

**JAMES A. WALSH:** Good afternoon everyone. Welcome to our meeting today. We will be opening our business section today with the Board of Campuses report. The Board of Campuses Thursday December 15, 2011 and on the agenda is the Certification of the Election Results for the November 08, 2011 general election for justices of the Supreme Court. Do we have a motion?

**DOUGLAS A. KELLNER:** So moved.

**JAMES A. WALSH:** Second?

**EVELYN J. AQUILA:** Aye.

**ANNA SVIZZERO:** We also have results from the special election in the assembly seat that was vacated there was one at the November elections.

**ANNA SVIZZERO:** And those results are here as well.

**JAMES A. WALSH:** This is the 148<sup>th</sup> Assembly District. I ask for a vote on that also.

**DOUGLAS A. KELLNER:** So I move we adopt the report as prepared by staff.

**JAMES A. WALSH:** Second? All in favor?

**All:** Aye.

**JAMES A. WALSH:** Opposed? Carried. Thank you very much.

We will now proceed with the agenda for our normal Board of Elections meeting. And before we begin as always we will have introductions of commissioners, my name is Jim Walsh and I'm the Acting Chairman for the day or the actual chairman for the day.

**DOUGLAS KELLNER:** Douglas Kellner

**EVELYN J. AQUILA:** Evelyn Aquila

**GEEGORY PETERSON:** Gregory Peterson

**TODD VALENTINE:** Todd Valentine

**KIMBERLY GALVIN:** Kimberly Galvin

**PAUL COLLINS:** Paul Collins

**JOE BURNS:** Joe Burns

**ANNA SVIZZERO:** Anna Svizzero

**THOMAS CONNOLLY:** Tom Connolly

**JOHN CONKLIN:** John Conklin

**GEORGE STANTON:** George Stanton

**WILLIAM MCCANN:** Bill McCann

**LIZ HOGAN:** Liz Hogan

**ROBERT BREHM:** Bob Brehm

**TARRY BREADS:** Tarry Breads

**ROBERT WARREN:** Bob Warren

**AIMEE ALLAUD:** Aimee Allaud, League of Women Voters

**DOUGLAS KELLNER:** Let's not forget Amy.

**JAMES WALSH:** Thank you very much and welcome everyone. Before we get into the official part our meeting, we have a person here today whose last on the job, I'm sure we all envy that in many ways and many respects. George Stanton who stated here in 1994. And the four commissioners have put together a statement that I would like to read on your behalf and anyone can certain chime in after I read this and make your own personal comments and that goes for anyone around the table and then we will get into our normal business agenda.

George has been with the State Board of Elections since 1994. Before he came to us he was with the New York Attorney General's Office for two years as Senior Programmer and before that he was with the State Education Department as an Education Program Aide. As director of the State Board's information technology unit, George has tackled a number of projects while here at the Board and completed them with skill and competence, but the achievement he is most proud of is the creation and implementation of the New York State Voter Data Base. Mandated by federal law New York was required to build a statewide list of all voters integrating separate voter registration systems for 58 local boards of elections. As we all know New York has never had a statewide list of voters, it has always been maintained by the counties individually. In addition, the state legislature intending to minimize the impact on the various counties required it to be constructed as a bottom up system. George, working with Elizabeth Mowery on our staff made successful and historic changes to the way New York

conducted its election business. Under George's direction and leadership, the state worked with various election software vendors and county information service departments of varying sizes and sophistication to implement the statewide system. George can be justly proud of his work as the project received a "Best IT collaboration among organizations" award with the best of New York awards program sponsored by the Center for Digital Government. George has talked many times of packing up the RV and heading for Florida. He is headed for Homosassa Springs where he intends to spend a lot of fishing. We thank him for his dedication, professionalism and his service to State Board of Elections and wish him a long and healthy retirement. George we thank you very much for all you've done for the state, the voters, for this organization and we wish you the very best of health and happiness.

**GREGORY PETERSON:** The state can't afford the gold watch though.

**GOERGE STANTON:** I thought Doug was going to stop down on Canal Street and get me a Rolex.

**EVELYN J. AQUILA:** No they stand on the corners. If you want a Rolex you've gotta go to someone who stands on the corner.

**JAMES A. WALSH:** Before we turn the chair over to you for a moment George, would anyone like to add some other comments other than the ones we have prepared?

**DOUGLAS KELLNER:** Well as I often said at our meetings that what doesn't become a crisis is also one of the great accomplishments of our IT department and the information technology unit here has been notoriously under funded for decades. They've been working with very old equipment and they've been able to keep the system online. I think one of the most important things that we do is the campaign finance disclosure system and people take it for granted that they can just go onto the internet and look up a campaign finance filing and get that information. And I for one appreciate how hard it is to keep that running with the equipment we have and that people take it for granted and George you've kept it going, so thank you.

**EVELYN J. AQUILA:** I'd like to say thank you also George. I've been here with you a long time and your expertise and the fact that you are a fine gentleman always impressed me and I'm not going to go on and on, I think a lot has been said and we thank you very much for all that you have done for the State Board of Elections and I hope you and your wife have a wonderful, wonderful retirement and when you fish one of those big ones, I think you'd better get it mounted and we'll find a spot here. So thank you very much and God Bless you and I hope you have the best of health and a really good and long life.

**GREGORY PETERSON:** I just wonder George if you will be kind enough to leave the gum and rubber bands behind we would really appreciate it. but I've always been

impressed by your professionalism and how you do so much with so little and I too join everybody in wishing you a very, very happy retirement, God bless you.

