

**Peter Kosinski:** I'd like to welcome everybody to the Meeting of the State Board of Elections here on December 15<sup>th</sup>, 2015. I'm Peter Kosinski Co-Commissioner with Doug Kellner, Andy Spano and Greg Peterson. We open up today's meeting as a Board of Canvassers. We have to certify the election of November 2015 so I believe we have a number of certifications we have to approve whoever has those?

**Anna Svizzero:** Todd has them.

**Peter Kosinski:** A lot of finger pointing here.

**Douglas Kellner:** Oh and we have our special pens.

**Peter Kosinski:** So I think what we do is...

**Bob Brehm:** Two specials in the Senate.

**Peter Kosinski:** Okay maybe we could just explain what each one is as we certify them. Do them one at a time.

**Todd Valentine:** Okay let's start with the one I have on top. The first votes to certify were two vacancies in the Senate one in the 19<sup>th</sup> Senatorial District and one in the 52<sup>nd</sup> Senatorial District.

**Todd Valentine:** Alright do you want to go over the numbers?

**Douglas Kellner:** No let's just sign them.

**Peter Kosinski:** No we'll just sign them.

**Douglas Kellner:** Okay we've seen these already.

**Peter Kosinski:** You can just say what they are and then we'll circulate.

**Todd Valentine:** In the second group were three vacancies in the Assembly, one in the 29<sup>th</sup> Assembly District, 46<sup>th</sup> Assembly District and the 128<sup>th</sup> Assembly District. And the last was the certification for Supreme Court. There were elections in every district except for the 6<sup>th</sup> and the 13<sup>th</sup>.

**Douglas Kellner:** Is it okay on this for the Supreme Court?

**Todd Valentine:** Yes.

**Peter Kosinski:** Is there like this one here?

**Douglas Kellner:** This here.

**Peter Kosinski:** Oh, that's it? Okay. I did sign this one yeah. This one's done, this one's done.

**Andy Spano:** It's done?

**Peter Kosinski:** Yes, this one's done as well so just this one.

**Douglas Kellner:** Alright just make sure you've got all six of them signed. And then they want the pens back right?

**Peter Kosinski:** Alright so that completes the action, I'm sorry so in order to approve, we'll approve all three at once. Is there a motion to approve?

**Douglas Kellner:** So moved.

**Andy Spano:** Second.

**Peter Kosinski:** All in favor say aye.

[chorus of ayes] Opposed? It is certified and I believe that ends the Board of Canvassers Meeting for today and we will open as the Board of Commissioners of Election now.

So, first order of business as the Board of Elections is to approve the, excuse me, the minutes of November 17<sup>th</sup>, 2015. Is there a motion?

**Greg Peterson:** So moved.

**Andy Spano:** Second.

**Peter Kosinski:** Any, all in favor?

[chorus of ayes] Opposed?

**John Conklin:** We're going to hold over to the Executive Session.

**Peter Kosinski:** Yeah I believe we have Executive Committee or Executive Session Minutes that are not complete and we'll do those next meeting if that's okay? Alright so that completes that. We'll now turn to unit updates. The first unit is the Executive Committee Todd Valentine and Bob Brehm.

**Todd Valentine:** Well the first thing was that is the completion of the vote earlier of Board of Canvassers with a certification for this election. So we'll move onto the next one. Recently both Bob, myself as well as Commissioners Kellner and Spano and Brian have participated with the Assembly Hearing in New York City and prior to that the Assembly Hearing in Albany on improvements to the voting process. We are expecting the budget to be released slightly earlier this year. We did have a call with the Division of Budget about some of the issues because it is a zero growth budget which we have submitted and that's what we're expecting it to be. But with

changes that we've had in the Agency and looking forward, you know, we believe there are some areas where, you know, additional personnel might be useful and we've laid that case out to them. I can't say that they were overly receptive to the concept to visit the larger plan of the budget situation but we'll see what comes out on the 13<sup>th</sup> of January when we're expecting it to be released.

And related to that we also have the State Election Commissioners Association Meeting scheduled for that time period so, you know, we are anticipating in participating in that. There have been a number of different panels which we'll go through in more detail after this meeting and Christmas and New Year's to get the staff ready for, you know, basically updates on the Presidential Election Process to remind people what the process is with the Delegate selections as well as these are Federal Elect, this is a Federal year so you know it's part of the panel so we'll be reminding about the Move Act and the issues that are involved in that and then our Campaign Finance, our Finance Unit rather is doing a presentation on the last day of the conference as a CLE on that Thursday. So if you'd like, you're welcome to participate.  
Bob?

**Bob Brehm:** You covered most on my list. I think what just in general that we had a chapter signed into law since our last meeting the Chapter 515 which is the use of the automated tools and performing the Post Election Audit. So we sent a copy of the bill out to the County Boards and included just a brief conversation about that with the Election Commissioners on December 3<sup>rd</sup> when we did our monthly call with them. I think we also gave them a highlight of the 2016 Presidential Primary and we are going to cover it in a little more detail at the Winter Conference because of the dates and the difference in the plan for Presidential Primary. One it's, the plans have changed since we did it four years ago and who remembers what we really did four years ago, you know, and there's a lot of new Commissioners. So we want to make sure that we're fresh in everyone's mind because for us this is probably the one time at the staff level we're able to meet with the Elected Commissioners this year because they're Summer Conference is August 1<sup>st</sup> to August 4<sup>th</sup> which is right in the middle of another filing period and it's going to be in the Thousand Islands. So, in the even year because of the political calendar we have it's very difficult for us to get to the Summer Meeting. So, we want to make sure we cover with them what we need to, to go over the Move Act Compliant Calendar and also the difference in the Presidential. So those are the major issues we want to cover, you know get out of the way early with them at the conference. Other than that I think that covers the general topics.

**Peter Kosinski:** Any questions of? No? Okay then we'll move on to the Council Compliance that's Kim Galvin.

**Kim Galvin:** Thank you Commissioner. We've been very busy. We've had many meetings with a variety of different staff people in and out of the agency. As Commissioner Kosinski and Kellner mentioned last meeting we started to work on the Legislative Program. Brian and I have had what I consider very productive meetings going over each of the proposals. We haven't finished yet but we're making good progress. We're on our way. I think we're narrowing down the list. There's a lot that we can agree to, some that just need more research or discussion but we're doing well on that.

Brian and I also met with Bob and Cheryl to discuss the de minimis lists of deficiencies for compliance reviews. When you have a filing that's otherwise complete but for one missing address or one missing address number we heard some complaints at the Assembly Hearing that it was a waste of money and time and to send them certified mail. So we're trying to just narrow it down. We've been working with Risa and her staff to just give some clear guidance to the reviewers moving into the January Periodic. We're making good discussion on that.

Brian and Bill and to a lesser extent I have met on the Hearing Officer Process that attempts to work out the wrinkles in the administration of that program. I'm sure Brian or Bill could add more. Training Unit has done some winding down the campaigns seminars, webinars and we have also agreed to a five or six seminar schedule in the near future for helping committees and candidates wind down their campaign.

Brian, Bill and I met on the Independent Expenditure Regulations. We were making extremely good progress on that until we caused to break up due to another event in the agency. So that, again, is in progress. The FOIL Guidance to the counties I think is going out or has gone out and various other meetings that affect the agency or the unit we've been involved in. It's been busy. Do you have anything to add Brian?

**Brian Quail:** Just a few things really just in amplification of what you said. The Hearing Officer Process is fully functional and up and running and ready to receive referrals. And I'm sure there will be something imminently coming our way there. We, just as a summary on the year in terms of Compliance Reviews, I'm advised that the unit has reviewed over thirty thousand filings since its inception which is an enormous quantity and an excellent job. Also with respect to the non-filers for this election cycle, the Twenty-seven Day Post General Report was due on November 30<sup>th</sup> and it's my expectation that we'll make referral in due course and shortly to Enforcement in respect to those. And just to echo and amplify what Kim said on the Legislative Program we've had extensive back and forths that have involved reviewing proposals, reviewing in some instances bill drafts and it has been very productive and is moving forward. And the, let's see I would be remiss not to mention also that the January Periodic is due on the 15<sup>th</sup>. The cutoff date is the 11<sup>th</sup> and in terms of looking forward the LLC case oral argument is on Wednesday, December 16<sup>th</sup>. It's an important date for the agency. Looking backwards Tom Connolly and Cheryl Couser participated and presented at a Civic New York Event – Follow the Money Opening New York Campaign Finance Data on November 20<sup>th</sup>. Kathleen had mentioned that they would be doing that in her last report. That did, in fact, occur and appears to have been, was a productive exercise.

**Peter Kosinski:** Okay are there questions?

**Douglas Kellner:** I had wanted to discuss the Legislative Report which I thought we had put on the agenda at our last meeting that there would be a report today on that and it's going to be lengthy going through the items. So we could do it now or we can put it as a separate item to go on at the end of new business.

**Peter Kosinski:** I'm sorry, you want to go through specific legislative items?

**Douglas Kellner:** Right and I this is another one of the problem of the people who work for us don't seem to communicate what the Commissioners want to do at the meeting.

**Peter Kosinski:** Well I was hoping I admit I was hoping to see a package from the staff today that we could act on. I see they haven't completed that and I guess they're working towards that.

**Douglas Kellner:** And I wanted to put that on the agenda today not with, so we could at least have some feedback on where we stand. And I was apparently vetoed by the staff to put it on the agenda which I really don't think is appropriate. In other words if a Commissioner wants to put an item on the agenda I think it has to be on the agenda notwithstanding what staff wants.

**Peter Kosinski:** Well I understand your position. I guess I'm feeling that what as I said what I was hoping for was staff could come to an agreement and we could act on them. I guess that hasn't quite occurred yet although it sounds as though they're moving in that direction.

**Kim Galvin:** There was sixty-five individual proposals.

**Peter Kosinski:** You have a list of sixty-five?

**Kim Galvin:** Yes it was a lengthy list that we were going to go over.

**Peter Kosinski:** It is a lengthy list.

**Kim Galvin:** It wasn't five or six so.

**Peter Kosinski:** I see that, I see that. I don't have that list here.

**Douglas Kellner:** So did they forward you the list?

**Peter Kosinski:** No I don't actually have the list but...

**Douglas Kellner:** See I guess that's my problem is that I feel the only way we get to communicate is at the meetings so let me...

**Peter Kosinski:** Are there specific ones you wanted to talk about...

**Douglas Kellner:** Yes.

**Peter Kosinski:** or all of them or what was your...

**Douglas Kellner:** Some small points on referring the items that we had from last year.

**Andrew Spano:** Do you want a copy of this?

**Douglas Kellner:** That would be very helpful. Do you have more copies for the Commissioners? Alright.

**Peter Kosinski:** I think we have...

**Kim Galvin:** I just have one of my notes on this.

**Douglas Kellner:** And I guess in the future I mean when I ask that something be on the agenda that it's on the agenda and not censored out.

**Peter Kosinski:** Now whose list is this? Can we start there? Where did this list come from? Bob?

**Kim Galvin:** Bob.

**Bob Brehm:** I usually keep a list throughout the year.

**Peter Kosinski:** Okay.

**Bob Brehm:** And it's a bigger list this year.

**Peter Kosinski:** Sixty-five separate items. Gotcha.

**Douglas Kellner:** So the first items at least to my understanding these were on our Legislative Agenda last year and did not go through. I have one suggestion for the very first item that instead of the title saying exempt "election workers from jury duty", it should say "poll work counts a jury service" just to put it in a more positive way. And although I still think the Office of Court Administration is still going to give us a hard time over that one.

