

Commissioner Kosinski: I'd like to welcome everybody to the meeting of the State Board of Elections here on December 15th. I'm Peter Kosinski. With me are Commissioner Kellner, Commissioner Casale, and Commissioner Spano. And I'll open up the meeting with the minutes from September 12th it was of 2022. Is there a motion to approve?

Todd Valentine: One second, we want to start with the Board of Canvassers first.

Commissioner Kosinski: I apologize. It's a Board of Canvassers meeting today, of course, I apologize, from the November election. So, we have to meet first to certify the election of November and the same commissioners are here for the same purpose. So, if there's a motion to accept the report as provided by staff?

Commissioner Kellner: I so move.

Commissioner Kosinski: Is there a second?

Commissioner Spano: Second.

Commissioner Kosinski: All in favor?

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kosinski: Aye, so, that is adopted. Is there anything else to come before the Board of Canvassers?

Commissioner Kellner: So, we do have to pause for a moment to actually sign the certificate

Commissioner Kosinski: I will give you a minute to sign and once we're done, we'll reconvene the Board of Elections. So, you guys go ahead and sign.

Kristen Zebrowski Stavisky: So, we can probably continue the certificates for the statewide have to be signed but those are just the certificates, so, if you wanted to go ahead.

Commissioner Kosinski: Well I don't want to distract people, if you want to finish signing that's fine with me. I would just ask a quick question, I understand there's a couple of offices we're not certifying today.

Brendan Lovullo: The 23rd Assembly District is still in court and the 50th Senate District.

Commissioner Kosinski: Okay, so we'll have to reconvene at a future date to certify those?

Brendan Lovullo: Correct.

Commissioner Kosinski: Okay. Well, when people are ready to go just make a motion to adjourn the Board of Canvassers.

Commissioner Kellner: I move that we adjourn the Board of Canvassers.

Commissioner Spano: I second the motion.

Commissioner Kosinski: All in favor?

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kosinski: And we will now reconvene as the Board of Elections. And our first order of business there are the minutes from September 12th.

Commissioner Kellner: I move adoption of the minutes.

Commissioner Casale: Second.

Commissioner Kosinski: All in favor?

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kosinski: Alright. So, the first item will be the executive, that's Kristen Zebrowski Stavisky, and Todd Valentine. Before we begin that, I would just like to take a minute to acknowledge that Todd Valentine, I believe this will be Todd's last meeting here at the State Board and I want to thank Todd for his long years of service. I know he's retiring at the end of the year and I'm sure he's anxious to do that. I fully understand that, but I will tell you, you will be greatly missed. Todd started with me really back in the late 90s with the Board. He's been there for geez, Todd, what is it, 28 years now?

Todd Valentine: 25 years.

Commissioner Kosinski: 25 years now and that's a long time, but I will say this about the Board, people tend to come, and they tend to stay. But Todd started as Counsel, and he's moved up to this position. He's done a great job there. I think we all can agree that Todd will be very much missed. He brings a lot of institutional knowledge. He brings a lot of just a steady hand at the top of the at least Republican side of the office, and as the Republican Commissioner, I specifically want to acknowledge Todd is leaving and certainly I wish him well in the future and know that he will be missed. I've had some county boards reach out to me lamenting that Todd will be leaving. I know they're going to miss him as well. And he will be missed by the locals as well. But I just wanted to acknowledge that before we begin today his report. So, with that said, Todd, go ahead.

Todd Valentine: Okay, well thank you, I appreciate the kind word. You know it's the biggest thing we were doing was certifying the elections. Obviously, that's the big task right here and still not there, almost there, close. That obviously has taken up a lot of our time just making sure the election ran smoothly. I think by all accounts, there were no major issues with the election, nothing reported. There was minor stuff but nothing of any substantial nature that impacted the election, so that's good. Moving forward, we did submit our proposed budget for next year. It has a modest increase to accommodate the increase in the mission of the agency to add the online voter registration, and the automatic voter registration program, which is a little behind schedule, but still up to speed, and obviously to accommodate the increase or the adjustment in office space. So, those are all built into there. Those were submitted. So, we've been answering some questions from the Division of Budget, and we'll wait and see what the Governor actually puts in her budget for January. We've been very successful in advocating for our needs over the last couple of years so, we're hoping that continues. And then, we did, it was alluded to a little bit in the last meeting, we did have an all-hands workshop last week. The first one we've done in a very long time where we actually took everybody from the agency and brought them to an off-site location where we had increased adding Public Campaign Finance Board and a lot of new staff where they could actually get to meet each other, and then talk about some of the issues that are facing the agency going forward, particularly technologically, the changes that will be occurring. And it was an all-day workshop. We ran it with the assistance from the Center for Technology and Government who helped moderate the event. And we did it up at the SUNY Campus, they have a nice new building up there and were able to arrange the accommodations for us. And, as we've done in the past, we hope that that is something the staff can build on as far as, "Hey I know who you are now" which is very helpful at least from an introductory standpoint. And then the next election is right around the corner. So, that's all I had. Kristen.

Kristen Zebrowski Stavisky: I would just add to Todd's description of that workshop, it really was a transformative day, and I think in addition to people getting to meet each other, there was a lot of learning across units, and I think it was extremely positive. The chatter here was very positive. I think people didn't quite know what to expect going into it, and they were pleasantly surprised. So, it was quite an interesting day. I'll also say that as Todd alluded to, online voter registration is a bit delayed, but we are internally working on an interim solution, and we've been meeting on that and that will be available on our site in May of 2023. So, that is moving

forward. Finally, Todd, I will miss you. I have to say, from the minute I walked, I can't believe I'm going to get emotional. The minute I walked in this building, every meeting that I attended with every division and agency, Todd would say, "Well, hold on Kristen doesn't have that background, explain to her where that came from." And I very much appreciated you taking me along and teaching me. So, I will miss you, but I know that you will be good on your journey, and you'll have a next chapter that is fulfilling and happy. Okay, that's it.

Commissioner Kosinski: Okay, are there any questions? Alright, not hearing any then we'll move onto Election Operations, and that's Tom Connolly and Brendan Lovullo.

Brendan Lovullo: Thank you, Commissioner. Certification is just about complete. Since our last meeting obviously we've been collecting statements of canvass and everything for the General Election. We will deliver each packet to the appropriate officers in the Assembly, the Senate, the United States Senate, the House of Representatives, Supreme Court, and to the Secretary of State. We've also continued our collection of information of 3% audits and the hand recounts that have been going on along with the cures and the accessible absentee ballot surveys. Staff was available throughout all of early voting and election day to field any questions from Boards of Elections and from voters themselves. Tom and I went to New York City to discuss new and future technology issues that they are having with poll books. A discussion of voting machines as well. Tom also went to 15 counties in Western New York throughout early voting to meet with the commissioners, meet with the poll workers, spoke with voters as well while he was out there. Our staff also did acceptance testing of over 400 machines in the past couple of months as well. Update on the voting systems, for Dominion our test plans are currently under review, and we'll be getting a demonstration of equipment later this month from them. Clear Count 2.2 a minor change submission has been submitted to us, and our testing partners are going over and doing an analysis to confirm that the submission fits the criteria. For Clear Vote 2.4, they are actually having a demo ongoing right now down on the 3rd floor. Test plans are due out this week for review. Testing scope of the overall project is completed and we're looking, there may be some code change necessary for this before testing begins and we're obviously working on that. Hart testing has been completed and we have the reports. ES&S we have test plans are due out this week for review. Testing scope of the overall project is complete and since our last report in February, we hosted a public demonstration on the system in our public viewing area. We continue to work with the county boards and our county IT for new voter registration systems for those boards that are migrating over. We're also working on a schedule for KNOWiNK. and Tenex demonstrations for their voter registration systems. And we also will most likely be getting at least something, my understanding, from the poll book vendors probably in January most likely from KNOWiNK in January, and then we will obviously reach out to the other vendors to see if they have any updates that we can do prior to the June primary too. And that's all that I have.

Commissioner Kosinski: Okay, are there any questions for Brendan? Hearing none, we will move onto our next unit which is Counsel and that is Kim Galvin and Brian Quail. And again, I would ask for a minute to acknowledge that Kim will be leaving the agency as well. I want to personally thank Kim. Kim came in just as I was leaving, and I appreciate all the work that she's done as well. Kim has been a very strong advocate for the Board, as she should be, as our

Counsel. She has done a great job and I know that she's also looking forward to retirement which I fully understand as well. She hasn't been there quite as long as Todd, I think she's got 14 years in now Kim, is that right?

Kim Galvin: 14 or 15 yep.