**GEORGE STANTON:** Thank you I did move my big box of rubber bands out into public domain.

**JAMES WALSH:** George would you like to say anything yourself in parting?

**GEORGE STANTON:** I, you kind of caught me off guard but and of course I guess Evelyn and Ann are the only ones here that have been here as long or longer than I have so, but I appreciated all of the opportunities that the agency has given me over the years and most of these accomplishments really are due to the staff that I have. They do the heavy lifting downstairs so I think I'm leaving you with a good staff that I won't be missed for very long.

**EVELYN J. AQUILA:** Ah, don't say that.

**JAMES WALSH:** Thank you George. You know as you say that I think every month that we've had a report from you you've always given credit to your staff and that's a great reflection on yourself and the quality of the gentleman you are. Thank you.

We will begin our meeting if we may with the minutes of the October 27 meeting and a motion please?

**DOUGLAS KELLNER:** I move adoption of the minutes as drafted.

**GREGORY KELLNER:** Second.

**JAMES WALSH:** All in favor? Opposed? Carried.

Unit updates, Bob Valentine.

**TODD VALENTINE:** Well for whatever reason, our normal post election quiet period is not particularly quiet. And things aren't on their way to necessary due to the election, that's the good news. The election was as was pointed out was good. But we have a couple of things looking forward to the future that will now start taking up a lot of our time for the spring and that's not even the court cases we will discuss later. But we will be moving, we're planning to move the agency. It's part of the governor's restacking initiative. Put agencies that are in lease space into space in order to reduce cost on the agency of course and the state naturally. The good thing is we're not going to move far. You can almost see the building; it's just a block south of here. It's a state owned building that's across from the Dunkin Donuts if you ever noticed.

**EVELYN J. AQUILA:** May I say something, this is our fourth move.

**TODD VALENTINE:** Fourth. Well it will be...yes.

**EVELYN J. AQUILA:** Four moves.

**TODD VALENTINE:** It will only be my second so. We started, we had an initial kick off, and we've actually had 2 meetings now. We had an initial meeting with the Office of General Services and then we had a kick off meeting to start getting down to the nitty-gritty with OGS earlier this week and we met with senior staff yesterday to start identifying some of the special needs that they have. For example with regards to the data base obviously for our resources, but also for petition filing room that needs particular security measures. So that's, we're targeting or I should say OGS, our Office of General Services is targeting us to move by March 1<sup>st</sup>. That hinges upon we said repeatedly and are respecting this that our calendar, our political calendar for the next year is in a bit of a flux right now and we won't know what we're doing beyond April how that's going to work. March 1<sup>st</sup> we said was a little unrealistic given that we have a primary in April, we need to be able; the counties need to be able to connect to the data base in order to get their registration lists and poll books printed. So they're aware of that and they're going to work with us on that so. But they are looking for an aggressive schedule. Honestly the sooner we move the more money we save in this fiscal year and going forward. Holding over our lease, our lease expired last year so. But also tied to that and you may have noticed this and I don't know we moved to a new email system and George can go into more detail if you want and we've been working on getting the kinks ironed out on that because there's always a big transition when you switch email systems. Everybody has their address books and they're used to working in a certain fashion. It will be a big change because it will help address, well we had to move because our old email system was reaching the end of life. The new email system connects us with the rest of the entire state, its standardized email for the state. The new email addresses are also the change the URL for our website but the key thing that's going to help us is the ability to archive that and when we get requests, as we get occasionally referral requests we'll be able to search a lot easier and be able to respond to those in a lot simpler fashion than we do now. And then we had a meeting earlier with DMV they wanted to start an initiative and Bob will talk about that in a little bit more detail about what the commissioner and staff they have a project, I don't know if there's a name.

**ROBERT BREHM:** I don't think so. I think they're facing the same challenge as every agency, fewer staff trying to review all of their programs and how can they move efficiently deliver the programs. They identified the NVRA components of the projects to try and improve how they collect all those voter registration pieces of paper now, sort them annually, put them in envelopes and mail them to all the county boards of elections from the various DMV offices in the state. As something that they think would be good for automating and from across a time point of view to provide this information perhaps on a slightly basis directly and they're looking at electronic signatures act to allow them to find a way to get that data compliant with the state law and how they collect that

information and funnel it directly to the county boards in a way that's still usable to the county boards. So we had an initial kick off with Commissioner Fialla and her senior staff where they identified to us of the project and looked a little bit to us as to how it would work through our NYSVoter system. Right now we have NYSVoter connection with information going back to DMV but not for new registrations. That's all piece of paper that DMV puts in an envelop and mails. So they want to look at the DMV program that they are working on is there a way they can incorporate voter registration component, electronic signature and then directly email that information to each county board of elections? So it was a 45 minute meeting as to identify the project that we're working on. We offered whatever help we can but also recommended just as they do for DMV projects that include a steering committee of county clerks that they also reach out to the association and get a representative group of the board of elections because we really want to make sure that the data that is coming is in a usable form that they can have. So they've already followed up with us. We provided information with the contact of the association to set up that contact for them to try and get that kitchen cabinet group together and also they asked for vendors that each county uses to do registrations so we sent that information. So I'm not quite sure yet, they haven't asked us for the next step. I think they are just taking that information and trying to put it into their plan and then would reach out to us as to what more we need to do. But if you consider when that program was set up in 1994 or 1995, all of the electronic things that are more common place now were not even on the table. The act wasn't adopted until 99. So it sounded interesting. The association members, some of their officers were here the day after we met last Wednesday. They were here I lost track of the days they were here, December 1<sup>st</sup> I think, no December 8<sup>th</sup> was the day you had your meeting. So we mentioned it to Sue Barren as the chair of the executive committee and they have a call planned next week for their members. So we provided that linkage so that they could try and find out what is a good representative group, big counties, small counties, they use different software systems in order to get that done. So it's an interesting way of making it work. I think DMV is probably more logical first place to start with, with this kind of a project because under NVRA more of their work is integrated into that single application because the federal law and the state law treated them differently than any other agency. So they're already at a point where this is more possibility and they've already been doing work on their DMV secured connection anyway to meet that OFT regulation with the secure dimension. So it was an interesting meeting. I'm not sure yet what our role will be at all as a technology role with us. We'll need to bring the technology together but it's uncertain yet. But it was an interesting preliminary meeting.