Then one of the priority items is ballot usability. And I would like to sort of understand what the hang-ups are in terms of coming to agreement on the usability at this time. In other words, what are the issues of disagreement now?

**Kim Galvin:** Now we didn't discuss about the draft on that one. The last I said to Brian I had to check the Legislature last year had competing proposals and we had to review to see if they were in this year and see where they differed and then maybe work through that process to come to an agreement...

**Douglas Kellner:** So has anything happened in terms of doing that review yet?

**Kim Galvin:** No.

**Douglas Kellner:** Because I think that in terms of priority the ballot usability is probably one that we as the agency have the expertise and that we ought to try to come to agreement and get something to the Legislature.

**Peter Kosinski:** Yeah I know there were a couple of proposals I believe, there was one in the Assembly and I don't think they were too much different as I recall because I think they were discussed last year in the Legislature. I don't know where they are right now to be honest.

**Brian Quail:** And again it was a very big list and my note is that we had agreed that we would have subsequent meeting specifically on that. A draft has been floating around the agency since last year and then there are the two different bills in the Legislature.

**Kim Galvin:** Right for the larger issues like that and the re-canvas procedures we thought, at least Brian and I did when we met to, that would probably be the subject of its own meeting with more people involved in it as opposed to him and I just hashing through things. That was one of the categories....

**Douglas Kellner:** But we need to schedule that now then so that we get it done. I mean the...

**Kim Galvin:** No I understand.

**Douglas Kellner:** the Commissioner's asked to have that today and I understand that other things interfered but we really need it by January 11<sup>th</sup> and we have the Christmas Holidays. It really means paying attention to it and the canvas procedures and the ballot usability have been around for awhile. And on the ballot usability one of the things might be to, you know, break it up into its parts to see if there, you know what we agree and what we disagree on. So, for example, right now the statute requires that everything be in capital letters and...

**Kim Galvin:** Sans Serif Font...

**Douglas Kellner:** ...and yet all these ability experts say that using large and upper case and lower case is more readable and usable. So...

**Kim Galvin:** There are also some things in there that require software changes for the machines in our program. So that's why I thought it needed a more extensive discussion.

**Douglas Kellner:** Which is fine but let's get the list and...

**Kim Galvin:** Right.

**Douglas Kellner:** And start identifying that.

**Kim Galvin:** Usually when we come to the Legislative Meetings there's like twenty items on it. I was a little surprised there were sixty-five. It took a little longer. There was you know...

**Peter Kosinski:** Yeah I would I mean I would just chime in I guess having looked at this that yeah sixty-five proposals is a lot to, you know, take a look at. It seems to me one of the first things we should try to do is prioritize because I think sending sixty-five proposals over to the Legislature is almost counterproductive because the chances of getting them to focus on sixty-five is very remote. It seems to me it would be in our best interest to, you know, winnow it down to, you know, a selection of those we think are most important and to identify those and then work on those to get those over there so that we can tell them these are priorities of ours this year rather than hear sixty-five proposals of which, you know, we know we're not going to get sixty-five proposals.

**Doug Kellner:** Right so why don't we start to prioritize...

**Peter Kosinski:** I have no problem with prioritizing and I think I don't know if the staff has done that even. Have you guys even prioritized these particular proposals as far as how you deem them from an important standpoint or?

**Brian Quail:** Well Commissioner what we did is we identified areas that would be easier to agree on and identified next steps in terms of needing to have meetings on other ones that were harder. Some of them are very small changes that are not ground breaking. So I don't, from my perspective I wasn't, my objective was not to reduce the total number in the discussion that we had but rather to begin the process of identifying where there can be consensus and then to identify new items where there wasn't consensus a path forward on potentially arriving at consensus. So it has not resulted at least on my end on my list I have notes on every single one of them I don't have a rank order.

**Kim Galvin:** So do I.

**Doug Kellner:** And some of them Commissioner are very simple. For example line twelve is remove petitioning for Long Island Power Authority Trustee. I mean it's just one sentence in the statute and it seems like it's a no-brainer to take it out even though somebody actually sued us when we did not accept the petition or sued the Nassau County Board of Elections because they were trying to run for a Trustee even though it's no longer an elected position.

**Bob Brehm:** On the first page number four through thirteen are carryovers except for 77 is a carryover from 2013. We didn't have a consensus last year.

**Peter Kosinski:** Well I see there are bills attached to some of these proposals at the Legislature apparently. So at least some of them have achieved that status that someone in the Legislature has introduced a bill to do what we're asking them to do.

**Doug Kellner:** Right.

**Peter Kosinski:** I mean focusing on those make some sense because at least you've got a bill in that you can focus on to try to get passed. I assume these are same as bills in each house so you could, you know, potentially get those adopted.



**Doug Kellner:** Right.

**Kim Galvin:** They aren't in a lot of cases same as.

**Peter Kosinski:** They're not same as's. I mean that would be the first thing to try to get a same as in each house. But I see most of these do not even have a, a bill.

**Doug Kellner:** No this is the long list. Now for example line 18 is electronic poll books.

**Peter Kosinski:** Uh, huh.

**Doug Kellner:** We've been told that there's no interest on your side in working through on that. Is that the case because then we should just take it off the list?

**Peter Kosinski:** Well I can't say there's no interest. I guess we're willing to talk about it. I just don't know exactly...

**Doug Kellner:** Well we have a proposal that's been circulating for a year and we are...

**Kim Galvin:** Based upon the hearing the other day when you said you didn't have a draft we had wondered whether or not it was going to come back a county opt-in or a county opt-out or remember there was a lot of discussion about that?

**Bob Brehm:** We have the draft and it's been out there.

**Doug Kellner:** We gave you the draft in January.

**Bob Brehm:** I haven't changed the draft since January. I just keep sharing it with people.

**Peter Kosinski:** So nothing has been introduced yet into the Legislature on that one is that...

**Bob Brehm:** I'm told it's imminent.

**Peter Kosinski:** Okay but it's not in yet? Okay.

**Doug Kellner:** But it's not our bill. I mean we haven't...

**Peter Kosinski:** I know it's not our bill. It's somebody else's bill.

**Doug Kellner:** it would not be a...

**Bob Brehm:** It may be the same. I haven't seen it in print yet.

**Doug Kellner:** No but I meant alright the, our meeting it's not the State Board of Elections Bill it's a Brehm, Kellner, Spano draft.

**Peter Kosinski:** Uh, huh. I mean I know some of our counties have...

**Kim Galvin:** Maybe Brehm should be in the meetings then.

**Bob Brehm:** Well I mean I shared this version for more than a year with everybody in the building, out of the building. I'm hoping to just get a bill in print at some point. I'd like to get it passed but I have to get it printed first.

**Peter Kosinski:** Yeah right and introduced those are good things to get it done. That's true I mean listen it would be good if we could agree on something here. I'm not disputing that so I mean I think we'd be willing to talk about it. I haven't, you know, focused on your draft. I know the concept. I've looked at the systems. I've talked to even some of the counties about it who have used it. I know a couple of the counties have done sort of a pilot on this and have tried it out. So I do know there's a little experience out there but I haven't, you know, I don't know the exact language of the bill or how it would work but...

**Andy Spano:** You weren't at the hearing but at the hearing I suggested that...

**Peter Kosinski:** I watched part of the hearing though Commissioner Spano.

**Gregory Peterson:** He put it on replay over and over. He looped it.

**Peter Kosinski:** So I am familiar with what was discussed there.

**Andy Spano:** I had suggested a pilot but, you know in the previous cases most of the pilots came directly from the local Commissioners.

**Peter Kosinski:** Right, right.

**Andy Spano:** We thought it should come from the state and...

**Peter Kosinski:** Right and monitored by us to see how it works.

**Andy Spano:** Yeah and monitored by us...

**Peter Kosinski:** Right I see that.

**Andy Spano:** sponsored by the state.

**Peter Kosinski:** Right, right ...

**Kim Galvin:** That's not the bill draft.

**Andy Spano:** Excuse me?

**Kim Galvin:** That's not the bill draft.

**Andy Spano:** No I understand that but I mean I would see that as a state run pilot...

**Peter Kosinski:** But maybe we could talk about something like that to...

**Kim Galvin:** Right so that's what we thought we were going to discuss.

**Peter Kosinski:** ...I don't know I mean maybe that's a proposal we could talk about, you know, getting this started. Maybe that sort of a state type of a uh...

**Andy Spano:** I'm willing to talk about it. It's just not going anywhere.

**Peter Kosinski:** Well again I'm not sure what this is but...

**Andy Spano:** And then there's the whole concept of opting in and opting out if you go this route.

**Bob Brehm:** Well it certainly just would authorize its use. It doesn't mandate its use. I mean the statute currently still allows the ledger that nobody uses to be in it and we added to it sometime ago the ability to have digitized poll books and this would just add one more option if you wanted to use an electronic poll book and the statute is pretty spec, I mean there's only one spot that deals with printed in the statute, that's a printed book. If you only change printed book and you allow electronic poll books there's many steps in the statute that speak to how the Board prepares the ledger, the poll book or the electronic poll book to seal it, secure it, transmit it for use on Election Day, how the inspectors receive it, how they use it during the day and how they ship it to go back. So, in the draft that we prepared and shared it speaks to just touching all those spots to how you would use an electronic poll book so that we don't, so if we do authorize their use, we don't end up with litigation as to why did you make the mark you did. You know because the statute tells you to make a mark in certain instances in the book...

**Peter Kosinski:** Right.

**Bob Brehm:** on the electronic. You have to make the same corresponding change to authorize electronic marks per se...

**Peter Kosinski:** Right, right.

**Bob Brehm:** or some way to deal with it. So that was the draft we did earlier and shared. It did not at the time call for a pilot. I think we saw some of the advocacy groups at the November 18<sup>th</sup> had recommended a fund to pay for pilots and for certain reforms.

**Peter Kosinski:** Uh, huh.

**Bob Brehm:** So I hadn't thought of it until then.

**Douglas Kellner:** Another area that hasn't been drafted but I would hope that we could get some feedback before we spend time drafting it to see whether it's productive is something I've talked about for a couple of years now which is poll site organization. That right now we organize our poll sites by election district and the election law provides that there be a Board of Inspectors for each election district. You know, one of the proposals we've talked about for awhile is just enlarging the size of election districts, allow election districts to go up to three thousand. Another way to address this is to instead have the Board of Inspectors for the poll site rather than for the election district so that there be two democrats, two republicans as inspectors who would be in charge of the whole poll site. And then everybody else at the poll site would be a clerk to be assigned as necessary and where there's a high turnout election, we would have a larger number of clerks. With a smaller turnout election you could have a smaller number of clerks and it would give much greater flexibility in terms of assigning people and also allow for people to work without having to work the whole sixteen hour day because they could just work as clerks during the busy periods while still having the inspectors for the whole day.

