

Peter Kosinski: Good afternoon I'd like to welcome everybody to the meeting of the State Board of Elections. I'll open the meeting as first the State Board of Canvassers because we have some amendments to our canvass that we certified back in December that have to be made. But before we start, I am Peter Kosinski. To my right is Douglas Kellner, to my left is Greg Peterson and to my far right is Andy Spano, the four commissioners. We'll open as a Board of Canvassers to do the following amendments to the 2019 certification. We received amended vote results from Dutchess County for the following contests: Governor, Lt. Government, Comptroller, Attorney General, US Senate, State Supreme Court Justice, Congress, State Senate, Assembly. We also received amended blank results from Warren County for US Senate and Congress. We have corrected formulas and totals vote by party and total votes by candidate for the following district 37th Senate District and we have correct vote results for Oneida County in the 101st Assembly District. So, we have these documents before us to approve those amended certifications. If there is a motion to accept these...

Douglas Keller: So, moved.

Peter Kosinski: Second?

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? So, we will amend these certifications, to that effect we have to sign these just the one page. Doug, we'll start with you, you're first. Okay, so that concludes the business at the State Board of Canvassers. I'll entertain a motion to adjourn from the Board of Canvassers meeting.

Gregory Peterson: So, moved.

Peter Kosinski: Second? All in favor?

(Chorus of ayes; 4-0) and we will now convene as the Board of Elections and our first order of business are the minutes from December 14, 2018. I assume all the Commissioners have received them. Is there a motion to accept the minutes?

Gregory Peterson: So, moved.

Andy Spano: Second.

Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? So, they are accepted.

We will now go onto unit updates and we will begin with the Executive Unit, Bob Brehm and Todd Valentine.

Todd Valentine: We continue to work on the budget was released with regards to the agency budget and we continue to work with the Division of Budget and based upon our analysis we're approximately \$3 million short for what we need to actually operate the agency.

Peter Kosinski: I'm sorry Todd how much was that?

Todd Valentine: Approximately \$3 million short we need to operate the agency in the coming year and that doesn't cover any of the costs of the additional programs which are included in the Governor's budget or are in any of the legislation that's currently pending before the Governor. And those items still have to be worked out. And there was, so far there has been no additional cyber security money which we were anticipating based upon our discussions last year with Budget to help with the county board mitigation program because of the large amount of the funds that we had already gotten from the federal and the state money was approximately \$24 million. Based upon the programs we've already started and the procurements we've put into place, we've allocated a very large portion of that money there's about \$4 million left that's not planned to be, we already have it planned to be spent so if there are not additional funds, we would have to revisit our plan. So that will keep us busy. And we are again, as I said, awaiting the Governor to sign into the new election reform bills and how we're going to implement that is still an unknown. It does put a lot of burden on the Board of Elections here and the county boards to come up with plans on implementing early voting, the transfers of registration, the 16-year-olds...the fourth one I'm forgetting... and the LLC loophole. So those we still need to come up with plans for those and they will require changes in regulation. So, we'll have to draft those, agree them and bring them back to you for your approval at some point probably this spring.

Peter Kosinski: Let's talk for just a minute about that. So, let's talk about timeframes as far as implementation of the programs...

Andy Spano: Can I ask something before that?

Peter Kosinski: Oh absolutely.

Andy Spano: Only because why are we \$3 million short?

Todd Valentine: Well that's a good question. What we were looking at was that there were monies that were not re-appropriated that we believe should have been, so that encompasses that. There's always a shortfall in the personal service money, typically. And then it's usually covered by the nonpersonal service funds. But this is a little bit higher because of that, because it was funds that would have covered a lot of the staff for what we call HBITS (Hourly-Based Information Technology Services), they're the technology people, the hourly-based technology people that do a large number of the work for CAPAS-FIDAS and NYSVoter Program. So, their services are needed so we would have to, if we don't get the funds, we'll have to figure out what it is we're going to have to stop doing because we're going to run out of money to pay them.

Andy Spano: Because there's no other pocket to get the money from?

Todd Valentine: Correct. And without the additional federal funds, while some of the work they do is cyber security related so certainly some could be moved to that, a large chunk of it is related to funds that we provided to raise up the county cyber security levels. So, the programs for intrusion detection is geared towards the county. That's a large chunk of money. It's what we called the managed security services, which is to look at the other logs the county produced.

Those are funds not for our support but for supporting the county cyber security which does support us as well. If they're stronger, we're stronger. But part of that doesn't even address some of the fixes that we know we will need to make in the coming year. The counties have their work to do based upon the risk assessment. Again, a cost that we have undertaken for the counties. We're going to get our own risk assessment done. The Department of Homeland Security has offered to do that for free, they're slightly delayed because of the government shutdown but we anticipate a series of items that we're going to have to undertake and it would be hard pressed for us to move those funds to cover something else. Here's this other need we've got to cover.

Andy Spano: No, I understand.

Todd Valentine: So, Bob can go into far greater detail than I can, and we did provide the detail to the Division of Budget when we met with them earlier this week. They don't say yes or no they just take in the information....

Andy Spano: I know how they operate.

Todd Valentine: ...and see what happens in the 30-day amendments. And it's true with the programs that were included in the budget and certainly the ones that were not in the budget that were passed, there is a fiscal implication to us but again, we haven't calculated it because it's still in its infancy figuring out what to do but who knows where the money is going to come from?

Andy Spano: That's a big deal. We could be short with new programs coming in.

Todd Valentine: Yes, that was the case that we were making.

Andy Spano: Yes, I'm sure you were.

Peter Kosinski: Something else?

Bob Brehm: Yes, On the budget, I mean certainly we always look at when the Executive Budget comes out, we were fortunate this year only one re-approp is not in the budget. It's for the technology money we received last year the unspent portion is about \$850,000 of that money. So, whether it gets re-approped or a new approp, but we're still \$3 million short. It's about \$1.5 million of that is for staff and the other half is roughly the contractual services for the hourly based people that do technology projects. We went this week to budget and made our case on Tuesday and we're going to follow up in writing to those persons in the Chamber that are our normal contacts as well as the fiscal committees just so that they all understand where we're at just as a baseline, what do we need to implement the programs established before any of the new initiatives are added to the table. And hopefully that will be received well.

The second item that we raised with budget is that there is no new appropriation of cyber money. I think we laid out for Budget all of the commitments we currently have in place to make the state election infrastructure strong and what are we doing in order to make county

infrastructure strong? And there is really only \$4 million left out of the State and Federal fund. So, somewhere around \$24 million, 20 of it is committed to one of the projects, the Secure Election Center or some of the other services we're doing to make the state system strong and the county system strong. It's not a lot for mitigation and there's not a lot for what would we uncover when the risk assessments are completed and we get that summary report of items that need to be fixed or, when the federal government comes finally to do our risk assessment and gives us the list of things that needs to be fixed. We kind of have an idea. We've dedicated certain things that we think would need to be mitigated. We've come up with an estimate but it's still an estimate, there's not a lot of wiggle room with only \$4 million left. So, we're also going to follow up with making the case to that same group of people why we think it's appropriate to have an additional appropriation of cyber money. So, my goal is, we met as a group to make sure we were all on the same page inside the agency on our numbers and now we are going to communicate outside as to what our needs are and at least make the case during the budget why it's important to fund it. So, I felt it was a good meeting with budget but, again, they have a good poker face. They didn't say no. They at least accepted the information. They said they were going to digest it and come back to us with any questions. So, I thought at least it was a pretty productive meeting. We don't currently have a Dep Secretary that we speak to because our last Dep Secretary was reassigned to an agency and we haven't been introduced to the new person yet. So, if that happens, normally Todd and I would meet with them individual as initial conversation so we can bring them up to speed on what our needs are. So, we certainly look forward to doing that as soon as possible. But for the budget, it's certainly starting the process \$3 million in the hole, we can hope for the 30-day amendments to address that.

Peter Kosinski: Okay. Any other questions? Okay. So, you already talked about the legislation. I just had a couple of questions about that. So, the one bill that allows for statewide transfers so if I move from Buffalo to Long Island I can vote in Long Island without re-registering. And I guess I'd vote by affidavit ballot or something. So, there's a provision in the statute, I guess it's a 60 day start or 60 days from when it's sign. And that hasn't been signed yet correct? Okay. So, it will be 60 days from the date the Governor signs the bill and we have to promulgate rules and regs prior to that 60 days I guess to implement this is that correct the way I'm reading this? So, we have a shorter window even than the 60 days to get some rules and regs out to the Boards about how they're going to implement the statewide transferring process which we currently don't have. So, have we thoughts about that? Is there something on the table about how to implement that for our people to do that and the boards? Because that's going to come up, I guess in the June primary right so the first time this will be used is that correct? Is that the June primary?

Todd Valentine: Yes, it will be in effect at the June primary.

Douglas Kellner: Brian, can I borrow your...?