**JAMES A. WALSH:** Thank you. I know you may know this and I don't mean to put you on the spot. Do you know the address of the new office location?

**ROBERT BREHM:** 40 North Pearl. We don't know what floor yet.

**JAMES A. WALSH:** Thank you. Legal Kim Galvin.

**KIM GALVIN:** Thank you commissioner. Paul and I set forth what we've been doing in summer and in our reports. Things that are worth mentioning I think to highlight are the two cases that we have with the Department of Justice. One thing the data base issue with New York City that has reared its head again. We filed a joint report last week that was required by the court and we are going to file a more detailed report on the status of the New York City list numbers in early January. Brian Heffernan who had been our long time point person there has left the Department of Justice. I guess he's retired so I wish him well. I doubt he's watching anymore. And if he is...he should turn us off. A new person assigned there Justin.

**EVELYN AQUILA:** He came to some of our meetings.

**KIM GALVIN:** He's come to several. Some happy times, some not to happy times. And with George leaving unfortunately for Elizabeth Mowery, I guess she's going to be the person that we work with on figuring this out. So we still have some work to do on that even though it's been quiet for a while. And the second of course, being the litigation to move the primary. As you are aware, we had arguments in front of Judge Sharpe this past Monday and we're required to file certain submissions next Monday and the Monday thereafter but I'm sure we'll discuss more of that particular case in executive session as we move forward. Paul do you have anything to add?

**PAUL COLLINS:** Not really no.

**JAMES WALSH:** Any questions. Thank you Kim. Election Operations Anna please.

**ANNA SVIZZZERO:** Thank you commissioner. I don't have much to add aside from what you see in our written report. We are as you most likely know Brennan Center issued a report concerning over votes in New York State and they took particular issue with Yates County, Greene County and also one of the burroughs in New York City. One of the electric districts in New York City actually. So Bob Warren and his crew have been working with Yates and bringing to action valid programming information and valid images so that we can do the kind of forensic review, I think that the issue warrants before any declarations can be made. We're also hoping that to review the matter in New York State when we do their physical asset audits, we have to go to all 5 burroughs and do a physical asset of the voter machines that they have and other how to purchase items that will make an appointment with them to speak to John Audis and whoever else the City Board determines we need to speak to who do that. The specific area in New York City that the Brennan Center continue to highlight in their report.

We are happy to say that our storm stricken but not beaten Schoharie county folks I think are happy with us. We did help the through their election, built their ballots, they brought us their memory cards, did not surrender custody of them, we read their memory cards, produced the post election reports for their use in compiling their certified results. Hopefully they'll get back into their office space and get back onto more friendly ground

there. But we certainly applaud their efforts and you have a letter before you from Mr. Conklin and Mr. Connolly on the agenda. We are hoping to resolve our ES&S certification issues. We're very, very close. We hope to actually do it at this meeting, but at the last minute we just couldn't get it together. Before you we do have some issues to resolve and we're hoping to have those for you at the January meeting. We are trying to push the issue. We may be actually doing the trusted bill on the same day the board meets so we've hoping that you don't take exception to that. The largest jurisdictions in the state use the ES&S systems and their upgrading process is a little more detailed than Dominion so we're hoping that if we can get them to get them in January we will have it to use in the presidential primary especially in New York City. I know there are some features in that new upgraded system that they're really anxious to put into effect. So that is our goal. Other than that, Joe if you have anything to add. I don't have anything further.

**DOUG KELLNER:** Anna I would ask that you give us a little bit of information about what you're doing on the grant from the EAC with respect to the auditing and canvass process.

**ANNA SVIZZERO:** We did meet with a gentleman, I can't remember his last name, his first name was Larry Moore with Clear Ballot Group and he is, has developed a way to use ballot images to conduct an audit, completely independent from the vendor's software. We had a bit of an interview with him on the phone. We decided it was worth seeing so he came down from Boston and demonstrated his product for us. He has it working with ES&S but not our version of ES&S and he hasn't, he's only just begun to have conversation with Dominion to see if we can use those images in the same way. It's fascinating to be able to do that in literally zero time. The time it takes now to hand count ballots and had counting ballots as we know is very subjective. This is a really unique process so in our grant program we're allowed the developmental research and we're allowed consultants etc. So in the grant award there is some money to be able to bring him on board and see if he can develop that process for use in New York State. We would report on it globally so that other states could take advantage of everything that we learned, but clearly we'd want to be able to demonstrate it using our own systems. So we're working with OGS. He is a soul provider of this technology. He invented it. No one else has this so we have to work with OGS in an advertisement in order to actually bring him on board and once we do that it will take a number of months. Excuse me?

**EVELYN AQUILA:** Would we be his first client?

**ANNA SVIZZERO:** No he's working with other states. He has conducted audits in Florida with Ian Sancho, I don't know if you any of you remember him with various documentaries, and certainly with election center conferences and such. He's a very hands-on election administrator and he's been around for a long time. He's doing this year's elections in New Hampshire I believe he said.