Commissioner Kosinski: Somewhere in that neighborhood, so not quite as long but still a pretty long duration. People like Kim are very hard to replace. She is not only a strong advocate for us, but she also brings a lot of knowledge to it. I know she came from the legislature, so she brings that perspective as well. This kind of knowledge isn't easy to replace. But Kim has been very, very good to us as well as the local boards, I know they appreciate it. I know when we're in court, we appreciate how much she advocates for us. She does a great job. We're going to miss her as well. It's going to be tough losing both of you at the same time. I know you guys have other plans, and I fully appreciate that and understand that and wish you well. So, Kim I want to wish you well in your retirement. I believe this is also your last Board meeting. So, I wanted a chance to say that. So, if you want to give your report.

Commissioner Kellner: Well, could I just chime in that I think it is absolutely the case that we will miss you very much Kim, and that you can feel that you have made a big difference here, that your contribution has been significant in helping to shape the legislative program with so many changes that have occurred that you have given invaluable input. And perhaps it will be ironic that your biggest legacy will be the Public Campaign Finance program where you served as a commissioner on the special commission to first explore the program, and I know you voted against the program and yet, notwithstanding that, you have made a tremendous contribution in helping to shape the regulations and the development of the program. And if the program survives, it will be to your credit, and I want to especially thank you for that.

Kim Galvin: Well, thank you. Thank you, Commissioner Kosinski and all the Commissioners. You know it's a very sad day. I'm sad, I've been here a long time, I was looking forward to retirement, then I got sick, threw everything up in the air, now I'm feeling better, now I'm nervous again, but I will miss each and every one of you. I will miss our side and I will miss your side, and if anybody thinks that the sides can't agree, they should pay a little attention to the work we've done and the accomplishments we've made giving and taking and coming together. And I have Brian Quail's desk number memorized, so he'll expect to hear from me through my withdrawal's days, but with regard to the Public Financing program, oddly I will miss working on that the most. It's like you carry it for 3 years and here we go, and I'm certainly available if anybody would need, just a phone call away, and I can be here or call or do anything to assist anyone in the transition phase. I don't know how long it will be until we're replaced but I'm certainly available to anyone and everyone that would need some assistance.

So, just to go over some of the major changes that we're dealing with, this is a double unit report if you recall, so there may be some things that are a little older but we're managing. All of the cases challenging the signature requirements, speaking of Public Financing, for independent petitions are now concluded and the signature requirements will stand, we won at every level. The DCCC vs. Kosinski, if you recall the cures matter, they brought the action, we did some

discovery. Then a preliminary injunction was issued post-election. On August 5th, all the parties agreed to put it off until the General Election and then restart the case. We are now starting negotiations for possible settlement on that. That's new and ongoing. Hernandez, the accessibility case, we stood up the RAVVM system, the remote access of voting and it worked through the general election. They took the time they trained over 200 county board employees prior to the general and it worked well. The originating case is being finalized now and I think we're very near to that one being wrapped up. As you recall, we got sued by Judicial Watch regarding some list maintenance issues out of the City. The City produced some information, Judicial Watch seemed satisfied. They let us out of the case. New York City has no objection to that. So, it's ongoing with them. And probably the last case or last two cases, we head up north a new case challenging the various things including the expansion of illness for absentee ballots again. That case was heard, it was appealed and it was found that laches applied at the point of fact so that case has ended. And then we have a nuisance lawsuit, Reinhold v Merrill Indiana District 4, kind of crazy, not really sure what they wanted. So, a motion to dismiss has been filed by our counsel on that. With regard to the Compliance Unit, and that's one other thing, there is a great bunch of staff here, great bunch of staff, I'll miss each and every one of them, they work hard, and they do a great job. The Compliance Unit we some time ago now had a meeting with Michael Johnson regarding the potentially duplicative effort of failure to file proceeding, I know we're going to take that up later in the agenda, so we'll talk about that then. Compliance staff continues to work with NYSTEC and IT on the new filing software for the new system. They began another dormant committee review to try to get rid of some of the older committees left in the database. That process is ongoing. Also, now that we're required for all filers with the State Board review and created a subunit, they're calling it the Match Process. This is new where they compare the candidate information received from the counties and compare it against our current registrants in FIDAS to try to make sure everybody is filing that should be. Like I said, that's new and ongoing. We have the FOIL subpoena requests, we have request for testimony coming up, working with the Public Finance terminating committees where candidates want to participate in the new program. And like I said, I dabble too much in that program to some people's likings, but it's my baby and that's too bad. And then we do the continuing and general work of the unit, assisting in training the new hires in the Compliance Unit and the PCFB, it's caucus goals on the upcoming elections because this was pre and now the post elections, we only have one live case and that's in SD50 that should be concluding shortly. And that's my report.

Commissioner Kosinski: Thank you. Brian, do you have anything?

Brian Quail: Just a little bit. First of all, I'd like to say that I echo both personally and programmatically the things that Commissioner Kellner and Commissioner Kosinski said about Kim. I would say that for me the principal loss feels very personal and less programmatic. I will definitely miss interacting with Kim on a multiple times per day basis, often times multiple times per night basis, sometimes multiple times per weekend basis. I have deeply appreciated her commitment to wanting to solve problems, find a way forward, taking it as a personal challenge to find that way forward when other people have said, there isn't a way forward, and always applying creativity and incredibly quick wit and incredibly kind nature to me personally, and all others frankly, but as we have moved through so many of those challenges. Her shoes are very big to fill. And I am given great comfort that she has my desk line number, it will not be

published here, however. And I also take great comfort in knowing that every last is a first and that the chapter of your life that is going to open in retirement I wish for you all the best in it and I'm sure that it will hold that. Thank you very much. Oh, now my report. Back to business. So, per usual would just like to report that the Compliance Unit is at having received 203,732 campaign financial disclosure reports to review and that presently there are 9,880 out and assigned that are being worked on. We are working down that deficit. Since the last meeting 4,068 reviews have been completed. Since January of 2022, 1,873 committees have been terminated. The unit has taken a substantial amount of effort and work at working on deadwood committees and again, I thank the Enforcement Division for their assistance in helping us identify those committees through their ramped-up efforts. Similarly, 8,615 candidate records have been terminated, and that is a result of the same overall effort. In terms of IE committees, there are 243 total IE's, 155 actives and 65 of them have filed now, 633 paid Internet digital ads that are available on our website. And I think that's it.

Commissioner Kosinski: Okay.

Commissioner Kellner: What's the status of the nonfiler list?

Brian Quail: When you say status of the nonfiler list...

Commissioner Kellner: Well, is there a definitive list yet?

Brian Quail: I would argue, Commissioner, that there always has been a definitive list and as of the July periodic, when we first tracked the number of nonfilings on August 26th excuse me, on July 26th, there were 3,137 on it. As of today, there are 1,778 on it, which historically is an improvement in terms of the people that have come into compliance. For the election reports, leading into this election, there are roughly 400 nonfilers for each of those election reports, and we do continue to work with the Enforcement Unit on dealing with this issue.

Commissioner Kellner: Is the list ready for prime time that the list can be published?

Brian Quail: In my opinion, the list is publishable, yes, and we do provide on our website the ability to see all of the nonfilers, and if it's something that, an actual list for each delinquency be provided, we certainly can do that.

Commissioner Kellner: Should we publish the list?

Commissioner Casale: Is it a public record?

Brian Quail: It is a public record and the information that comprised of the list is currently available, it's just not available as a list so...

Commissioner Casale: The list you said as of July 26th is that those who failed to file the June report? Or were all those in the past that haven't filed and then, what if an entity files and fails to file for a while and begins filing again, and the gap is never met?

Brian Quail: We maintain the list by each filing that's required. So, there's a separate list for each required filing.

Commissioner Casale: So, people could be on there, committees could be on there multiple times?

Brian Quail: Most typically, actually yes. So, if you look back historically at the number of nonfilers per report, the recidivism and the duplicates between those lists would be overwhelming, yes.

Commissioner Spano: What is the cumulative number now that you have?

Brian Quail: I was scared someone was going to ask that question. I don't actually have the cumulative number, eyeballing it, going back to July 2016, on my sheet, that's probably around 15,000 nonfiled reports and we have at various times reported to the Board the specific number of committees, but I don't specifically know that number right now. And it is influenced greatly by the termination activities that have occurred also. So, I don't know the precise number.

Commissioner Spano: But people could be on there 1, 2, 3, 4 times?

Brian Quail: Yes.

Commissioner Kellner: Michael Johnson may be able to comment on it better than I do, but some of the people on it are not worthy of attention.

Commissioner Casale: You say not worthy of attention, but a nonfiler is a nonfiler.

Commissioner Kellner: I agree..

Commissioner Casale: Who's going to pick and choose?

Commissioner Kellner: But that was one of the issues that we talked about is how that list needed to be cold, because it has committees from legacy campaigns where they never properly closed out the committee. It has a number of filers for New York City offices where the New York City Public Campaign Finance Board has done a full audit and sometimes assessed penalties, but they never closed out the state filings at the same time.

Commissioner Spano: So they're dead to the candidates.

Commissioner Kellner: But the 1,700 figure from the current list is probably worthy of public distribution and at least to make it more readily available to the media. Well, that's my thought.