Peter Kosinski: Okay so I mean is there a plan? Is there a process? Is there something in the works as far as how we're going to actually tell the counties they should implement this to make sure that people are, I guess there's a number of issues, where they can't vote twice. They can't move and vote where your old address was and also vote with your new address. Are there thoughts on that?

Todd Valentine: There are thoughts. We haven't met on it and I certainly haven't seen any written drafts or plans from Bob, I don't know Brian has them and shared them with Kim, I haven't seen those. So certainly, I was not a party to the drafting of the legislation so nobody on our side was so, if there was a plan with that in the back of their mind certainly putting in that effective date will make it challenging, I think so hopefully, I don't know Bob if you had any ideas on that.

Bob Brehm: Well, certainly all of the bills allow us to do regulations to the extent we need regulations but transferring records is not unlike transferring within a county so the question is, how can we make data available to the counties? So, we talked briefly, Todd and I, briefly, about what could we do under NYSVoter to make it, because that's certain the statewide database is available in every county and everybody in a Board of Elections has the ability to see all of the voter records throughout the state. The only one issue is we put a watermark on your signature, counties would certainly need to see your unblemished signature, I guess. Non-watermarked signature but that would be a question of meeting with our IT people and figure out how to make a report available to counties now so that they can at least have information on that kind of, you know they certainly can see your voter record as it relates to transferring a voter within a county. The second issue is the vote issues, how do we accommodate the affidavit voting as to whether or not they voted twice. But those are two issues; one is a regulation or if they do vote twice is it a crime? So, at which point do we do the regulation around? So, we certainly have to sit and review them just like we have to review all of them. I think LLC has a 7-day effective date, so I don't know if you do them, I mean certainly we have to look at them in which one do we have to do, which one is immediate, which one is 7 days, which one is 60 days. Ideally the preregistration of 16-year-olds is next January so we have a little bit more time.

Peter Kosinski: Well, I guess that's why I'm focused on this one is the relatively short implementation of the timeframe they gave us. The 60-day window is relatively short compared to some of the other provisions, so that's why I focus on that.

Bob Brehm: I certainly think its work and we will, I know we've been on a number of items mostly since the budget came out. We worked on the calendar which we know is like an immediate need that people will have if we do the uniform primary to make sure that we're all on the same page so we can issue a calendar as quickly as possible. So, we've tried to focus on perhaps not every one of them but those which we saw immediately in our face but certainly we would have to focus next, especially if the Governor signs them, to be able to implement them.

Peter Kosinski: Well it just seems to me that this one is a more significant change in the sense of administrative processes that will have to be undertaken than say the LLC or even the 16-year-old which, to me, are not administratively as difficult because you can implement both without a lot of changes. But this one changes the very structure that we currently use for allowing people to transfer. Right now, it's in county now it will be in state. So, if I move from let's say Buffalo to, I guess anywhere Rochester, the Erie County Board will have my record, I will come into the Monroe County Board and vote. I guess it would have to be affidavit because I'm not registered there. So, I vote affidavit and then the Monroe County Board has to know, well did you vote in

Erie? Because if you voted in Erie, you shouldn't have voted in Monroe. And right now, it's internal so I know if you move within my own county because I have your records...

Bob Brehm: Well, I know if you voted in Monroe because I have your affidavit.

Peter Kosinski: No, I'm saying the current situation is if you move within county you can do that, but I know about it because I control the records. Now I don't control the records.

Douglas Kellner: Peter, we already have that system in place in New York City where if you move across borough lines and while it technically the City Board of Elections is one unit, the boroughs with respect to processing transfers of registration that come by affidavit ballot on election day have procedures that area already in place and that would easily apply statewide. It's not a particularly difficult problem although I agree with you that it needs to be addressed and the counties need to be given a procedure promptly. But the New York City procedure is already written and frankly that procedure could easily...

Peter Kosinski: But the City Board as I understand it controls its own records. So, if I move from Brooklyn to Richmond County, the City Board has all my records so they can look at the signature, they can look at the record that they control right now. Right now, Erie does not control Monroe's, Monroe's does not control Erie. Does Monroe have access to Erie that would allow them to do the necessary research to determine if you voted in Erie?

Douglas Kellner: Well if the voter registered with a new registration as opposed to voting by affidavit ballot you have a procedure in place for processing the transfer of that registration. And that procedure would remain unchanged essentially.

Peter Kosinski: But you're not registering now, I'm coming in on Election Day and voting.

Andy Spano: Someone just walks into the booth and says, "I want to vote. I am registered in such and such a county", this is a different county. You have to give them an affidavit ballot. Now you have an affidavit ballot. Now somehow, we have to check out whether they voted again and transfer the record.

Peter Kosinski: Correct.

Andy Spano: I'm just trying to get this.

Douglas Kellner: The voted again is not part of the New York City Procedure, in other words, they don't check to see whether they voted at the old address. Obviously, if they did it would come up eventually when they did voter history because it would show.

Andy Spano: Yeah but we'd have to check that if it was a legitimate voter and get the record transferred.

Douglas Kellner: You would treat the affidavit ballot the same way you would treat a registration application. It simply transfers the registration from the old registration address to the new

registration address and where that crosses county lines we already have a procedure in place how the database operates when somebody files a new, when a previously registered voter files a new registration in a different county, under the Help America Vote Act that is not technically a new registration. The registration has to be transferred across county lines.

Andy Spano: I'm just looking at the physical aspect of this okay.

Douglas Kellner: I'm saying this is basically already worked out but Commissioner Kosinski is correct that we need to promptly put it in writing with a procedure that we can send out to the county boards. But I don't anticipate any significant change in the process now of how voters who move within the state have their registrations processed.

Andy Spano: We look in New York City we have the staff do something, write something up, give it to the four of us.

Bob Brehm: We would normally do that, we first probably would want to meet and talk first before we start writing and that would probably be more helpful, what do we think. It doesn't necessarily always, it certainly helps to know where people are coming from before we start writing, but then we would start writing anyway after that just to try and incorporate any thoughts that were shared in the beginning. And certainly, we would look at all of the bills probably, where are we on this specific proposal? Where are we on some of the other ones so we can then maybe delegate them to different staff members to come up with the first drafts, so we have some starting point.

Andy Spano: When would have to approve this?

Bob Brehm: Well the sooner the better. We would have to do an emergency anyway under a 60-day effective date because there's just not 60 days to enact regulation. So certainly, the sooner the better to have a draft so people can start proposing alternative language or have some starting point to comment.

Peter Kosinski: So, you're saying that the City Board process right now allows me to transfer which I think will say the law does within the city if I move from Brooklyn to Richmond let's say and if I vote at Richmond, Richmond doesn't check to make sure I didn't vote in Brooklyn too?

Douglas Kellner: Not when they process the affidavit ballot but...

Peter Kosinski: So, they will count the affidavit before they check to see if I voted in Brooklyn on the machine?

Douglas Kellner: That's correct. But if you did vote twice it would come up in the voter history because you would have the new borough listing that you voted by affidavit ballot with the transfer and the old borough would show that you voted in person.

Andy Spano: But you would still have to check the affidavit ballot against the fact that this person was pre-registered somewhere else.

Douglas Kellner: No, what I'm saying is that the voter history would show that the person voted twice. And as far as I know in the what is it now 23 years this has been in place, that there has never been a case of someone who has transferred on Election Day having voted twice.

Andy Spano: That's not my...my question deals with the fact that when I say I want to vote here, they say, "You're not registered" I say, "I was registered in New York City and now I live here in Suffolk County and I want to register. Give me an affidavit ballot to vote on." Now they have to check to see if I was registered there otherwise, I'm not registered...

Douglas Kellner: Correct, but that's in the statewide database.

Andy Spano: They have the ability to check the statewide database?

Douglas Kellner: It's in the statewide database.

Bob Brehm: They have the ability to look. I mean take the person Monroe example and the Erie, Monroe can't change the Erie, but they can look and see the record. The report that everybody kind of calls it something else, but the report is kind of like we call it an extract file, counties call it a voter dump which has kind of like a one-page sample of what the record looks like. It doesn't include the voter history on that page but at least it gives you the name, address, date of registrations to the extent you have a client ID, the last 4 digits of social security, your signature would be available to any county to see. We also have voter history to the extent the county gave it to us and they do give it to us under our existing regulations at all different times so we could look to try and encourage, I mean a reg that if they're not collecting voter history until March after the election, it would be a concern to rely on it but certainly we could look at all those issues. But at least for the data that is currently there, the NYSVoter system does show to any county board they have the ability to give user rights to their employees to look at this information. The only issue that is clearly an issue is that they should see the signature so they could do a comparison without the watermark. We watermark it, it shouldn't be too much to take the watermark away but then I'm not a technology person. We'd have to meet with our technology people to make sure that they could do that for Boards of Election login people just as some of the types of things. There's other things we'd have to look at also.