**EVELYN AQUILA:** I was just curious

**ANNA SVIZZERO:** And some work in California that he's doing and then certain New York would be the. It's really interesting. We like it because it's completely independent from the vendor's software. The demonstration was very impressive. It's a very accurate process and would save on board's tremendous amount of time and effort, staff time and that now adds up to money and we know that they don't have enough money to go around as it is so it would make the audit. We have to revisit our statute and certainly our regulation which requires that the audit be manual, so we are looking at that legislation and consider some potential changes to it if you wanted to, if the board was in the mind to make those changes now to allow this research to actually come to fruition. It's really interesting. I mean in elections you think you've seen it all but you really haven't.

**DOUG KELLNER:** Well I think it's a very positive development and it's a way of automating the audit process in a way that's still completely independent of the original software so it is a true audit and it's much more accurate than a manual hand count. Because the manual count is prone to errors. And in the long run it would be much more effective and it appears to be cost effective that the cost of automating this is going to be significantly less than the cost of the counties of doing the manual count. But as Anna says, if we were to go this route then we would have to propose some modifications to the statute because the statute requires a hand count now. Anna is there anything else that's being done with that EAC audit grant.

**ANNA SVIZZERO:** From an audit perspective no. We've reviewed our own audit process and we're prepared to write that aspect of the report that deals with what our statute requires now and the clause that we see in a manual subjective audit and anything that could be automated, we'll explore that and provide that narrative. But clearly, the automation is what we're going to be focusing on. The other part of our grant award was for the pre-election logic and accuracy testing. And we have worked with several county boards to view our process. To refine the number of ballots required to do that testing and we've got it down to a system that really works. What's been an issue is teaching boards how to do testing. We've tried to do it at conferences. We've done it here on an individual basis, that seems to be the best. But we're also working with a state agency that produces videos. So we have met with them twice. We provided them the raw materials. They're going to bring back some ideas for us to create a DVD that boards can have. They can put it on their own computers. They can share it with staff. They could use it as a resource, as a training tool but also as a, you can pause it and go back, build a test text and see if you did it right. It's a very interactive proposal that we have from that video group and they're working on just the very initial stages of that right now.

So those are the two prongs and that's the status that we have to report on the grant. The award was for \$230,000 total for both.

**JAMES WALSH:** Thank you Anna. NVRA PIO John Conklin.

**John:** Thank you commissioner. I just want to highlight a couple of things from the written report. The unit's completed the NYSVoter review for every county board in the state with the exception of New York City. Since our last board meeting the two remaining counties are also the largest counties in the state outside of New York City, Nassau and Suffolk and they were completed. So that's been a two year project that we've been doing that's now essentially complete because New York City is on its own separate track. So next year we'll begin the process over again, go back to the boards that were at the beginning of the process 2 years ago and begin to review them again. You may also notice that we have some new cameras in the room. We have a new web casting contract. The old contract expired. The company that was doing it before was not a New York based company anymore. We found competitive pricing in New York State. It's actually a group associated with the State University of New York. So we were able to work that out. The archiving of our previous meetings is also going to be something unique. We're going to be moving that to YouTube so people will be able to look at our past meetings by a link to YouTube so we're actually entering the 21<sup>st</sup> century for some parts of our operations. Tom's been very instrumental in achieving a lot of that stuff.

And the last thing I just want to mention is the results that you certified earlier on the meeting is going to be posted to the website today. Any questions.

**EVELYN AQUILA:** Well it sounds good like it's going to be much better. I just hope we all look about 10 years younger.

**GREGORY PETERSON:** 10 pounds thinner too.

**JAMES WALSH:** Campaign finance Elizabeth Hogan.

**ELIZABETH HOGAN:** Thank you commissioner. I really don't have anything to add to the report that I provided to you. What I tried to do obviously as I do every board meeting is give you an opportunity to look at the numbers that we've processed and give the categories so you can keep an eye on kind of activity that we have. Basically what we do is we try to do some of everything with what we have to work with and we will continue to do that. The one thing that I think bears maybe touching and kind of in honor of George's last board meeting is that we're putting the beta aspect of the software project into effect for the January period. So that process is in the works and we've come unfortunately with the kind of intermittent approach that has had to be taken with that software project with NYSVoter and other issues that came to the board and the resources that were available, it's kind of nice that we're finally there. So what will happen is after the beta in January, we'll do an assessment of the software, discuss it with IT, if there are any changes based upon usability issues, we'll address those and we would anticipate then putting that software into full operation for new filers, new treasurers and any

treasurers who want to go forward using that software. So, other than that, other than what's in here I really don't have anything to add. Bill would you like to add anything?

**BILL MCCANN:** No perfect

**EVELYN AQUILA:** So early next year, when do you start to count how many fines you collect to come in here. I know you keep track of...

**ELIZABETH HOGAN:** We keep track of the 5 special proceedings. Per special proceeding we keep records. So we know what we have for each, we know we'll find the benefits for each special proceeding that we bring. It's, so that's an ongoing thing.

**EVELYN AQUILA:** Do we lead it off at a certain time?

**ELIZABETH HOGAN:** Oh we can calculate it to in a cumulative way. I think we did because it was requested that we look at the total numbers, but that's basically easy enough to do should you...

**EVELYN AQUILA:** Well like I said during these times when there's not a lot of money around maybe its good once a year to figure out how much we did come up with. Although it doesn't go to us it goes to the general treasury right?