Commissioner Kosinski: I have no problem putting the list out as long as it's accurate. I mean is the problem that the list is not static, that it's constantly changing?

Brian Quail: The list is constantly changing because...

Commissioner Kosinski: So once you put out a list it becomes not obsolete, but it becomes inaccurate within days because somebody comes into compliance, is that part of the problem?

Brian Quail: It is a true statement that it's an accurate list as of when it's created, and then immediately becomes inaccurate. So, it's a snapshot in time.

Commissioner Kosinski: I mean that's the problem with disclosing it is that you put it out there like it's accurate and then by the time somebody looks at it, it's no longer accurate. But again, I don't have a problem putting it out if people understand that and we update it so that it stays current or something like that.

Commissioner Casale: There is the issue. How often are you able to update it? Do you have this manpower or person power to update it.

Kim Galvin: It would be a huge undertaking.

Commissioner Casale: I would say it's a big job. And is it worth the effort when you've got other important things going on in your office.

Brian Quail: I mean the policy choice I think definitely belongs to the board. There are some aspects of the list that are generated automatically from the system. That part is easy, but vetting the results of the automatic production of the list typically does require a substantial amount of staff energy and effort. Not insurmountable by any stretch of the imagination, and you could theoretically decide to put the list up for a period of time. Like after a certain period of time after the report is up and then for a period of time take it down. You could have the list updated every 2 weeks, any number of permutations. But I do come back to the point that the data about who hasn't filed is available on our website, you can see who has and hasn't filed.

Commissioner Casale: And how do I do that?

Brian Quail: Mechanically. So, if there is a separate particular committee that you want to make an inquiry of...

Commissioner Casale: Oh, you have to go each committee?

Brian Quail: And then there's also a bulk function which I don't understand particularly well, but that allows you to see all that have filed. So, there are a number of options. And we could create a list that would provide that information so that it would be available yet another way. There may be accessibility issues, we'd have to think about that is a document and that the remediation of a very, very large document could be a little bit dicey but none of those challenges are insurmountable. Just things that we would have to do.

Commissioner Kosinski: Well, I will say I have no problem releasing a list as long as we can accommodate you know those issues of accuracy. I think the access that Brian is alluding to is probably not something the general public can manage under current conditions, and the only way we can really provide a list is to do it ourselves to the public which I think has a lot of benefits. I agree with Commissioner Kellner on that, its just as long as we do something that is accurate. I don't think it's fair to campaigns to put out an inaccurate list or a list that becomes inaccurate right away and makes a committee look like they're not in compliance when in fact they are. But with that said, I still think doing it makes some sense, yes.

Commissioner Kellner: Could I suggest that maybe the Counsels could circulate that list to the Commissioners and then we can decide in January whether that type of list could be made public with a press release?

Commissioner Kosinski: Yeah, I don't need to see the list really, I just want to make sure its accurate and if...

Commissioner Kellner: But Peter you might be able to evaluate that when you see the list. I feel that I can evaluate it when I see it.

Commissioner Kosinski: I guess I'm relying on staff to tell me what the list is and what's come in and what hasn't. I honestly don't know and if I get assurances that the list they give us is accurate, which I'm sure it is at the time, I'm not questioning that, its really just how long it continues to be accurate.

Commissioner Kellner: And how much of the, what I would regard as junk legacy, shows up on it.

Commissioner Casale: To Peter's point, I think you publish it with a disclaimer, this is the list as of a certain date, certain reports may have changed. Leave it that way. This way, if I'm looking at a particular committee and I'm interested I could go further. To Doug's point, you start talk about calling lists and what are the parameters? Is it the dollar amount, is it the age of the committee, is it the status of the candidate?

All Talking

Commissioner Kellner: I think we have guidelines for that right?

Brian Quail: And for the failure to file list if it's an active committee and it hasn't filed, they are on the list. The only vetting that we do with the list involves making sure that the automatic poll of the list is accurate and that there aren't duplicates. So, that pretty much is all that we do on that piece. So, the valuation for the compliance unit on whether or not someone goes onto the failure to file list is purely binary. Are they a committee or are they a candidate that's in an election and have they or have they not filed? And if the criteria is met, they're on the list. To Commissioner Kellner's point, I do not believe that the list is inaccurate because there are older legacy committees that are on the list but it creates a distorted view. And that's part of the

reason why, as I mentioned in the numbers part of the report, that the unit has been working harder to bring committees through to termination and get committees off the list and be as assertive as we possibly can helping them come to a point where they can stop being a committee and stop showing up on these lists when the committee is long gone. But we do need people to come to the process with us and we also do need in certain instances for reasonable criteria to be met when we act unilaterally in that regard. I would say that the Enforcement Unit's work by sending out 10-day letters and aggressively pursuing failure to file against the entire list has definitely moved a number of committees in our direction. Just the other day Michael Johnson delivered up 29 e-mail addresses that they had gotten a bounce back from and they sent notices to those folks and the e-mails came back. The compliance unit now is acting on those e-mails to try to track down what is going on with that committee. Why don't we have a good e-mail, let's get a good e-mail for them. And that can be an indicator too that the committee needs to be shuttered and then hopefully getting in touch with somebody and helping them through that process is something that we're working on. So, I think the detritus is less than it was historically but clearly I'm sure there still some there but there is a limit to what we can do on our own to both of your points.

Commissioner Kellner: Well, I would ask that you circulate the list and I for one would like to look at it and then I'll say lets send out a press release.

Commissioner Casale: Do you make a distinction in terms of the dollar amounts? For example, if a committee is out there for 10 years and there's \$50 in the account...

Kim Galvin: Well, that plays into the dormant committee review that's being done extemporaneously with this, that is anyone that hasn't filed in the past 5 years and certain balance thresholds, and they notify the committee they're going to be closed administratively if they don't respond, and many do, most don't. So, there's two sorts of things being done at the same time here. They're trying to clean it up based on 5 years failures to file and a very small monetary threshold. And then the more relevant and recent failures to file. So, they do work in conjunction with one another a little bit.

Commissioner Kellner: I guess we'll take this up in our agenda item.

Commissioner Kosinski: Okay. Anymore discussion on that? Any other questions for Counsel? Alright, if not that will be the end of that unit report. We'll go onto our next unit, Enforcement, Mike Johnson.

Mike Johnson: Before I give my report, I would just like to echo what everyone else has said about Todd and Kim. I wish you both the best in your retirement. Kim, I've known you since the legislative days and I truly value your friendship and I will greatly miss you.

As far as the Enforcement Unit is concerned, at one of the previous Board meetings Commissioner Casale has mentioned that no one can tell your story like yourself, so we should tell our own story. We have a website; the website address is electionenforcement.ny.gov. We've not gotten a link to the main board's website yet, I don't know if that's coming or not, but

we do have our website it's great. Hopefully everyone will get a chance to take a look at it, the public can take a look at it as well.

Commissioner Casale: Yea that's a good point, can it be linked?

John Conklin: It certainly can be but not realizing that the website was happening, and some specific issues that we've had with our website that are playing out on your website to a degree with regard to accessibility, there are some issues that have to be ironed out there as well.

Michael Johnson: ITS I know we had reached out to them with regard to accessibility and from what I can recall, they basically said, anything that as far as accessibility now with our side is concerned, it's the system itself, there is nothing else we can do to fix that. So, hopefully at some point...

Commissioner Casale: Your website is not part of the state board website?

Michael Johnson: Well, our website was developed by ITS which is the same folks that developed the Public Campaign Finance website. So, it was developed by...

Commissioner Casale: Doesn't it run through our IT department?

Michael Johnson: No.

Commissioner Casale: Are they involved in that or not?

Michael Haber: We were not involved in this, no it is developed and hosted by the ITS agency

Michael Johnson: Which is the state agency.

Commissioner Casale: Right, I understand,

Todd Valentine: But if it went into our website it has to meet the accessibility standards and right now it's under review and does not currently meet our standard.

Commissioner Casale: Standard for?

Todd Valentine: For accessibility

Commissioner Casale: For visually impaired?

Todd Valentine: For visually impaired, yeah.

Commissioner Casale: We can we work on that?

John Conklin: Well, that answer concerns me because that answer basically says it's based on the system that was used to create the website and the problems are in that system and therefore can't really be remediated unless the vendor remediates their basic system. That's really not a good answer for us because we couldn't give that answer in regard to our lawsuit, we had to fix our stuff and we have, and we've done a lot of work in that regard.

Commissioner Casale: The vendor is ITS?

John Conklin: No, the vendor is Site Factory.

Michael Haber: Content management system utilized by ITS.

Kristen Zebrowski Stavisky: But to that end PFCB used Site Factory and they are linked to our site, and they have met accessibility standards, so it can be done.

Michael Johnson: Well, ITS basically said we pretty much have the exact same thing that Public Campaign Finance Board has. So, they were a little confused in terms of why we have accessibility issues.

