

Douglas Kellner: Good afternoon everyone, welcome. I'm Douglas Kellner Co-Chair and to my right is Peter Kosinski also Co-Chair and to his right is Commissioners Greg Peterson and then we are joined by video with Commissioner Spano. So, we'll start with the approval of the minutes. We'll take the regular minutes first. Is there a motion to approve the minutes as drafted?

Peter Kosinski: So, moved.

Douglas Kellner: Those in favor say aye. (Chorus of ayes; 4-0). Those minutes are approved. We have the minutes of the Executive Session. There has been a revision. Commissioner Spano have they gone over the revision with you?

Andy Spano: Yes, they have. I received them and went over it.

Douglas Kellner: Okay.

Andy Spano: I'm fine with them. I move that we adopt them.

Douglas Kellner: Is there a second?

Gregory Peterson: Second.

Douglas Kellner: Those in favor of adopting the minutes of the Executive Session as revised say aye. (Chorus of ayes; 4-0). Opposed? Alright so they are adopted unanimously. We will then turn to the unit updates. We'll start with our co-executive directors Robert Brehm and Todd Valentine.

Bob Brehm: I think there are a number of items that we have worked on to prepare for today's session, but I think one of the biggest items I wanted to speak to you about today following up on our last meeting is the budget. The picture still remains where the agency is approximately \$1.7 million behind what's needed for personal services and we are about \$1.4 million behind what we need for contractual services so it's a little over \$3 million deficit just to maintain services that has...

Peter Kosinski: What's the whole budget? Bob what's the entire budget?

Bob Brehm: I have that number here, I have a packet if you want. The entire appropriation includes I think just under \$3 million for contractual and \$4 million for personal services. The only other money on top of that are the grants that we receive for the federal Help America Vote Act which is \$19.4 million and the state Cybersecurity money which is \$5 million.

Peter Kosinski: So, you're saying the budget for the agency is about \$7 million dollars?

Bob Brehm: Correct, not counting enforcement that's about \$1.5 million.

Peter Kosinski: Okay and out of that \$7 million you're saying we're short 3?

Bob Brehm: Correct. But we have 7 we need 3 more.

Peter Kosinski: So, you're 30% short of what you need.

Bob Brehm: It's about 30%.

Peter Kosinski: Got it. I was just trying to get the percentage.

Bob Brehm: So, we have communicated in a meeting that co-director Valentine and I and staff had with the Division of Budget, we now have a Deputy Secretary, Jonathan Smith. I had a preliminary conversation with him, and Todd and I have a call with him on Thursday to go over these items. We communicated in writing in the 30-day amendment period that there is an issue and Todd and I testified before the Joint Legislative Committee on the budget on these issues that we're in this predicament. We're also at the next stage because there were no additional funds in the 30-day amendment to solve this problem to evaluate what we would need to do as an agency to meet a reduction of this size. We don't have an answer for you yet, but I am hopeful we will have that for you at the March 19th meeting. But it's significant. If you look at the services we're providing at a time when we're being asked to do even more for election poll books, early voting and the other reforms that are coming our way, this number does not reflect the added responsibility of those programs. So, it would be nearly impossible to deliver on those new programs because we would have to take some drastic reduction and it would hit across the agency from Campaign Finance Compliance, from Election Operations and oversight boards of elections and guidance that we normally would be able to give. Also, while we're trying to develop new guidance and new programs. So, it would be a significant impact on the services that we would need to do to provide that oversight. It would also be a significant impact on the technology upgrades that we're currently working on for the Candidate Management Campaign Finance and many others that are just trying to keep the systems up to date. So, it would be a significant impact and we just wanted you to know that. We are continuing to focus on it but I think our next step is in order to give proper notice, we would have to look at how we would reduce staffing and contractual services to meet what we anticipate is the available money that would be a big change to what specific programs would be impacted and we will have that plan for you at the March 19th meeting. It's not a pretty picture. We're also working, hoping we don't have to get to the stage of planning, but we have to do it to be prepared.

Peter Kosinski: That's pretty severe.