**ELIZABETH HOGAN:** It does. It goes into the general fund. We don't, we do not get the any of the money...

**EVELYN AQUILA:** It still goes to the state. I'm just curious about how much we get at the end of the year.

**GREGORY PETERSON:** Your notes said you have 477 new committees that you registered?

**ELIZABETH HOGAN:** In over in November. We registered..

**BILL MCCANN:** ...at an election site. People...

**ELIZABETH HOGAN:** Some terminate and some

**GREGORY PETERSON:** There's a net gain of about 300.

**ELIZABETH HOGAN:** We're currently at about 12, almost 12 5. The numbers of other filers

**BILL MCCANN:** It's more of an educational process you become aware and you get more participation locally.

**JAMES WALSH:** Thank you very much. Next on our agenda is our is to you George Stanton and George Stanton has submitted a letter to the commission and directors and in this letter he states,

**GREGORY PETERSON:** Tells us what he really thinks.

**JAMES WALSH:** George you're fired. In this letter he states "This letter will serve as my final official report to the Board of Commissioners." This is your final official report; would you like to make any unofficial report George on your last day here?

**GOERGE STANTON:** Yea, I mean I hope everybody read the letter; I'm not going to read it out loud because I'll probably get choked up reading it. I would like to say that for any of the county folks that might be watching out there it's been a pleasure working meeting all of you over the years, working on NYSVoter and met a lot of great people. I did actually have 3 things that I wanted to add that we did accomplish and I've sort of lost my notes in the all the excitement here and they've been touched on. We finalized the change move to the NYS mail. We have finished the ESF software and put it out for beta testing finally, it didn't seem like it was ever going to end but that's done, and the other thing that we did accomplish was we made the changes to NYSVoter to accommodate the new political parties and the county software vendors made their changes and that's all been accommodated. They still have to make the changes to the parties, the green parties that already existed in the data base and there's going to have to be some auditing done. Somebody is going to have to follow up on that but the tools are all there. It's been done. I look at my leaving as a win-win situation. Win for me because I'm going to be retired, but a win for some folks downstairs to have a chance to step up and show you what they've got and possibly a win for you, you might get somebody to fill my shoes that's got some new and bright ideas that I didn't have and I think it'll be good for everybody. So thank you all.

**JAMES WALSH:** Thank you again George.

**ROBERT BREHM:** Well since you retired at the same time that Heffernan retired, hopefully you'll see him fishing in Florida and you can put a good word in for us.

**GEORGE STANTON:** I won't be watching on YouTube.

**EVELYN AQUILA:** Thank you George.

**GREGORY PETERSON:** That brings the number down to 8.

**JAMES WALSH:** New business. Vote on a final adoption of our 6212 regulations relative to information recorded in poll books. Paul Collins.

**PAUL COLLINS:** This has been kicking around for quite sometime because it's a rather sequacious route to get these regulation changes through the various agencies that have to approve. It has been published and I am sorry to advise that ne'ery one comment was received. Not one. So I believe that the commissioner's may now vote on this as it was originally proposed and published. And there is a resolution in your packet to that effect.

**JAMES WALSH:** I move adoption of the resolution. Do I have a second? All in favor?

**All:** Aye.

**JAMES WALSH:** Carried. Thank you Paul. Item B, discuss new part 6200.10 regulation relative to independent expenditures. Elizabeth Hogan and Bill McCann.

**ELIZABETH HOGAN:** Well commissioners as you know we were mandated to draft and put forth this regulation over a concern that the legislature that the governor stated regarding filing exposures of independent expenditures. We have Bill and I and our staff have worked on getting a final version of this. The version that is in your packet reflects numerous rewrites and considerations of comments that in house as we vetted it. So it is there for your review. Do you want to add anything about it?

**BILL MCCANN:** Yea, we anticipate more internal tweaks of some language and we're open to have something more fitted for the board this January meeting.

**DOUGLAS KELLNER:** So you're not actually ready to publish this for public comment yet. Talking about doing that at the January meeting and that will start the regulatory clock.

**ELIZABETH HOGAN:** When you vote on the text at whatever meeting you choose to vote on the text will go through that process.

**DOUGLAS KELLNER:** Why not just publish this now so we meet the statutory deadline and then modify it after the publication?

**BOB BREHM:** You'd have to have a second publication comment period.

**TODD VALENTINE:** It's not ready for publication yet.

**BOB BREHM:** even if you did, when you made the changes you'd have to draw up another 30 day comment period so I think the date we're looking at having meetings less than 30 days away so it will probably be faster if we can, if it's not ready yet, it would probably be faster to wait until the next meeting than it would to publish it and then have to do the 30 day change anyway.

**JAMES WALSH:** Okay. Next item is a vote to authorize the agency to submit a hiring freeze waiver to the DOB as required by budget vote B1182.

**DOUGLAS KELLNER:** Well I mean the resolution would just say that we're, what the title is. So why don't we make a motion that we adopt a resolution to submit a hiring freeze waiver to DOB pursuant to budget bulletin B1182 to fill the vacant position of manager of information technology.

**JAMES WALSH:** Well stated. Second. All in favor?

**All:** Aye.

**JAMES WALSH:** Opposed? Carried. We have a resolution commending Schoharie county for their efforts to conduct a November general election overcoming the extensive flood damage to the community. John Conklin, Tom Connelly.

**JOHN CONKLIN:** I think it's very straightforward. Schoharie was in the unique position relative to the other counties that had flood damage in that they did not have a primary election otherwise they would have been included in the round of resolutions we did for the other counties earlier this year. So but they had very extensive, they were one of the most severely damaged counties as a result of the flood so they deserve as much accolades as we can give them and I mentioned they're still not completely back in their building even now. So I think it's very straightforward.