Kristen Zebrowski Stavisky: Well, your scores, the accessibility scores are much lower than the PCFB, but I believe now you're working through our consultant and vendor to try to remediate that. So, at that point if remediated it, it could be linked.

Commissioner Casale: Is this being worked on?

Michael Johnson: Yes.

Commissioner Casale: Alright thank you.

Michael Johnson: So we have our website going, and it's there and it talks about what the unit does and as far as transparency goes, it also puts the determinations that revised that's on the website so, people can see exactly what we do, the decisions we come to and that kind of stuff. We just sent out on December 7th, we sent out 720 e-mails to the individuals who did not, to remind folks to do their 27 day post general filings. As of yesterday, at 10:15, we still have 492 nonfilers. I presented, I gave to Brian a list of all of the e-mail address that bounced back and there were quite a few committees that had no e-mails at all, so we gave him those committee ID numbers as well so they could figure out why those committees don't have any e-mail address. Other than that, we are going to be onboarding another staffer next month who will come on board as one of our investigator folks. Other than that, that's really what we've been up to, cleaning up the nonfilers, and working hand in hand with the Compliance Unit and addressing a lot of those issues.

Commissioner Kosinski: Michael I have a question you can help me with something maybe, so you sent to us today some closed cases, some investigations that you've closed, and I guess my question is how you are handling those. Are those done like how you come to deal with certain

investigations. Is that done chronologically, is there some method to how you actually deal with complaints as they come in?

Michael Johnson: A lot of it is basically what's in front of us at the given moment. Is it chronologically, we try to do it chronologically, but a lot of times wherever they come from, we just grab them and a lot of it is, okay if it's something that's a complaint that can be handled very easily, we try to get it off of our plate very easily. If it's a case that looks like it's going to be very, very complex and may take a lot of time, sometimes we'll try to get to those quickly because knowing that it may take a long time to actually resolve, it's like at least let's just start it right away. And a lot of it also depends on who's up next, so to speak, to get cased, and how quickly they act on it.

Commissioner Kosinski: I guess I'm not sure what that means Michael. Somebody is up for something; I'm trying to understand the process.

Michael Johnson: In other words, I look at the workload for each individual, and if someone has a workload that they can take on a particular matter, they will get it. If there is someone who isn't available and the case requires, say for instance it's a complaint that requires heavy and sensitive audit, an audit on it, and numbers crunching, then that has to go to someone who has that particular skill set. So, a lot of it depends on the case, and the particular skill set of the individuals who are available.

Commissioner Kosinski: I mean my concern is somewhat triggered by, I noticed on today's agenda there is a case from 2019, there are several cases from 2021. At our last Board meeting, we saw a case that came in in October 17th that you received a complaint, and it was on our October 25th Board meeting. I'm trying to understand how that happens. How you can have something that was in here since 2019 not get to it till today where a case that was brought to you or a complaint that was brought to you on the 17th of October came to our Board meeting, was on the agenda for the last meeting.

Michael Johnson: Did we have an October Board Meeting?

Commissioner Kosinski: We didn't Michael but there was an agenda that was put out and I noticed your items on there, even though the meeting didn't actually occur.

Commissioner Casale: Well, to that point too, my concern Michael and I know I read your website, speaks to the question of confidentiality. I was quite concerned to pick up the New York Times and even the Albany paper and to read about agenda items that we were led to believe were marked confidential.

Michael Johnson: Right.

Commissioner Casale: So, that's what I think we're alluding to here, that there's agenda items, they're in the newspaper and you can just follow the dates by looking at the newspaper articles, it's a dual question. The first question is, what order do we take these in, and is there an order.

And the second question is, are they confidential in your mind or not? I mean I felt bad for your operation, I take you at your word that you keep everything confidential.

Michael Johnson: And I do. And you know the article that you're alluding to, I was just as surprised as you. I was in Rochester when I heard about the article. So, I share your surprise.

Commissioner Casale: Obviously, we've got a problem if we're going to be reading in the newspaper...

Commissioner Kellner: What are we talking about?

Commissioner Casale: There was an article in both the Albany paper and in the New York Times alleging that there were items on our agenda...

Commissioner Kellner: On the State Board's agenda?

Commissioner Casale: On the Enforcement Counsel's agenda that the Enforcement Counsel had allegedly sent us certain requests...

Commissioner Kellner: Subpoenas?

Commissioner Casale: And other matters. Why are we reading about is in the newspaper when we were led to believe its highly confidential? The issue for this Board for this staff for everyone it's a major problem for this agency if we don't have confidentiality or if we pick and choose what to make public and what not to make public. It's a major concern.

Commissioner Kellner: I agree with you. I think the source for that came from a complaint. But how they could have known it was on our agenda.

Commissioner Casale: Unless somebody leaked this. Do we give the complainant...

Michael Johnson: I give nothing to no one. The only people who get...

Commissioner Casale: I know you don't.

Michael Johnson: I don't. I can't speak for anybody else; I can only speak for myself. I don't know.

Commissioner Casale: Same here pal, same here. But...

Commissioner Kosinski: Well you know the last time this happened, which it did, there was a full-scale IG investigation as to how that happened. Is there any effort on your part to find out how this happened, Michael?

Michael Johnson: No.

Commissioner Kosinski: So, you're not concerned enough to follow up? I mean last time that the Board went through this which was a few years ago, the IG the state IG got involved in looking into it. It was taken that seriously. Now, I'm not suggesting that happen, but I am suggesting it's a serious matter, and I don't understand your lack of interest.

Michael Johnson: I'm sorry that's how you perceive it, but I mean I don't know what else to tell you.

Commissioner Kosinski: Well, it's very troubling. I share Commissioner Casale's concerns, it's very troubling...

Commissioner Kellner: But Commissioner, aren't you also troubled about the two commissioners deciding to sort of veto the action by...

Commissioner Kosinski: No, no, no, that's not an issue here Commissioner. The issue here is whether this Board has confidentiality with these matters number 1. And number 2, whether there is selective enforcement of these cases. Why are we seeing cases out of order? Why is that? Is that a selective enforcement issue? Is there an issue relating to certain candidates or certain parties that seem to take priority over other issues? That seems to be what's going on. I don't understand this and I don't understand the lack of concern by the Enforcement Counsel on these topics because it seems to me they go to the heart of the legitimacy of his unit.

Commissioner Kellner: Alright, go ahead, finish your report.

Michael Johnson: Other than that, I think I pretty much covered our report other than I know we're going to talk about the failure to file.

Commissioner Kellner: Yeah, I hope you'll stick around for that.

Michael Johnson: Sure, I will.

Commissioner Kosinski: Well, listen I think I've made my points clear here today that I'm very unhappy with the way this transpired. I am very troubled now by the Enforcement Unit's disinterest apparently in this breach, and in this topic. I frankly don't understand it but I guess that's the way it is and we'll just have to take that into consideration going forward, but Michael I really think this is something you should be concerned about because it really does affect the legitimacy of your unit. So, with that said, if there's no other comments for the Enforcement Counsel, we'll move on.

John Conklin: Can I ask one question?

Commissioner Kosinski: Absolutely.

John Conklin: I noticed on your website Michael that you have some news published with regard to the website when you put it up which I would characterize as a press release and at the bottom of that you said, all media inquiries should be directed to Koren Salatino?

Michael Johnson: Satalino.

John Conklin: Satalino, so it appears as if you're operating a press shop out of your unit that I am unaware of?

Michael Johnson: Any questions with regard to what we do or cases...

John Conklin: It said all media inquiries.

Michael Johnson: That involve the Enforcement Unit, she works in the Enforcement Unit.

John Conklin: Okay.

Michael Johnson: She's capable of answering questions that involve the Enforcement Unit.

John Conklin: Okay. Alright I mean I just recall a Board Meeting where a Commissioner specifically told the previous Chief Enforcement Counsel that press office for their unit was this press office, the press office for the agency, not a separate press office within the Division of Election Enforcement.

Commissioner Kellner: And I think that's how it should operate.

Michael Johnson: Any more questions?

Commissioner Kosinski: Alright, if there's no more questions, we'll move onto NVRA/PIO John Conklin and Jennifer Wilson. John if you want to continue with that line of questioning, feel free, I don't quite understand what's going on there, Michael apparently has made a decision to take you out of the loop and to have his own press shop. So, I don't know that we can do much about that although that was not the agreed upon situation with the previous counsel.

John Conklin: Well, I don't really have any follow up questions other than, does that mean we should refer press questions to that person who come into the Public Information Office? I'm not sure how to proceed at that point, so. Maybe that's not something we can resolve here. So, alright well, along the lines of what everyone else has said, I could go on and on about Todd and Kim, if I do, I'll become a blubbering mess over here, no one wants to see that, so they both know how I feel about them. So, I'll leave it at that. So, for the Public Information Unit, obviously we've been very busy over the past few months. We had a major election take place here in New York State. Since Election Day, most of the questions have been about what the post-election paths are and the certification process and that includes what's relatively new for us is the automatic recount process. So, a number of those have taken place in the state. We've answered a lot of questions about those.

