they had some minor modification that dealt with the Image Cast Evolution or the ICE and also the ICP. Both of them were firmware updates and on the ICP there was also what was actually an enhancement to the ballot processing, the imaging processing the ICE was just an update to the firmware for printer hardware that was already

approved as diminimus back in April and there was also a hash export utility. So we will be providing the reports on both of those systems to the Commissioners for consideration at the next meeting.

Democracy Live which has been mentioned in the past at a few meetings has stated their intent to submit their ballot marking device for testing and consideration for certification by the State Board. Their system basically is just about marking system. They can work with the two existing certified systems in New York ES&S and Dominion. They can take the information that comes out of their election management systems. They can then provide a voter with an accessible voting experience. They can then print on demand a ballot that will be able to be scanned on the existing certified optical scanned hardware. There is also the capacity for a voter to do a verification of the printed ballot should they so desire.

Other than that, I wanted to obviously thank my staff. They've been doing a great job, there have been a lot of late nights, with entering the data and proofing it, so I appreciate all of their hard work. Brendan, did you have anything in addition?

Brendan Lovullo: No, I just wanted to echo everything that you said and also the special thanks to our staff. I mean this whole process really began in March when everything shut down and we actually ramped up the collection of petitions and everything else. So I can't speak enough about how great of a job that everyone's done here throughout; not just our unit, but we've had help from other units as well with the influx of papers and everything else that we've gotten. So thank you very much to all of them.

Douglas Kellner: Alright, well thank you. I am interested in the paperwork behind these new voting machine certification processes. Have we actually received the reports on the ExpressVote XL?

Tom Connolly: From SLI we do have a final report and we just have to I think approve the near final draft from NYSTEC and we will provide all that information along with the technical documentation that we normally would give you, obviously that's kind of large so we'll probably provide it to you in a download form so you can have access to it.

Douglas Kellner: And when do you expect that that will be distributed to the Commissioners?

Tom Connolly: I would probably say not later than the end of next week, probably less.

Douglas Kellner: Okay so alright. And with Democracy Live is there also paperwork involved in that yet?

Tom Connolly: So, Democracy Live has submitted I would say an initial application although it was incomplete, so we had a call with them last week about some of the additional details that we wanted to receive from them. So I'll provide that information once I have a complete set from them.

Douglas Kellner: Thank you. Anything else? Alright then we'll move to the reports from Public Information John Conklin and Cheryl Couser. John, you're muted so we don't hear you.

Todd Valentine: Now you're muted again.

John Conklin: I think I double clicked there, so sorry about that. Can you hear me now?

Douglas Kellner: Yes, we can, thank you.

John Conklin: So again, thank you Commissioner like all the other units in the agency the Public Information Office has been extremely busy since the last Board Meeting. We've been answering thousands of phone calls and e-mails about the election and anything and everything to do with the election. We had as many as 8 people on the phones in the Public Information Unit so we did get some assistance from other units in the agency which is often the case, we all pull together in these difficult times. So we do want to thank those other units for lending some staff to us for coverage on our phones and our e-mails.

So we've also processed 462 FOILS since the last Board Meeting, 138 in September, 114 in October, and 210 in November. We continue to attend and participate in all the Election Commissioner Association calls that occurred through September, October and November. We've been having meetings with regard to the online Voter Registration System and the automatic Voter Registration System in anticipation of that legislation being signed later this year at some point. We were asked by a number of county boards to issue some kind of statement with regard to sharpies which we did. We put out a press advisory letting people know that if they use the sharpie that it was okay and that the voting machine would count their ballot. That was as a result of a meme that sort of went nationally and don't know that we use a lot of sharpies in New York State but felt compelled to issue that to take a little pressure off the county boards.

With regard to the website, we posted unofficial election results for the general election, obviously. We have also posted the official results for the June 23<sup>rd</sup> primary, for the June 23<sup>rd</sup> Presidential primary, and for the special election in New York 27. We posted the webcast and the transcript for the September 8<sup>th</sup> Board Meeting. We also took down the absentee ballot portal that was up on our website approximately 700,000 applications were processed through the Statewide portal, and directed to the county boards on a daily basis. Just to be aware, the portal did not include New York City or Erie County. They had established their own portals; so that number represents all counties except those two jurisdictions.

With regard to NVRA, we continue to be, there are no in-person board visits going on for the NVRA unit. We are continuing to monitor the counties for any anomalies but we are working on setting up a remote schedule to continue board visits going forward so that we can complete the visits within the customary 3-year period that we follow. So we're looking to at least visit 19 boards remotely if nothing else changes this year to complete that process.

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We're also collecting data for the post election DOJ surveys. With regard to the website accessibility coordinator, we continue to have internal meetings with the Information Technology Unit and our vendor level access to work on parts of the website that have underlying responsibilities. And lastly, I'm just going to preface it by briefly discussing but then handing to Cheryl, we did receive a grant of \$5 million from the Center for Election Innovation and Research. The purpose of the grant was to improve the effectiveness and efficiency of election administration by funding election offices to educate, inform, and communicate with voters. So we did put together a media campaign with help from the Office of General Services and Cheryl is going to talk about some of the details of that, and then she'll also give a recap of the statewide grants that we administer as well.

Cheryl Couser: Thank you, John. I would also like to mention that this year the Voter Look Up also included early voting location and hours which was very beneficial for voters when they logged on and they could find not only their Election Day poll site, but early voting information. And the unit also provided a security briefing or attended a security briefing to the FBI and the Department of Homeland Security in New York City on October 22<sup>nd</sup> to review New York State Election Law.

Regarding grant administration, I'll discuss grant administration and then our media campaign that we're all very proud of. Regarding grant administration, the State Board is required to report to the Federal Elections Assistance Commission on the 2018 and 2020 election security grants. The Shoebox or the submission of HAVA Operations Expenses by Boards of Elections and the HAVA CARES grant. We made our 20-day post general report on the HAVA CARES fund through the Election Assistance Commission on November 20<sup>th</sup>. We attended several webinars by the EAC, most recently on their new reporting financial system in which we will use shortly to report our HAVA 2018 and 2020 election security reports. Those reports are due December 29<sup>th</sup>. We have been working with the Office of General Services and expect to have that report submitted next week by the 11<sup>th</sup>. The State Board, our unit also assisted in the administration of 7 grants to county boards of elections, and in this portion I'll just give an overview of the grants, but also look back, kind of a year in review on how each grant went in terms of administration.