**DOUGLAS KELLNER:** I move the adoption of the resolution as drafted.

**GREGORY PETERSON:** Second.

**JAMES WALSH:** All in favor?

**All:** Aye

**JAMES WALSH:** Opposed? Carried. Discussion of the legislative packet for 2012 Kim Galvin.

**KIM GALVIN:** This is certainly just a generic effort. I know that some of the commissioners wanted something in this packet and so despite Anna's strong efforts, this is the best we could come up with at this point. A few of the first ones on the blurbs are just rehashes of other things that we've put forth that the legislature doesn't seem to pay much attention to. The publication of election results I know is one that would save a lot of money that perhaps they can talk about again this year. There are some new ideas as a result of the ballot usability studies that have been done. I anticipate there will be more coming than just the removal of the fist and using the multicase characters for the candidate names. We do have everything drafted and memos done on these things but

they just weren't exactly ready to come before you. The one that you do have is the suggestion of the canvassing at the polling places, we did include that draft because I understand Commissioner Kellner wants to talk about that one specifically is what I was told. And then I don't know if the commissioners would consider, I don't know where this idea came from but it came to me today from someone walking down the hall that perhaps with something that is this county specific, perhaps including the counties in seeing a draft of this particular legislation, it was one of them, coming and having her input as opposed to them telling us we make them do things without getting recommendations. I don't know if that's...

**TODD VALENTINE:** I thought coordination because I know...

**DOUGLAS KELLNER:** One of my principal reasons for asking that this be distributed to the commissioners today was because I'd like to start that vetting process that we should send this out to the counties for comments. I have already given a copy of this to New York City but in addition to sending it to the counties that we give it to the election law committees and the bar associations. I haven't given it to them yet, but the state bar and the city bar both have committees that are very interested in working through the canvass procedures. So I think that we would get some feedback.

**KIM GALVIN:** Commissioners have a legislative group too that...that makes sense.

**DOUGLAS KELLNER:** So this wouldn't necessarily go on our legislative package now but we would send it out and ask for comments and input so that we can formulate something.

**EVELYN AQUILA:** especially that's it out a little bit already. The others will say, we don't get a copy? I mean let's face it the practical union side of it and I think it's important.

**KIM GALVIN:** I think that also might be a good idea for the usability bills and documents that we come up.

**DOUGLAS KELLNER:** I'd be all in favor if you have drafts that you're ready to start circulating to circulate them as drafts. The canvass procedures are particularly important and timely because the New York City board takes the position that the current statute requires their Rube Goldberg Scheme for doing the final closing and one of the major purposes in this redraft was to clarify the expedited procedures that the state board has already been saying are in place and can be used by the counties in which all the rest of the counties in the state are using. But at least...

**KIM GALVIN:** Do you think we need to develop a memo to go with them or just the draft?

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**DOUGLAS KELLNER:** I'll leave it to you Kim. I think at this point, because what we've really done here is a redraft almost from scratch of Title 1 of the canvass article in the election law and the idea was to put it in order step by step addressed to what we are saying now are the practices that people should make.

**KIM GALVIN:** And again my reading of it certainly appears logical and well done but again I don't have the experiences that they do so I don't know what tweaks need to be made or...

**DOUGLAS KELLNER:** And I think the election law community also may have comments.

**KIM GALVIN:** Okay does Bob have a list of the people you would like it sent to or?

**DOUGLAS KELLNER:** Well we'll work it out. As I say I think if we send it to the association and the chairs of the election law commits and bars. And you know still in the works is a redraft of Title 2. And the most important thing is if we can come together with a bipartisan consensus on revising the recanvass procedures to deal with the public criticisms that there's no recount at all in a close election. And come up with some kind of agreeable formula on when the recanvass should be escalated into a manual hand count. So and it's critical that there be bipartisan agreement on that. New York City is still using the formula that was adopted in 2000 when they went to scanning absentee and provisional ballots which is that they escalate to a hand count whenever the margin is less than 10 votes or half a percent and they have kept that procedure in place but that is a very, very rough number because half a percent in the statewide election, that margin is too big to trigger a recount when you figure that the error rate, I figure is roughly 1 in 2500 ballots which are ballots that would be valid under our part 15, 6210 section 15 regulations on what is a valid vote that would not be picked up by a machine and that's really what you're trying to pick up in the recanvass. So how to develop a meaningful formula to address that.

**ROBERT BREHM:** No it's not the same issue. Yes it was Howard Stanislevic.

**Male:** Well and what it is, is the difference between the audit regulations and the recanvass procedures. Because they're really 2 different things. The audit regulations as we drafted them are designed to ensure that the machines are accurately counting votes. And that also we may want to revisit. Ann already brought up this issue of "Well can we alternate that audit process" it may also be now that we have some experience with it that we can take a simpler version of what Howard Stanislevic was proposing which is the be done with the risk limiting formula. So instead of just the gross 3% formula that there be a more meaningful formula that would actually involve less auditing. If we automat the process it may not be that important. But I distracted myself, I'm sorry. The issue with audits is whether the machines are accurately counting the ballots as they're programmed to do. The issue in the recanvass is who's actually the winner and what is the final



count. And when you have an extremely close race, then the final count is going to be determined on the ballots where the machine did what it was instructed to do, but because of voter error and our ballot, valid ballot definitions that come from the statute on voter intent, that you have a potential variance. I happen to think that that number is very small. And

**EVELYN AQUILA:** It is very small.

**DOUGLAS KELLNER:** Right but, so that there ought to be. Well if you're having a small village election and the margin is 1 vote, and there are only 500 ballots, strikes me that it would make sense that you allow them to hand count the ballots to see if within those 500 votes there is a ballot that the machine would not have read that could change the outcome.

**KIM GALVIN:** I think it's probably most likely to occur in a race like that. The bigger races are going to have a judicial order that's going to require certain things as well.