For FOILS we processed 94 in September, 90 in October, and 133 in November. Jen and I did a training presentation for the county boards on FOIL responses in October and we reissued the FOIL guidance that was given out last July. We collected the pre-election and post-election UOCAVA surveys for the Justice Department. Back in September, we participated in the National Voter Registration Day. We did several posts to social media and collected some statistics from DMV with regard to that. We did a press release regarding the new accessible absentee ballot system. Kim made reference to that earlier. We responded to some inquiries with regard to that lawsuit. We did the statutorily mandated ads with regard to the single ballot prop that was on the ballot. So, that was published in all 62 counties in the state in the week running up to election day, that cost us just under \$28,000. We did a number of social media posts related to the Voter Registration deadline, National Voter Registration Day, the absentee ballot application deadline, and early voting. We continue to have biweekly meetings with the IT unit and compliance on the public reporting page and we've been pushing out updates. After working through many of their suggestions and updates through the fall, we did get a formal response back on a letter that we received from a number of the government groups back in August. We did get some positive feedback on our response on that. We participated in all the monthly ECA calls with the counties. One last note, we are struggling to get a print vendor for the voter registration forms, no one responded to our most recent RFP, costs have skyrocketed. So, we're trying to work out a solution with the print shop at Tax and Finance, we may be able to do it that way, so we're still working through that. With regarding to the website, obviously we've posted the agenda and related documents for today's meeting. In reference to a comment from Commissioner Kellner in a previous meeting, today we are making a project of going back through what's posted for the meetings to make sure that all the documents that are necessary and should be attached to them are doing that, so that is a little bit of a project, and we are working our way back through that. We posted the webcast and associated materials for the August 15th and December 12th meetings, not December 12th, September 12th meeting, pardon me. We posted the webcast and associated materials for the September 7th hearing that we had on the video conferencing policy that was adopted. We posted information on the new accessible absentee ballot system. We did revise certified results for the August and June primaries and posted certified results for the August special election. We did review all the materials for election night reporting to make sure they were accurate before election day and then that was done on election night. We also hosted specific election night reporting website for Suffolk County. They're still dealing with the consequences of their ransomware attack down there, so we were able to host that for them. We have removed a number of things from the 2020 election box to sort of de-clutter that in the lead up to election day. We posted an updated version of 'winding down the campaign' for the Compliance Unit, and they did a webinar on that as well. We posted updated lists for the LLC statements of identity across a couple of different years there, and we posted updated contribution limits and some verbiage regarding participating candidates in the PCFB.

The last NYSVoter review visit was in September to Cayuga County before the General Election season started to get a little too hectic. We will resume those in January. With regard to early voting, we did everything to ensure the early voting websites were updated for the General Election, and the PIO staff was on call through the two weekends through early voting and we

put out daily early voting counts to the media throughout the early voting period. So, Jen, do you want to add anything or talk about grants a little bit.

Jennifer Wilson: Yeah, and actually Brendan reminded me of something fun that we participated in which is we had two overseas observers come to visit us from Germany and the Netherlands. They were very interested, from the Office of Democratic Institutions and Human Rights, and then we also helped organize, I believe it was around 15 or 20 observers from all different countries that wanted to visit counties on election days, the long-term ones stayed longer through early voting, the other 15 or so just came for election day and that was through the Organization for Security and Cooperation in Europe. And elections operations participated in the...

Commissioner Casale: What counties did you go to?

Jennifer Wilson: So, our observers, the two long-term they stayed in the Capital Region for election day and then they also went down to New York City during early voting. They also stopped in Westchester for campaign events, and I believe it was Putnam County was the other county that they have visited and then they were here in Albany, Schenectady and I believe Saratoga. And they had a great time, they're working on their final report, when they send it, we'll send it out to you guys. On the grants, we're working on...

Commissioner Kellner: And they issued a preliminary report which is about 30 pages long and does refer to New York in their preliminary report.

Jennifer Wilson: It was actually, yes; they gave us lots of compliments.

Commissioner Kellner: I would say accurately.

Jennifer Wilson: So, we've been working on our dying grants. We have several grants that are set to expire in April 2023, our Early Voting Aid to Localities which is all the way from 2019. Our Early Voting Capital grant and our Early Voting Expansion grant. We only have a handful of counties that still have funds remaining, 9 for the E-Poll Book grant, 11 for the Early Voting Aid to Localities, and then 20 for the Early Voting Expansion grant, so we will be working to have those extended, we don't have too many counties left with funds. Our TIER grant is also set to expire that same time in 2023 in April. We do have a number of counties, that's our Technology Innovation and Election Resources grant, so for different technologies and equipment, and we have a lot of counties with funds remaining because of issues with companies not having things in stock and supply chain issues. So, we're working with counties to get as many as we can to get their equipment in time but ones that we can't, we're hoping to have those reappropriated in the state budget so they can have that money. And we're also working on our federal grant reporting for our Shoebox grant, our HAVA poll site improvement and HAVA education grant, we have to report on those annually and semi-annually. We're working on that now and we'll have that done by the end of this year, and that's everything with grants.

Commissioner Casale: Thanks Jen.

Commissioner Kellner: I'd like to just follow up on the issue of decluttering the website which I think is important. So, one of the messages I got in the last 2 days since they told me that they were finishing the Hart Intercivic certification process was that the machine testing was published on the website. Where was that publication made? And how would somebody know to look for it?

Kristen Zebrowski Stavisky: You mean the demo?

Commissioner Kellner: Yes.

John Conklin: They did the demo in the outer area of the Board, so I didn't even know that it was being filmed.

Commissioner Kellner: I was told it was done on November 17th. I don't know that I ever got notice of that and I can't say that I ever saw it on the website. So, I was asking about where I should have been looking for that.

John Conklin: That was posted on the calendar events at the bottom of the homepage, so it was between two board meetings, but it was there.

Commissioner Kellner: When changes are made to the website, is there any system that people who could be followers or something would know that something new was posted on the website?

John Conklin: We don't have a system of alerts set up at this point, and I suppose there's a way to do that. I'm not familiar with it. But I will defer to Jen, she's a little bit more technically savvy than I am with regard to social media.

Jennifer Wilson: Yeah, and we have talked about the Public Campaign Finance Board reported on how incredible their social media's been doing and we've talked about having the PIO staffer that's worked on that work on some things for the State Board because it really is a full-time job to run social media accounts and the staff that we've hired is doing an excellent job with PCFB. So, I think in the future we'll certainly post that to our twitter and our Facebook and kind of have it more out there. But it was on the homepage.

Commissioner Kellner: Okay.

Kristen Zebrowski Stavisky: We've also entered into an agreement to redo the entire website next year. So, it will be redesigned because I know that is a common complaint that it is cluttered, there is a lot of information on there. So PIO will go through a process in which they will basically try to outline how to put the information out in a more easily consumable way.

Commissioner Kellner: And my complaint is that there is a lot of legacy information like the HAVA things that were done 15 years ago that have relatively high prominence on the website and I'm not suggesting they be removed...

John Conklin: Just put in the background?

Commissioner Kellner: Right. On the other hand, we're doing 3 significant certification testing programs right now with Hart Intercivic, with Dominion, and with ES&S, and I haven't been able to find any information about those anywhere on the website, while there is tremendous highlight about the work that we did between 2005 and 2010 on the implementation of HAVA with all that voting system information.

Kristen Zebrowski Stavisky: I think that's part of the goal of 2023 to really redesign and make sure that what needs to be prominent is out there and what could maybe be put in the background.

John Conklin: Yeah, certainly, we can put more stuff up on...

Commissioner Kellner: Well, I just you know...

Brendan Lovullo: We can certainly work with them and those concerns as well.

John Conklin: So, I believe there was a video of the demonstration that was taken and if there is editing happening or something, we're waiting for it to come to us. I don't mean to put that on Election Ops per se but...

Jennifer Wilson: Not to interrupt you, but I did speak with Tom before he left and there was a number of pieces that have to be edited out, as they just continued recording so there was lots of times when nothing was happening. So, they're working on that, so once we get that, we'll post it.

Kristen Zebrowski Stavisky: And that can also go on YouTube and we could tell people when we put it out there, we could put it on social media.

John Conklin: Right, and I believe there was a time when there was more stuff about the machines per se and a special link dedicated to the machines on the website, but when we had the accessibility issue, I think a lot of the documents that were associated with those things were not fixable/

Commissioner Kellner: Which is fine, it was all old legacy stuff anyway. But you still have on the left margin HAVA 2002 implementation and it strikes me that that's not worthy of that high a level button on the page, but we don't need to get down to that level of detail now.