Bob Brehm: It's over 1/3 of staff and it's almost all of, it's more than all of the contractual. So, we pay a little under a million dollars for the contractual services now, but we have a \$1.4 million deficit in that fund. So even if we stopped all contractual people, we will have to make up \$400,000 in that department alone and they support the agency because we have not succeeded in getting approval to bring on staff to do the work that the IT and technology people are working on. So, we hope to continue to make the case. I can only be hopeful. But I think we have to do our due diligence to plan.

Peter Kosinski: I agree.

Douglas Kellner: Anything else?

Todd Valentine: No, that's the biggest project right now.

Douglas Kellner: Alright then let's go to the report from the Counsels, Kim Galvin and Brian Quail.

Brian Quail: Thank you Commissioner. The last meeting the Commissioners' approved amending Part 6214 with respect to contribution limits. The Counsel's office prepared and filed that paperwork on January 29th and the change was published on February 13th. And that was an emergency rulemaking and we'll come back to a final adoption on that after a 60-day period after publication.

The unit worked on the matters that are in the packet with respect to the proposed transfer regulations. The petitioning for the June primary has begun so ballot access, questions and calls, as well as inquiries from Boards of Elections and the public regarding signature calculations have taken a considerable amount of time and energy from both the Counsel's unit and Operations.

Brendan Lovullo and I had the privilege of participating in a meeting of Village Clerks in Herkimer County which is not very far from here where the Board recognizing that there were consistency issues in how certain issues were handled brought their fellow election administrators together to harmonize practices and procedures and to discuss best practices and we were privileged to participate in that and I think made a significant contribution to the process and it's something that I would recommend other Boards take such an affirmative act to do.

The Compliance Unit is finalizing preparation of the fourth quarter deficiency list, there are about 85 deficiencies recognized on the preliminary list. The Training Unit has been very busy updating EFS user guides and other materials and working on relevant documents for the anticipated roll out of the new CAPAS-FIDAS system. Due to the LLC law which went into effect shortly after the last Board Meeting on the 31st, the Board posted a notice to filers, LLC's and obviously those receiving LLC contributions about their new limits. Shortly thereafter, we issued detailed guidance for treasurers on precisely how to use the current filing system in order to report LLC attributions and that was turned around very quickly and efficiently. Both those notices are presently on the website.

The unit obviously remains very...

Peter Kosinski: Brian, can I ask a question about that, the LLC provision?

Brian Quail: Absolutely.

Peter Kosinski: So that went into effect immediately upon...

Bob Brehm: Seven days...

Brian Quail: Seven days after adoption...

Peter Kosinski: ...seven days after his signature which was the 31st of January?

Brian Quail: It went into effect, yes.

Peter Kosinski: So, if I made a contribution back in December as an LLC how are they being treated?

Brian Quail: A contribution in December was before the effective date of the law so (blank on video) to my knowledge the \$5,000 limit would not apply. The aggregate \$5,000 limit would not apply retroactively.

Peter Kosinski: So, we aren't applying it retroactively. So, anybody up through January 31st would still get the same treatment that they received prior to the change in law and then anything after the 31st would have to be treated the new way, basically attributable to the individual.

Brian Quail: Yes.

Peter Kosinski: Alright, fair enough.

Brian Quail: And so obviously the unit remains active in a number of cases. There have not been significant developments in most of the cases since the last meeting save one. The Eason matter is now officially off of our list of cases and we're in the mode of the settlement agreement in that case, completely. There are no more court proceedings in that case so it's nice when a case comes off the list. Certainly, if there are questions about any of the other cases or any details, I would be happy to provide those.

And then in terms of the Compliance Unit's work, the January Periodic for 2019 has 2,823 non-filers identified, that's up from the 2,531 in January of 2018 and if anyone desires detailed numbers on the number outstanding for any particular filings, I would certainly be happy to provide that. The total number of reports reviewed by the Unit today, sorry, received 120,653 and they have completed reviews on 109,389 which means that we are keeping pace pretty well with the number in and out in terms of the workflow.