We have the HAVA Education and Training Grant in which there's \$1.3 million available. Last December there were \$2.6 million available to counties. That's a difference of \$1.3 million was spent down.

There is the New York State Poll Site Improvement Fund which currently has a balance just shy of \$1 million. Last year there was \$1.7 million so a difference of \$700,000 spent down.

For Shoebox funding, there is \$6.7 million available. Last year at this time there was \$8.9 million available or a difference of \$2.2 million.

We have the State E Poll Book Grant Fund which was \$14.7 million appropriation. There is currently a \$2 million balance. As of last December there was \$13.3 million available or a difference of \$11.3 million.

State Early Voting Aid to Localities Grant which is a \$10 million grant. We currently have \$2.6 million available. Last December there was \$9.8 million available or a difference of \$7.2 million.

The 2020 Federal HAVA CARES Grant with a federal appropriation plus a state match which totaled \$24.6 million. Currently there is less than \$1 million left or approximately \$865,000 left to be spent or claimed. We have spent down \$23.7 million of those funds.

And there is also a newly created Cybersecurity Election Remediation Grant of \$9 million. There haven't been any claims submitted yet. 40 contracts are in.

So over 2020 we have processed approximately \$46.4 million in claim for payments. Remaining towards the end of this year, there will be \$4.6 million or I'm sorry \$23 million remaining. \$4.6 million must be spent by the end of December, December 31<sup>st</sup>. So heading into 2021 we will have approximately \$18.8 million in grant funding left. Half of that is the Cybersecurity Remediation Grant Funding of \$9 million.

The county boards have been working diligently in submitting claim for payments for the HAVA CARES fund there was a December 16<sup>th</sup> deadline to get those claims into us. The majority of counties exhausted their funding. We're working with approximately 5 counties to get below the 20% state match. And again, those funds must be spent by December 31<sup>st</sup> and related to the 2020 federal election.

The State Aid to Localities and the E Poll Book Grants the eligible expenses must be spent by December 31<sup>st</sup>, 2020 and all claims for payments are due next year March 31<sup>st</sup>. So the Public Information Office will continue our outreach on the HAVA CARES the E Poll Books, the Aide to Locality Grants and all those funds that must be spent down by the end of the year. We also are conducting outreach on the Cybersecurity Remediation Grant to have contracts submitted, and I just would like to say a thank you to our grants team who worked with all the counties on these 7 grants and as we receive claim for payments, they review them all and provide suggestions; perhaps you want to spend your money on this grant first through to exhaust your funds and then work on the other grants. So thank you for all of their work.

Douglas Kellner: Thank you Cheryl. You mentioned one grant program which you called the Shoebox. Do you want to explain what that is?

Cheryl Couser: Absolutely. That is, did I mention it's the first time the submission of HAVA Operations Expenses by Boards of Elections? Shoebox can be used for any purpose supporting a federal election; the list of uses is widely permissible from voting machines to any supplies needed at a voting site. In fact it covers almost any expense that other grants do cover perhaps and as I said, there's approximately \$6.7 million in that fund.

Douglas Kellner: And when did the Federal Government appropriate those funds?

Cheryl Couser: Well Commissioner we took over the fund internally this year, but I want to say and please correct me if I'm wrong: 2006?

Douglas Kellner: Right so funds basically the county boards are banking that they and there's no guarantee that the federal government is going to roll over these funds in the future if the counties don't spend them, right?

Cheryl Couser: That is correct, and we did spend down \$2.2 million. I would like to think that's probably because the 3 grants that expire this year, many counties were focused on expending those grants and hopefully will utilize the Shoebox and also the HAVA Education Training grants soon.

Douglas Kellner: Certainly, there was a lot of fiscal pressure put on the counties this year and the state funds helped very much for the primary, but I think we're also aware that the counties had to incur additional expenses in running the general election with the new programs that were initiated this year that were not fully funded.

Cheryl Couser: Certainly. I could provide further statistics next meeting, but the majority of the category of the spending from HAVA CARES was on postage and additional mailings.

Douglas Kellner: Right, any other questions? Then we'll move to...

Cheryl Couser: If you don't mind, I would like to speak about our statewide media campaign.

Douglas Kellner: Certainly, go ahead.

Cheryl Couser: Great, thank you. As Bob mentioned and John mentioned the State Board received a \$5 million Voter Education Communication Grant award from the Center of Election Innovation and Research at the end of September. This grant award was utilized to conduct an extensive statewide media campaign. The board had a very aggressive timeline from late September through November 6<sup>th</sup> in applying and receiving the award, getting the contract, selecting voice over talent, creating media including radio script, static content and videos, revising script, translating into 5 languages, 4 languages and approving content and run time. The content for this campaign began to air on October 15<sup>th</sup> and concluded on November 13<sup>th</sup>. The campaign was conducted in English, Spanish, Svengali, Chinese and Korean and we utilized print ads, out of home advertising, social media, streaming radio, streaming audio, streaming video, streaming digital mediums such as banner aids. The content and campaign included advertising specific to 3 ways to vote in New York State; by absentee, early voting, election day. Specific ads on how to vote by absentee, ads on the 9 days of early voting and ads specific to November 3<sup>rd</sup>, 2020's election day with hours and how to find your poll site. There were also ads on make a plan to vote. Find your polling site and your hours of operation, pertinent deadlines, safety considerations relative to the 2020 general election, please mask up and please prepare to social distance. And we also ran ads after the election on post election timelines specific to receipt dates on absentees and then we wrapped it up with a Thank You New York ad campaign. Per the vendor Op Ad Media, a

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conservative estimate that the overall media campaign between TV, radio, digital, out of home and print it reached approximately 95% of the New York State adult population. This means about 14.7 million adult New Yorkers were reached. There were over 178 million impressions and 15 million video completions during this campaign. And we will be receiving a high-level final campaign recap shortly from our vendor. I would like to reiterate thank you to Op Ad for delivering a top quality product in a very short timeframe, for the assistance the Office of General Services provided to us for their excellent content creations, and overall guiding us through the process, and also the New York City Board of Elections for their assistance in reviewing translated copy for us.

If I could take one moment further and I know I'm making this the longest unit report I've provided, I would like to show you a couple copies of the ads we developed. So let me share my screen for a moment.