Kristen Zebrowski Stavisky: We also had people attend the demonstration which we were very happy about and I believe from the disability community.

John Conklin: Yes.

Commissioner Kellner: I'm going to get to that when we get to that

Kristen Zebrowski Stavisky: Okay.

Commissioner Kosinski: Okay, any other questions for John or Jennifer? Hearing none, we'll move on to our next item, which is ITU notwithstanding the agenda, Michael Haber will be providing the update today.

Michael Haber: Thank you, Commissioner. Well, in addition to some of the work that we've already previously mentioned, and in addition to supporting the general election cycle, some budgeting work, we've been actively working on maintaining and enhancing our hardware infrastructure. We've also begun exploring potential additional cloud deployment of certain applications in the future working with some of our partners. And we're exploring, evaluating several options for a refresh of our endpoint hardware, so additional laptop and similar interfaces. As for ongoing projects, we've already discussed some. The online voter registration, automatic voter registration projects, I believe we've given the update there that we're working with another state on the memorandum of understanding. In parallel with that, we have indeed begun the development of the interim solution that we plan to have deployed and operational by May of 2023. Some initial draft streams of that application have been circulated internally and we're reviewing that and meeting on them. In terms of space expansion for the agency, the IT unit continues to work as part of the team, that means with the Office of General Services, and again, that's targeted to begin approximately March 2023. We did just a moment ago have some discussion about a website refresh and we are beginning a project on reviving and redeveloping that using a content management system which should allow us to give a fresh look and some improved functionality including search functionality on the site. We are working closely with PIO on that effort. The content management system should make updates much more seamless and streamlined when there are updates that are needed. We have a formal kickoff on that project in the first week of January.

In CAPAS FIDAS the team there continues to respond to enhancement requests on a regular basis just to improve usability and functionality on the various applications. Several EFS updates have been developed and deployed as part of the interim solution in support of Public Campaign Finance. That work continues as planned and on schedule. In terms of our work with the Public Campaign Finance Board, OGS, of course, released the RFP for the procurement of the long-term system and along with others at BOE, IT staff responded to a variety of vendor questions as part of that process. When bids do come in from vendors, they are due on December 29th, as was mentioned earlier. IT will of course be taking a role in evaluating those responses along with others in the agency. We're also participating in leading discussions with external stakeholders such as the Statewide Financial System and the Commission on Ethics and Lobbying, we will be interfacing with and/or providing data to the PCFB systems.

In the world of cybersecurity, our Secure Elections Center led another successful interagency partnership to monitor threats around the Election Day period and while there were no cyber threats identified, our partners did alert us to a few power outages and suspicious interactions that were ultimately deemed as not malicious. This partnership with our multiple state, federal

and local partners continues to be very valuable as an addition to our overall awareness on Election Day activities. Over the next two weeks, we are reviewing submissions of and meeting with the existing voter registration vendors to validate their compliance with our cybersecurity regulations and requirements. And we're preparing to move forward with the renewal of several security services internally, as well as monitoring what we provide to the county boards. Additionally, our Chief Information Security Officer, Ben Spear and I, attended the National Association of Secretaries of State tech talk last week. It was held in Washington at the gathering of State Elections IT and Security Directors from across the country. We also continue actively working with our Center for Technology and Government partners, our vendors on the future of election infrastructure as was mentioned as part of that initiative and all hands meeting with staff which had a focus on technology across the agency and was very well received. Beyond that, of course around the election period we did have an increase in the hits on our website. A number of users, a number of scans that were conducted. These spikes were something that we were able to manage without any difficulty, and as mentioned before, we had no real security incidents. So, that's the end of my report. Are there any questions?

Commissioner Kellner: What can you tell us about the Suffolk County Board of Elections?

Michael Haber: Well, I can tell you it was primarily, the cybersecurity incident there which occurred sometime back, was primarily not focused on the Board of Elections. However, it did impair their ability to post their website and to post their election night reporting.

Commissioner Kellner: And why was that? How did that actually impair them? Is their system tied into the county system?

Michael Haber: They utilize the county website for posting that information and that site was not brought back up after the incident. We, of course, did host a...

Commissioner Kellner: Why were they unable to host their own website?

Michael Haber: They utilize the Suffolk County technologies for that.

Kristen Zebrowski Stavisky: Counties do.

Commissioner Casale: County website, that's the IT department. Right?

Michael Haber: Right.

Commissioner Casale: It wasn't that they couldn't put the information in, they just couldn't get it up?

Michael Haber: Upload it, right. So, we set up a process by which they would send that information to us over the course of election night and we would post that information.

Kristen Zebrowski Stavisky: And they're going to have a special election, correct? And in a year

I believe we're going to host it again.

Michael Haber: Right.

Commissioner Kellner: Well, I'm glad you were able to do that. Does it have any lessons that should apply to other county boards of elections?

Michael Haber: I would say that given that the county board really was not the target, I don't think there's anything different that the Suffolk County Board of Elections could have done in this matter. They were really at the mercy of the Suffolk County IT.

Kristen Zebrowski Stavisky: They acted very quickly and unplugged the Board from the county and from us to make sure that it was contained.

Michael Haber: They did follow some good standard cyber hygiene procedures in that regard.

John Conklin: But to your specific point, I don't know that we can answer that question yet, because I don't think all the answers about what happened down there have come out yet.

Brendan Lovullo: We've obviously worked with the Board throughout that to make sure that they got all the information that we needed through different e-mail addresses that they would be able to access for anything that we could do too on top of continually staying in touch with them.

Kristen Zebrowski Stavisky: I don't believe they're back up and I think it's widespread, I mean their transportation schedule, so I don't think we have much information yet.

Commissioner Casale: It's kind of unusual, we had this situation about 3 or 4 years ago in Chenango County, a disgruntled person went after the Social Services Department, but it affected everyone else.

Michael Haber: And in that case, the Chenango County Board of Elections did actually ask us to come in and consult and we did provide them some assistance.

Commissioner Kellner: And, of course, congratulations to Commissioner Lahota for being elected to Congress.

Todd Valentine: There is a future after election commissioner.

Michael Haber: So, that's the conclusion of my report.

Commissioner Kosinski: Okay, any other questions for Michael? There being none, we'll move on then to old business. Is there any old business to come before the Board? If not, then we'll move onto new business. And under new business there are a number of items, and the first one is the Early Voting Site Regulation, someone want to just quickly explain what that is. We're amending our regulation on it.

Brian Quail: Yes, Commissioner, the Board had previously made some adoptions to put these into effect on an emergency basis. This is a permanent adoption, and it is purely conforming. There were amendments made to the title of the Election Law related to Early Voting in terms of the thresholds for how many voters per site, and also a requirement that, in counties that have a city, that the largest city have one of those sites, and in counties that do not have a city, that the municipality with the largest population have a site with a carve out for Washington County.

Commissioner Kosinski: Brian is there anything in here that goes beyond the statute?

Brian Quail: Per se, no. But, arguably, in order to make the process work, the deadline for Early Voting Site designations in A, changing the date from 46 days to 30 days, I don't believe that's specifically provided for in the statute but it is necessary in order to make the process work given the June primary.

Commissioner Casale: This regulation has to be promulgated so that we're compliant with the statute right?

Brian Quail: Correct.

Commissioner Casale: If they change the statute, they have to change the regulations? For example, I know several bills that change this largest city concept. Every time they change the statute, we have to go back and amend the regulations?

Brian Quail: If the change creates an inconsistency, yes. We do try to draft these regulations in a way that will limit the number of inconsistencies over time, but there is some importance to have the regulation be a total picture. Because the boards, when they go...

Commissioner Casale: So basically, claims the statute.

Brian Quail: Right.

Commissioner Kosinski: Is there a motion to adopt?

Commissioner Casale: So moved.

Commissioner Kellner: Second.

Commissioner Kosinski: Any further questions? If not, all in favor?

Commissioner Kosinski: Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kosinski: Opposed? So, that's adopted. And then we move onto our second resolution which is about independent petitions. And again, if someone wants to quickly explain that. Brian is that you again?

Brian Quail: It can be. Kevin drafted this one. But this is another conforming change Commissioner in terms of the changes to the statute for the distribution of the signature requirement geographically around the state for independent nominating petitions, and this is a conforming change to bring the regulation into alignment with the statute.

Commissioner Kosinski: And again, I'd ask does this go anywhere beyond the statute itself?

Brian Quail: Not at all.

Commissioner Kosinski: Not at all, okay. Are there any other questions about this regulation, if not I'd entertain a motion to adopt.

Commissioner Spano: So moved.

Commissioner Casale: Second.

Commissioner Kosinski: All in favor? Aye.

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kosinski: Opposed? That is also carried unanimously. Our next resolution regarding our new voting system application from Hart Interactive, or Intercivic I mean. If there are questions or if there's a resolution on that, but Brendan you're there to explain this, if you'd like to do that first or you can wait for questions, either way.