Andy Spano: It's just adding a line to the affidavit saying, "I haven't voted any other place this year," period.

Bob Brehm: Well if they lie that's a crime. No matter what.

Andy Spano: It's a reinforcement that's all. You know what I mean.

Peter Kosinski: Mm mmm, right.

Bob Brehm: And certainly, we will look to do our best to accommodate as many views. And I remember how we did the voter registration, excuse me the enrollment transfers in the early 90s before NVRA went into effect and we did a lot of this without any computers in that period of time where anybody who registered who said, "I previously lived in another county" we had to handwrite a postcard. At the end of the week we would mail them to all of our other counties. Monday morning you'd get that stack of mail and they would look you up and write on that card and come back to us. And based in what the previous county told us, we would go to your original document, because that was what was there in the poll site on Election Day and we would say you were a Democrat in Albany County and you're not a change of enrollment in my county. Now we changed the law in the 90s to stop that when NVRA happened, but we did all that work back then to make sure that your party followed you and then NVRA that stopped. But we used to do it all so we could do it then without technology, we ought to be able to accomplish something similar with the technology. The fact is there aren't many people of my vintage left who remember doing it.

Peter Kosinski: So, we should anticipate improving some regs in the next 2 months is that correct?

Bob Brehm: Yes.

Todd Valentine: I think so.

Peter Kosinski: Okay. Can we just talk a minute then about the other bill that is the early voting bill which we also have an obligation to promulgate rules and regs on? So that's a longer period, right? What's our time frame on that one?

Todd Valentine: So, that's effective for our 2019 election.

Peter Kosinski: So, what would be our anticipated need to do rules and regs on that?

Bob Brehm: I think the main issue is to give guidance to the counties on what they need to do to select their sites.

Peter Kosinski: They have a May 1st deadline right to have...

Douglas Kellner: I'm not sure that there are any regs that are needed as opposed to providing assistance to the counties. I don't think the statute mandates regulations it just gives us the authority if we can't to exercise it. But I'm not aware of any regs that we'd actually need to implement it.

Todd Valentine: Depending on how you want to enforce because the issue is with part of the plan that the counties have to do by May 1st is not so much identify the poll sites but identify the plan for how they will accommodate having sufficient voting so that they are able to accommodate the voting wait time for those voters and given the size of the populations that are in the statute for the one for 50,000...

Douglas Kellner: How would you regulate that as opposed to, I understand that we have to implement it and it's a very complex implementation project and so far, the funds have not been allocated to do that so that that issue will certainly be an important one for discussion in the adoption of the budget. But in terms of regulations, while the statute gives us authority to issue regulations, I'm not sure I see anything that actually needs a regulation as opposed to us providing assistance and guidance on how to implement.

Todd Valentine: Well how about the number of voting systems per voter those are in the regulations and they are set design for Election Day registration.

Douglas Kellner: Well we could do that by reg if you wanted to.

Todd Valentine: Extrapolating that out, based on the current numbers we have, given the size of the voters for the poll site, granted its spread out over a number of days, 9 days in theory for 50,000, you would have to have a fairly large number of machines which I don't believe was anticipated. I mean I don't know I would be reading the mind of whoever wrote it, that I don't know that was expected. But we set those numbers for the number of workstations, the number of scanners, to force the counties to try, that's what we came up with that the machine can process in order to keep the wait times down. So, I think if we don't...

Douglas Kellner: For Election Day poll sites?

Todd Valentine: Right. We don't have that for early voting poll sites but if I just applied those then I would have a potentially large number of machines.

Douglas Kellner: I don't think anybody intends for us to apply. Listen I have an open mind, if people want to have a regulation, we can look at it.

Todd Valentine: We're open too it's just that obviously we're not a party to drafting of this so I would hope that there was, I don't know who to speak to to get what was in your mind when hey you wrote this what did you think was going to happen?

Bob Brehm: Well this is a proposal that's been out for years. It's passed the Assembly, was in the Governor's proposal and the Election Commissioners Association annually has attempted to talk about it but has not succeeded in getting a consensus even to talk about it. So, certainly there has been a conversation. We've appeared before two public hearings together but with a different message over four years talking about it. So now we really have to talk about it because we have to implement it. So, certainly we will look at whether or not counties must follow the regulation because of Election Day Poll site is different than an early voting poll site or that we would come up with new numbers anyway and certainly we can either give guidance or propose if Todd thinks it's more preference or more importantly if the four Commissioners think it's more preference that we put it in reg as opposed to guidance. Either way we need to come up with a plan, communicate with you and make sure that we all agree on what we should communicate to the counties. Earlier the better I agree.

Peter Kosinski: I mean there's some direction in the statute for us to do certain things. For example, it says, the Board of Elections shall establish procedures subject to the approval of the State Board of Elections to ensure the persons who vote during early voting shall not be permitted to vote subsequently. In other words, double voting. So, it imposes on us an obligation to approve whatever plan the county comes up with to implement this program to ensure double voting doesn't occur. So that's an obligation on us, we have to do, we have to have a procedure. I think we have to have some sort of standards we're looking for, and while this allows the county board to do it, I think we would be interested in a statewide type process so what's going on in one county is not significantly different from another county. So, every voter in the state is being treated equally. So, it seems to me there is some obligations this state board has visa via the implementation of this. It also goes on, State Board of Elections shall issue rules and regulations that shall include but not be limited to and then it lists out, ensure ballots that are cast early by any method are counted in canvass, ensure the efficient and fair early voting process. So, there are obligations put on this Board to implement the statute. So, I don't think it's quite as easy to say, "Well we can just sit back and let the counties do it, we don't really have any role here." We do and I'm just trying to understand how we're going to fulfill that role. What our thoughts are as far as getting this rolled out in a timely manner. And Bob you're right, this has been out there for years but the implementation of it is what's at issue here today. We're no longer discussing the wisdom of doing this, we're discussing how to do this. So, I think we need to focus. Because the statute frankly doesn't give us a lot of direction. I mean it gives us an outline. It tells us we want early voting in New York, and we want it done over a 10-day period and we want this. But it doesn't give us the nitty-gritty about how to do it. It doesn't give us the nitty-gritty about how the counties have to implement this. It gives us some broad guidelines. For example, when I looked at it, it says you must have at least one early voting site for every 50,000 eligible voters.

Bob Brehm: Full increments of 50,000.

Peter Kosinski: Okay so if I'm an upstate county you know I'm looking at this saying, I'll take where I'm from Cattaraugus County, big county, less than 50,000 voters but it's a county of rather significant geographic size. So, if I'm in that county and I have one poll site for 50,000 voters, you're going to force people to drive 30, 40 miles to go to that one site. Is that reasonable? I don't think so. So, to implement this to say we'll we've set these parameters out not go ahead and implement it, to me it's not that simple. I mean upstate you've got huge geographic counties with relatively small voting populations but to accommodate them on an early voting site I don't think it's fair necessarily to say you get one site in a county where I'm driving 30, 40 miles to get to that site maybe because of the distances. And we should be accommodating voters better than that in my view. While the statute has this population rule, it doesn't accommodate a distance rule.

Bob Brehm: Well it's a minimum, maximum, it's nothing that stops the counties from having more.

Peter Kosinski: I know, I understand it, but I'm telling you from my standpoint as a statewide matter, it seems to me we have some interest in making sure that the voters throughout the state are serviced and they are serviced appropriately.

Andy Spano: You know my assumption, because I didn't read this, my assumption was that we would do exact that.

Peter Kosinski: What's that?

Andy Spano: That they would get together we would be involved in a discussion on how to do things like that looking at the problems and then a final draft would come back to us and we approve it or disapprove it. So, I mean I agree something like that has to be done and that's what's going to happen. That's just my assumption, because it's typically the way we handle any of these things.

Bob Brehm: And I think some language generally whether or not we agree we need a regulation even though it says shall only is if we need it to accomplish early voting say in that parameter. But if they didn't counties have a long history of making sure the people don't vote twice so depending on what is different about early voting, not voting twice is just something we have to look at. Does it really require regulation or is it something that's long-established policy?

Douglas Kellner: Well if the statute says, "shall establish a regulation", then we have to do it. The language you read is not discretion. So, we'll do it.