**EVELYN AQUILA:** If 50 people come down to watch the count and whatever the count is, if I lost by 100 votes, I have 30 people down there watching everything being counted.

**DOUGLAS KELLNER:** Right now there's no manual count Ellen. The court rulings

**KIM GALVIN:** Unless you live in Columbia county.

**DOUGLAS KELLNER:** Or in New York City that has its own rule on a manual recount.

**EVELYN AQUILA:** But you know I trust the machine count faster than a human count. Well except if you have...alright. Not even the faulty machine.

**TODD VALENTINE:** The machine could work correctly but...

**EVELYN AQUILA:** but the person could put it in wrong.

**KIM GALVIN:** The machine is not going to tell you that you wrote your name across the ballot or did some other identify. The machine is going to say it's a valid vote when you actually look at it visually you're going to see perhaps a reason to disqualify it which may alter the numbers.

**DOUGLAS KELLNER:** And right now the courts have said, have basically strictly construed the audit regulations and they've said that unless the audit finds that the machines were inaccurately counting the votes, which has not happened in this state except for I believe one ballot in the 3 years now that, or 2 years that we've been doing

this and that ballot apparently was because the ballot was wet when it went into the machine and so there was a blurry image.

**EVELYN AQUILA:** Oh, I think it was crinkled.

**DOUGLAS KELLNER:** Whatever it was but the ballot itself was deformed and that's why the machine miscounted it. But as far as I know that's the only time our audits have ever determined that a machine miscounted a ballot.

**EVELYN AQUILA:** That's why you can trust the machine.

**DOUGLAS KELLNER:** Well that's a good sign. It doesn't mean we should stop auditing because it's also a fraud prevention.

**EVELYN AQUILA:** But tired humans they make mistakes much more.

**DOUGLAS KELLNER:** But in a very close election the courts have said now there's no remedy if the audit doesn't trigger and at least within the election law community the election lawyers have been quite concerned about that. It's the formula. I'm not suggesting that, I think half a percent is too high a number. But no audit at all is not satisfactory either.

**BOB BREHM:** The biggest issue is there is no recount provision. So in the concept where should it be what should it be and then the trigger is always the important issue. And

**TODD VALENTINE:** But it also has to counterbalance with a certain finality of the elections and the timeliness it deals with.

**KIM GALVIN:** That's why we have to talk about it.

**TODD VALENTINE:** So you have to work it, it's very difficult to reconcile those two.

**DOUGLAS KELLNER:** So hopefully I'll circulate something soon. I've been saying I would do it for a long time. At least we got Title 1 out.

**JAMES WALSH:** Our next meeting day will be January 12, 2012. And before voting on going into executive session we have some preliminary determinations and update. Can we have a motion please?

**DOUGLAS KELLNER:** I move that we adopt the report of the campaign finance unit on each of the preliminary determinations.

**GREGORY PETERSON:** Second and moved.

**JAMES WALSH:** All in favor?

**All:** Aye.

**JAMES WALSH:** Opposed?

**DOUGLAS KELLNER:** And Liz or Bill do you want to just give a summary of the over contribution audits, just explain what you did and what the reports say. And what the action is that you're actually recommending we do.

**DOUGLAS KELLNER:** The usual thing is we forward them to the respective DA's.

**ELIZABETH HOGAN:** Well there were 2 audits that are being reported to the board at this meeting. One was the audit of candidates for the statewide offices which ran from the day after election in 06 until election day in 2010. The process that the staff used basically was to generate computer reports to analyze recorded contributions for those offices in the election cycle. They were then contacted to, once it was identified that a particular candidate or candidates committee had received contributions for the cycle, what they did just in summary was to contact both the treasurer and candidate to let them know that it appeared that there might have been an over contribution issue and to give them an opportunity to dispute it and say "No that was a recording error" or it could have been something as simple as it was on the wrong schedule or something like that. And basically the one that was finished, what we found when all of that shook out what we found was that there was no candidate in this statewide office audit for that election cycle that was in an over contribution status. The other report that we did for the packet for today was the report of the audit of the legislative election cycle and that ran from day after election 2008 until election day 2010. The same process basically was utilized by staff. There were reports that were generated identifying contributions in election cycle. There was a vetting process of internally of "did it appear that things were reported on wrong schedules" and those kind of issues. Again letters were sent to treasurers of committees and candidates telling them it appeared that there was an over contribution issue for the cycle giving them an opportunity to dispute it or to admit it. And when that audit shook out, basically there were 6 candidates determined to be noncompliant with the contribution limits for their election cycle. And those candidates are listed in the report that we provided to the commissioners and just to say that there was a repeated effort on the part of the board in the audit process to discuss any issues with these treasurers and candidates to come to some kind of a resolution of what these issues were, but in these particular 6 instances, what happened was either they were just, the candidates and the treasurers were totally nonresponsive to us or they just didn't take care of the issue to address it. that being said, the 6 people that we've listed in the memo to the board we are recommending that they be sent to the Albany County District Attorney for a review process to see if the District Attorney feels that they wish to go forward with prosecution. So that's the status of that.

**JAMES WALSH:** Could I ask you and I think this possibly should be done annually, particularly around the local elections because these are elections where people are supposedly familiar with what their responsibilities are but you mentioned each time the treasurer, could you just for the benefit of all those people watching out there, explain how the treasurer can be held legally responsible for the reports that are coming in. What does that really mean to them?

**ELIZABETH HOGAN:** Well when committees are registered and treasurers are registered here, basically what happens is the treasurer assumes the responsibility for the actions that the committee takes relative to financial disclosure reports. As well the candidate gives us a form that tells us that they approve the treasurer and this committee to be in place to represent them to effectively deal with the financial issues of their campaigns. So what we have is we have documentation from the treasurer and as well we have documentation from the candidate naming the treasurer and the treasurer takes full responsibility for these things.