Okay is that on? This is a copy of our out of home media campaign placement visuals. So these are some of the digital billboards around the state in the Bronx, Manhattan. These are statewide in Albany, Utica, Rochester, Buffalo, North Country, on Long Island. But these are examples of some of the billboards around the state, make a plan to vote. And down in City Field these were both in English and Spanish. We also utilized print ads as I mentioned and these are a couple of the newspapers that and examples in the newspapers Daily News, The Schenectady Gazette, Albany, Buffalo, Syracuse and Rochester newspapers as well as in Svengali, Spanish, Chinese and Korean. So we were able to be very visual in all different mediums. And it was a very interesting experience for me just demographically the different mediums that people tended to look at.

This is a much larger file, but I just want to go through a little bit of the social media content from Facebook which was in English and Spanish and we had Instagram in multiple languages including Chinese and Korean. We used Nextdoor, Twitter, Snapchat here's some streaming audio, I will go through quicker but YouTube it's on our State Board channel as well, Hulu, I'm sure everyone has hopefully seen this, Spotify and then Accuweather so it was widely displayed. We are very proud of the resources we were able to obtain. Bob said in his 29 years it was a first, and this was a fun project to work on in an extremely short timeframe. So that ends that part.

Douglas Kellner: So Cheryl I guess the key here is that this was a private grant. This was not funded from the State treasury.

Cheryl Couser: That is correct. This is a private grant. But it really did supplement, PIO tries to provide we do a lot of TV interviews, we do interviews for print, we do radio interviews, we do press releases, but it's not enough. This really helped reach all New Yorkers.

Bob Brehm: I just also want to point out even though it was a private grant, Todd and I reached out, it took an effort to coordinate with the State Division of Budget and their Comptroller's Office to line up the ability to receive the money and spend the money. So



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even though it was private money coming to us it still took a cooperative effort of many different agencies to allow us to use it in a very short time period.

Douglas Kellner: Good. I appreciate that explanation. Alright anything else for Public Information? Then we'll recognize Bill Cross for Information Technology.

Bill Cross: Good afternoon, Commissioners. I will start with projects, as usual. CAPAS-FIDAS; the team is working on final testing of the system in preparation for our go live, set for January 25<sup>th</sup>. Outreach and training materials are also being finalized, and information will be posted on our website in mid-December. Webinars, training videos, and such, and we will also have outreach to all of the treasurers. The final testing consists of performance testing, load testing, accessibility, security, etc., and it is going very well. We are still on point for that date. Online voter registration; the mini bid for the software analysis and development has been completed and released through OGS. We expect bids back by January 8<sup>th</sup>. In the meantime, the team has been conducting shareholder meetings with State IT services, DMV, the various NVRA agencies and the voter registration vendors on the effort. For NYSVoter; we are currently working on several enhancements, as always it seems. As Cheryl noted, just prior to the election, we added the ability to look up early voting poll site locations, including hours, maps to the locations, and directions. We are now working on adding the display of local ballot information for January to that system. IT has also worked with executive, admin, Counsel, and others to develop the state fiscal year, 21-22 budget, including an initial budget for the public campaign finance, and IT needs a round to that. In terms of security, I am happy to report we had a secure election. The secure election team posted daily touch points, with all our various state and federal security partners, as well as monitoring several internal and external sources throughout the campaign, throughout the election period for security information. I am also happy to report that all county boards have now submitted, and we have approved their Cybersecurity remediation plans. With these plans in place, they are now able to utilize the nine-million-dollar grant that Cheryl spoke about. They also need a contract to go along with that. Forty have been submitted; we are trying to get the others, and there will be more outreach to the counties to get them finished up, now that we are post-election, but that is significant progress. Also, building on the Cybersecurity directive we issued just prior to the general election, the secure election center has begun development of a comprehensive set of Cybersecurity standards for the county boards, which will ultimately be issued as regulation we're targeting the January timeframe. This will formalize many of the practices that the counties are already doing, but also add some industry standard practices that will greatly enhance the security of elections at the county level. As always, we are also working to improve our own security infrastructure. I can't go into details in a public setting, but one of the things we are doing right now will significantly increase our ability to have visibility across all our systems and correlate a lot of that information. It is a significant addition to our abilities. In terms of the website, I know many have touched on it. Obviously, a significant increase in traffic leading up to the general election, in particular, the absentee voting webpage, probably significantly driven by the media campaign, but it had at one point two million views alone in just October. The voter lookup function had eleven million views over the September-October timeframe, with 1.3 million on Election Day alone. Also, as John noted, the absentee ballot portal processed over

700,000 requests for ballots in the state, not including obviously New York City and the Erie, as John noted. Are there any questions?

Douglas Kellner: Alright, well if there are no questions.

Peter Kosinski: I just want to say, I think Bill has accomplished a lot here. I am encouraged by his report that he is going to have the FIDAS-CAPAS up and running. That is a major accomplishment, and I know he is doing it in the midst of many other initiatives he has had to undertake during this year.

Bill Cross: Thank you, Commissioner.

Douglas Kellner: I share that, although I will reserve my compliment for (laughing), since I've heard this so many times before, but.

Bill Cross, Well thank you also, Commissioner (laughing).

Douglas Kellner: I know that you have accomplished a great deal this year, especially in getting that absentee ballot portal up and running for the general election.

Bill Cross: Yes, as many others have thanked their teams, I would be negligent if I didn't do the same. They have been fantastic this year, particularly that effort was pulled together in a very short timeframe, as well as everyone working on the other projects; security and CAPAS-FIDAS.

Peter Kosinski: And, Commissioner, if I just could, I would be remiss if I didn't congratulate the rest of the staff as well. I know it has been a difficult year for the staff. It has been a difficult year for everybody, between COVID and all of the changes to the election law, and I know the staff has worked very, very hard this year. I know we are at the end of our reports here, so I think everybody deserves a real slap on the back and thank you that they have done a great job of carrying through this year, not just the county boards, but also our board itself, and I congratulate everybody there.

Douglas Kellner: I couldn't agree more. Commissioner Spano, do you have a dog nearby?

Commissioner Spano: No, what happened is that my, you see me in two places there?

Douglas Kellner: Yes.

Commissioner Spano: My sound went off.

Douglas Kellner: I hear background noise coming from your mobile phone connection, so that when you are not speaking, it would be helpful if you would, unless it is somebody else. It sounds like a dog to me.

Douglas Kellner: No, it stopped.

Douglas Kellner: Thank you. Alright, well, now, Commissioner Kosinski, you had all this great praise for the staff, but now we turn to the one unit where I would not include in that praise, our enforcement unit. I do not see Ms. Sugarman joining this call. I will ask our compliance counsels to confirm that for the entire year, there has not been a single criminal referral. Is that correct?