Peter Kosinski: I think realistically speaking this statute gives us a sort of outline but to flush it out I don't think it's realistic to do it without some more meat on the bones so to speak. Some more detail to the counties of here's how to implement this because this broad parameter is too broad in my view to ensure that there is a uniform application of this statute across the state and that our voters are being, you know right now we have rules for example on size of poll site, size of ED's. You can only have so many voters assigned to an ED that's statewide. We do that to make sure that the uniform standard across the state that voters have equal access to the poll place. This now creates a whole different set of rules. This one for 50,000 as I outlined in upstate counties is going to be significantly different from those in more heavily populated areas where 50,000 voters might be in a relatively small geographic area. You're now upstate are going to have voters 50,000 voters in a very large geographic area. Well is it fair to say to them you might have to drive 50 miles to get to your poll site if you want to vote early? As opposed to maybe downstate where you're having to drive 5 miles to get to your poll site because of the density of the population. Is that fair? I think we need to answer those questions and we need to address those questions because I think to be fair, there should be a uniformity to the implementation of any voting standard on this state rather than just allowing rural voters to be forced to drive what we might consider unreasonably long distances. So, it's not about the, you know you say, we have been talking about this, yeah, we have been talking about this for years but not to this detail. Not to this level of how it is actually going to be implemented. And I would like to know what the thoughts are because I don't see it here in the statute about how that implementation is going to occur. It's, it's not just double voting, I mean that's one issue. But I think there are other issues that also need to be fleshed out and we should be involved in.

Bob Brehm: Absolutely. So, we will work to have those conversations and to start working on drafts so that we can present them at a future meeting.

Peter Kosinski: So those conversations haven't started is that what you're saying?

Brian Quail: No, they have started.

Peter Kosinski: Oh, it has, Good, I mean are there any thoughts here or are we...

Brian Quail: I think that the conversations that have occurred so far are obviously relatively new. We do have an important bill in a short period of time to get it done but we also don't even have them signed yet. But I certainly have been talking about all of the issues that you've raised at various points in time in the last week or so, county commissioners who have called and raised some of the issues that you've outlined and on that particular issue there is a threshold question of how much reliance will there be on the discretion of the counties to address the issue? And an appreciation for the fact that they may, because they are closest situated to the population demographics will they deal with that? In fact, the statute says that travel time to the early voting site and equitable access are factors that are to be taken into consideration by the local board. So, of course, if the State Board of Elections wants to amplify precisely what those considerations need to be for the local board, we certainly could do that. But I think both the local level people that have read it and have echoed some of your concerns about how to deal with sparsely populated geography. As a rural voter myself, I find myself having to drive a lot further to do things than some people who live in more urban settings do. To some extent that's a factor of rural living. But on the other hand, if the site is 50 miles away, to your point Commissioner, in certain places in the state, at some point that may be deemed an unacceptable burden and the State Board and the county board's in consultation with each other I'm sure will be able to come up with a way to resolve those issues.

Peter Kosinski: I mean what's our plan here then? Is there a timeframe in which we intend to get some sort of advice, rules, whatever we're going to call these out to have the counties implement this? Is there some, I know this has to be done for the general election correct? That's the first time it will be used so it will be the November election. In our minds when we need to get our regs, procedures, again whatever you want to call them, done, in order to have time to actually implement this new program.

Andy Spano: Why can't we do this by the April meeting?

Peter Kosinski: I don't know I'm asking the staff I guess if they thought about this. April's fine with me.

Brian Quail: We have thought about the need to do it. There have been conversations about what needs to be done and I think that the onus is to get something in writing as soon as possible. I cannot imagine that we would take until April to have something written. I think that this is obviously a key and top priority. But I will be honest with you, a specific calendar date by which we would it done, I have not discussed with my colleagues. But exigency we will have to...

Douglas Kellner: And there are two additional factors that will be important on how this is formulated; one is whether there will be adequate funding from the state budget, and the second is whether electronic poll books will be authorized which many of us have said are essential for implementing this system especially in the larger counties. And if electronic poll books are authorized then we have to be able to gear up very quickly with the certification program so that we can test and approve what systems the counties require.

Peter Kosinski: I agree with you that electronic poll books would be a key component to implementation of this. I'm wondering if you have any insight into whether or not that will be approved for this year or even in the future? Because that wasn't part of the bill which actually was a little surprising to me was, I was interested because that's always been a piece of this discussion and it wasn't in the bill, so is there any....

Douglas Kellner: My understanding is that it wasn't in the bill because of the budget issues and so that the legislative leadership had postponed consideration of it to include it within the budget.

Peter Kosinski: So, we may get a whole new component to this when the budget is passed?

Douglas Kellner: That's my point. We need to get ready.

Bob Brehm: I think from our perspective we are going to start where it is just preliminary, we would start writing based on what we have and to the extent something else firms up as a when and a what, then we can adjust. But I don't want to wait until....

Peter Kosinski: I agree with you Bob I don't either. Let me ask you this question. Let's say they do approve for electronic poll books, are we prepared to certify this year? Is that something we can do?

Douglas Kellner: We'd have to do it.

Peter Kosinski: Are we prepared to do it?

Douglas Kellner: Right now, well I'll turn to Brendan and ask.

Brendan: We've had no conversations on any kind of standards for anything to criteria to meet to certify any kind of electronic poll book. I have not been part of that conversation, I should say that.

Bob Brehm: So when we did digital, again when we stopped with the actual buff card at the poll site and went to the photocopy image that we use now it was more of a functional testing at that point in time because it was the document, did the system print the words on the page and the page was in the poll site. So certainly, we would have to look at what we would need to do, first of all what has the bill authorized to allow to happen at a poll site or an early voting site and then

what would we need to do to verify that the systems presented for sale in New York meet that? So, it's still unclear to me what would be included in a bill from that perspective.

Douglas Kellner: But we're not inventing the wheel because many, many, many states now use electronic poll books. There are many systems on the market and some states do have robust certification procedures. And we should promptly assemble them and be ready if we see the bill moving.

Peter Kosinski: Yeah, I agree. I don't know if there's a plan to do that, but I agree. I think rather than sitting back and waiting we should be out front. Because if this gets put on us in April when the budget gets passed and we have to have electronic poll books ready for October, that's a pretty short time period.

Douglas Kellner: Right and we might have to do something interim.

Peter Kosinski: And then you'd have the whole training issue for the counties to train their poll workers on the use of these electronic poll books.

Bob Brehm: That's a big component.

Peter Kosinski: Major component by the way. Maybe bigger than the certification component but it's big either way. So, certification I don't know. I mean it took us years to do certification of voting machines so I'm just trying to understand how we're going to push through the certification of an electronic poll book when how many years have we been going through the process of trying to certify voting machines in this state. It takes us a long time to certify these machines and I don't know why it would take us less time to certify an electronic poll book.

Douglas Kellner: Well I could answer that question. I mean they're very different. We were at the cutting edge in setting forth our regulations with voting machines. We were the first state to prohibit Internet connections and one of the early states to require a voter verifiable paper audit trail. You'll recall that the majority of the systems that were submitted failed to meet our certification standards and that there were only two systems that were ultimately approved and only after we discovered substantial flaws in the federal certification system which created two years of delay in our certification process. But just the opposite is the case with electronic poll books. Where there is very substantial history now. But I would urge that the Operations Unit start devoting time to reviewing the certification procedures used in other states and to use that as a model and indeed, we might be able to shortcut some of the testing process by relying on certifications from states with a robust certification process.

Peter Kosinski: Well, I would hope we have a plan for that as well. Because, again, if they do adopt this in the budget process that means we'll know about it April, 1, and have a very quick turnaround then for implementation of electronic poll books.

Douglas Kellner: Correct. Not ideal.

Peter Kosinski: Okay. Well I'm sure the staff has a lot of work ahead of it to try to get this stuff put into place, so I guess we'll be expecting to see stuff sooner rather than later. Because I would like to see it, so I have time to look it over and approve it before, I know the Boards have to get us their plans by May 1. I was looking at that as sort of the timeframe the early voting process was working within because they were given a mandated time of May 1 to get us a plan which, by the way, I don't know if we actually approve but they have to get it to us so I don't know that I saw language in here that we actually approve the plan or if they just have to file it with us. I'm not sure how that works.

Douglas Kellner: Well, we had supervisory authority anyway whether it's in the statute or not, if we don't like the plan, we have the authority to tell them we don't like it.

Peter Kosinski: So, this may take longer than May 1, but I would think that if they have an obligation of May 1, we should be working with a similar timeframe to get them guidance as to what we think they need to do in order to implement this early voting process.

Douglas Kellner: We all agree on it.

Peter Kosinski: Okay.

Douglas Kellner: Peter...

Peter Kosinski: Well, no...

Douglas Kellner: You have other issues?

Peter Kosinski: No, I don't. I sort of interrupted there I didn't know if they were done. Are you guys done with your report?

Todd Valentine: I'm done. Bob says he's done.

Peter Kosinski: Okay. Then we'll move on to Counsel, Compliance and Kim isn't here so, Brian.

Brian Quail: Thank you Commissioner. It has been a very busy month. Council's Unit participated in the Election Commissioners Association Conference and made two presentations; obviously the January Periodic was due and the review of those filings are underway by the staff. Our training staff has reached out to all of the county boards of elections to introduce themselves and we're in the process of training or scheduling rather the campaign finance training sessions for this year happens about this time.