Bill McCann: I'll just add that we did a demonstration from IT on the new CAPAS-FIDAS user interface and it was excellent, and a couple of minor points people made but I think moving forward it looks very good. So, we just had that last week and it really came along.

Peter Kosinski: We're going to see something next month?

Bill Cross: Hopefully, we're trying to.

Peter Kosinski: That would be good.

Douglas Kellner: Alright, we'll turn to Election Operations, Tom Connolly and Brendan Lovullo.

Tom Connolly: Thank you Commissioner. With regard to Elections we did certify Supreme Court vacancies that are going to be filled in the November election. We distributed that to the different counties.

From a voting machine standpoint, we have ES&S application for ExpressVote XL both as a tabulator and a ballot marking device. We're still waiting for them to finish getting their source code to our testing lab - SLI. Once that's done, then SLI can do their work and they can provide their review to us. We're also waiting for some updated language on their TDP their technical data package. We did have two di minimus reviews of SLI on engineering change orders by ES&S; one of them was just a replacement printer for one that was end-of-life for DS450 Central Count and the other one was for the DS200 scanners, the application of texture-free surfaces around the outer housing for better adherence of seals. Dominion we are reviewing, we had certified the ICE machine that was in the configuration where it was only using a primary monitor. They had submitted a modification for us to certify the system using a secondary monitor which is only used for accessible voting sessions. We will be probably finalizing that and bringing that to you in the near future. And then with regard to Clear Ballot we are just continuing to work on a few more test cases of both development and execution of them for their upgrade submission.

On the Cybersecurity front, as usual, we'll been continuing to participate in our calls on Cybersecurity both our plans risk assessments with our partners, Grant Thornton, OGS on procurements and NYSTEC. We've been reviewing our security incident response procedures and policies with NYSTEC for changes and updating. As part of, since the early voting bill has passed the staff has been reviewing security policies and procedures from other states to kind of just getting some insight to people who have already executed this before to kind of prepare our own guidance reports from a both physical security and also from using the machines in early voting itself. We did meet, Brendan and I with Jeff Baez, our CISO, with the Center for Technology and Government. We've been working with them on some pilot projects, so we had gone over to give them kind of a good overview of all the different election phases and the different processes involved.

Todd and I had gone down to D.C. at the beginning of February for the National Association of State Election Directors Conference. That was a multi-day conference that had a lot of good presentations and certainly there was a lot of focus on Cybersecurity but there were other topics covered as well.

We met with Anthony Stevens who is an Assistant Secretary of State from New Hampshire. He invited us to visit New Hampshire while they were doing a machine demo with some of their local election administrators. I was able to attend that meeting in New Hampshire which was a nice drive. A little bit far but still good. And so, there were some good conversations with some of the locals. They obviously did things slightly different in New Hampshire and they used different equipment, but it was a good conversation to have. Otherwise we continue to process

our SHOEBOX contract extension docs and we've been working with IT on the development of the CAPAS system. Brendan do you have anything?

Brenda Lovullo: I'm good.

Douglas Kellner: At the last meeting we talked about the need to at least have an outline of how we would provide for certification of the electronic poll books. Have you discussed that?

Tom Connolly: Yes, we've been discussing that. We've been having some conversations with NYSTEC obviously as our kind of security expert that we work with. We have been doing research on what other states have put into their certification or review process for electronic poll books and we will be continuing to do so as far as should that bill pass, we would then be required to use the current language to draft minimum security guidelines for devices and those networks.

Douglas Kellner: And where do we stand on providing guidance to the counties on early voting?

Tom Connolly: We've been working on, we're looking to have a draft with Bob and Todd at the end of this week and we imagine that we'll probably have some more internal conversations about that over the coming week or two.

Bob Brehm: Our hope was to have that internally at the end of this week so that we can prepare for the March 19th meeting with something that you can look at.

Douglas Kellner: Well, what are the key issues that you're going to be addressing in that guidance?