**Gregory Peterson:** Per diem, a per diem clerk paid for by who?

**Douglas Kellner:** Well an hourly clerk but these are all paid by the counties. But uh...

**Peter Kosinski:** I'm not sure I guess I'm not quite sure how that works.

**Douglas Kellner:** It's just a question of organization.

**Peter Kosinski:** Yeah I guess in my own mind I'm not sure, I mean right now you have four inspectors per ED, two of each party. I'm not sure how this would change that dynamic so. I mean right now the Boards can change the dynamic by, you know, carving up their ED's into smaller units if they feel, you know I know we talked at the last Board Meeting about a concern of lines and, you know, having voters waiting too long and it's particularly a New York City issue I believe. But, you know, that's a concern generally. We don't want voters waiting too long. I don't want to create a situation where we're, you know, forcing more voters into a polling place and maybe creating more lines where we don't have them now.

**Douglas Kellner:** I would agree but that's, that's just a question of how you staff the poll site. This would allow greater flexibility. And I think one of the things is, is that we've been telling County Boards that they can name the same set of inspectors for each election district within a poll site but some counties are saying that they would prefer to have Legislative authorization for that before adopting that practice.

**Bob Brehm:** I think that we got into that issue was when we went with the lever world we had a machine in an ED and there was no crossing over with the optical scan. Most counties put like one or two machines in a building with multiple election districts and people could go to any machine. So it's harder to identify who are the group of inspectors to that machine versus that

machine which is, you know, historically the lever was assigned to an election district and that group of inspectors signed all the documents for that lever machine. Now you have a team of people signing for the machines in the building which is primarily, you know, to sign the return of canvas or return the tapes for their, or the documents related to the seals, how the machine was found in the morning when they opened it. So it's not who's in charge of the machine any more is some of the issues that relate to it's really the building's machine so there's a team of people responsible for the building.

**Peter Kosinski:** Uh, huh.

**Bob Brehm:** And then there's tasks within the building at the election district level and the general issue only matters get them the right ballot so that if at the time of year when the election district matters which is like a committee man.

**Peter Kosinski:** Are you suggesting that these clerks would not be bi-partisan like it's the case right now? You just call them something different?

**Douglas Kellner:** Right the...

**Peter Kosinski:** I mean I'm not sure. So the different titles?

**Douglas Kellner:** the idea is instead of requiring four Election Inspectors for each election district that there would be four inspectors for the poll site and all the other poll workers at the poll site will be clerks and that they would be staffed by the County Board of Elections on a bi-partisan basis as necessary to process the anticipated number of voters. It's an organization issue.

**Peter Kosinski:** Yeah I see that I mean...

**Douglas Kellner:** And um...

**Peter Kosinski:** I don't know I guess the...

**Douglas Kellner:** alright well I...

**Peter Kosinski:** I can't say on first blush I, you know, I'm against it.

**Douglas Kellner:** No that's why I wanted...

**Peter Kosinski:** I'm just trying to understand exactly what it...

**Douglas Kellner:** that's why I want to try to get it on the agenda...

**Peter Kosinski:** Yeah, yeah.

**Douglas Kellner:** if we never talk about it we um, we...

**Peter Kosinski:** Anna seems to have a thought on this by the way what's your thoughts?

**Anna Svizzero:** I was just going to explain it could help in recruiting because you would train people, you would expect your four chief inspectors or judges or whatever you want to call them to be the decision makers in the polling place with regard to court orders and how things are handled. You're training and paying at the same level the same inspector whose only responsibility is to monitor the privacy booths to make sure that campaign literature isn't left behind, that ballots aren't abandoned and that voters get assistance when they need it. So you could have various degrees of training and performance.

**Peter Kosinski:** But don't we already have some of this. I mean aren't there already election coordinators...

**Anna Svizzero:** Coordinators don't...

**Peter Kosinski:** in some poll sites that actually function in large part to...

**Bob Brehm:** You have four election districts you have sixteen people and there's you know each of them responsible for theoretically signing everything and then you have some, you know, each inspector is supposed to sign and return the canvas. So you have that ultimately really sixteen people are signing all those little documents for that machine that there might be two in the building. So there's a duplic, the statue still requires that level of duplication because we're used to an ED and a machine.

**Peter Kosinski:** Uh, huh.

**Douglas Kellner:** Well let's say some people say the statute requires that because in fact we're telling counties they can...

**Peter Kosinski:** I understand. I think that's, you know, that's something maybe we could look at as a sort of discreet issue about who has to sign because there's two machines now for four districts maybe doesn't make sense that everybody sign, I don't know. But yours is a bigger concern I take it that you want more flexibility within that poll site so you can assign people to a particular machine...

**Douglas Kellner:** Right.

**Peter Kosinski:** or particular ED based on need at the time rather than four at each is that what you're saying?

**Douglas Kellner:** Right.

**Peter Kosinski:** Yep.

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**Douglas Kellner:** So, you know we've had an initial discussion on this and I would like people to look at it and I think, you know, in addition to Kim and Brian looking at it on this particular issue, this is something where Brendan and Anna might very well uh...

**Peter Kosinski:** Yeah well I think they should, I agree.

**Douglas Kellner:** and have a roll in looking at it and how to streamline that. Those are my priority issues. A lot of other items on here though I think are still worth our attention.

**Peter Kosinski:** Uh, huh.

**Douglas Kellner:** So for example on emergency preparedness that right now we have an administrative remedy that applies to general elections but not to primaries. And Todd made some very good points at the Assembly Hearing on this issue that unlike the general, the primary triggers all sorts of dates where you still have to run the general and especially with the current election calendar as it is where there really isn't a date to spare between the September Primary and the November General Election. If you had an emergency that affected the primary it would definitely impair the schedule for preparing for the general. But I still think it's something worth working out in advance a non-partisan procedure so that when the emergency happens we won't be put in a position where decisions could be colored by partisan advantage. I mean I think for something like that it's always better to figure out what the procedure should be in advance so that the ultimate decision isn't colored by partisan objectives if the emergency should ever arise.

**Peter Kosinski:** Yeah I mean again I don't think I have a problem but I do see some issues and I did see Todd as well as your Commissioner testimony for that hearing. And I would say that, you know, there are other issues I agree like what is an emergency? When does it constitute such an emergency that requires action? I think in a primary situation you also have more authority in a court to impose, I believe courts have more power in the context of a primary than they do in a general. So if there was an issue maybe they could, you know, that's another avenue of relief. But I think in the context of a general right now the emergency is identified by how many people show up. So if you have below a certain turnout that sort of defines the emergency for you.

**Douglas Kellner:** But only for the general.

**Peter Kosinski:** Only for the general right, right but my point is in some primaries we currently have very low turnouts but it's not due to an emergency, it's due to lack of interest I guess in the election that you just don't have turnouts of any magnitude. I think if we look around the state some of our turnouts are extremely low right now in some of our elections. And so, you know, to say that's going to trigger this emergency status I think may do things we don't intend. Because suddenly you'll have an emergency declared because people didn't turn out, well it wasn't due to an emergency. So defining the emergency I think is difficult as well. I think even in the context of the general this definition of a low turnout is pretty arbitrary because lots of things can drive turnout that have nothing to do with an emergency.

**Andy Spano:** There were a number of things...

**Peter Kosinski:** I mean I've been around here enough that I, you know, I remember 911. It was on a primary day. It was, you know, the New York City Primary was going on that day and, of course, everything had to be shut down but the Governor had the power to do it. And we talked to the Governor's Office. We worked it through with the Governor's Office. The Governor declared an emergency, cancelled the Primary and the Legislature rescheduled a new one. It was handled. I mean it's not perfect but there is, you know there was a mechanism that was in place. Sandy we saw, you know, another emergency, the Governor dealt with that. So, it has come up, it has been dealt with. I think it's hard to come up with a pat way to deal with every emergency simply because each emergency sort of stands on its own. First of all, what is an emergency and secondly how big is it, who does it affect and what's the impact? Again, if we could come up with some Legislative solution, that would be great. I am not personally optimistic we can because I think it's too variable in the way it occurs and how you decide here's an emergency that should constitute a new Primary or a change in how we handle the Primary. So those are my thoughts on that.

**Douglas Kellner:** Alright well I appreciate that and I think those are all very relevant considerations.

**Andy Spano:** You know you mentioned low turnouts which is a big issue across the state and there's an issue in here in which they should propose discussion and legislation they talked about consolidating election days. Putting them on the same certain elections on certain dates.

**Peter Kosinski:** Right.

**Andy Spano:** Now I don't know if that makes sense but it makes sense to discuss it. I had a guy in my building the other day, he said I want you to vote for me in the fire district election on Tuesday. I said I can vote in the fire district election. I had no idea. I had no idea. He happened to be running so when we got together in the building we went over and voted for him. There must have been two hundred and fifty people voted. Now ultimately that group can build a Fire Station for ten million dollars and two or three hundred are making, basically making that decision and it was because it was six to nine on an odd night. No one expected it and so on. I think that's just part of the problem but it's a discussion they should have. The same thing happens in School Board Elections. The same thing happens in Village Elections. So I think we should have a discussion on that issue.

**Peter Kosinski:** You know Commissioner I agree. I think you make a good point. I think another related topic to that is who runs the elections? I've always felt the Boards of Elections should run elections. I think that's what they do. I think that's their job. I think that's what they're trained to do and they're professionals at it. I think it makes sense to me that Boards of Elections should be in charge of elections because I found in my experience that many times the problem we have with elections are individuals or groups that are not, that's not really their primary job and they aren't as adept at handling them as the Board of Elections is. So, you



know, related to what you're talking about I think also, you know, we could talk about that as well. I don't know exactly how that would work but I think all that stuff is important I agree.

**Andy Spano:** You, you're gonna issue update as I walked into the building there was this overwhelming new group that walked into the building didn't know how to handle the volume but it got handled. But even as I walked into the building I walked in and I stopped a minute because I was in a lever machine and I'm not use to using a lever machine. And I hesitated and then looked at the ballot and there were three names on the ballot for each one.

**Peter Kosinski:** Right.

**Andy Spano:** So it's a different experience. All the experiences should be the same I think and get people acclimated to what voting is all about at the right time.

**Gregory Peterson:** You often find too though so whether it be village or an election such as you described that sometimes they need the help or ask the help and the local boards really are overwhelmed with what they have to do and they say frankly handle your own board and leave us alone and, you know, they don't want to coordinate this. If, we look into this it'll be something to say if we're going to impose that upon a local county board so again is there a cost involved with that and so forth personnel as well, that has to be taken into consideration on both sides of that.

**Any Spano:** Yeah I know I'm a mandate guy so don't worry about that.

**Douglas Kellner:** Um, number twenty seven is another one that really ought to uh, Operations ought to work on this as well, is that right now or just this year, ES & S has developed the Express Vote System and Dominion has adopted a comparable system that now works just, it's a ballot marking device but instead of marking a pre-printed ballot it prints out the voters selections, a list of the candidates the voter has chosen like the old ticket ballots that were in place before 1890. The number of jurisdictions across the country have as they're now looking at replacing their antiquated voting equipment they're using the system because it means that they don't have the expensive pre-printed ballots.

**Peter Kosinski:** I'm sorry Commissioner, explain to me how that works again. So I go into a voting booth...

**Douglas Kellner:** Well right now you have like the...

**Peter Kosinski:** on a piece of paper.

**Douglas Kellner:** auto mark or the image scan...

**Peter Kosinski:** Oh, okay.

**Douglas Kellner:** and so you have the terminal in front of you. The terminal would start with a full face ballot and then you'd pick the contest that you want to vote on. And it would then show you the selection....