Brian Quail: Yes, that is correct, and also, we are on target, Commissioner, for this year to be the first year that we have not had a hearing officer referral either. We are at zero for the year and 27 since 2015.

Douglas Kellner: Alright, so we have no criminal referrals, no subpoenas, no hearings, and then on the other side of the matters that we have referred to them for enforcement, I think you mentioned before, that there were 1,411 discrepancy, noncompliance referrals made this month.

Brian Quail: No, that's the aggregate number of deficiencies that have been referred, that remain deficient.

Douglas Kellner: Okay, and yet, she has not brought even a single proceeding to address those deficiencies, correct?

Brian Quail: None at all this year.

Douglas Kellner: And we still have thousands that we have referred to her, who have not filed at all, and there has been no enforcement against non-filers, correct?

Brian Quail: That is correct.

Douglas Kellner: And I guess I want to emphasize that the Commissioners of the Board of Elections do not have the power to remove Ms. Sugarman for nonperformance of her duties that that rests solely with the Governor. Does anyone else have any other comments with respect to the Enforcement Unit?

Peter Kosinski: I have nothing else, Commissioner. I think we have said it all before, and I think there has been no change over the year. I am hopeful that things will improve going forward in our relationship with the Enforcement Counsel and that things will move more smoothly through that unit.

Douglas Kellner: Alright, thank you. I do, the next item on our agenda is old business. I don't believe we have any old business, so we will move to new business. The first item was a discussion on New York City's request regarding ranked-choice voting. I believe that we covered that in the Operations Report. Does anybody have anything else they want to add on the ranked-choice voting issue?

Peter Kosinski: I guess I am not clear exactly on what's going on with it. Is there any other, so the report that I got, or I heard, was that the staff discussed something with the city board.

Douglas Kellner: There was a draft outline that was circulated regarding what the state board's role would be, depending on what New York City submits. I guess to summarize it very quickly, is that if there is a change in the source code to the DS200 machines, then that would have to be, go through a certification review process. If there is simply a software that is used only for aggregating the vote count, that that doesn't involve the actual voting machine process, and so that would need full certification, but it is still also a county board procedure, and those procedures would still have to be reviewed, just like all other county board procedures. Is that a fair summary, Tom and Brendan?

Tom Connolly: Go ahead, Brendan.

Brendan Lovullo: Somewhat, I would say, and we did say it to New York City, that there is no official agreement between the Commissioners on the, and the State Board and between Tom and I on exactly what needs to be done, based on the legal ambiguities of the law that was passed, and the fact that we don't have anything to test to. There are no standards for any of this stuff, so that was all passed along to the City Board and their staff when we talked to them a number of different times, so the paper was sent out to them, so they could have it, but under the, with the understanding that there is still no agreement on what exactly needs to be done to any of these, to the utility that they may or may not receive requests back for.

Douglas Kellner: And at this time, we don't have anything submitted to us.

Brian Lovullo: Correct.

Douglas Kellner: There is nothing for us to review at this point.

Peter Kosinski: Yeah, I mean, I guess, from my standpoint, just to comment on this, it seems to me there are a couple of principles at play here. One is that I think that any voting system in the state needs certification. I agree with the Commissioner that if a Board of Elections is utilizing a voting system in the state, it does need to go through the certification process that has been approved by this Board and by the state legislature for certification. That said, this ranked-choice voting process is not something that is a part of the state law. This was done at a local level. It was done at the city level; not at the state level, so there really is no state legislative action that was taken that we could look to, to provide us with any authority or guidance of how to proceed in this matter. We don't have voting system standards for ranked-choice voting, which is really a different way to conduct an election than we have had in this state or that we have in this state. I think to have a local government enact a brand-new voting system and then ask the state to approve it, I think is very presumptuous. I think as a state agency, we enact laws that are passed by the state legislature, and this was not. I know there were bills in the legislature this past session to adopt ranked-choice voting and authorize it in jurisdictions like New York City, but those were not adopted by the state legislature. We

also have, you know, conflicting state laws here. I mean, the state law provides for a runoff election in New York City. This ranked-choice voting system would preempt that really by having a different system in place that would eliminate the runoff election in New York City, which is still part of state law, so from my standpoint, asking us at the state level to get involved with something that was enacted locally and not approved by the state, I don't know how we do that. I don't know how the state sanctions something, certifies something that we don't have any standards to certify to or that has been authorized by the state legislature.

Anthony Casale: Doug?

Douglas Kellner: Yes, Commissioner, go ahead.

Anthony Casale: Yes, I want to echo what Peter sentiments, and having spent a couple of years over on the third floor in my lifetime, I can tell you that at the end of the year, when you evaluate the actions of the state legislature, you look at what they have done, but you can also look at what they haven't done, as a means of evaluating their position on various issues. The fact that bills were introduced and never taken up might be as much of a telltale sign as bills they do pass, so I think until the legislature takes action, and my concern would be, there are how many in the state, if every town or village or city felt that they could change the laws and have their own form of voting without coming to the state legislature, we would have a hodgepodge mess across the state, so I would agree that this is not really something we should be dealing with at this time.

Douglas Kellner: Commissioners, I would simply point out that there has been no legal challenge to the system, and I believe that if there were, it would be unsuccessful, that the Court of Appeals has ruled that other municipalities have the right under the Home Rule Provisions of Article 11 of the State Constitution to adopt systems consistent with the authorizations in their various charters for the conduct of voting, and there have been challenges in the lower courts, for example, to the city charter revisions of the petition requirements and the campaign finance restrictions that are stricter, well the campaign finance restrictions are stricter. The petition ballot access requirements are actually half the level as provided in state law, and so far, the courts have upheld all of those. We have a mandate under Article 7 of the Election Law to supervise voting systems, so if there is a legally enacted local voting system, then we need to perform our duties with respect to that, and then every county Board of Elections is required to submit their procedures for review by the State Board and certainly whatever procedures the city uses to implement ranked-choice voting would be subject to our overall review. So, that's my view. We will see if someone brings a court challenge to this and if not, I think we need to do our part.

Peter Kosinski: Well again, I would just reiterate that I think our part is limited to what the state legislature authorizes us to do. I think that has been done in the certification process of voting systems. There are statutory provisions. We have issued rules and regulations pursuant to those about certifying voting systems. None of that speaks to ranked-choice voting and this new way of accumulating and aggregating votes, and I just don't see where we have the authority, as a state agency, to enact something again that the state legislature has not

approved, has not sanctioned, and as I said earlier, and Commissioner Casale reiterated, has in fact chosen not to. I mean the state legislature could have approved this and chose not to, and I think that is significant.