Tom Connolly: Well, I think we're going to be looking to cover not only the general physical security as far as having voting machines possibly out in locations for multiple days at a time. We're looking at how these machines can operate with regard to removing sticks or compact flash cards portable media devices. We're looking at capacity issues. There are some machines that can only, like a Dominion machine can only handle 2,500 ballot images on a set of cards so there would definitely need to be multiple sets of cards so we're going to have to figure out policies and procedures for keeping them secure. We're going to have to figure out how we close all of those sets in a way that makes the most sense for county boards. We're having a meeting with some of the local ES&S Counties next week to kind of talk about the ES&S machines and any questions that they may have as far as using them in early voting. And we've also been discussing Dominion machines with Monroe County who has been looking at doing some testing on different considerations that they may have to take and think about for early voting as well.

Peter Kosinski: Now the counties have to have a plan to us by the first of May is that correct?

Tom Connolly: Yes.

Peter Kosinski: And will the plan include their anticipated process for early voting?

Tom Connolly: It's supposed to include their sites and the general outline of their process for early voting.

Peter Kosinski: So, are we providing guidance to them prior to that so they can use that guidance to help formulate their own?

Tom Connolly: Right, yes.

Peter Kosinski: So, what's our timeframe for getting guidance, official guidance to the Boards so they can use the guidance for their May 1st plan?

Tom Connolly: It would be I guess we'll bring it before the Commissioners before the next March meeting and then if it's all good it would go to the Counties.

Peter Kosinski: So, you could bring a formal proposal we would actually vote on at the next meeting and we would send out.

Bob Brehm: There would be regulations in there but certainly our goal is to get the plan drafted by the end of this week, certainly share that as soon as we've had a chance to review it and then get some comments. But our hope was not later than your March meeting either get your feedback before then or at that meeting. There's no reason to hold it up if it's acceptable to people and I don't think you have to vote on it. If it's regulation changes that are coming our way, that we would have to bring to you but we're still looking at how to deal with the security, the normal bipartisan processing of opening and closing 8 days in a row to make sure that we're all consistent with what the statute provides where there are some deviations and the other guidance certainly for the security of ballots.

Peter Kosinski: Now do we approve these plans that they submit to us on May 1st? Is this an approval?

Bob Brehm: They have to pick the sites by May 1st.

Todd Valentine: They have to choose the sites by May 1st. The plan that you're referring to is the plan to prevent duplicate voting under the statute. That does not have a date attached to it. But that is also part of what we're talking about when we're discussing either incorporating the electronic poll books which allows you to do it in a different way versus if you don't have them - we're assuming that you're going to have them - but right now if you don't, so they have to have a process to ensure that voters don't vote twice within their own county but in an event that they get information based upon the statewide transfers, which is going to go into effect at the end of March, so it will be in effect for not only the June primary but also for the September, November early voting, the process where a voter moves and what is your ability to ensure or notify the old county that they've moved; you've voted in my new district, oh by the way I'm going to tell you this, if they haven't voted you should address adjust your poll book accordingly.

Peter Kosinski: So, we have to approve the process for avoiding duplicate voting.

Todd Valentine: That's why we want to give them a template so here's, because there's only so many ways you can really deal with this with technology and the process you have. If you don't have electronic poll books, then you really have a hard copy list so you have to figure out okay how do I make sure that if the county gets divided up and there's only one list then it's not really a problem because you can only go to one spot to vote. It's in those situations where a voter can vote in multiple sites within a county that they have to then coordinate how they transfer that information. So, it's really a limited number of ways it can be done. Electronic poll books do make it easier, that has its own security provisions, which is why we need to incorporate them into transmitting data electronically that you ensure that it's accurate and it gets there, it's not corrupted in the transmission. So that's why we're looking to what other states... Other states already do this, we're not reinventing the wheel. So we've been researching and have an amalgam of what the other states have done and certainly they have done it well before electronic poll books existed so if we have to go down that path there is a model that we can use that Texas had done for many years before electronic poll books existed but we have to plan for both because the timeframe for implementing the e-poll books is short.