**Peter Kosinski:** So there'd be like an electronic display...

**Douglas Kellner:** Yes.

**Peter Kosinski:** of the, of the ballot?

**Douglas Kellner:** Right.

**Peter Kosinski:** I would push the candidate's name that I want to vote for?

**Douglas Kellner:** Right, right.

**Peter Kosinski:** And that would register on this machine?

**Kim Galvin:** It takes you to the individual race.

**Peter Kosinski:** I'm sorry what's that?

**Kim Galvin:** It takes you to the individual race.

**Peter Kosinski:** Oh it zooms in on the individual race so then I make my selection on that race...

**Douglas Kellner:** Right.

**Peter Kosinski:** and then I would go to the next race and do the same thing...

**Douglas Kellner:** Right.

**Peter Kosinski:** and then ultimately a ballot would be printed out with my selections marked?

**Douglas Kellner:** Well right now under the current system if you're using the ballot marking device, it takes your pre-printed ballot and then prints it for you. Instead what the Express Vote System does is that it prints out your selections and then the selections are then taken to the scanner and you insert them in the scanner. That system...

**Peter Kosinski:** Uh, huh.

**Douglas Kellner:** even though it's very similar to what we have now, the one difference is, is that because it prints out the list of selections and doesn't print out the full face ballot I think most of us who've looked at it say that that doesn't comply with New York Law. But if it printed

out but with some very simple changes in the statute, it would allow them to use that next step in technology as a valid marking device in New York and I think it's a good idea. But what I would suggest is that because apparently it is that uh, we make arrangements to have the vendor show us their system or look...

**Peter Kosinski:** Are they coming to the conference maybe?

**Douglas Kellner:** at them at the conference.

**Peter Kosinski:** Do you know? Are they coming to this conference?

**Bob Brehm:** They had it at the conference.

**Douglas Kellner:** Yeah they had it at the last conference.

**Peter Kosinski:** Are they coming again do you know?

**Bob Brehm:** We'll check but I believe they...

**Anna Svizzero:** They're coming to the conference I wasn't sure if they're bringing this system in but we can certainly ask that they do. This is the ballot...

**Douglas Kellner:** E S & S had it at the last conference I remember.

**Bob Brehm:** That's a, it uses a longer piece of paper.

**Peter Kosinski:** So the advantage is you save the cost of pre-printing the ballots...

**Douglas Kellner:** Pre-printing the ballots, right.

**Peter Kosinski:** for the county?

**Bob Brehm:** Or we re-use the blank stock I mean if you...

**Anna Svizzero:** That same ballot would scan in the scanner that you see in New York City and Erie and Nassau instead of the full face ballot it will accept that ballot and it reads the bar code so the voter can see by name the selections that they've made and the system will tabulate based on the selections that are captured in that bar code.

**Peter Kosinski:** Who, who's using this now?

**Anna Svizzero:** Nobody in New York.

**Peter Kosinski:** No, no I mean nationwide?

**Anna Svizzero:** E S & S is the company um, Maryland is looking at it.

**Douglas Kellner:** Maryland just bought it.

**Bob Brehm:** They're going to a paper base.

**Douglas Kellner:** and Colorado is using it.

**Anna Svizzero:** It, it's really brand new and they don't have a big footprint yet.

**Peter Kosinski:** Brand new? Okay.

**Anna Svizzero:** But it was something that might be appealing for these other jurisdictions that can't use letter machines any more to not have to print ballots and pre-populate a polling place you could certainly do it in this sort of DRE kind of environment that uh we had started looking at when we originally got into the HAVA requirements as you know and then we...

**Peter Kosinski:** So are there two full faced issues then – one being how the ballots displayed as you're voting that it will instead of having full face it will highlight it race by race?

**Douglas Kellner:** I think that we already sort of agree that the time of the, you know of the 2005 Act was put in place that right now the image cast and the auto mark comply with the full face ballot requirement. But...

**Peter Kosinski:** Because you have a full face ultimately produced.

**Douglas Kellner:** Right.

**Anna Svizzero:** And you end up with one. You start with one and then you can pace it through the contest and then you end up with that full ballot.

**Bob Brehm:** It's full on the image cast because the auto mark is a printed ballot that you put into the machine.

**Peter Kosinski:** Yep.

**Bob Brehm:** And when you're done making your selections, the system colors in the ovals that you're going to vote for. On the image cast you start with a big blank sheet of paper...

**Peter Kosinski:** Uh, huh.

**Bob Brehm:** so the terminal, the display terminal starts by showing you the whole face of what the ballot looks like and then it goes contest by contest until you get to the end unless you decide to go back at any time to look at the full face. When you're done making your selections, it prints a full faced ballot.

**Peter Kosinski:** Right, gotcha.

**Bob Brehm:** So it takes blank paper, that's why it...

**Peter Kosinski:** So, this only applies to the full face?

**Bob Brehm:** Well it would be similar to that but it would start with this white paper and then it would mark whatever you mark...

**Peter Kosinski:** Yeah, yeah.

**Peter Kosinski:** So this would only come into play if we are contemplating buying new voting systems?

**Anna Svizzero:** They are looking for the, E S & S demoed it to us because they're looking at it as a replacement for the auto mark because it's very hard to get parts etc. for that auto mark. The technology has moved on...

**Todd Valentine:** It doesn't meet the standards right now so...

**Peter Kosinski:** Yeah, I gotcha.

**Anna Svizzero:** So they were interested in what it would take if it was acceptable and...

**Peter Kosinski:** I just didn't know I didn't know Boards were looking into buying new equipment already.

**Kim Galvin:** Well I think what is happening is because the levers are not being allowed to use in any election...

**Peter Kosinski:** Right, right.

**Kim Galvin:** I think it would be responsible for us to look at something that may be an interim type machine not for public offices but for Fire Districts or whatever that maybe those localities could buy that would be cheaper.

**Peter Kosinski:** If we could just get our proposal that would, I gotcha fair enough. So you're looking at other entities maybe? Okay.

**Kim Galvin:** Well I think they see a market emerging...

**Peter Kosinski:** Okay.

**Kim Galvin:** and maybe not a full certification but maybe approval.

**Peter Kosinski:** Well I think we should look at it, I agree, I think we should look at it and I'd like to look at it if you can get them to bring it to the conference, I would like to look at it.

**Bob Brehm:** Would you like to see it brought up here...

**Anna Svizzero:** We'll confirm it.

**Peter Kosinski:** It doesn't matter wherever they bring it. I don't care.

**Anna Svizzero:** We'll confirm that with them Brendan and I.

**Peter Kosinski:** If you could have that done, that would be great. And Commissioner just to go back to the other one that you mentioned this ballot usability...

**Douglas Kellner:** Right.

**Peter Kosinski:** which I know has been talked about for some time. And, you know, when I was in the Legislature it was talked about very seriously and I'm hoping that, you know, they can, I know that one of the big issues that was finally addressed I believe was in New York City where as I believe they have now limited their languages to two?

**Kim Galvin:** English plus two.

**Peter Kosinski:** English plus two and I think that helped a lot that the city on it's own and I give them credit for this instead of having six or seven languages on a particular ballot which I thought was extremely difficult to read, they have administratively, you know, address that by reducing the number of languages to make at least the print a little bigger down there so you can actually read the candidates names in these races where you have multiple languages. So that was helpful but I know there are other...

**Douglas Kellner:** And they're still complaining though that they're locked in by the capital letter requirements and the...

**Peter Kosinski:** Fair enough and I think we should look at that too but I think there is a way that we can streamline these ballots to make them more readable so the voter can read them makes sense.

**Bob Brehm:** And the statute says in the title of the office that you have, that you can make more than one selection. The ballot should say in the title of the office, you know, vote for any two, vote for any three, whatever your total number of selections are but it doesn't say when there's only one you said the once. So when they did their analysis of what the statute requires for the full faced ballot they took that off when it was vote once. You and I had already been there when they looked at it and that was the issue where the statue was amended for the instruction section that said mark the, complete the oval to the above or below the name, whatever the

instruction was and New York City put the oval in a different spot and they said it was because the statute didn't address their need even though on that system in the what is typically the voting square, the system they used could have put the oval in any one of the four corners. So they could have picked two that would meet the statute. So they did a review of the statute and they took off the vote once because the statute doesn't require it. So, I mean that's really helpful to people to know how many choices do I get. So, there's some things that just should be fixed in Article 7 that just makes sense. There's always the issues of, you know...

**Peter Kosinski:** Well the problem Bob I guess is what you identified. What you...

**Bob Brehm:** The usability.

**Peter Kosinski:** no what you think makes sense, someone else doesn't think makes sense and what someone else thinks makes sense you don't think makes sense so it typically is that kind of discussion. You know I might argue with you whether there is a need to put that vote for one up there because I would maybe assume that and the only time I need to be told it's more than one is when it's more, that it is more than one. So...

**Douglas Kellner:** There are usability experts and there is a science to this and so...

**Peter Kosinski:** Fair enough.

**Douglas Kellner:** some of these things are...

**Peter Kosinski:** And I think we should look at all of that, I agree with you.

**Douglas Kellner:** fairly well known. So...

**Bob Brehm:** Well we've had to look at them from our perspective and we've done it when there are proposals is to ask the staff just to look at whatever is being proposed, can the systems we currently use do it now. Would it require a software change?

**Peter Kosinski:** I don't like that ballot prompts are on the back. I mean I think that is not a good way to present a ballot. I'm sensing that a number of people forget to turn the ballot over.

**Douglas Kellner:** A separate piece of paper?

**Peter Kosinski:** I don't know, I don't know the solution I admit that but I can see where, you know, I've voted and now I don't turn it over cause I didn't realize I had to. I know the ballots say to do it but I'm not necessarily looking at that. So, you know, there are design issues that exist with these ballots. I don't dispute that for a minute. I think a lot of it is just agreeing on what design is the best, and then you know coming to a consensus on that. So, I think we're definitely willing to look at that. I know the Legislature is looking at it and I welcome that. I think probably we should talk to them as well because I think they were relatively close those

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two bills that were introduced I don't think were that far apart. And maybe we actually could get something done this year.

**Douglas Kellner:** Thirty-seven was filing dates. I think one of our biggest concerns is that is trying to clarify the calendar to get the statute amended with respect to mailing things to the Board of Elections.

**Peter Kosinski:** Okay.

**Douglas Kellner:** So for example that we would require overnight mail of all notices so that they'd have to arrive the next day and I think that's what that was...

**Bob Brehm:** No I think in number 37 somebody said there's a ton of phone calls that we get from a lot of people, counties and people filing as to what category, you know, what is the deadline for me to substitute or file a certain document because as you know reading that section we tend to always end up with as soon as practicable as the default. But there are so many, it's written in such a way that most of the phone calls that we get around that period of time take a great deal of explaining as to which one really makes it. If we could just more clearly say what the filing requirements are in 6158 to make our life easier but more importantly it would make the people trying to figure out how do I file and plan to file a lot easier. There's a ton of phone calls and I know Brian and Anna put it on the list as things to try and just clarify what is the standard that people should live under. And essentially...