**JAMES WALSH:** What does that mean legally? What kind of punishment is there for a treasurer who is not performing and has been warned several times?

**BILL MCCANN:** Well depends on the circumstances, I mean ultimately as you know that the state board watch doesn't have prosecutorial authority we can investigate and refer as the case might be. There are issues concerning filing and we have processes in place for that. and then there's the issue relative in this case to over contribution and the limits applied to that. the election law places the burden on campaign financial disclosure on the candidate but the statute also allows, since candidates do what they do which is they're out shaking hands and hugging babies and doing all the things that go with that, they generally don't want to handle the bookkeeping and accounting of the campaign. They pass that responsibility onto a treasurer through an authorized political committee. And in that case the candidate becomes an agent of the committee just like any other member of the committee. So the treasurer then taking on those responsibilities is obligated to register the committee with the board, they make disclosure of all receipts and expenditures made by the committee and take on the obligation, the statutes specifically places the obligation to make those disclosures on the treasurer especially when a candidate notifies us through the appropriate form that this is the process that's going to take place.

**EVELYN AQUILA:** Excuse me may I say something. Most treasurers especially in small races haven't any idea of that. They really don't have any idea of that.

**JAMES WALSH:** Exactly, that's why I'm asking.

**EVELYN AQUILA:** We should almost send them out when that treasurer is registered with us, we should send them out a list of their responsibilities.

**ELIZABETH HOGAN:** We do that.

**EVELYN AQUILA:** You do? Okay. Because I've talked to people who are

**GREGORY PETERSON:** Local boards do the same thing.

**EVELYN AQUILA:** They don't seem to know what their responsibilities are.

**JAMES WALSH:** I think too what very often happens in a local election you might appoint your best friend or your cousin or something, and "Sure I'll take it" and all of a sudden somebody tells them, "Do you know what that responsibility is? Do you know you can be held responsible?"

**EVELYN AQUILA:** When they receive this information they throw it in the waste paper basket.

**ELIZABETH HOGAN:** Well the process that we have of course here at the board from the educational component, we do everything we can. I wish we had more money to do more educational function but we do do. When a treasurer registers a committee, they are sent a letter within a day or so and it gives them the responsibilities. It gives them their PIN number which serves as their electronic signature in the filings and they're told all this stuff. Once a year we send, we do a mailing in the spring and we send them out all kinds of reminder issues and we remind them of certain federal regulations and all this stuff and then we run the seminars as well and we encourage, we work, we have a liaison program with each county board and we work with them to try to get them to round up these people to come so that we can help them. We also have the help line. Beyond that it's difficult to know what else to do.

**EVELYN AQUILA:** I didn't know most of that myself.

**BILL MCCANN:** Well I can say, I've served as a treasurer in the past. It is in many ways a thankless but very important position. You know, again, we do a welcome letter that's pretty in depth but you can only give so much information in that. We have a handbook that has a lot of information. We do a manual filer update. We do a series of trained seminars throughout the state. We have our phone staff is phenomenal and the amount of patience and time that they spend with callers to work them through. And we try very hard as it takes place in these audit processes where we bend over backwards to work with these committees to mitigate any issues that might be there. But ultimately there are those who are 100% recalcitrant and they just for any number of reasons don't do what they have to do and so...

**ELIZABETH HOGAN:** And relatively speaking there are very few of those compared to the number of registered filers that we have. You know and the other thing that we do is we don't take a legal action against any treasurer or candidate without, for example

when we don't get a filing from someone from a treasurer who is supposed to give us a filing, we send them a letter and we say "We haven't gotten your filing." We do everything we can to give them every opportunity to help themselves and we will help them in any way that we can but at some point it shakes out that there are some people who just will not comply.

**JAMES WALSH:** I know everyone around this table knows this and I bring the question up because we're talking about referring things to a district attorney and in those remarks measuring the treasurer, the treasurer and the candidate. And I just wanted the people who do watch this to understand that treasurer job is very, very important. Be careful.

**ELIZABETH HOGAN:** It is and we obviously contact the treasurers because they're in the position of dealing with the reports or whatever the issue are that are being raised in the particular audit that we're looking at. And the candidates also but the treasurer I mean we bring up the treasurer because that person is the person of record for a committee that everybody on that side of the campaign has said is going to represent us and take care of business with you. And we give them every chance that we possibly can.

**BILL MCCANN:** Right I mean the DA is going to do another assessment to determine what particular track they want to take and they've done it in any number of different ways.

**DOUGLAS KELLNER:** They'll have to decide whether to prosecute the candidate, the treasurer or both of them.

**BILL MCCANN:** Or any other agent frankly on the committee that...

**DOUGLAS KELLNER:** So the motion is to adopt the over contribution report and to refer the files on these 6 committees that are shown to remain in violation of the over contributions to the Albany County District Attorney for possible prosecution.

**JAMES WALSH:** A motion? Second?

**EVELYN AQUILA:** Second

**JAMES WALSH:** All in favor?

**All:** Aye.

**JAMES WALSH:** Opposed? Carried. Before we go into executive session, we do have business for executive session. I would like to wish everyone a happy Merry Christmas and Happy Chanukah and all the other happy holiday and healthy happy retirement George. If no other business we will come back after executive session for anyone...

**DOUGLAS KELLNER:** Well I don't think we're going to come back because we're just going to discuss.

**JAMES WALSH:** There will be no vote taken in the executive session for discussion. Thank you all and good day.