In the area of our cases, we have entered into sort of the end of the litigation phase altogether in Eason related to the usability of our website and are firmly in the settlement component or the compliance, settlement compliance component of that case. And common Cause, we have an answer due on Friday and we're in the discovery stage League of Women Voters, our answer is due on the 28th and we're being represented by the Attorney General's office on that and they're

working with us. Of course, we had a new lawsuit filed against the Board last week, Sugarman vs. the New York State Board of Elections. There was an application in there for a temporary relief to stay the application of Regulation 6203 and the judge denied that and that is returnable on March 1 with our papers due in that case by the 22nd and any reply due by the 28th.

Bill McCann: 21st.

Brian Quail: 21st excuse me I apparently have a really hard time with it not being the 22nd. It has been the 21st in the beginning and I keep saying the 22nd. Obviously, the legislature acted on seven bills related to election reform and Commissioner brought up a number of those. Obviously, there are various requirements of the agency and also the Counsel's Unit with respect to those and we're continuing to look at that and be on top of that.

With respect to Campaign Finance filings of the 2,500 July Periodic filings that were made as of the 18th, 2,311 remain out of compliance. The January 2018 not the 2019 periodic filing of the original 2,530 non-filers, 1,928 remain. With respect to referred deficiencies, roughly 1,629 that were not reclassified as a result of changes in criteria, 1,245 remain not in compliance, 384 have come into compliance. And in the aggregate in terms of the workload of the unit, we have received 119,460 filings and have completed work on reviewing 106,710 in a nutshell. Bill did you have anything to add?

Bill McCann: No.

Brian Quail: Did the Commissioners have any questions?

Peter Kosinski: Questions? No, okay thank you. Then we'll move on to Election Operations, I see Tom Connolly isn't here so Brenden.

Brendan: Tom and I participated in the Election Commissioner Conference in January. We are also continuing to collect the statistical survey from the counties. We collected and amended the results as we did earlier today. On the voting machine front, we did receive some hardware and ES&S was on site to provide an overview of their ExpressVote. We met with NYSTEC about another upgrade to a Clear Ballot and the ES&S submission. Orange County is currently in the law library doing an EMS refresher training with staff. Our cyber security team has been very busy as well. They have gone with Grant Thornton to assessments at Rensselaer, Saratoga and Schenectady Counties, met with them on calls, reached out to the counties, they've also are continuing to work on removable media erasers for the counties and best practices for that as well. They have reviewed the risk assessment reports in association with that and we've also continued to work on our SHOEBOX and the CAPAS upgrade with IT and everything else. So, that's all I got.

Peter Kosinski: Okay. Any questions for Brendan. Thank you. Now we'll move on to NVRA PIO John Conklin and Cheryl Couser.

John Conklin: Thank you Commissioner. Public Information Office was relatively quiet over the holiday season until last week. Hot topic included the general election results, Campaign

Finance disclosure reports, changes at the state legislature due to the election. We were part of the winter meeting of the Election Commissioners Association in here in Albany as mentioned by other units. Cyber security preparations and obviously the new legislation changing election administration in New York State. So, the unit has participated in the monthly call with the ECA back in December. We've been part of the meetings on the cyber security plans and implementation of the contracts for risk assessment, intrusion detection, and managed security services for the county boards. We processed 86 FOIL requests in December. As Brian mentioned, we continued to participate in meetings on the Eason lawsuit although it's coming down to the end.

For the website we posted the election results for the general election. We've made some changes to the Campaign Finance web pages primarily with the seminar schedule and campaign finance filing calendar letting people know that there will be changes and they're upcoming. We removed a lot of extra stuff from the homepage to sort of declutter after the election; lists of candidates and various things like that. The 2019 proposed legislative packet has been posted. The webcast and the agendas for the December 14th meeting have been posted.

For NVRA the unit visited the Suffolk County Board of Elections. They were found to be compliant, that was last week. And that's all I have right now. Cheryl, you want to add anything?

Cheryl Couser: No thank you.

Peter Kosinski: Okay any questions? Okay then we'll move on. Now I see that we have ITU listed but Bill Cross is not here. Does someone else want to report for him?

Bob Brehm: Bill has a number of items.

Peter Kosinski: Do you have a written report? Is it in my packet? No, okay, go ahead...

Bob Brehm: He just gave it to us this morning. Go over the number of items. Certainly, we continue to work on his list of projects to come up with a better date as to when CAPAS-FIDAS will be able to roll out. Certainly, plugging the hole in the budget is a very critical part with coming up with a date that he can stand behind. So, I think we have a little bit more time to get you a better date, but it certainly is something that he continues to work on.

Peter Kosinski: He did tell us this year I know at one point.

Bob Brehm: Well if we're \$3 million in the hole and both capital and personnel...

Peter Kosinski: Let's say it gets filled, let's say the budget gets filled, let's assume that for a minute.

Bob Brehm: Well, we are working desperately to get it rolled out this year whether it has a future phase because of some other issues; one we're kind of looking at, like the Paid Digital Ad. We have a temporary work round and in order to streamline getting the system out, do we just leave

the work around in place for one more year and roll it out in a future phase as all one system? So, we're still meeting to try and figure out are they so far into it anyway which would be easier to roll out? But certainly, we have not moved to a year other than 19 in our own strong encouragement.

Peter Kosinski: So, I assume that the LLC change has made some difference to the implementation or not really?

Brian Quail: I can speak to that. The LLC change primarily is going to impact the rules related to what the LLC's themselves can actually do but there are some changes that our system is going to have to accommodate and in terms of what I'll call the Legacy System, the one we're on right now we do have staff looking at how we're going to sort of round hole square peg fix that problem in the interim, how to tell people to comply with for example, the additional attribution requirement. Because it doesn't currently apply to the LLC code. So, we are working on that. but the extent to which that that will affect the CAPAS-FIDAS larger project while it has not been determined, does not seem to be a significant change because the exact things that are going to be required to be done by LLCs are done by other entities in our system.

Peter Kosinski: So, you don't see that as a big impediment to rolling out the CAPAS-FIDAS system?

Brian Quail: I do not, I think Bill Cross will have an opportunity to disagree with me, but I don't believe that it is.

Peter Kosinski: You don't want to speak for Bill, I got you, fair enough.

Bob Brehm: But it's an example though if we, if they come to the conclusion that something needs to happen, is there a temporary work round that will be acceptable or is it something that we have to ask IT to write into rolling out this new program? At some point we have to stop doing that and put out something and all of the temporary workarounds would be in a future phase.

Peter Kosinski: I guess from my standpoint we keep getting changes which impact this, which delay this. We've been waiting for this for five years? And I hate to just take the position that, well just because they made a little change to the Election Law, we're going to have to push that back another year. We're never going to roll anything out. I think it's an important roll out. I think having FIDAS more accessible to the public is something we should be doing, and I really am against I guess delaying it because if we can do a work around temporarily to address a couple of these issues and get the main component out, I think that's important to do.

Bob Brehm: Well one of the items that Todd, myself and Bill Cross talked about especially in light of the budget even if we have full funding in the budget does it make sense, since we already have a work around for the Paid Digital Ad, which was last year's bill, does it make sense to hold up rolling this out any further by implementing that. Our goal was we wanted to be able to implement that into the system, but does it make sense to do it or not? And Bill said he would go back and talk to his staff and meet with us in order to tell us is it more work to finish it

or to roll it, and we don't have that answer yet. But certainly, the conversation has been happening with him. We need to roll this out. We have to stop making it perfect before we can do anything. We want it to work but does it have to have every one of these changes? Once we get one done another one gets passed. Three of the last four years they've amended the budget to require Independent Expenditure something that has had a short period of time that we've stopped doing things in order to incorporate. So, at some point it has to be in a future phase. We have to acknowledge that. We've had like the first rung of the 12-step program to get there but we have a long way to go to say stop, anything else has to be in a future phase. And then the problem is, we don't have enough money to finish this phase much less a future phase so how honest are we to say it will be in a future phase? I think it would be in a future phase to the extent funding is made available to make it a future phase and until then whatever work around that they find acceptable is going to be the work around until we come up with money or free up our IT staff from other responsibilities to do this work around. So those are the kind of things we have to, the eye at any of these new proposals how important is it? Is there no other way to do it in order to come up with rolling this out?

Bill McCann: And that's also on top of anything that they take out of the Article 7 bill, there are components of that that would certainly impact CAPAS-FIDAS and that's a whole other ball of wax.

Peter Kosinski: What are you referring to?

Bill McCann: Well the Governor's budget bill has any number of things related to public financing, certain disclosures that would be required to be filed, additional data elements that would be required to be filed as part of the report. So additional reports potentially. So, depending on what bits or pieces come out of that if not the whole thing, then that would have an impact on the system.