**Douglas Kellner:** Well Anna what are you proposing?

**Anna Svizzero:** I think we need to look at the practicality of the, you know, when everything comes into us on the prima fascia review there are just a lot of deadlines that don't welcome the building of a ballot subsequent to that. There's just a lot of time that's absorbed there and initially we thought at least if there was overnight mail it would eliminate that lag of three and four days and depending upon where in the state you are mailing those documents to us, you know, in New York City you have to file everything personally and we realize that's not possible here. You know in New York they know their sum total on a given date and here we don't. We just linger until it, you know, the process creates problems with building ballots on time, getting ballots out not just to military voters but to every voter. Part of that issue on a separate tract was the fact that the judicial conventions happen after the day that the state has to certify the ballot. It doesn't make sense and then you're stuck with all of the fallout from that with these postmarks and various certificates and the scenarios that lay themselves out for county boards. If you have a death or disqualification and when is this due, when is that substitution due with the acceptance, is it appended, is it separate, when does that have to get to you? So those are the kind of questions that we all dealt with in that prima fascia time period where you're looking at petitions and whether they're valid or not. We're open to any suggestions. I think we've all encountered those phone calls and just looking for a calendar of dates that has some meaning to it and also eliminate that lag with postmarks as opposed to the express mail.

**Douglas Kellner:** Sounds like you need to talk it through and work up some specifics.



**Peter Kosinski:** Yeah I mean I think if your specific concern is the mail, I think we should look at requiring overnight mail if that's a solution. I don't think that's unreasonable and I think...

**Douglas Kellner:** It's in the Federal Court Order and it seems we're starting to get people used to doing that so maybe it's time to get the Legislature to do it.

**Peter Kosinski:** Yeah so that might be at least one step to solve some of them.

**Bob Brehm:** On the Democrat side is, I, I think on the Republican side for the Presidential you, I think you, if I'm wrong, last time you did the receipt deadline. And I'd hate to use that again this time.

**Todd Valentine:** Well we had to in order to accommodate the calendar. In certain instances we could do that for receipt deadline. We're actually talking apples and oranges here because one is just a general receipt deadline versus filling vacancies and there are extraordinary circumstances that come up. And they are complex because like many vacancies depends on when it occurs in the process as to which rule you're going to follow at any given time. So yeah, I can see that it is a complex process but it's designed that way because it depends on when the vacancy occurs you do follow different paths. And the difficulty that most counties have is they'll come across these once in a blue moon whereas we from the state level see these on a regular basis. So it's, we understand the issue and the complexity of it. Could it be streamlined? Possibly but, you know, you have issues as to, you know, you need to put together the ballot at different points in time so and it may change which is something the counties don't like because if a vacancy occurs after you've already set your ballot. It happens people die, they resign, whatever.

**Douglas Kellner:** Should we move out the deadline for judicial conventions before the deadline for fixing the ballot?

**Todd Valentine:** Well I mean that's the problem with having this discussion here because there's a lot of issues that the staff were trying to work out which is why we weren't ready to have this discussion at this meeting because these are the exact discussions they were having. So...

**Douglas Kellner:** Okay.

**Todd Valentine:** I don't know how, you know could you? Yeah but there's a domino effect to that because it has an implication for other things that actually occur after that as well because you're electing the delegates to go to that so who will be the delegates means you have to move the election for the delegates in order to go to that which is something that we, unconstitutional so.

**Douglas Kellner:** You could, you could move the, you could narrow the window for holding the convention.

**Todd Valentine:** Well you could except the problem is that it coincides with the time that I'm actually electing the delegates at the primary to go to that convention and I have to certify who is the delegate. So I need that time period actually to figure out who is attending that? Now could I choose the delegates in another manner? Sure but you know this is a colossal waste of time.

**Peter Kosinski:** I think the mail thing is something we all agree could and should be looked at if you have a proposal on like an overnight mail requirement for documents related to I think it's something we'd look at.

**Douglas Kellner:** Rewriting 1104, 1106 I'm sorry.

**Anna Svizzero:** Resolving that would also create consistency through the state because when the Board's default to that as soon as practicable, they all come up with their own deadline. You've got three days to get me a certificate of something. You have several other dates to do that so we try to coach boards. We've all done that you know follow the three days that's required for an acceptance or four days that's required for something else. But that doesn't mean the boards are applying that uniformly. So throughout the state when they have these, you know, and Todd's right they're once in a blue moon scenarios and they...

**Peter Kosinski:** See I don't think the as soon as practicable comes up very often. I think typically there's a timeframe that the statute outlines. It's just different timeframes depending on a particular circumstance and you need to know which timeframe applies to your circumstance. So I understand that. But you know Todd makes a good point that some of this does depend on when it happens and that drives a lot of, you know, the calendar and how the process works so it's hard to have one size fits all. It's a little bit like the emergency, you know, Primary preparedness. Yeah it's one size doesn't fit all.

**Bob Brehm:** You guys talked about consolidating very special district elections here. That's number 43 on our list.

**Douglas Kellner:** Okay, alright well I appreciate the time you've given us to discuss this and I've gone through my highlights so we don't have to go through everyone of the sixty-five items on the list today. But I hope that we would put this on the agenda for January...

**Peter Kosinski:** I'd like to see an, I'd like to see a...

**Douglas Kellner:** and that we'd be prepared to continue...

**Kim Galvin:** No matter what happens Brian we'll have it on the agenda.

**Douglas Kellner:** this discussion in January. Okay?

**Kim Galvin:** Whether the building burns down we'll have it on the agenda.

**Peter Kosinski:** Well let's, let's, let's put it this way, let's have a dead...

**John Conklin:** That's only seven bills.

**Peter Kosinski:** It'll be on the agenda one way or the other whether it's point of discussion or point of action. Alright the next uh, if we're done with that then we'll move on to the next unit which is Election Operations. Anna?

**Anna Svizzero:** I was hoping you all forgot about this. We do have a written report. It's summarized in the Board Packet but we will highlight those for you. Brendan and I have worked with our team to get three of the certifications on our table completed and those are in your Board Packet today. We are in the process of working on two other upgrades and we understand that there will be an additional one submitted in the not too distant future so the Voting System Team within Election Operations has been busy and continues to be busy and we'll provide a status on those ongoing certification projects by email to you if you would like that. We'll be doing it after the Board Meeting today and tomorrow we'll try to get some status on reaching out to our labs and looking at where those projects are. Wanting something to happen doesn't make it happen I will just say that and then we'll share those status reports with you.

We certified two vacancies in the Assembly to the New York City Board of Elections. We prepared the documents for the Board of Canvassers that you had today. We also prepared our year end reporting documents for county boards. Those have been launched to them and we're hoping to get a lot of that feedback by the end of the year. It's very helpful when counties want to compare their budgets and staffing and other aspects of their own operations with boards of similar size, boards within the same region with whom they share Senate and Assembly seats, Congressional seats, etc. so it's very helpful data for them.

We continue to work with boards to get their contracts in order for shoebox reimbursements. There has not been a lot of activity there but we do want to make sure that the contracts are current because one never knows. We have one county board that has to buy a new server for it's connection with NYSVoter so that's the kind of thing that comes up with the start of the process.

I don't know that we had anything else of high we've been working with the Legislative Packages. We've been working on preparing testimony for the presentations that Todd and Bob made last week in New York City and Brendan do you have anything to say?

**Brendan Lovullo:** I don't think so.

**Peter Kosinski:** Any questions for Anna or Brendan?

**Anna Svizzero:** Thank you. .

**Peter Kosinski:** Alright then we'll move on to the next unit which is NVRA PIO that's John Conklin.

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**John Conklin:** Thank you Commissioner. Well we are still busy with lots of public inquires with regards to Voter Registration deadlines for the elections that happen next year. We just recently updated the Website to provide all the updated information on all the new registration deadlines for the Presidential Primary, the Congressional Primary, the Fall State and Local Primary and the General Election including absentee deadlines and military and overseas voters as well. We had thirty-one FOIL requests in November as previously mentioned by the other the Council Unit the FOIL Guidance Survey went out. We participated in that to a degree. Tom and I participated in the ECA monthly call for November. We continue to participate in the NYSVoter Refresh and CAPAS FIDAS Project Meetings. We also did a user group presentation for the county boards. The annual report is done. There should have been a copy in your packets. With regard to the website, we posted some updates for Compliance Unit for their seminars and the winding down, the Campaign Seminars as well. We are up to date on the formal and informal opinions that have been issued by the Board on the Election Law page. We're up to date on the transcripts for the Commissioner's Meeting Page. I mentioned the voter registration deadlines with in relation to NVRA Greg and Patrick visited Tioga County last week for their NYSVoter Review. I think that's everything that I have. Do you want to add anything Tom?

**Tom Connolly:** Just with regard to what was mentioned last meeting and also Brian earlier within the last month we did attend a presentation down in New York City where we had the opportunity to talk to what I consider the three different user groups for the CAPAS FIDAS redesign more of a consumer user group. So this was an opportunity for people who use the information both provided by us and also by the New York City Campaign and Finance Board to have opportunity to come and see what is in the works for both us and the NYCCFB and then to also have an opportunity to kind of ask questions or make some requests for various data and I know Commissioner Kellner was there as well. I thought otherwise it was received well and I think that they're happy to see that we are making strides in creating a new more user friendly system. Otherwise I know we'll be working on pulling together some conference presentations for the ECA Conference next month. John and I will be working with the various units to make sure that's all in place and ready to go. We're going to be, I set up some stuff with our online ballot delivery for Military Voters for Suffolk County. They have a special election on January 26<sup>th</sup> so I was just helping getting that all set up so the ballots can go out in time for the Military Voters to vote in that.

I was at two conferences last week in Nashville. The first was held by the well their attendees went and included some of the Commissioners from the Election Assistance Commission, the Presidential Commission on Election Administration, the Bi-Partisan Policy Center. That Conference largely focused on looking at what kind of standard and certification should be done for the next generation of voting systems as Commissioner Kellner was mentioning before. There are other states that are looking at replacing their aging systems and so trying to figure out how the EAC can best kind of create the next generation of standards that will allow a bit more flexibility and a little bit more nimbleness as in being able to have systems available for consideration. And also with the advent of new technology like electronic poll books or like the Express Vote was mentioned, different ballot marking devices, what things really require standards and/or certification and what should not. I thought it was a good conversation. I do

know Ed was also there. And then the letter after the week was Council of State Governments and part of an overseas voting initiative that I'm on the Technology Working Group. So we're uh, it was a good conversation about serving the overseas and Military Voters. That is kind of an ongoing thing. We are kind of working on how best to serve them. One of the things that I'm kind of focused more on is data standardization and in that vein I also mentioned John last week and I didn't have an opportunity to really talk to him about but I know we discussed with the Associated Press. They're interested in gathering some of our election night results data from us which is certainly a change. And so that's also working towards us trying to get our information in more standard form. Beyond that I think that does it for me unless there's any questions?

**Douglas Kellner:** Can you tell us what the status is of the pilot projects with respect to the interstate registration checking process?

**Tom Connolly:** With regard to, we've been receiving a lot of requests from other states for the crosscheck with regard to duplicate possible voters. And we've been trying to provide them with that information as we can. With regard to use of the information for our own state though I will have to say that there's been some delay in getting that information to them. You know the only one that we were looking at was interstate crosscheck. We weren't looking at participating in ERIC this year we discussed because we're going to use the crosscheck because of the, it's a free cost. But there is a lot of information that we did receive and we did winnow it down and we did provide some information to counties but we will have to kind of more thoroughly follow up on that and evaluate how good of a process that was and whether or not it's worth the extra effort and continue to do so in the future.