Brendan Lovullo: We have the packet that was on the agenda today to discuss. It's up to the Commissioners whether or not they want to bring this up.

Commissioner Kellner: I move that we lay this over to our next meeting. There are literally thousands of pages of backup to the summary report on the certification. I started to go through them. There were some inconsistencies, some documents that could not be downloaded on my system. So, I would like another couple of weeks in order to go through a review of the documentation.

Commissioner Kosinski: So, you're making a motion to table?

Commissioner Kellner: That's right.

Commissioner Kosinski: Okay, before we discuss, is there a second to the motion to table?

Commissioner Spano: Second.

Commissioner Kosinski: There's a second. Alright, Commissioner Casale.

Commissioner Casale: I have no problem, just a couple of questions, because this is the report, right?

Brendan Lovullo: There are a number of different reports.

Commissioner Casale: I read all the stuff. This has passed through all of the appropriate testing standards, correct?

Brendan Lovullo: So far. Our testing lab SLI and our security consultants.

Commissioner Casale: And you received approvals right along.

Brendan Lovullo: Yes.

Commissioner Casale: How many objections were filed against this? Any objections filed or anybody expressed any concern about it?

Brendan Lovullo: Not that I have received.

Commissioner Kellner: Well except for me.

Brendan Lovullo: I didn't know it was an objection, but I'll classify it as that then yes. Then there was one that I recall.

Commissioner Casale: And in deference to the senior member of the Board, I'll vote to table.

Commissioner Kellner: Let me ask a couple of questions. So, who actually got notice of the demonstration, the test demonstration besides putting it on the calendar box on our website?

Brendan Lovullo: I don't know if anybody did. We followed the same procedure we have for years, but we would alert the public based on anything that...

Commissioner Kellner: But that's not the procedure that's been followed for years, Brendan. With all due respect, during the HAVA era, we had a list of voting integrity activists who got notice of that and also, the Commissioners would get notice of it. And I don't believe that any of

the, I'm not aware that, notwithstanding my request, that those people be notified that they actually got notice of that testing.

Brendan Lovullo: If there's a list or something that we can help facilitate that, I'd be happy to work with that.

Commissioner Kellner: Well, I did ask Tom Connolly to put together such a list and I thought that I was told that that would happen. But I don't know because I haven't been able to follow up. so that's one complaint. Second complaint is...

Brendan Lovullo: I can go back and speak with him because he may have as well, and I may have missed it.

Commissioner Kellner: Right, and maybe they did receive notice. Now you said two outsiders showed up, but I don't know who they were or how they got notice of it.

Brendan Lovullo: We did have a list, I don't have it with me.

Kristen Zebrowski Stavisky: We do have a list of who showed up. It's not here, but we could give it to you.

Commissioner Kellner: And I would like that list, so then I can find out whether others who should have been involved in the process were given an opportunity to be involved in the process. So, that's one issue. Second issue is that some of these reports are weeks and even months old, and yet they were only sent to me the day before yesterday. And I think I've made it known that I take this testing process seriously, and that I don't regard that I'm prepared to rubber stamp what happens, and I think that some of, even the review that I've been able to do in 24 hours, bares out why its not a rubber stamp. So, with the ES&S and Dominion testing that's going on now, when there are test reports, I would like to have copies of those reports and not the day before the meeting when you asked to certify so that we can review them. So, that's...

Kristen Zebrowski Stavisky: Well, let me just step in there and say that Tom gave me those reports last week, I held them until we had a complete packet. So, I'll take responsibility for that.

Commissioner Kellner: But he got some of those reports a month ago.

Kristen Zebrowski Stavisky: I'm not sure when he got those reports. But I will certainly go back and see when he got those reports and when we were authorized to distribute them, we will definitely put that together for you, so it does not happen again.

Brendan Lovullo: I know some of them are may be dated at that, but then they're checked and either the SLI report is checked by NYSTEC, so from the time that one report is dated, they are checked and then they could go back.

Commissioner Kellner: That's fine and that's good, so I'm fine with that process other than to expect that we would vote on certification less than 48 hours after the Commissioners get the reports, when the reports have attachments with thousands of pages to them that are relevant to the conclusions in the report. And then the other issue that you've kindly agreed to meet with me later on to go through is that I think the vendor has grossly over designated proprietary confidentiality on the submissions. And I would suggest that models for public disclosure are the Texas, California, and Colorado websites that provide all of the backup documentation to their certification and machine review processes. I respect that our regulation that we worked on drafting in 2007 makes the presumption that all these testing documents are public documents but does preserve the right of confidentiality for documents that are related to the security of the voting system, and to truly proprietary information. But I don't think it's reasonable for a vendor to claim that something is proprietary when it's published on the EAC website or on another state's website, and especially the operational manuals that are distributed widely to poll workers or to county elections officials. I don't think it's appropriate for them to be claiming proprietary designations, so that the public can see how these systems operate and get a proper understanding of them. And I think in the long run security is improved when there is public access to the system and issues can be raised and debated publicly with accurate information instead of the misinformation that often gets spread because people don't actually have access to the underlying documentation. Thank you for patiently listening to me.

Commissioner Kosinski: I would just say that I support Commissioner Kellner in that we should get timely receipt of these documents and if the Commissioner wants them earlier, he should get them earlier, so he has more time to look at them. I also support the idea of consistency. I think consistency of how we treat the vendors should be adhered to, and the same documentation that one vendor has to give, everybody should have to give the same documentation. It should be released in the same way, I also support transparency. So, any transparency should be emphasized. I think for voters to feel confident in their voting systems, there needs to be a transparent system of certification so that voters are assured that it's done in a proper way. So, I support all of those concepts, and I think it's important that we do that going forward. Are there any other comments? The motion before us is to table this until next meeting. My only concern is I know a number of our counties are waiting for the certification. I know a number of them are looking to buy new systems, right now we only really have two systems out there that are available, this would add a third system to the stream, which I think is healthy. I think the more competition the better. So, I don't want to delay this longer than we have to. I'm hopeful we can deal with this then at the next meeting if we're going to table it today.

Commissioner Kellner: I agree with that and it certainly looks like the Hart system is a good system and I agree that we want to make it available to the counties as soon as possible, but I also want to actually go through these documents, and I'm hoping that Hart will be responsible to my requests to declassify much of the information that they submitted. And perhaps we can do this at the sort of interim meeting when we have to adopt the certification for the other two legislative districts. So, my goal is not to hold up the project, but to satisfy myself that everything is in order.

Commissioner Kosinski: Fair enough. Then we'll table that for today and bring it back hopefully at the next meeting whenever that is, if its soon to do the certification, maybe we can try to do it then, but we will pick it up at the next meeting.

Commissioner Kellner: There was one other thing, Hart submitted documentation about parts of their voting system, and of course they have a system that is used in many other states and has obtained certification from the Election Assistance Commission, but some of the documents they submitted relate to barcode systems. Am I correct that none of those systems are going to be deployed in New York.

Brendan Lovullo: Right, and we actually have it set up outside so I can show you after the meeting.

Commissioner Kellner: I'm just thinking that because those components were submitted with their documentation, and I assume they did that just so that it would be a complete documentation submission, that our resolution should explicitly address that, especially because so many of the election integrity advocacy groups have been opposing barcodes. And I'll say by footnote, that I don't necessarily oppose barcodes, that I think that some of the election integrity advocates have been missing the point that its not the barcode that makes a ballot unverifiable, because in New York there is a clear understanding that when a manual count is done, that you look to the actual choice that the voter made and wrote on the ballot or that the voter saw as printed on the ballot by the ballot marking device. When a hand marked paper ballot is counted, it goes into the scanner machine and you cannot observe how that scanner machine interprets the ballot, and whether the scanner is looking at a barcode or whether the scanner is looking at hand markings, that occurs in the black box, and is not transparent. And that is why New York law has provided for a requirement that we use voter verifiable ballots and that it's the voter verified ballot that is the official record, so that, as I say, many advocates say putting a barcode on the ballot makes it unverifiable. I don't agree with that sentiment. But nevertheless, because it's of such concern to so many people, I think that we should affirmatively indicate on the certification that the certification does not extend to the barcode systems that were identified in the documentation that was submitted, which is good. That's not going to be an issue of dispute in New York. Alright, thank you again.

Commissioner Kosinski: Okay, so we'll move on from that and we'll put that off until the next meeting. Our next agenda item is...

Multiple attendees: There's a motion to table..

Commissioner Kosinski: I'm sorry there's a motion to table. All in favor?

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kosinski: Aye.

Commissioner Kosinski: Opposed? Alright so the tabling is approved. Now we have a point of discussion not really an action item, I guess, it's couched discussion on the agenda and that's the failure to file. There is a proposal in front of us to change the failure to file enforcement, so I don't know who wants to lead that discussion?