Bob Brehm: And unfortunately, last year when we had Paid Digital Ads passed, counsel met, and they found to the extent that it could be a work around and still we had to divert IT resources to make it happen because it had a date certain. So, to the extent there are new LLC loopholes, whatever they are if they can figure out a work around that is acceptable, we communicate that to the filers. If it doesn't require diverting staff to make it happen, certainly we have had those conversations, hopefully if there's another way of doing it we just describe to people, here's how you accommodate it for now. But we haven't finished. You know certainly those are in our head and it would be advisable to do as much work around as possible so that we can roll this program out without further delay to a date I still don't have for you.

Peter Kosinski: I understand. I know the date does keep moving but again I hate to keep pushing it off because there's been another change in the law that requires another amendment to FIDAS because FIDAS is a big program and there's a lot of information in there and I don't like to hold it up because the LLC stuff isn't quite ready, for example. If there's a work around it seems to me that would be the way to go to get the bulk of the information out there in a better format for people to look at. So, I do think that should still be our goal and if we have to delay incorporating a couple elements into it for a little while, I think that's the way to go. Get the bulk of it out there. Because right now, FIDAS is hard to work with. I mean the fact of the

matter is if I'm a member of the public and I go into our FIDAS system and try to find information, it is difficult, and it should not be. And I think we have an obligation to get this thing fixed sooner rather than later and I've been very frustrated, I don't think I'm the only one, with the delay after delay after delay in getting this thing out there because frankly for me, from a public perspective, it's one of the most important things we do, as a State Board. And I don't think we do a very good job of it and we haven't done a very good job of it for the entire time we've had this program, which is 1999, it's 20 years now and it's not a very good program. It's very difficult to search and find what you're looking for and know how to do it and that's not right. People are used to having a simple search engine that they look at right now and we're not it.

Bob Brehm: We need more money to make it...

Peter Kosinski: Well that may be but it's not just the money and we know that. Some of it has been just oh this new program came out, we've got to implement that, and we've got to incorporate that, that's going to delay. Really? How many times can we let that drive the bus which is what it's doing. We have the exception driving the rule. The rule should be this system is out there and able to search easily by the public not just by professionals who happen to know how it works but by anybody that wants to look at it. And right now, with Google and these other search engines, people are used to being, and they can't do it here and that's just wrong. So, I would encourage you to try and get it out there and not let this newest change hold it up if it doesn't have to.

Bob Brehm: Other security issues, I think the importance of cyber security we have completed now 44 site visits with Grant Thornton our contractor with county boards of elections. We continue to work the schedule, the remaining counties for that perspective and how best to get the reports and information in a usable format that both county boards can use it as a road map of what they need to do to fix their systems and we can use that as a road map for the next steps that we need to implement either by way of mitigation services, request for funding to mitigate or other regulatory items or oversight that we need to incorporate? So, it's well on its way to completion but it is still a significant energy and effort that almost all of our staff are involved with at some point to make sure it's a successful a project as possible. The other investment of money which is one of the largest investments in our cyber security portfolio is the intrusion detection services. We've gone back and forth with our vendor. Now that we have the information from counties as to what they specifically, their network configurations and where the election infrastructure is placed, we were hoping in our conversations with counties we'd find that some of the election infrastructure is segmented separately from the whole rest of the county. Unfortunately, the answer is no its just kind of blended in there so an issue that might happen to the Parks Department could make its way to the infrastructure of the elections for the voter registration component, not the voting machine part. So certainly, that makes the intrusion detection services more important but also it has to go and besides just beyond elections. We're rolling out, this week there were phone calls with the original seven counties that were in that pilot to be ready next week to install those intrusion detection services. Assuming all of that works the way that the planners planned it to work and we don't have any adverse issues that need us to adjust the plan, we would then find the pilot was successful and quickly be able to roll

out the rest of the counties that are part of that. And that's a mandatory requirement to have that system in place or already have the equivalent of it.

Peter Kosinski: And that system would be highlighted if we do implement electronic poll books?

Bob Brehm: Intrusion detection to the county system?

Peter Kosinski: Provide security to the voter registration data.

Bob Brehm: IDS does not provide security it just lets you know who's trying to get through the open networks to your system, so it follows are there issues with who is getting access.

Peter Kosinski: Well I just mention that because, as we know the voting machines are stand-alones and the kind of intrusion concerns that people have with systems don't really apply to voting machines because they're stand-alones. But the voting registration system which would be incorporated into the electronic poll book is not and it's on a statewide system. So, security issues become more important visa via having electronic poll books out there that contain electronic data from a system that is not fully internal.

Bob Brehm: I agree with that, but an Intrusion Detection is only who's knocking on your door it's not a firewall, it doesn't, people shouldn't assume that since it's there we are safe. All it is is a system that is giving you information, who's attempting to get into your system and where those are abnormal or somebody inside trying to do something that shouldn't happen. So, having that in place is helpful to see what's going on.

Peter Kosinski: But we don't then provide some sort of mechanism for the county to utilize to ensure that their system is not being encroached upon by an outside entity?

Bob Brehm: Well the next...you mean a firewall system.

Peter Kosinski: Is that the term?

Bob Brehm: Yeah, those would come out of the risk assessment to what do they have and to the extent it's good or bad. We are scanning from...

Peter Kosinski: Let's say we discover a county has a bad, what we would describe as a bad security system we've now identified. Do we then provide funding or assistance for the county to improve it so we're comfortable now that that county has upgraded their security program to ensure our data is being securely held or no?

Todd Valentine: That's what we're hopeful to do with the mitigation funds on a risk assessment that we would have funds to address... We'd have to flush out what are the most critical needs then what can we afford based on those critical needs. So, we are that's exactly what we are looking to do but it's a question of whether or not we have the capability to provide that. Every county has such a large problem. The problem, as I've alluded to before, since the elections are

not segregated on a county network, what we're doing with the intrusion detection is a good example, we also end up providing a service for the entire county which, great that includes elections so it meets the mandate of the federal grant, but what we're also going to analyze at the same time is whether or not another research project we're undertaking is whether or not is there a better model or more cost effective to isolate the county board of elections and protect them, put a box or a wall around them separately, or is it just easier and cheaper let's just protect the whole county an election gets covered and we're all happy. We don't know the answer to that and that's something we're going to look into. Nobody knows the answer to that yet that's what we're at the front edge of that research trying to figure that out. Well with the poll books, now the intrusion detection they have some role in that but what you're talking about is the poll books in the field, they obviously will have to have their own security formats for how they connect with each other, how they connect with the main database, what's the relationship with any data that might move back and forth. For example, if you're recording voting history and pulling that off of there you want to make sure that that's not corrupted in any way when its being transferred. That transfer data is an issue we've already identified as a risk among the counties because it's something they already currently do with third-party vendors who presumably poll book would be a third-party vendor unless they developed it in-house. And they'd transfer data to printers for the poll books. Are they sure that that data was transferred correctly, is there a validation procedure for that? (mic got fuzzy)...to the valid printer you want to make sure that that is protected as well. So, all of those issues are something that we're going to identify in risk assessment but what we have the capability to either regulate for the counties that here's the standard you need to meet and how much money we can give them to get them to that level? The worst situation is you don't want to set something that they can't ever possibly meet, and you give them no resources to do it. So, that's one of the fears we have in looking to figure out identifying what the risks are, we're already starting to see that there are issues in counties. Some counties are better than others and it's not a question of size and it's not a question of money, there are small counties that run an excellent IT shop. But that's where the county has invested locally.

Andy Spano: A great deal of confidence....

Todd Valentine: Right, and they put the effort into it. But security continues to be an issue. We have seen breaches in 3 counties this year and they weren't attacking the county board directly, but they were impacted by a breach in the county; two of our counties are still off line for the voter registration system because they have not met the requirements, we want them to meet before they reconnect. Again, it wasn't the fault of the county board, it wasn't an attack on the elections, but it had an impact. So, we are looking at how the county is protected is becoming an issue for, I think the state is starting to see that the state services are being impacted if you don't protect the county as a whole. And we were fortunate to get some funding for that so the counties will benefit. The counties as a whole will benefit from the work that we're doing.