Peter Kosinski: So, we anticipate this to be a county by county analysis or is there going to be a statewide process for avoiding duplicate voting? Or could different counties have different processes in place?

Bob Brehm: I think you have to accommodate how each county is going to staff and conduct early voting so the smaller counties have the ability and they've expressed in some of the conversations while they're thinking of how to comply with the procedures, if they only have 20 election districts, Hamilton County has 11 election districts, they are going to have one early voting site at the County seat. So, it's feasible that they could have 11 poll books and then just get that poll book to the 11 sites by Tuesday morning open of polls. So, it depends on where you are, and I think we're going to have to accommodate that there are going to be in particular ways of providing this service all the way to New York City which will have a bigger issue of how they could comply. If under our timeframe I'm not sure we will have e-poll legislation signed if we're aiming for the middle of March at the rate we're going. So, we can, so we're anticipating the version of the bill that we've seen. I don't have the number off the top of my head. I think it's Senate 508 and Assembly 2070 both in an "A" version.

Peter Kosinski: You do have the numbers.

Bob Brehm: I always check them, and the "A" version is significantly different, and we have a county call tomorrow with all the county boards for our monthly call. This is on the topic because the biggest amendment to that law is that it would become effective immediately. The previous version was effective next year. So, one should it pass it's effective immediately. It does require an approval process by the State Board and counties can only purchase off an approved list. So that is different than the earlier version. So, we are working at the staff level with that document. If it changes, we'll have to adjust but that's the one we're using to at least come up with some planning around it. So, we're hoping to say to the counties if it's not available here is the non- E-poll book guidance and if it is, here's based on everything we're

reading in this bill that you should consider if it gets adopted and you can use it in time. And it's harder to do because...

Peter Kosinski: So, there's no timeframe then for the counties or us to adopt a duplicate voting process in the state?

Bob Brehm: I see in the statute they have to give us a plan. I don't necessarily see us approving the plan. I don't see an approval process of a plan. But I think if the legislation is asking for the county to give us a plan in the way we know it's a good plan is to give guidance and make sure we get, almost like we did with the security plan, here are the factors you should consider, and....

Peter Kosinski: So, we don't actually approve the county process you're saying. They just give it to us. We don't approve it, they just...

Brian Quail: With respect to the communications plan that the county has to have, they provide that to us, it does say that the Board of Elections shall establish procedures subject to approval of the State Board of Elections to ensure the persons who vote during the early voting period shall not be permitted to vote subsequently in the same election. So, for that piece it anticipates that we would get some sort of imprimatur.

Peter Kosinski: But there's no timeframe for that to occur.

Brian Quail: For that piece, no. The communication plan is due in May.

Douglas Kellner: Alright anything else? So next is Public Information, John Conklin and Cheryl Couser.

John Conklin: Thank you Commissioner. The Public Information Office has been very busy since your last Board meeting. Hot topics include the changes that the legislature is making to how elections are conducted in New York State, early voting, the June primary, the changes to signature requirements for this petition gathering period, electronic poll books, always Campaign Finance, Cybersecurity, schools as poll sites and lastly the public advocate election in New York City yesterday.

The unit also participated in the monthly call with the Election Commissioners Association in January. We continue to be part of all the meetings on Cybersecurity, the implementation of the contracts with regard to risk assessments and intrusion detection systems and the managed security services for the counties. We processed 104 FOIL requests in January. We continue to participate in the meetings on the Eason lawsuit.

We did place an order for Voter Registration Forms approximately 900,000, about 740,000 of them will be English and 154,000 of them will be Spanish.

The unit also sent out NCOA files for the counties on February 8th. And I sent out a notice asking each unit to prepare their portion of the annual report and submit it to the PIO.