Douglas Kellner: They didn't choose not to; they deferred to the city government. Alright, look, I guess we are not going to resolve this today. I do think we have an obligation to carry out Section 7-202 of the Election Law, but there is nothing before us now, so the city hasn't submitted anything, so there is nothing for us to do.

Peter Kosinski: Okay, well I just wanted my position to be known. I don't want to say something, you know, or wait to say something necessarily. I just wanted to get it out there.

Douglas Kellner: Okay, so next is the resolution to approve the revised voter registration form. Todd and Bob brought this up in their reports. Is there anything to add? Does anyone want to discuss this resolution?

Peter Kosinski: Yeah, I think we should just note what it is. My understanding is this is reflecting the outcome of this past election, where I believe three of the recognized parties failed to meet the threshold necessary to retain their position as a recognized party in New York for voter registration purposes, and so the new registration form will delete those three parties, as I understand it, and reflect that there are now four recognized parties in New York State on the registration form. Is that correct?

Robert Brehm: We lose four parties.

Peter Kosinski: We lose four parties. I'm sorry. Can you just enumerate which ones?

Robert Brehm: Sure. The new standards for reaching in a presidential year qualified the Democratic, Republican, Conservative, Working Families. The ones that did not meet the standard are the Green Party, the Libertarian Party, the Independence Party, and the SAM Party.

Peter Kosinski: Okay, thank you. That's just for clarification. As I understand it, that's the only change being made to this form is to omit those parties.

Robert Brehm: That's correct.

Peter Kosinski: Okay, thank you.

Douglas Kellner: Alright, so Commissioners, do you move the resolution?

Peter Kosinski: I'll move the resolution.

Douglas Kellner: Is there a second?

Anthony Casale: I'll second.

Douglas Kellner: All those in favor say aye.

All: Aye. (Chorus of Ayes: Casale, Kellner, Kosinski and Spano; 4-0)

Douglas Kellner: Alright, so you unanimously adopted. So now we will move onto public campaign finance, and I will note that Commissioner Yankah is with us and will participate in this discussion. I think the main issue is that we need to approve the proposed budget. Does someone want to present that or explain it? Bob or Ken?

Robert Brehm: So, so in the budget that we presented this year, we have done what we attempted to line up the current structure of the state agency in the budget into three parts. We have the agency that deals with nonenforcement, I guess there is the Enforcement Division, that's one part. There is the agency of the day-to-day operation of elections, which is another part, and then public financing is the third part. The public financing portion provides for the members of the public financing commissioner to approve a budget and submit it to the Division of Budget and the Governor, not later than January first, so that their needs can be communicated to the Governor and the legislative leaders during the budget process. So we provided a draft in the budget and also for you that laid out the money that would be needed for public financing, and it is for the next fiscal year, and it is \$7,337,000.00, in a number of areas that include IT, equipment, people, rent for office space, things like that. We put in a budget request in a side letter last year to get money in this fiscal year's budget, so that we could begin the work to support the commission and also to do, get a start on setting up the business rules that are required under this new program and get a start on developing the computer systems, etc., that people will file and use to track these. So we also put in a little bit of information in this budget to point out we didn't get any of that money, and if there is any way possible, we still would like to get it, a quarter of the year would be January through March money, but we weren't specific other than to say it was a quarter of what we asked for last year. So that's the proposal that is before you in the form of what we submitted in the budget. Todd and I, in order to meet the deadline, simply pointed out that the public financing is subject to your approval.

Douglas Kellner: Alright, I will move that we approve the proposal prepared by the co-executive directors. Is there a second?

Andrew Spano: Second. I seconded it.

Peter Kosinski: Gotcha. Can I just ask a question?

Douglas Kellner: Go ahead, Peter.

Peter Kosinski: So, we are meeting now as the Public Finance Commission to approve the budget because the statutory provision says it is the commission that has to submit the budget to the legislature. Is that correct?

Douglas Kellner: That's my understanding.

Peter Kosinski: Okay, okay. So we will just meet for this purpose of doing that, and Commissioner Yankah can join in with us to support this and send this forward? Is that the proposal?

Douglas Kellner: That's my understanding.

Peter Kosinski: Okay. Okay, I just wanted to know.

Ekow Yankah: I was muted when I said I seconded it.

Douglas Kellner: Alright. Does anyone want to have any substantive discussion over this proposal?

Peter Kosinski: Well, I guess I would just like to get a, so the budget we are submitting, I mean this program is supposed to be up and running by 2022, as I understand it. So the budget we are submitting is to start the process of trying to hire staff and get the new information out there that would be used for the computers and the way this is all going to be programmed, so I am assuming that these are startup costs that we are identifying in this budget?

Robert Brehm: We identified, just in response, the startup costs in the side letter that we submitted in February. It is hard to get our arms around, since we got, received none of that money if we don't really have the resources to start until sometime after April of 2021, it is going to be a lot harder to meet the deadline, you know, to have a program in place and people can be trained, what the contribution requirements and reporting requirements will be starting in December, I think it is December 9<sup>th</sup>, no excuse me, November, somewhere around, you know, early November 2022, so this is the money to get us through from April 1<sup>st</sup> of 2021, until March 31, of 2022.

Kim Galvin: If I could just add, Bob, and I might sound like a broken record if anybody has heard me on this particular issue, since I was on that committee; however, if we do not have money to begin software development, and we're already late, the program will not make it. It will not be ready. We are already behind schedule, and I don't know what else to say, other than this requires an entire software development upgrade, requires specific interactions with committees and call backs, matching numbers, and I was told by someone that, well the program is not till 2024, and I explained that the first contribution can be taken in November of 2022, and the software has to be developed and ready to go significantly before then in order to do the training, and outreach and all the other things. I think we are already late. We are already behind schedule. I would urge people to pay attention because I don't want anyone saying that the State Board of Elections failed in their mandate because we don't have a dollar to start this very important and very expansive program.



Ekow Yankah: Just, there is no need to delay us, but I would just echo what Kim said, what my colleague has said, that this is, that we are getting to the point where two years will go by much faster than we think it will be, and we are now facing the risk of only two options; one is a set of embarrassments in failing to live up to our duty and public embarrassments, or spending vastly more than would need to be, in order to invest in huge amounts of essentially fire-drill work if we don't start our work now. And the second may not even forestall the first, and so we really are at the point where we must show our commitment to that which is our legal duty, frankly. That's just a way of amplifying what Kim has said.