Commissioner Kellner: Well, there are two proposals actually that the Counsel's Unit made at our request at the last meeting. One is a statutory change to explicitly modify the statute so that the Chief Enforcement Counsel can go directly to Supreme Court to get judgments with respect to failure to file, basically giving the Chief Enforcement Counsel the same system that was in place before the statutory change in 2015. And the other was a very clever workaround that we could do ourselves by simply changing the regulation to say that we're not going to appoint hearing officers for failure to file issues. And that would allow the Chief Enforcement Counsel to go directly to Supreme Court without having to wait for legislation. So, I think both of them are good ideas and that we should proceed with. I hope that there's consensus. I would ask the Chief Enforcement Counsel if he has any comments or suggestions.

Michael Johnson: Well, I will say this, at one of the previous Board Meetings, I believe it was September maybe when Peter mentioned how it used to be done before. Now, how it was done previously when I was here before, by no means would I sit here and say it was perfect, but what I will say is its better than what we have currently. That I will say, and I don't think, I don't know who would disagree with me. If someone did, it's because they don't do this.

Commissioner Kellner: So, how do you feel about the draft regulation?

Michael Johnson: I think it's fine, I think it's absolutely fine.

Commissioner Casale: Would you prefer the regulation, which we can do...

Michael Johnson: I prefer whatever we can do here and now.

Commissioner Spano: We can do one and vote for the other.

Michael Johnson: Exactly, that's how I would suggest they be done.

Commissioner Casale: I think it's safer. We control our own state with regulations.

Kim Galvin: Not that I want to throw a wrinkle into anything, but just noting on the regulations, it's saying that we're not providing a list. So, his authority to go directly to court is because the Board is not providing a list for these items only, which is specifically laid out there. So, just throwing that out there as...I have no objections..

Commissioner Kellner: I think you're right and I think the legislation would be much better in the long run.

Kim Galvin: I agree but I believe...

Commissioner Kellner: But this would allow us to do something now

Kim Galvin: I agree.

Commissioner Kellner: So that we can actually have penalties for people who don't file.

Kim Galvin: Just pointing out if someone says, "Well, why didn't you give them a list" well, he's going to attest to the fact that its simply this, it's only this, and that, so there will be no bomb throwing from one side to the other.

Michael Johnson: Right, it's just your basic, you didn't make your filing.

Kim Galvin: Right, just pointing it out.

Commissioner Casale: I know this is only for discussion purposes, is it appropriate to recommend to Counsel come back at the next meeting with a formal proposal?

Commissioner Kellner: Or, why don't we just tell them now to

Commissioner Casale: That's fine with me. If Enforcement Counsel is comfortable with it..

Michael Johnson: I'm comfortable with it

Commissioner Kellner: Well, I move then that we direct the Counsels to follow the process for promulgating the draft regulation.

Commissioner Kosinski: There's a motion?

Commissioner Casale: Second.

Commissioner Kosinski: All in favor?

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kosinski: Aye.

Commissioner Kellner: And then with respect to the legislation, let me just ask, is it appropriate to move this as a Commissioners' recommendation now or would the staff prefer that we simply incorporate it in our legislative recommendations, if we're going to do that?

Commissioner Spano: You made a comment before about highlighting this that may be something that we should incorporate it in the regulations.

Commissioner Kellner: Okay, great well thank you.

Commissioner Kosinski: I have one question along these lines, I have questions for Michael about, you sent us a few weeks ago a settlement on a failure to file case, I guess. There was an issue with a former candidate, where you had a settlement agreement with a specific candidate's committee on their failures to file and I know there hasn't been a lot of enforcement on failures to file and I'm wondering why that one was settled as opposed to all the other ones that are out there.

Michael Johnson: Off the top of my head from what I can recall, that particular committee had numerous failures to file.

Commissioner Kosinski: Yes.

Michael Johnson: And opportunities. I mean usually we give opportunities. "Hey, you didn't make your filing, do you want to settle?" This individual chose not to. It's simple as that, that's why it went as far as it did through the hearing officer process. And a lot of times when we reach out to folks it's like, "hey can you just simply make your filing?" That's basically how this came about.

Commissioner Kosinski: But I mean I guess my question is my understanding is I think the reason that we're trying to move this resolution along or this regulation is there hasn't been enforcement of failures to file because I know its cumbersome and been difficult, and I'm just trying to understand why this one came to conclusion on this one candidate where we have many, many other candidates out there also with failures to file that have not come to any conclusion? Why was this one concluded and the others not?

Michael Johnson: This was just one of several that made its way to a hearing officer. There are many, many more that either with this process can be handled much more expeditiously.

Commissioner Kosinski: So, do we have others in the pipeline in the hearing officer process?

Michael Johnson: Off the top of my head, I honestly can't answer that. I don't know. I mean there are a bunch that are ready to go that have not been sent to a hearing officer yet. We have, as we discussed earlier, we've got plenty of failures to file, at this point was a question of okay let's see how this process is going to play out. Will we be able to avoid the cumbersome hearing officer process and just go right to court and this way we can dispense with a whole lot more as opposed to one at a time.

Commissioner Kosinski: Listen, I'm in favor of that. I'm in favor of dealing with all of them, my issue and I've raised this before, I raised it earlier today, I'll raise it again, my issue is that everyone is being treated the same. That everybody gets the same treatment from this agency. That I'm not seeing any evidence of selective enforcement. And that is a huge issue with me because that I think creates a situation where you can accuse this office of selectively prosecuting certain candidates or certain committees and not others. And I am very concerned about that. So, I'm all in favor of treating everybody the same and I always want to know why a certain committee that's really no different from other committees, at least from what I can see, is suddenly brought to conclusion when numerous others, who I think are similarly situated, are not. And this one raises that issue with me. And I guess you should know Michael, I will continue to ask questions on issues like that as you bring them to us. I think it's our job here at the Board...

Michael Johnson: I expect it, Peter.

Commissioner Kosinski: Pardon?

Michael Johnson: I expect it. I said I expect it.

Commissioner Kellner: I want to agree that I think that it's very important that Enforcement process be transparent so that the Commissioners and the public can be assured that everyone is being treated the same.

Michael Johnson: And if you ever have any questions Peter that I haven't satisfied you with an answer here, you can give me a call.

Commissioner Kosinski: Well, I'd rather do it here where the public can see it Michael, because I think it's important for the public to understand how your unit works and how we interact with you. You know I raised questions earlier today that go to the very heart of that. You really didn't give me any answers frankly, and I'm a little troubled by that. But I will continue to monitor this and try to see that things are being done in what I consider to be a proper way. Proper way to me is consistent enforcement of similarly situated candidates. And so, I will continue to watch this and that's why I'm raising that stuff today. I think I've seen some instances where I don't believe that's been happening, and that's why I say to you I think it goes to the very integrity of your unit because without that assurance, I don't think this Board, or the public can be assured that the Election Laws are being fairly enforced across the State. And I think without that assurance, that is a failure of both your office and us to oversee that. So, with that said, I have no other business.

Commissioner Casale: Mr. Chairman?

Commissioner Kosinski: Yes?

Commissioner Casale: May I make a statement please?

Commissioner Kosinski: Yes, Commissioner Casale.

Commissioner Casale: I've listened to everyone's comments about our two departing staff members. I haven't been on this Board as long as some of you but I've known these two, Kim and Todd, from my previous lives and I can tell you, I've always had the greatest respect for both of them. Their abilities are unsurpassed by anybody in this profession. They're dedicated, they've been hard working, they are very loyal to the agency, very loyal to their duties, and I just want to add my congratulations. It's a bitter-sweet day for me because I really hate to see them leave, but no one wishes them more good luck and for a long, happy and healthy retirement.

Kristen Zebrowski Stavisky: Commissioner, don't worry, Kim will be a consultant. She's going to come back every year to help me with the color of the law book. We already made the agreement.

Commissioner Casale: And I have both of their cell phone numbers and I know how to find people in Lewis County if I have to.

Commissioner Kosinski: Alright Commissioner, thank you for that. If there's no other business to come before the Board, I think we will readjourn, I'm sorry, recommence our meeting at the call of the staff depending on when that's necessary. So, if we can agree is that fair with everybody?

Commissioner Kellner: Sure.

Commissioner Kosinski: Is there a motion to adjourn?

Commissioner Kellner: So moved.

Kristen Zebrowski Stavisky: Commissioner?

Commissioner Kosinski: I'm sorry, do you have something Kristen?

Kristen Zebrowski Stavisky: Commissioner I just wanted to ask, should I try to get a date during the week of the conference for the Election Commissioner's Association?

Commissioner Kosinski: We can talk about that once we go forward. Absolutely, we'll work on something, but in the meantime let's focus on when we have to reconvene for the canvass and in the meantime, I would wish everybody a Happy Holiday and best in the New Year. And with the motion to adjourn, everyone in favor?

Commissioner Kellner: Aye.

Commissioner Spano: Aye.

Commissioner Casale: Aye.

Commissioner Kosinski: Aye. We are adjourned.