Bob Brehm: And I think the state, because when we were given this responsibility this money and Todd and I participated in the Governor's taskforce and many of these other groups, it's like you're getting this money to protect elections. And they all asked the same kind of question. The first time we went to the legislature, they said, why can't we build a requirement that the voter registration system be separate like the voting machine? And our initial answer was well it

sounds expensive and would take a long time. Now we've done a little bit of research and we find out it would be expensive and take a long time. We are looking but they all keep asking us the same question. One of the things we're doing is we're working with the Center for Technology in Government to come up with a model. What would five years from now be the ideal place we want to be to protect voter registration system? Can we put protections around it and feel confident its working or do we have to isolate it? And then what is the cost benefit analysis of those two options? We need to get that information in a more reliable way than to just start, what are we hearing, what do we think, what are we seeing in a report that we can all come to a conclusion and make recommendations of where we want to be five years from now. And in the meantime, we're doing the best we can to identify what's broken. There are counties that are better. Nobody is perfect and certainly in this area even if you're perfect today, the bad people find a way to break it and then you have to work tomorrow to stay current. So, the \$4 million that's left is nowhere near going to cover anything that's on the list that's why not only do we need to make the case why do we need more money to protect elections. One of the issues is its harder for us to protect elections the way the infrastructure currently is in place in counties because we're finding it hard to protect elections without protecting counties. And it's kind of like why do they sue us to make the school accessible other than we picked it as a polling site for election day when we use it 2 days out of the year? If we don't use that school, it would never get accessible. But they don't sue the school, they sue us because we decided to use it. Same kind of issue here. We have to find a way to make the counties safer for an election infrastructure but have all these other effects for Health Department and all the other departments that they have and it's taking more money. And we have to make the case to the Governor and the State of New York its either all in the counties to do and then how can we guarantee elections will be safe, or collectively we need to work together and get more money to do it, whatever pocket you're taking it out of at the state level because we have the resources and the ability to do it in a uniform way that really makes it safe. So, I would encourage that whether it's our job, DHSES job or some other entity of the State of New York it's going to take more money and they should appropriate more so that we can do more of the items on the list. Because when we met to come up with the work that the risk assessment is doing which is also an inventory of what is out there. Nobody had an inventory of what was out there. So, it made our job harder to do the traditional risk assessment because it's really a risk assessment and an inventory. So, it's a big project, it's a huge project. It's taking a great deal of resources of the extra people we have from the Secure Election Center, a huge amount of effort from Bill Cross and others and because we're spending so much and spending so much time on it we want it to be as value added to the counties as possible and more importantly, we don't want to just come up with a report and tell them to go make a change to it. If it's not going to give us something that we can use to set policy going forward so those are the perspectives that we're looking at. And it's a lot of money just to get, what can we do to protect as much as we can while we come up with a list of things that need to be fixed and fix them. And we need more money to make that happen, so we'll make the case.

Peter Kosinski: Is that report from Bill?

Bob Brehm: That summarizes the high-level items.

Peter Kosinski: Any other questions? Okay then we'll move on to Enforcement. I know that Risa Sugarman is not here, in fact I think she sent us an email saying she purposely didn't attend today's meeting and I think her reasoning was the lawsuit that she filed last Friday regarding the implementation of the regulations that the Board passed back in August?

Brian Quail: August 8th.

Peter Kosinski: August right. I would note that well a couple of things I guess, I would just note that there were several reports due to this Board based on the regulation from her unit. They were due the end of the year. Our regulation has them coming in on a quarterly basis. At the end of the last quarter would have been December 31st. So, I have a list that report the total number of complaints received by the unit, total number of hearing officer proceedings initiated, total number of settlements, total number of special proceedings commenced by the unit, total sum of money collected, total number of deficiency referrals from Compliance to them and the failure to file report as well. So, there were a number of reports that were due to this Board on December 31st pursuant to that regulation. I believe the directors informed her of that...

Todd Valentine: That's correct.

Peter Kosinski: ...a couple of weeks ago. I don't see the reports here, so we don't have them. The lawsuit was filed on Friday. There was an effort as I think Brian mentioned to have a TRO implemented by the court to prevent us from enforcing our regulation that was denied by the court. I think pursuant to that denial that obligation continues by the unit to comply with the regulations. Apparently, Ms. Sugarman has chosen not to, considering we don't have the reports here and I don't believe the directors received a copy of the reports. Just so you are aware, we do not have the reports that were required, and I don't believe the lawsuit, by the mere filing of it, would allow that she no longer has that obligation. I think she does, and I understand the TRO was the proper method to try to get relief from that, but the court denied that TRO and so there was no relief given. So, I still think those reports are due and we have not received them.

Andy Spano: I was looking forward to those reports and getting the numbers. I couldn't get those numbers because there's no other place to get them. So, I asked a couple of staff people to just look up subpoenas and referrals and that kind of stuff and they went through the minutes because we can get that through the minutes. She requested in 4 ½ years 48 subpoenas, 40 we granted, eight we denied. Of those denied, six were referred to Compliance over a 4 ½ year period. She requested 18 criminal referrals, and all were granted. And the last request we got from her was December 15, 2017.

Douglas Kellner: More than a year ago.

Andy Spano: More than a year ago. So, I just wanted to put that in the record so that we have it. This is over 4 ½ years, I think.

Douglas Kellner: And not a single criminal referral last year. Not a single subpoena request last year. She only brought six hearing officer proceedings, is it six or five?

Bob Brehm: Six.

Douglas Kellner: Six out of the several thousand referrals that were made to her by the Compliance Unit and that there are still how many committees that have not filed at all? From the last report?

Brian Quail: From the last report I believe it was around 2,300 out of the 2,500 something like that.

Douglas Kellner: And nothing happens to those 2,300 unless you were one of the six that she chooses to bring a hearing officer proceeding and, of course, she refuses to disclose what criteria she uses on how to pick those six out of the 2,300.

Andy Spano: The reason I want these numbers are is because we granted almost everything that was asked for in this process, there weren't that many things asked for. So, I didn't want general public, because I've read so many articles on this, to get an impression that there was anything that we weren't doing that wasn't assisting her in doing her job. I don't know about the other ones because we don't have the numbers. But I'm just concerned.

Gregory Peterson: Well the unfortunate part is obviously, she's not present today and fact of the matter is, if she were present, she wouldn't be presenting us anything anyway which was the reason we put in some of these regulations. It's all about transparency not to throw up a curveball or wrench into her work as to what she's doing as far as investigations are concerned but to say, "Hey how many investigations do you have? What have you done? Have you proceeded?" The list that Commissioner Kosinski just read off basically says, "We'd like some numbers." Numbers certainly have nothing to do with secrecy, have nothing to do with impinging upon any criminal investigations, it's just numbers, we'd like to know what's happening. And, I think that the public has a right to know what's happening. That's the only reason these regulations were put in. If she had been cooperative from the beginning and answered some of the questions that have been asked right here in public, we wouldn't have needed it. However, we tighten things up, haven't hindered her at all. We still have, she still has to come to us for subpoenas as she did before.

Andy Spano: That's why I read these numbers.

Gregory Peterson: What are we talking about, we're walking about a pocket full of nothing here.

Andy Spano: That's correct.

Gregory Peterson: That's ridiculous. It's a sad commentary.

Andy Spano: And by the way you just alluded to it, to emphasize that we didn't pass any regulations and I voted against that remember that. Not because it was against it but for other reasons. We allowed over 3 ½ almost 4 years to go by before we did any regulations and it was just because of what you just mentioned that we went to the regulations. There's no

confidentiality being exposed in any of the things we've asked for. We haven't hindered in anyway.

Gregory Peterson: And what's her answer to us? I think I'll sue you! I say bring it on.

Andy Spano: Well, I just thought that should be public.

Douglas Kellner: I just want to follow up by saying, certainly she has the right to sue us if that's what she wants to do and we get sued by lots of people all the time but the fact that she brings a lawsuit does not excuse her from performing her job and for her to just unilaterally say, "I'm not going to come to your meeting because I sued you" does not appear to be appropriate. I wanted to add also that I was disappointed that the Albany Time Union posted her legal papers but did not post the affidavit that our legal staff worked so hard to prepare in opposition to the motion for a temporary restraining order.

Peter Kosinski: Which were the successful papers.

Douglas Kellner: Right. The court agreed with our papers and not with her papers. And so, for anybody who's interested, I would certainly urge them to ask public information or our legal staff for a copy of the papers and we would make them available.

Peter Kosinski: Yes, I agree and by the way I would commend the staff for the job they did because I know they had a very short period of time. She filed the suit on Thursday, our responsive papers were due on Friday, needless to say it's an extraordinarily short period of time but I thought the legal staff did a very good job of composing the papers and outlining the arguments that we have for why those regulations are valid and I would commend the staff for doing that and I think the court agreed with that by denying the TRO. So, I would just like to make mention of that as well. But I agree with the Commissioner that as I mentioned, the legal avenue to avoid doing that would have been the TRO that was denied. And with the denial the obligation continues. So, the fact that there is no TRO in place means you have to continue to comply with the regulations that are in force.

Gregory Peterson: It borders on insubordination.

Douglas Kellner: Not borders, but it is insubordination. The temporary restraining order was denied. Even if there were a temporary restraining order that doesn't give her cause to unilaterally say, "I'm not coming to your meeting." Coming to the meeting is part of her job and now she's not doing her job. Do we all agree with that.

Gregory Peterson: Certainly.