For the website, we posted the amended results for the 2018 general election after the last Board meeting. We posted the 2019 Political Calendar and a revised version that reflected Chapters 17 and 18 that reduced the number of signatures for public offices and county committee positions. We posted the statewide enrollments in accord with the requirements for the June primary and to allow for the determination of signature requirements. We posted a notice to filers and a guidance regarding LLC contributions that Brian mentioned. We also posted the 2019 Campaign Finance Filing Calendar. We've updated the various deadline pages for Voter Registration and Absentee Ballot applications for the June primary and for the general election for the domestic military and overseas voters. We posted updates to the "Running for Office" page that reflect changes for the Libertarian Party and the SAM Party. We posted the Advisory Opinion that was adopted at the January meeting. We posted the updated regulation for Part 6214 on new contribution limits. There have been a number of changes in the County Commissioner / Deputy Commissioner ranks, we've updated those postings on the County Board's page and the County Board Roster page. And lastly, we posted the transcripts for the October and December meetings. The January one will be up shortly.

For NVRA since the last meeting, Patrick and Mike have visited Cayuga, Seneca, Ontario, Wayne, Nassau and Orleans Counties for NYSVoter reviews. All those counties were found to be compliant. The unit would like you to know that they traveled 2,930 miles for those visits.

And lastly, we are processing contracts for education training and capital funds for the counties. Not every county has money left in those categories, but we mailed out the contracts. So, for the Commissioners who are listening out there, please sign and return all 4 copies. If you have any questions, please contact Pat Campion or Mike Moschetti in my unit. That's it. Do you have anything you want to add?

Cheryl Couser: No, thank you.

Douglas Kellner: So, we'll have ITU William Cross.

Bill Cross: Good afternoon Commissioners. I'll start with projects, CAPAS-FIDAS always at the top of the list. Development continues. Recent activities focus on electronic filing and primarily back office functionality. I wasn't here last month for the meeting, but I know the question was raised about LLC implementation and the change there. We don't feel that's going to be a substantial change. I know that was discussed last month.

We've begun implementation of front-end portal for the system a more secure portal that not only covers CAPAS-FIDAS but also NYSVoter and some future applications where we envision users of these applications will have a central login screen. We will authenticate them and then go into whatever applications they have rights to and that will be much more secure than we currently have for NYSVoter and incorporate multi-factor authentication and some more modern-day security features around that. So, we're taking the opportunity to put that in front of CAPAS-FIDAS as well.

We've begun our next round of outreach for the Project Workgroups. We did several internal demonstrations of the EFS filing portion of the system, I think Bill referenced earlier. We have a

scheduled treasurer workgroup meeting which will include some public entities and good government groups for next week on March 5th. We're also scheduling the demos and outreach for the vendor and the county workgroups in April. We are also trying to get a demo scheduled for the Board, the primary focus on some of the public facing, public reporting portions. I think we're looking at the end of March or April now, if we can. We're also continuing our efforts to fully staff the project as always, I think that line's always in here. We have identified a new candidate as one of the program positions and making an offer this week. We have also added one additional contractor to help the data conversion effort. And the schedule, we haven't officially moved the date, we know it's not accurate, but we are still not that far off, but we are still in 2019 and we're really looking at, most likely, for at least a portion of it, in the July timeframe hopefully. Maybe still optimistic because we're still trying to fill out a couple of the positions and based on the budget its still, there's contingencies there.

For NYSVoter, we're continuing work with the vendor to finish implementation of that project. Everything is in place; we just have to complete the final testing, particularly with the disaster recovery and the ability to failover from our primary data center to our disaster recovery site. We're trying to get that testing scheduled as well. It is looking like it will be later March or early April for that.

MOVE progress – the redevelopment of that is also moving ahead as well as our accessibility effort. We worked with PIO and the other BOE units and completed all the work that was required for December 2018 deadline in the lawsuit. All that work was completed prior to that deadline. We are currently developing projects to meet the requirements of the 2019 deadline. Those are more substantial. We've got a good jump on how we are handling a lot of the website remediation work, particularly the PDF files that are out there, some of the legacy files. But we also require changes to Voter Look-Up, Election Night Reporting, and some modifications still to the new CAPAS-FIDAS System. The portions that were developed earlier will have to be retrofitted with some accessibility updates. But we are currently planning those out and put a timeline on all of that work for 2019.