Peter Kosinski: Okay.

Douglas Kellner: Thank you. Alright, so those in favor of the motion say aye.

All: Aye. (Chorus of Ayes: Casale, Kellner, Kosinski, Spano and Yankah; 5-0)

Douglas Kellner: Okay, so it is adopted. I guess I would also add that we are missing two commissioners from the campaign finance commission; one to be appointed by the Governor, and one to be appointed by the Republican legislative leaders, and I hope that they will recognize that those, every day that passes without making those appointments further slows down the implementation of the new system. Okay, the next item on our agenda is the Fair Campaign Code complaint. I guess there's two separate proposals on this? Do the Counsels want to present the proposals?

Brian Quail: There are, as the Commissioner said, two proposals, and to give just a very brief background on what the issue is and then the difference between the two proposals, and then perhaps upon deliberation. Perhaps there might be a way to merge them into something acceptable to the sentiments that are behind both drafts. We can hope for that. But here is the underlying factual scenario. A complaint was made.

Douglas Kellner: Brian, excuse me, but you need to, your microphone is not very good, and you need to keep your head from moving and try to stay as close to the screen as possible.

Brian Quail: Alright. I think I am actually using my phone at this point, so I will actually be moving closer to my phone, but this is my third

Douglas Kellner: If you keep moving left and right, try to stay still and stay an equal distance from the phone.

Brian Quail: Alright, and just as a test, can you hear me alright now? Can you hear me alright now?

Douglas Kellner: Yes.

Brian Quail: Great. Okay. So the factual background is that the Columbia County Democratic Committee sent out a mailing including an absentee ballot application and a set of

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instructions in an envelope that was directed to Democratic voters in Columbia County, in an envelope that on the outer mailing envelope included as the return address the Columbia County Board of Elections. So there was a complaint brought that alleged that this violation of the Fair Campaign Code and in particular, Section 6201.1(b), that it was a false, that essentially was inappropriate as it was essentially masquerading as the Board of Elections. The Columbia County Democratic Committee responded. They essentially acknowledged that it was inappropriate for them to use the return address of the Board of Elections on the mailing, professed that it was an error. They pointed out that they indicated on the mailing itself inside the envelope that they had paid for it, and so that there was no actual effort to try to pull the wool over anybody's eyes about what it was or what they were doing. And indeed, the application that's inside essentially is the voter, excuse me, is the absentee application, and the instructions that they provided to voters were accurate.

And so there was sort of a mea culpa to that extent, and the two staff drafts that you have approach this in, and again, I am sure others will describe the one draft, in particular, the one that I drafted, basically concludes that there was no malice involved and that based on court holdings, and in particular one that was affirmed by the United States Supreme Court, in *Schwartz v. Venasco* where you are dealing with first amendment conduct by political committees when the first amendment is at its zenith, you have to have actual malice in order to have a finding that comports with the Constitution and the statute, and that obviously the information that was actually provided by the committee to voters was not inaccurate; it was just inaccurately identified from whom it came, which they had acknowledged that it was an error, but not a purposeful one.

The other draft, which others may want to characterize, is very similar. It began as a track change to my draft, but it reaches a different conclusion. It reaches a conclusion that you could make an inference that based on what happened that there might be malice, so our statute requires that when a complaint comes in under the Fair Campaign Code, and when it is answered, that the Board can make a determination as to whether or not to send the matter to a hearing officer for fact finding and a recommendation as to a final disposition. And the statute allows the Board to compose up to a thousand-dollar civil penalty or under certain circumstances to seek a court order if some form of remediation is necessary. My draft essentially concludes there was clearly no malice, so while there was something that occurred that should not have, it doesn't warrant fact finding because there is no possibility of malice. The other draft finds that fact finding I think could come to a conclusion of sufficient falsity that there was.

Kim Galvin: Just a couple of missing facts, I think that Brian inadvertently left out was the fact that this committee also [indecipherable] that was supposedly [indecipherable] board, and also, they used the official election insignia.

Ekow Yankah: I am sorry, Kim, I had some trouble hearing you when you spoke.

Kim Galvin: Yeah, I don't know what is happening.

Peter Kosinski: Yeah, I am getting a lot of feedback from you.

Bill McCann: There are a lot of people who are unmuted, and therefore, feedback is being generated that way. If the people who are not speaking muted their phones, there would be less issues.

Cheryl: I will mute everyone right now, and then Kim, if you can unmute your phone.

Tom Connolly: Bingo, go ahead.

Kim Galvin: My only point was that in addition to the facts that Brian laid out, there were also, this committee did also fill in parts of the application that said for official board use only, and they did use the election mail insignia that only official election personnel are allowed to use, the Boards of Elections. So, that is in addition to the return address stating that it is coming from the Board of Elections. So, there were other facts and circumstances leading to the conclusion that it was intentionally deceitful.

Bill McCann: And if I could just add to this also, I think it is a critical point that Brian had mentioned in the *Venasco* case, but I think there is some language in that case. First, a critical distinction here is that we are not talking about speech regarding a public figure or a candidate. We are talking about whether or not something truly came from a public entity or not and what the purpose behind that was, but critical language in the *Venasco* case is the following. It says, "calculated falsehoods are of such slight social value that no matter what the context in which they are made, they are not constitutionally protected." So, in reading the response from the chairman of the Columbia County Democratic Committee, I think they do a little double speak and talk around, as to how the error occurred and who didn't review what, etc., but there is a definite consideration here that it was done intentionally, and with malice to deceive people as to what the origin of this mailing was. And so clearly, as Brian said, we diverge in what the ultimate suggestion is and the Board can ultimately determine what approach to take, but I think clearly, there is clearly an indication that malice could have been there and that could be ascertained one way or the other.

Ekow Yankah: Can I, let me ask you a quick question and trying not to let any political priors push me one way or another, we obviously should take election, this information quite seriously, but given that the content of the envelopes was accurate, can somebody just speak to what malice would have accomplished for them? Is the idea just that they would get higher rates of return if people viewed this as official or could somebody just speak to what the potential chicanery might have been aiming at?