Peter Kosinski: Well I'm disappointed because we did from the last meeting have some outstanding issues, I know the staff had provided a pretty robust report to us on the last meeting about the status of our failure-to-file committees and we had raised it at the meeting but I believe that Risa had not received the report and wasn't really able to discuss it but I had indicated we wanted to discuss it at this meeting then because there would be adequate time to look it

over. Unfortunately, we won't be able to do that, but I think having those kinds of discussions would have been helpful, fruitful to get it out there as to what is going on with the failure to file as well as other issues, but unfortunately, we can't do that today. So, is there anything else anybody has? Okay then we will move on to the Old Business that we have in front of us. And the first one is we have new Voter Registration forms coming out because of the last election two parties were dropped and two parties are being added to the Voter Registration form, so we have to adopt a new Voter Registration form to reflect that. We also, pursuant to Commissioner Spano's suggestion last meeting, we had a change in the way the "Independent voter" is being presented on the form. There is new language there. I know this was of particular interest to Commissioner Spano. I don't know if you had a chance to look at it.

Andy Spano: Yes, I did.

Peter Kosinski: So that's also a change to the form so I guess before us today is a request to approve the new form for use going forward in New York State. Well we actually have two.

Bob Brehm: Both the mail registration form...

Peter Kosinski: The affidavit...

Bob Brehm: ... and resolution 1 is the form for Voter Registration by mail and the NVRA form making similar.

Peter Kosinski: And those are the only two changes is that correct?

Bob Brehm: Since we met last, yes.

Peter Kosinski: No, to the form.

Bob Brehm: We also accommodated, the Health Department had some word changes to the organ donor and we presented at the last meeting a slight update in the qualifications to register in the top part of the application to reflect "unless parole or pardoned" and we added "or restored rights of citizenship" because of Executive Order 181 we wanted to make sure we included that couple of extra words in all of our applications.

Peter Kosinski: Okay.

Douglas Kellner: I move adoption of both resolutions.

Peter Kosinski: Is there a second?

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? So those two both the Voter Registration form and the affidavit envelop form were approved. Okay that concludes Old Business. We'll now move onto New Business.

And our first one is I know we're short on hearing officers, we're down to two, as I understand it, and we should have five and before us there is a...

Bill McCann: Commissioner...

Peter Kosinski: Let me just outline it Bill. There is the request that we appoint three more hearing officers and five is the maximum or is that just the number we can up with?

Bill McCann: No, you can have as many as you want.

Peter Kosinski: So, we decided five is the optimal number so this will bring us up to five.

Andy Spano: Did we lose any?

Bill McCann: Well this will be the third time since the implementation of the law that the Board will be adding hearing officers. We had an initial slate, people have gone on to different jobs or just some health issues and things like that. That list winnowed down to two and so because, and one of those has a potential conflict with one of those people. So, as it stands, we want to have at least assemblage to pick from. And so, this will bring our list to four plus and will allow us to do a random selection for when a hearing officer is requested.

Douglas Kellner: I think that's appropriate that we have that so that there can be a random assignment even though being a hearing officer for the Board of Elections is like the old Maytag repair man.

Gregory Peterson: "Waiting for the call..."

Douglas Kellner: You have to be old enough to understand that.

Gregory Peterson: I fall in that category.

Peter Kosinski: Okay any discussion about the three names that we've been given?

Douglas Kellner: I move the resolution.

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? So, the three new hearing officers are approved. We'll move onto number two which is the amendment to Regulation 6214 which I believe is the contribution limit and who's going to speak to that?

Brian Quail: I will speak to it but if there's any detail that needs to be provided, Mr. McCann is best situated to provide it. Every four years, Commissioners as we discussed briefly at the last meeting by-statute, ministerially we're required to do a calculation based on a particular subset of the United States Bureau of Labor Statistics Consumer Price Index and then adjust the

contribution limits, certain contribution limits that are identified by the statute. So, since time immemorial, well actually not that long, but since the 1990s, the Board has every four years adopted a resolution to do that. Attached in the Board's packet are the relevant limits that are outlined in 6214 that have to be increased. The computation which is just shy of 7% in terms of the four-year increase in the CPI which is applied to the prior limit and then the statute says that we round the nearest \$100 increment. So, the resolution before you adopts on an emergency basis the publication of those new limits and because the statute requires that this work be completed by February 1st.

Peter Kosinski: Any further discussion? This is basically a ministerial act.

Brian Quail: Completely ministerial.

Douglas Kellner: Move the resolution.

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes; 4-0) Opposed? Okay so that's adopted. And then last is an advisory opinion regarding campaign funds, use of campaign funds. And who wants to speak to that one?

Bill McCann: I can speak to that. Commissioner we received a request from a present office-holder who was seeking to challenge the actions of the Committee on Legislative and Executive Compensation requesting an advisory opinion as to whether or not they could appropriately use funds from their campaign committee relative to the legal expenses for such a challenge. Staff compiled this advisory opinion that outlines the pertinent provisions of 14-130 which is the personal use provision. Talks about the applicable sub provisions therein in applying it to the facts provided determined that it would be an appropriate use of campaign funds as those uses of funds to pay for the legal fees would be directly related to the holding of the public office. And so, the determination before you would hold that to be the case.

Peter Kosinski: Any discussion? Do I have a motion?

Andy Spano: I move.

Peter Kosinski: Second?

Gregory Peterson: Second.

Peter Kosinski: All in favor? (Chorus of ayes:4-0) Opposed? Everybody agrees. That ends the New Business portion of the meeting. And I don't have any other public business to discuss except I guess the next Board meeting. I would like to have a quick Executive Session after the Board Meeting to discuss litigation and an enforcement matter. And if that's okay we'll do that right after the meeting. But before we leave, I think we should...

Douglas Kellner: I don't think we can do an enforcement matter without Risa being present and she wasn't notified of an enforcement item on the agenda. But we can discuss litigation.

Peter Kosinski: Okay.

Bob Brehm: She was notified of the meeting, though. But that's your call.

Peter Kosinski: Well we'll discuss it I don't want to inappropriately discuss something.

Douglas Kellner: Okay.

Peter Kosinski: Let's go to next meeting. So, we need a next meeting date. We're looking potentially at the last week of February, I don't know how people feel about that.

Andy Spano: It may be tough for me, but I can make it with the screen.

Douglas Kellner: 25 or 26...?

Peter Kosinski: We can do 25, 26 anybody care? Is that okay? You're not going to be here?

Andy Spano: No, I may be here.

Peter Kosinski: Well how about, does one day work any better than the other. How about the 26th?

Douglas Kellner: Okay.

Peter Kosinski: Tuesday the 26th is that...

Andy Spano: It's okay with me.

Peter Kosinski: Okay, so Tuesday the 26th will be the next board meeting.

Bob Brehm: We need to have one by May 1.

Peter Kosinski: I know but can we talk about it in February. Is there a reason we have to do it now or do you want to?

Douglas Kellner: Well it would be nice to block out a date.

Peter Kosinski: Okay fine.

Douglas Kellner: It's easier for me.

Andy Spano: How about March 19th?

Bob Brehm: We need one somewhere around April 29th or 30th. If you want more in between that's perfectly fine but in order for you to make determinations so we can certify any ballot issues we have to certify by May 1st, on May 1st or not later than.

Todd Valentine: Assuming the June Primary bill gets signed.

Peter Kosinski: So, you're talking the end of April. Did you want to make it the 29th or 30th?

Douglas Kellner: Right.

Peter Kosinski: Okay I can do either one.

Andy Spano: I can do either one.

Gregory Peterson: The 29th or 30th of...

Peter Kosinski: Of April.

Gregory Peterson: April, oh...

Peter Kosinski: Yeah, way into April. We can talk about March as well.

Gregory Peterson: Yes, I can either one.

Douglas Kellner: Actually the 29th is better for me.

Peter Kosinski: Well let's do 29, if that's better for you we'll do 29th.

Douglas Kellner: Thank you.

Peter Kosinski: So, April 29th. So those are the next two and I guess my concern is with these regulations or procedures whatever we call them, we may have to have a meeting in March to get those out and I think will be available if that's necessary. We can talk about that in February though.

Andy Spano: Can we pencil that in?

Peter Kosinski: March? If you want to.

Douglas Kellner: It's better for me to pencil something in.

Peter Kosinski: Well your date as I understand, you have a 60-day window on something regarding the transferring I don't know if we need any action by the Board for that, that's mid-March, that's like March 20th give or take?

Bob Brehm: 19th would work too.

Peter Kosinski: So, March 19th?

Douglas Kellner: What about the following week. Oh, you're here the 19th.

Andy Spano: That would be easier for me.

Douglas Kellner: Okay.

Peter Kosinski: March 19th.

Bob Brehm: If that would work, we can propose...

Douglas Kellner: Tentatively, we can always change these.

Andy Spano: Yeah, we're just going to pencil this in...

Peter Kosinski: March 19th.

Bob Brehm: So, we have three meetings. Great.

Peter Kosinski: Okay. So, we're good. So that will conclude today's public meeting. If there's no other business is there a motion to adjourn?

Douglas Kellner: I move to adjourn.

Peter Kosinski: Second? All in favor? (Chorus of ayes: 4-0). So, we're adjourned, we will not be coming back into public session.

Douglas Kellner: No.

END.