**Douglas Kellner:** Who are the staff people who are doing that?

**Tom Connolly:** Largely me but I know John has been helpful with some of the requests that have come in for additional data.

**Douglas Kellner:** A lot on your plate I know.

**Peter Kosinski:** Any other questions? Okay we'll move on to ITU then – Mark Goldhaber.

**Mark Goldhaber:** Thank you Commissioner. Don't have a whole lot of new news this month. We did get about an hour and a half ago we got approval to finally move forward with bringing in some assistance to get the county VPN Systems upgraded so I expect that we will be able to start scheduling some work here in the next week or so. We still have a shot to get a couple of test devices out to the counties by the end of the year. If it doesn't happen it should be early next year. We'll get maybe three test VPN Units out to the counties to make sure that the configurations are working.

**Peter Kosinski:** Mark VPN?

**Mark Goldhaber:** I'm sorry Virtual Private Network that's the secure connection from us to the counties for the NYSVoter Network my apologies. Okay so the secure network to the counties if

we get the three different configurations tested out we can send out the devices to the remaining counties to implement. Our goal is to have unplug the old device plug in the new device, it works, we'll be available on the phone. If they do run into issues...

**Peter Kosinski:** Mark I'm getting some skepticism over here.

**Mark Goldhaber:** um, well that's why when we have the first test counties go, we will have someone there. We'll hand them the instructions and say can you follow this? If they can follow that then we've done a good job with the instructions. If not, we've got to go back and rework them. So we will again we will assist and if things don't work it's very easy to plug the old one back in and we'll take a closer look. But we expect that once the configurations are done properly it should go smoothly and then that's one big leap with the infrastructure. We're working on cleaning up the issues with the construction of our end of the infrastructure for all of NYSVoter and CAPAS FIDAS. As John and Tom mentioned earlier we had on December 3<sup>rd</sup> the 3<sup>rd</sup> Focus Group with the county boards. That seemed to go well. They seemed to appreciate being kept in the loop and being given the opportunity to have some input. And we're hoping to nail down time estimates for any changes that we may want to bring into the initial release by the end of the month so that we can then evaluate and see can they actually be brought in with the initial release or do we hold them for a later release?

I did include in the packet just for your information some figures on the election night website traffic between mobile tablet and desktop for the three main areas just to illustrate how much of our traffic is actually going towards mobile and tablets these days. That's the first table in the minutes. It's, we've got to the point where from 5 PM to midnight it's 37 to 44 percent are remaining on desktop. Everybody else is mobile or tablet. So again, our user base on our Website is more and more going mobile and we're going to make sure that that is addressed in the revised CAPAS FIDAS and NYSVoter Sites so that we have responsive designed. If they're working on a small screen that what data they're seeing is appropriately sized for the small screen rather than trying to see the big image that you get on a desktop.

**Peter Kosinski:** So when you say mobile Mark you're primarily talking about an iPhone...

**Mark Goldhaber:** I'm talking about a...

**Peter Kosinski:** or an iPad or?

**Mark Goldhaber:** I'm talking about, an iPad would be a tablet.

**Peter Kosinski:** Okay.

**Mark Goldhaber:** So mobile is generally a smaller form, smaller device format. And so we've got I believe three screen sizes that we will be doing in this responsive design and that should make it easier for anybody that wants to look at those sites on a small device or trying to do their campaign finance input from a site on a tablet or on a cell phone, they'll be able to do that

because the screen will be appropriately sized or if somebody wants to do an inquiry. And that's really all I have.

**Peter Kosinski:** Any questions for Mark? No? Okay so that ends the ITU. Next is Enforcement, Risa Sugarman?

**Risa Sugarman:** Thank you Commissioner um, we've been continuing to work and evaluate the failure to file mailing that we did to the state to the state filers. We're continuing to see people coming into compliance. As Brian said, we worked with Brian and Bill to my attorneys Carlo DeMarco and Jay Arnold worked with Bill and Brian to discuss the Hearing Officer Process. I think that there are a couple of little tweaks that we can make to that process but we're working towards it. We have cases that are ready to go for that hearing process. We're getting ready to send out I'm not sure whether we're going to rely on the twenty-seven day filing or the January Periodic for the local filers. I haven't made that decision yet but we're certainly getting ready to send out the mailings for the local filers failure to file. That's going to be a much bigger mailing than the six hundred plus mailing we did for the state filers. But the State Filers is continuing to come into compliance and we're looking to see which cases they're going to be sent to the Hearing Officers and which cases we're going to evaluate for possible referral for criminal referrals to the Board.

As Kim said we are discussing the serious or de minimis decisions as to the Compliance Unit and how we're going to discuss that. We had an initial memo from Kim and Brian which I discussed with my staff and I replied. Initially we had a lot of meetings scheduled so we couldn't sit down and talk but we did respond to that. And I think that we're going to be able to get a good feel and resolve to that what we feel would be de minimis as that term will decide what should be just dealt with by letters and who can come into compliance with the Compliance Unit whether people are not coming into compliance if they are on multiple filings doing the same things whether that should result in in a Hearing Officer or whether it's going to be a training letter or a, a more serious letter from the Compliance Unit.

We also talked about creating a committee between Kim and Brian and that staff and my staff about looking into the committees that are on hold because there are several committees that are old and on hold that we might be able to open up those committees and look to see if they should be um, the committees just should be terminated and how we could do that. If they haven't been filing or if they haven't had any kind of conduct or action for many years, what we can do to close those committees. And we've had conversations with Mark and my staff about a Data Analytics Program and how we can test that Data Analytics Program. Mark has been very helpful. I know that he's very busy doing the CAPAS FIDAS and he's been very helpful with us to get that. Hopefully we'll be able to get that open so that we can do that test and hopefully purchase that Analytics Program. And I hope to be able to meet with the local the county commissioners. I tried to set up meetings before their winter meeting and that was not possible so I hope to meet with them at their winter meeting.

**Peter Kosinski:** Okay any questions for Risa?

**Douglas Kellner:** Brian Quail said before that the Hearing Officer Process is in place and everything is all set. Do you agree with that characterization?

**Risa Sugarman:** Well I think that there's a couple of issues that I would like to discuss about how the conflicts check is done so I would like to discuss that. But basically it is in place.

**Douglas Kellner:** So what is the issue with the conflicts check?

**Risa Sugarman:** I think that we have an issue of who should send out the name of the case to the Hearing Officer whether it should be the staff or whether it should be my unit.

**Douglas Kellner:** You want to send, alright the uh, my understanding of the issue is that you want to know who the Hearing Officer is before you file the case?

**Risa Sugarman:** No I would like to have the, the Hearing Officer look at, I don't have to know the name, I just want the, I would like to send out the name of the respondent to the Hearing Officer before the staff knows the name of the respondent.

**Douglas Kellner:** And why is that?

**Risa Sugarman:** Well there were certain instances during the course of our conversation about the mechanism that we were going to use during the process of creating the Hearing Officer mechanism that I felt that it was improper questioning of what case was being referred as my first case for a Hearing Officer. I felt that it was an improper question as to what case I chose and, therefore, I didn't feel that the staff of the Board should know what case I chose. The case name was given. I was questioned about what case was chosen. So I felt that I should be allowed to just send the name to the Hearing Officer for the conflicts check before the staff or the Board knew what cases went to the Hearing Officers. I thought it was improper, perhaps improper is too strong a word I thought that it was not the correct thing to do to call and ask me why I was selecting this case for a Hearing Officer.

**Andy Spano:** So your system let me get this straight. They would pick a Hearing Officer and tell you the name of the Hearing Officer.

**Risa Sugarman:** I would send the Hearing, I would send the number of the case. The Hearing Officer would be selected. I would send the name of the respondent to the Hearing Officer for the conflicts check.

**Andy Spano:** And if there was a conflict then you would go back to them and ask them...

**Risa Sugarman:** No then the Hearing Officer could notify the staff that there was a conflict and then another Hearing Officer would be selected out of the wheel.

**Greg Peterson:** And who chooses the Hearing Officer?



**Risa Sugarman:** The staff chooses the...

**Bob Brehm:** You, well you appoint the Hearing Officer and the statute the Reg requires Todd and I to do the random selections.

**Peter Kosinski:** It's not a selection in the sense that you pick somebody. It's a random selection correct?

**Risa Sugarman:** Right it's like the Bingo ball.

**Peter Kosinski:** Okay because my understanding is it's random.

**Bob Brehm:** Correct.

**Peter Kosinski:** Okay.

**Douglas Kellner:** I think there are two issues here. I think first that the procedure is that you should file your papers and then the Executive Director should assign the Hearing Officer randomly. But I am...

**Risa Sugarman:** Well it was never the procedure to file the papers.

**Douglas Kellner:** Pardon?

**Risa Sugarman:** It was never I don't believe the procedure to file the papers.

**Douglas Kellner:** Well the Reg says the proceeding is commenced by the, by three things all together and so I think that the papers get filed but that's a clerical function for the Board. And I think that you have to separate out whether it's appropriate for people at the Board to then start questioning whether particular cases are filed.

**Kim Galvin:** If I just might jump in there and I really wasn't involved in the whole thing but I think the questioning was more from our perspective and again I wasn't directly involved, but from our perspective to test the process, I think that's what the case comments were. I don't think it was the best one to just test how the process is going to work from our side as a simple form...

**Douglas Kellner:** Isn't that really her choice the independent enforcement counsel's choice....

**Kim Galvin:** Well it's our job to run the program. So...

**Douglas Kellner:** These are clerical functions so what...

**Kim Galvin:** But what I'm trying to say is...

**Douglas Kellner:** so what does the significance...

**Kim Galvin:** okay but what I'm trying to say is...

**Douglas Kellner:** of the things have to do with that clerical function?

**Kim Galvin:** it wasn't a, it wasn't a substantive issue with the case as much as it was a process issue from our perspective trying to work through a process.

**Douglas Kellner:** What, what is the difference...

**Kim Galvin:** I don't think anyone...

**Douglas Kellner:** between a politically charged case and an obscure case?

**Kim Galvin:** That wasn't the issue at all.

**Risa Sugarman:** Well there were two comments that were made. There was one comment and then a question. So I but I agree Commissioner that there shouldn't be any kind of...

**Kim Galvin:** I think we agree too.

**Risa Sugarman:** I just felt that there was that neither there shouldn't be any kind of question or any kind of inquiry as to what case or how I make my decisions as to what cases go to a Hearing Officer and that was my concern and that was, my comment was I will provide the number of the case because we assign a number to each case that comes in and is opened and that if you want it provided in a sealed envelope to send to the Hearing Officer the name of the respondent that would be fine. It's just that I was I did not feel it was appropriate that that was, and that was my concern.

**Peter Kosinski:** Okay I mean my, my perspective is, is it's your choice as to which ones you decide go to a Hearing Officer. That's under your jurisdiction. It's the Board's responsibility to randomly select...

**Risa Sugarman:** Absolutely.

**Peter Kosinski:** a Hearing Officer to hear the case and I guess this conflicts check has to take place at some point to make sure the Hearing Officer isn't conflicted out. So it seems to me that's got to be the goal of whatever process is put into place and I think we all agree on that, is that fair to say? Is there a disagreement that those two principles should be in play here?