Bill McCann: Well again, I think the issue is to whether or not there was an intention to deceive the public as to what the origin was. While there is certainly some language on the bottom of the letter that says it was paid for by the Columbia County Democratic Committee, it is very small, and it is not prominent at all, and when you look at the outside envelope and the inside materials, the comment could be made that a member of the public would say, oh, this is official, and I think that the issue is whether or not that was done intentionally to lead

people to believe that it would be an official thing, so that frankly more people might be apt to respond. Again, that is an issue of fact to be found, and I am sure the Board of Elections, the four commissioners, can determine whether or not they think it should go to a hearing or not.

Ekow Yankah: Yeah, I just wanted to know what the malicious intention then, the idea is the malicious intention is to in a sense boost response rate by making it an official mailing I take it?

Kim Galvin: Just to add to what Bill is saying, I think part of it is the official election mail insignia. You had many executive orders requiring different things to be sent by the Boards of Elections at various times, postage paid, not postage paid. I think that throwing something in there, pretending to be another mailing from the Board of Elections does in fact create confusion and mislead the individual voters that, to think that it was something in the whole chaotic-ness of this election that was officially sanctioned. So, that adds to the confusion surrounding this particular item, and I do believe the use of the official election mail insignia, I mean, no one is authorized to use that on their own unless they are an official entity.

Douglas Kellner: That is certainly the case. I don't see what the point of a hearing is. The county committee seems to acknowledge that it made a mistake in doing this. I think that we should make it very clear that it is inappropriate to use the Board of Elections return mail on political mailings, and reprimand them accordingly, but I don't think there is anything to be served by sending this out for a hearing. So, what I would suggest, if we could reach agreement on that fundamental conclusion, that we send this back and try to get language to that effect.

Peter Kosinski: Well can I just weigh in on that, Commissioner? I think, you know, I appreciate Brian's conclusion that there is no malice here, based on what is in front of us, but I think the whole purpose behind a Fair Campaign Code hearing is to allow the parties to make their case and to have a hearing to determine whether or not there is some, in this case, malice that was intended by the mailing that went out. I think to reach that conclusion right now with just what we have in front of us, I mean there is somewhat, you could call it, a self-serving letter from the Columbia County Democratic Committee saying "oh it was a mistake, we didn't mean to do it," but I think the point of a Fair Campaign Code hearing itself, which would be conducted if we have one by a hearing officer that has been preselected by a couple of hearing officers that I know are available who work not for us, per say, but are independent contractors of the Board, but the point of the hearing would be to, you know, allow the parties to make their case as to why they think this is a violation or why not, but it seems to me this discussion we are having right now is really the point of a hearing; is to allow people to make their case in front of a hearing officer.

Douglas Kellner: What would they add, Commissioner, that's not already a fact before us?

Peter Kosinski: I am not sure.

Douglas Kellner: It seems that all you want to do is push this for political purposes because you are unwilling to just work out a text of a resolution that basically acknowledges that an error was made here.

Peter Kosinski: Well, I am not unwilling necessarily, Commissioner, I am just trying to point out that I think that if we are discussing why we have Fair Campaign Code hearings, it is because there are parties that have different opinions, and it is much like a court hearing, where you allow the parties to come in and make their case in front of a hearing officer, who will then resolve the matter that we can then take a look at. I mean, if we are not going to get agreement today on doing something with a Fair Campaign Code hearing, I am certainly willing to discuss something else, but I think it is clear something wrong happened. It was acknowledged, as you said, by the Democratic Committee itself that they made an error. You know, it is a serious error to me in the sense that it is an official insignia that was put on the return envelope that we are discussing here today, but if there is not an ability to get a Fair Campaign Code hearing, I am willing to discuss some other remedy that we may undertake.

Anthony Casale: Doug, Doug?

Douglas Kellner: Go ahead, Commissioner.

Anthony Casale: Before we get to that point, you made the comment that Peter's goal of asking for a hearing is to advance some political agenda or cause. We are the partisan people. The hearing officer is the impartial third party. Sending it to a hearing officer would give you an impartial person looking at the facts, maybe taking testimony or evidence and then coming up with a conclusion, so don't suggest that because we want to go to a hearing that we are playing the partisan role here necessarily.

Douglas Kellner: Commissioner, that's what you are doing because there aren't any facts that are in controversy here. The committee has basically acknowledged that it has made a mistake and...

Anthony Casale: What mistake did they acknowledge? The envelope or what they did on the form?

Douglas Kellner: What?

Anthony Casale: You know, I am concerned about the envelope and the return address. I am mostly concerned with the fact that they created an absentee ballot application with information regarding the voter. Now you and I know that that is public information and if somebody wants to go find it, but when a voter receives this and looks at it and sees it has his date of birth on here, he has got his registration number, I daresay there is not a voter in New York who knows what his or her registration number is, it looks like an official document from the Board of Elections. Oh, the Board wants me to vote absentee this year. So, it is more than just the envelope.

Douglas Kellner: Now, if you are suggesting that the campaigns are not allowed to prefill that information when they send it to the voter; I don't agree with you. In fact, there are many Republican campaigns that...

Anthony Casale: No, no, I am not saying it is wrong, but the envelope compounded the problem. The envelope was wrong, they admitted it was wrong. I don't know who reviewed it. Maybe the post office reviewed it.

Douglas Kellner: Let's focus on getting a decision where our Board policy stated to that affect, and, but there is nothing that warrants a hearing. We need to set out what the policy is here.

Peter Kosinski: I am not sure what you mean what the policy is? What are you alluding to?

Douglas Kellner: I think we are all in agreement that campaigns cannot use a return address from the Board of Elections. Indeed, I believe that we, in the days when we used to have enforcement responsibilities, we have made rulings to that effect. The campaign, in this case, the county committee has acknowledged that. If this additional issue of the misuse of official election mail was on the envelope, then we should clarify that as well, but I don't know that there is any purpose to sending it out for a hearing.

Peter Kosinski: Well,

Anthony Casale: What are you suggesting?

Peter Kosinski: I guess we are trying to understand if we can reach some sort of consensus here. If we are not going to get a consensus on a Fair Campaign Code hearing, then is there something we can get a consensus on that would recognize that this was wrongly done, and there should be some penalty...

Douglas Kellner: Well, reprimanding them for doing it. I mean, the penalty is almost meaningless anyway. It is only a \$1,000 fine. So, it is really the reprimand that is most significant.

Peter Kosinski: So, are you suggesting the staff draft up a reprimand to them? That the Board is going to review?

Douglas Kellner: Yes, basically site the acknowledgement that they acted inappropriately, and to make it clear that campaigns may not use a return address from the Board of Elections or the official election mail insignia.

Ekow Yankah: And Brian, we have reason to believe, you are confident that this practice was discontinued, right? I mean, we don't just have their letter acknowledging the mistake that plaintiffs have pointed out that this is not going on anymore?

Ekow Yankah: Brian, I am sorry, I cannot hear you.

Brian Quail: I am sorry. Can you hear me now?

Douglas Kellner: Yes.

Brian Quail: Excuse me, Cheryl muted me. The committee in its letter indicated that they regret the inadvertent error of the return address and will ensure that it does not happen again in a future mailing. Obviously, a reprimand would tell them not to do it again. I mean it would be, they shouldn't have done it, and we are telling you, don't do it again. I am sure this would be part of any reprimand. I would point out, just for the factual record, that the outer envelope upon which the communication from the committee went to the voters did not include the official election mail insignia. It was on the return envelope that would go back to the Columbia County Board of Elections, which was correctly addressed to the Columbia County Board of Elections. It had the official election return mail insignia on it, and that envelope would have had a ballot inside of it.

Douglas Kellner: Alright, and I would agree that that is a proper use of the official election mail insignia, so I appreciate you clarifying that.

Andrew Spano: I haven't said much only because there is construction going on in someone's apartment here, and I didn't want to overwhelm the meeting with noise. But at this particular point, I have been listening to all the dialogue, and I am going to vote not to bring this to a hearing, and I assume that Doug is going to vote that way too. And I think looking for an alternative solution is where we should go. I believe there is a reprimand that we need right here, that we should draft it, maybe get the two Counsels to draft it, and bring it back to the Board, so we can, you know, send it to the committee.

Douglas Kellner: Commissioner Kosinski and Casale?

Peter Kosinski: Well, I would say that if that's, you know, if what Commissioner Spano is saying is true, which is that are not three votes to send it to a hearing, certainly I think doing something is better than doing nothing, even though I do agree it should go to a hearing, but I think if we have the staff draft a reprimand and submit it to the board for approval, if that's what we can agree to do, then again, it is better than nothing, and I would think we would at least do that.

Anthony Casale: I would agree to that as well.

Douglas Kellner: Okay, I think we have consensus then, so Kim and Brian, I think you understand the mandate here. Brian, I see your lips moving, but we don't hear you.

Kim Galvin: Yes, we understand the mandate.

Douglas Kellner: Okay.

Brian Quail: We have bridged bigger gaps than this. I am sure we will be successful in coming back with a product that we can all agree on.

Peter Kosinski: Okay.

Douglas Kellner: I think that completes are regular agenda. Should we discuss a potential next meeting date?

Peter Kosinski: Sure.

Douglas Kellner: Todd and Bob, do you have anything in mind?

Todd Valentine: Bob, you are still muted. Bob, you are still muted, but part of it is, you know, we need to, the last outstanding race is Congressional District 22, we don't know when that is going to get resolved, but that aside, you know,

Douglas Kellner: I don't think the House of Representatives needs our certification to seat the winner, but I don't mind either calling a telephone meeting on very short notice to confirm that certification, if that is acceptable to the other commissioners.

Peter Kosinski: Yeah, I agree with Commissioner Kellner on that. I think if we need to do that one act because of the delay on that, we could do that, but I think if we want to have a regular meeting, we should also try to set a time for that, if we can.

Douglas Kellner: Why don't we meet in January?

Todd Valentine: I mean normally, you would meet around the time of the Election Commissioners Association conference, but since they have canceled their in-person meeting and not rescheduled anything virtual, that timeframe is now not needed, so...

Douglas Kellner: How about January 7<sup>th</sup>, a Thursday?

Peter Kosinski: I can do that.

Andrew Spano: I can do that too.

Douglas Kellner: Commissioner Yankah?

Anthony Casale: That's fine.

Ekow Yankah: What time? Forgive me, as you know, I teach.

Douglas Kellner: We usually meet at Noon.



Ekow Yankah: I am going to, if you will forgive me everybody, I have not memorized my spring schedule. I will double-check my spring schedule and email straight away. The life of a permanent schoolboy, forgive me.

Todd Valentine: Bob, you are still muted.

Robert Brehm: My phone is green, but I realize when Cheryl is muted, sorry. Is it our intent to do both meetings at each session, public financing or not? And then, do we publicly announce, like one starts at some time and the other one starts at a different time, just so that we know how to announce these, and the public has an idea if they only care about one portion or the other, when to dial in. If you don't know that, that is fine, but it's kind of how Todd and I try to figure out how to, whether we announce these.

Douglas Kellner: I suggest that we announce them together, and we do our combined agenda, just like we do for the Board of Canvassers, when we meet as the Board of Canvassers.

Robert Brehm: And do you want to do one first and the other one second maybe?

Douglas Kellner: I think you and Todd should work that out when you put the agenda together. So, my guess is that the agenda for the Public Campaign Finance Commission will be much shorter, at least initially than our full Board of Elections reports.

Peter Kosinski: Yeah, my hope is that that have our other two commissioners on board. I think we are kind of limping along now, as a Public Finance Commission. As I understand the law, the Public Finance Commission chair, for example, is to be picked from the three commissioners that are outside the State Board of Elections, so I think we are really, well, Commissioner Yankah, you are eligible, of course, but I think until we get the other two commissioners on board, I am reluctant to have a chairman appointed until you guys are all together, and it is difficult to really have formalized meetings, so I am hopeful that that will get resolved between now and then, and we can have a more formalized process, but I am fine if we, if Commissioner Yankah joins us for purposes of discussing the Public Campaign Financing at our next board meeting.

Ekow Yankah: Yes, I would say I have no machinations on the chairmanship, but I do think we should get going, so as you know we have been making noise about Public Finance, so if we can start our meetings, and even if we need to delay the question of who is the chairman, that is totally fine with me, so I think that means I take up your invitation, Commissioner Kosinski.

Peter Kosinski: Sounds good. Okay.

Douglas Kellner: Okay, so I don't think there is any other business. Can we adjourn?

Peter Kosinski: I would move we adjourn.

Douglas Kellner: Alright, and thank you, Commissioner Casale.

Commissioner Casale: Thank you.

Douglas Kellner: We appreciate you. We stand adjourned. Thank you.

Peter Kosinski: Thank you.

Ekow Yankah: Enjoy your holidays everybody.

Peter Kosinski: You too.