**Risa Sugarman:** No disagreement with that.

**Peter Kosinski:** Okay so there's no disagreement so it seems to me since there's no disagreement on those two principles it shouldn't be that difficult to arrive at a solution to how we actually get there. Because it doesn't seem to me there's a disagreement on the goal.

**Douglas Kellner:** Wait except I think we're already there and I just want to clarify that that the real issue was questioning the Counsel's judgment.

**Peter Kosinski:** But has that held things up now? Has that somehow held things up?

**Douglas Kellner:** Did you get the assignment of a, so they never gave, you requested the assignment and you never got the assignment?

**Bob Brehm:** Well I think to be clear about this...

**Risa Sugarman:** Well I think that we were having a conversation. I don't think that it was a, I think that Bob and Todd and I met yesterday and with respect to you we, they heard my feelings about it and then were going to have that conversation with you when...

**Douglas Kellner:** Well except I mean I think there's a form, you should fill out the form and file it. And that starts the Hearing Officer...

**Risa Sugarman:** Well the form goes with a name which is what I refuse to give.

**Douglas Kellner:** Well but I don't think you have the right to do that. These proceedings should be semi-public that when you, I question whether the Co-Executive Director should have argued about your selection of who you were going to prosecute.

**Risa Sugarman:** And I don't think they're public until they're filed but.

**Douglas Kellner:** Yeah but that's what filing is, that's how they start.

**Brian Quail:** Well the thing that I would just point out now is that the random selection process is totally ministerial. So whatever name is actually sent over, there's an obligation to make the assignment and, and the...

**Douglas Kellner:** And it must be ministerial.

**Brian Quail:** Right and I, and I also...

**Douglas Kellner:** that's my point is that Executive Director's don't have the authority to hold it up or to comment on it.

**Brian Quail:** And I don't think there would be any objection to having the item that's going to be randomly assigned delivered and it occur in a way that everybody can see how it works so that there's no question.

**Bob Brehm:** I think with regard to are we ready let's just be clear to be sure we were ready while the regulations were pending and the administrative ability to pay the Hearing Officers was

taking place, two members of our staff met with two members of Risa's staff to make sure these, just the process was discussed so that there weren't any surprises. What process would we follow? So when Risa said I'm ready to spin, you know we need you to spin the wheel, we simply responded back fine. At the staff level they discussed a certain, you know, this is what you'd send us. We're ready to spin the wheel send us the stuff the staff discussed. That was the first time that we realized that Risa hadn't signed off on what the staff discussed which she communicated to us in that email and then again yesterday. So all we simply said is oh great send us the letter that your, that the staff level discussed so that we would know that we're ready to, you know that we would do the drawing. I think yesterday we discussed come to the drawing you know it's not a big event for those of us who have never been to a Bingo drawing but to watch it.

**Peter Kosinski:** Well is it your concern that if you share the name that the staff is going to refuse to...

**Risa Sugarman:** Well I just don't want to...

**Peter Kosinski:** give you a Hearing Officer or?

**Risa Sugarman:** my concern is that I, I don't want to receive those inquiries or calls again. And I don't want to comment to say that oh I thought this case was finished already, why are you sending it to a Hearing Officer...

**Peter Kosinski:** Okay.

**Risa Sugarman:** which is a comment that was made during the meeting with the four attorneys. That's my concern so I think that that's why if I have to, if I can give that in a sealed envelope and the staff doesn't know who it is it just eliminates that...

**Brian Quail:** I guess my point is if I may is that the Bingo process is not going to know. Anyway it is a truly random process, it's truly ministerial and theoretically if everybody in the room didn't want something to happen, the Bingo ball doesn't know. I mean it's going to pick. And so I think if everybody attends the ministerial literally random act of assignment it would remove any possibility of your concerns...

**Risa Sugarman:** I'm not talking about any act of assignment.

**Kim Galvin:** So what the Commissioner is directing us is to not ask her any questions about her choice.

**Brian Quail:** Absolutely.

**Peter Kosinski:** Yeah I don't know what the question would elicit. I'm not sure, I'm sorry go ahead.

**Gregory Peterson:** Procedure wise I think everybody's in agreement. Now the sticking point appears to be that you don't want to disclose the name of the person. To me it seems you do a Joe Gizoski and it didn't without an envelope, you give it to the staff and then the choice at that point is not to question why or how you did it, but that you did it, fine. Joe Gizoski then you go, spin the wheel it comes out to Hearing Officer 2. Hearing Officer 2 gets Gizoski that's it and then you go down the line for the next one. There's no reason to question you as to how you put it in there or why you put it in there, period. But I don't know that we have a star chamber proceeding here where oh you got to have a secret, got to seal the thing and then we'll have a seal opening time again. That's ridiculous. Everybody's going to know eventually anyway so it doesn't matter. Bottom line is give them the names, no questions end of story. Problem solved. As a practical matter I don't see that there is a conflict here.

**Douglas Kellner:** And I think the staff should be clear... they shouldn't be questioning your... it's your decision. And if they do question it to me it should be I mean we question and lot of things you do and you don't seem to be all that concerned about it.

**John Conklin:** Because you've said no before. You have no problem saying no.

**Douglas Kellner:** Well I don't think there's any question that you should be able to commence a proceeding any time and any against anyone that you think is appropriate to commence and that it's...

**Risa Sugarman:** I will accept your direction to this.

**Peter Kosinski:** Okay, okay good.

**Risa Sugarman:** Thank you.

**Peter Kosinski:** Yeah we'd like to get this moving. We'd like to get it resolved and I think we've been...

**Risa Sugarman:** I understand and I will accept your direction, yes.

**Gregory Peterson:** I have another question. You said you want to send a list of local filers?

**Risa Sugarman:** The "C" filers as opposed to "A" filers. The county...

**Gregory Peterson:** Define that point please.

**Risa Sugarman:** I'm sorry.

**Gregory Peterson:** The "C" filers are?

**Risa Sugarman:** The county Exec, the county, the town, the village.

**Douglas Kellner:** People who aren't required to file with us.

**Risa Sugarman:** Thank you so much that's what I meant. Thank you.

**Peter Kosinski:** Are we are there more questions? Risa do you have anything else? Are there more questions for Risa? No. Okay then that ends that portion of the meeting. We are now on to subdivision 3 Old Business. We've having an update on the FOIL, Voter Registration and Brian you said I think earlier you sent out the proposed regulation to the counties?

**Brian Quail:** The Co-Executive Directors actually yes. I've sent it out and that is uh...

**Peter Kosinski:** When did that go?

**Brian Quail:** It went yesterday.

**Peter Kosinski:** So it just went and you're waiting to hear back from them? Is this going to be discussed at the conference in January is that the intent? Is that why you sent it out now or?

**Douglas Kellner:** I think we...

**Peter Kosinski:** What's the idea?

**Douglas Kellner:** we asked, the Executive Directors asked for comments.

**Peter Kosinski:** Okay.

**Douglas Kellner:** I think if we haven't received any, that we should get those comments in and then vote on this.

**Peter Kosinski:** Did you ask for a deadline on comments?

**Bob Brehm:** You know we didn't give a deadline although we did get out first comment about three minutes after we hit the send button and it was substantive and very informative so.

**Douglas Kellner:** Alright so maybe we should hold off for the comments.

**Peter Kosinski:** Okay well I'm happy if you want to discuss it at the conference whatever you want to do on this. I'm sure it's probably a substantial deal to these counties some of them at least as to what this is going to be. But...

**Douglas Kellner:** Alright so we'll put this on the agenda for the February Meeting, okay?

**Bob Brehm:** It's already on.

**Peter Kosinski:** Well we could get an update in January.

**Bob Brehm:** Let's keep it under Old Business.

**Peter Kosinski:** Let's get an update in January because I'd like to see the comments we've gotten by January anyways just so we'd have a chance to look at them.

**Gregory Peterson:** Even if we categorize it under Older Business.

**Peter Kosinski:** Really Old Business. Alright so that's that. Then the next is Update on Independent Expenditure Regulation and Revisions. Who's prepared to, I guess Brian and Bill? Does somebody want to speak to that?

**Bill McCann:** Sure we have reviewed at a meeting with Kim, myself and Brian to go over the substantive proposal that was previously submitted. We made some pretty good progress on it. Our goal was to get through all the aspects of it with the exception of coordination and then to tackle coordination as a big issue, as a singular item. So I would anticipate that within probably a meeting we should be able to resolve all the substantive issues of the regulation, outside of coordination and then our goal is to drill into coordination.

**Peter Kosinski:** Should we expect to see something at our next meeting on the at least the statutory changes portion?

**Brian Quail:** I think that that's entirely possible. I think there's also an important question and Bill eluded to it that, and so I'll be more definitive. Risa your little chuckle alerted me to but I equivocated too much so I'm going to be more direct yes. However, what I did want to raise is to get a sense from the Commissioners on the big nugget which is coordination which I'm tackling that obviously is much more difficult but it's a very, very important concept and a topic. There's language in the proposal that Kathleen drafted and getting a sense from the Commissioner's on how we want to move forward with that issue given its greater complexity but also the importance of actually arriving at something with coordination I think is very important?

**Andy Spano:** There are other jurisdictions that have a definition of coordination like the Federal Government.

**Brian Quail:** Yes, yes and there are some guys from the Campaign Finance Board and...

**Bill McCann:** Well there are several, there are several models not only from the New York City Campaign Finance Board but the Federal Election Commission also at the Federal level and also a variety of states. The devil's in the details because they all have varying degrees of what constitutes in their mind coordination. So it's really trying to digest those nuances and having a meeting of the minds because certain things tend to steer one way or the other depending on how much coordination you want to be coordination. So, I know that sounds funny but it's the truth. The issue is to, you know, when do you arrive at that golden nugget as to what's coordination?

**Andy Spano:** I think it's impossible.

**Bill McCann:** Well.

**Andy Spano:** I don't know again I've got to I'm not a lawyer but it seems that they wrote this legislation that has quid pro quo in it and that sort of got redefined in a different way with the cause recently.

**Douglas Kellner:** It didn't have quid pro quo in it, the court said that it had quid pro quo.

**Andy Spano:** Well whatever.

**Brian Quail:** But I think the, you know to my inquiry...

**Andy Spano:** I think the more you define something the more difficult it becomes.

**Peter Kosinski:** I mean let me just say something in response to that. And Commissioner I appreciate your position on this. I think the goal as I see it is that if there isn't something done here on coordination, then it's probably going to be done in the courts or somewhere else. I think there's an advantage to having this Agency try to do something in this context because I think otherwise someone is going to do it outside of this, someone who may not be as experienced as this Agency is and on this topic. Something that might be done in the context of a campaign or something that is heated that might not be as objective as we can be. I think there's an advantage to us trying to do this now even though I appreciate what you're saying. It's somewhat in the eye of the beholder. I'm not going to say this is going to be the definitive list that we're going to put out. It's possible that not everything will be in there but I think trying to give guidance to campaigns or committees that are out there functioning in this area is useful. I, so far we've given none and there are people we know doing independent expenditures in this state without any real guidance as to what constitutes true independence. So I think there's some benefit to us at least trying to come to some agreement here. Because as I say I think if we don't do it, it's going to happen in another context that might not be as thoughtful and useful as I think we can do. So that's my thought on it.

**Andy Spano:** I have no objection to trying to do that.

**Peter Kosinski:** So I would encourage the staff to try to do it if they can and we'll see where we are but...

**Andy Spano:** I'm just saying...

**Peter Kosinski:** I admit it's not going to be...

**Andy Spano:** even once you get to whatever you think is the most perfect thing in the world, that's when we argue and start saying things...



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**Peter Kosinski:** You're right I mean I'm not going to say it'll be perfect but I think it's better than what we have.

**Andy Spano:** And we just don't even get involved with the other person. That's it.

**Peter Kosinski:** Well whatever that means. I mean I again I think there's you know what I may consider coordination you might say no that's not co, you know, I mean different minds are going to disagree on this. But I think if we can possibly come to something we should try to do it. So I would encourage the staff to work on it but I do not want to hold off myself the portion on the statutory changes while we're trying to work this out because I realize this is going to take a little longer to this because there's no statutory construct to work from. It's going to be a wholly created you know rule that we would create without much guidance from the Legislature which is always difficult.

**Gregory Peterson:** And in the interest of fairness to, to any candidate or committee they should have some guidelines and this should come from us rather than anybody else. Frankly when we give all due to the Legislature, you give it to the Legislature it bounces all over the place and when you get it back it's not always the greatest solution in the world. However, if we do it as professionals and say look these are the guidelines and this is what you should look at in determining whether you have any involvement, you're totally independent or whatever and at least that way they have something to look at and they have no excuse. Or frankly they look at it and they talk to their attorney and their attorney says, you know what don't go here, stay away from this or don't do that. That's appropriate. So I think we should in that vein wind up being helpful to those who have to run for office and tell them what to avoid. You know coming up with those kind of that kind of terminology doesn't have to be specific, specific but just say hey look this is what you have to do.

**Peter Kosinski:** And there is some guidance out there. There are some court cases on this that exist at the Federal Level you know as well as Federal rules. The New York City Campaign Finance Board has some rules. There are some guidance we can look to as we should to give us something to start with. We're not, it's not a whole cloth we're creating this out of we do have something to look at. And again I think those should be useful to us. Is there anything else on that topic that we want to talk about? Okay so we'll expect Brian and Bill at the next meeting we'll see proposed regulations on the statutory stuff and then we can talk further on the coordination.

**Peter Kosinski:** We won't do that. Okay that's good and so we're done with that and then we move onto New Business. Now these are the action items for today and I think it's been talked about earlier. Anna brought it up. We have Voting Systems Certifications. Anna and Brendan may want to speak to each one. We'll take them in order. The first one is the Clear Ballot Simple County Voting System.

**Anna Svizzero:** This is a brand new voting system to primarily serve for the county of ballots at county boards of elections. Ballots that can be counted centrally would be absentee ballots, affidavit ballots, the emergency ballots that are not canvassed in the polling place. Those should

have been counted in the polling place if they weren't able to be scanned. But we do know that from time to time those go back to the County Board of Elections for counting. So this is a brand new system and we're very pleased with how it works and we're happy to have so successfully completed the testing and the reports are attached herein and we recommend it's certification.

**Peter Kosinski:** So this certification would be available to the counties to purchase for central count purposes?

**Anna Svizzero:** Yes.

**Douglas Kellner:** I move the resolution.

**Peter Kosinski:** There's a motion to approve is there a second?

**Greg Peterson:** Second.

**Peter Kosinski:** Seconded. All in favor.  
[chorus of ayes] Opposed? Okay that's adopted.

**Anna Svizzero:** Thank you.

Second one is the certification of the Dominion upgrade to the image cast. This is the precinct based. There's two Dominion machines here – one's precinct based, one's central count. This is the precinct based upgrade.

**Anna Svizzero:** Yes.

**Peter Kosinski:** Now I think we've talked about this. I'm just going to preface this by saying we talked about this prior to this meeting I know about this will create a situation now in New York where some of our counties who are under maintenance contracts with these with Dominion will automatically get the upgrade.

**Anna Svizzero:** Yes.

**Peter Kosinski:** Those counties that are not, maintenance contracts will not automatically get the upgrade. They'll only get it if they so deem purchase it. So it is possible that there will be two different systems, two different Dominion Systems out there in the state. But I understand none of this has to do with voters interfacing with the ballot in any way or counting ballots in any way. These are strictly administrative type changes that the boards wanted to help them administer the election.

**Anna Svizzero:** Yes.

**Peter Kosinski:** Is that fair to say? And Dominion is prepared to service both systems...

**Anna Svizzero:** Yes.

**Peter Kosinski:** in New York State. So the upgrade and the current system will continue to be serviced by Dominion going forward?

**Anna Svizzero:** Yes sir.

**Peter Kosinski:** Okay.

**Andy Spano:** I move that we approve.

**Peter Kosinski:** It's been moved and seconded to approve is there any discussion? All in favor? [chorus of ayes] Opposed? And that is also approved.

**Anna Svizzero:** Thank you Commissioner.

**Peter Kosinski:** And then the last one is the Dominion upgrade for the Central County System. Now as I understand it everybody who has a Central Count System will get this upgrade.

**Anna Svizzero:** Yes this will go under warranty.

**Peter Kosinski:** This is not, this is not, yeah this is a warranty issue not a maintenance issue so everybody, how many have that by the way Central Count Dominion Central Count? Do you know how many counties?

**Anna Svizzero:** Fifteen.

**Peter Kosinski:** Fifteen okay so all fifteen will receive this upgrade because they're all still under warranty and that automatically makes them eligible for this upgrade?

**Anna Svizzero:** Yes.

**Peter Kosinski:** And again this will not impact anybody's voting I guess because the voter isn't actually even present at this process so.

**Douglas Kellner:** But we are not decertifying the previously certified Central Count Optical Scan Software for Dominion and Image Cast. The resolution doesn't say that we're decertifying the old version.

**Peter Kosinski:** Is there significance to that that we're not decertifying the current program?

**Anna Svizzero:** Well we've never used that language in the past whenever we certified something that was still under warranty it automatically took the place of what was in place at

the county boards. We've never used that language. We've never envisioned that there would be two now central count systems.

**Douglas Kellner:** So it is the intention that we as the State Board are going to require everybody to upgrade to this system?

**Anna Svizzero:** This in the central count world, yes because to a board this is at their request. This enables the boards to not have to build multiple elections for, Bob can probably explain it better, but it consolidates how ballots are built for absentee purposes and it allows them to be aggregated. The same ballot style can go out to an entire town as opposed to billing them separately by each precept. It's a...

**Kim Galvin:** Are you going to run into the same issue when the maintenance agreements are up on the central count?

**Anna Svizzero:** At that point any upgrade to this system would fall into this realm that we were in on the previous one.

**Kim Galvin:** So hence Commissioner Kellner's point about not decertifying. You'd just be adding another certified version as opposed to so now they'll be two that can run in the state.

**Anna Svizzero:** But our default has always been provided this goes under the warranty the amendment, the upgrade or whatever you want to call it, always took the place of what had been previously certified without using that decertification language. We've never used that.

**Kim Galvin:** Right but in this unique circumstance when they're all under warranty but there may very well come a time when the warranties are up and we're going to have a varying...

**Anna Svizzero:** Yes.

**Kim Galvin:** version of central count? Okay.

**Anna Svizzero:** Yes, yes but in the meantime we would like for there to be one and since this particular one happens to be one that they we advocate.

**Douglas Kellner:** The we is Anna Svizzero or?

**Anna Svizzero:** Well we the Elections Operations Unit, the county boards that provided comments that this...

**Douglas Kellner:** So Brendan, Anna is speaking for you correctly?

**Brendan Lovullo:** She does that sometimes.

**Douglas Kellner:** Well that's what I'm trying to clarify.

**Peter Kosinski:** I'm trying to understand what the issue is. What do you see the issue is if we don't decertify the current... I could envision...

**Douglas Kellner:** I'm just saying, I'm just asking whether the Operations Unit has the authority to tell the county board that they must use this new system. And I mean I don't have a...

**Peter Kosinski:** It would say...

**Douglas Kellner:** ...it sounds right that if it's not going to cost them anything and this is better than the old system and we know it's better we should tell them they have to use it. But I was, the same way you were asking...

**Peter Kosinski:** Fair enough.

**Douglas Kellner:** before I was trying to be clear because...

**Peter Kosinski:** Well I think it's a fair question because I could see for example these fifteen upgrading automatically because they have a maintenance contract. Some county three years from now saying I want to buy a system now and Dominion saying well you can buy either the old system or the new system your choice because they're both certified in New York, which one do you want? And that county says I want the old system for some reason. I don't know what it would be but you could end up with a situation where you have two central count systems now. I can see it. So, by not decertifying it does create that situation even though it may not be immediate it definitely creates the potential if that's considered problematic. It seems to me we're allowing two different systems at the precinct. Is it really problematic to allow two different systems at the central count? I don't know that it does. So I don't know if it's an issue or not. I'm not seeing it offhand but you tell me.

**Douglas Kellner:** In any event I'm prepared to approve the resolution...

**Peter Kosinski:** You're prepared to approve? Well we should think through the decertification.

**Douglas Kellner:** and if the county wants to use the old system...

**Peter Kosinski:** I don't know that we care, do we?

**Anna Svizzero:** Well I think the scenario here is that it's under warranty...

**Peter Kosinski:** I know.

**Anna Svizzero:** and vendors expected to...

**Peter Kosinski:** I know.

**Anna Svizzero:** support this.

**Peter Kosinski:** But if a county said no I don't want to upgrade is there a problem?

**Kim Galvin:** No.

**Anna Svizzero:** No, not with us what I mean we could certainly talk to the vendor about it but no I don't see one.

**Peter Kosinski:** Okay are you moving this thing?

**Douglas Kellner:** I'm moving the resolution.

**Anna Svizzero:** But we are sensitive to the language that the Commissioner used and will incorporate it into future resolutions.

**Peter Kosinski:** There's been a motion to approve, second?

**Male:** Second.

**Peter Kosinski:** It's been seconded. Any discussion? All in favor say aye?  
[chorus of ayes] Opposed? That is also approved.

**Anna Svizzero:** Thank you.

**Peter Kosinski:** And that is the end of the open session unless there's something else someone would like to raise during open session.

**Douglas Kellner:** Well we need a motion to go into Executive Session and I think we have also said we were going to agree on our date for the next meeting.

**Peter Kosinski:** Yes we'd like to agree. We thought the 11<sup>th</sup> made sense because the conference starts on the...

**Peter Kosinski:** Okay so January 11<sup>th</sup> will be...

**Bob Brehm:** It will help if not sooner definitely by the 11<sup>th</sup>. Our February date we have to certify...

**Peter Kosinski:** We're looking at the, just so you know, we actually Greg and I saw it, we looked at the 23<sup>rd</sup>. I know we have some dates we have to work with.

**Bob Brehm:** We have to certify on the 25<sup>th</sup> so.

**Peter Kosinski:** So we're looking at the 23<sup>rd</sup> if that's something you could live with. You may want to look at your calendar.

**Douglas Kellner:** Right.

**Peter Kosinski:** Okay alright then I'd entertain a motion to go out of regular session and go into Executive Session for the purpose of discussing enforcement cases. Is there a motion?

**Douglas Kellner:** So moved.

**Peter Kosinski:** Second?

**Greg Peterson:** Second.

**Peter Kosinski:** Any discussion? All in favor?  
[chorus of ayes] Opposed? Thank you very much we'll now take a two minute break and then go into Executive Session.