Security is always the top focus as well. In terms of activities, the Secure Elections staff has worked with the county boards and county IT on several recent cyber incidents in some of the counties. In each case we've brought down our connections to the statewide system and then worked with the counties and their vendor and the partners on recovery efforts. We've had three most recently, two of them are back up and running and working as we speak with the last of these is Broome County being brought back online today for them. In each of these cases, the Board of Elections hasn't specifically been targeted but has been affected due to lack of segmentation in the counties. Their systems are mixed in with everyone else's in the counties, so we kind of catch shrapnel in that case in terms of some of the effect that let this happened. But we have in each of these cases though we have discovered that some of the systems they were running were quite out of date and beyond end-of-life in some cases and as a prerequisite to them coming on line we have required them to bring these systems up to date and they work with their vendors to do so. In the last case, Broome has actually taken the opportunity to segment Elections from the rest of the County which is a welcome effort.

We also continue to work with the counties on several other projects; the risk assessment that has been mentioned a couple of times already. But, they have now I believe completed approximately 45 site visits. We're working with them to refine and finalize the reporting format for the counties and the next steps in what we will do in terms of procurement for helping the counties remediate any of the issues identified by these reports.

The Intrusion Detection Systems rollout has begun. They've completed the first seven pilot counties. We listed their feedback from the pilot counties, and it was all positive in terms of the benefits providing them as well as the workflow and working with the vendor to implement them. So, we are now proceeding with the remainder. We are also working with the Managed Security vendor, Sedara, on the initial pilot counties for that project. Unlike the Intrusion Detection, that one is not mandatory. We are not requiring this capability in each of them. It's more of an ala carte option. However, 30 counties have expressed interest in it that will be beneficial to them.

We're working on several security improvements of our own for our own systems including enhanced malware detection. I mentioned the multi-factor authentication; some increased login capability, as well as upgrading our own internal documentation for policy and procedures around information security. And we've also now scheduled a date for our federal Department of Homeland Security Risk Assessment that they will be performing against our systems. That's scheduled for late July and I expect we will have several pre-planning meetings with them for that.

And we, as well as Operations, and others have begun working with Center for Technology and Government for various projects and initiatives, one of which is analyzing NYSVoter data for abnormalities. That project has been defined and now we're starting some initial meetings on that effort. We also started some initial discussions with them on researching improvements to the overall elections infrastructure if we can define it. Ultimately the goal may be to define a uniform model for elections infrastructure so that we can carry into the future and hopefully deal with some the segmentation issues or lack thereof that we currently have in the counties. (Lights went out) Well, that is interesting.

John Conklin: Somebody is in the Petition Room.

Bill Cross: Is that my cue to get off stage?

Douglas Kellner: Are you finished Bill?

Bill Cross: Pretty much. The only thing I had left was website analytics. As is suspected everything has dropped back to normal post-election levels and patterns for December and January.

Douglas Kellner: Any questions? Alright well thank you. Our last report is from the Enforcement Unit, Risa Sugarman, but I see that she is not here. Mr. Quail, she commenced one proceeding in the last month?

Brian Quail: Hearing office proceeding, yes, I believe that is correct.

Douglas Kellner: And that's out of the 2,700 referrals that are outstanding?

Brian Quail: Yes.

Douglas Kellner: And, alright. So, then we'll move on to Old Business. The resolution to approve the revised affidavit envelop. Someone just want to briefly explain what the revision is?

Bob Brehm: Early voting law required the ability of a person to attest on their affidavit that they summarize erroneously reported as voting, so if you show up to vote and it says you've already voted, you can vote an affidavit to preserve and be reviewed later but it required a line to be added to the affidavit. The line says, "I'm enrolled in the political," excuse me, "I have not voted in this election, but the records of the Board indicate that I have already voted." As the reason why they were unable to vote on the machine on Election day and during early voting.

Peter Kosinski: And that record would be a signed poll book. Is that the presumption that someone signed the poll book with my name and I'm now saying that wasn't me...?

Todd Valentine: Correct.

Peter Kosinski: ...so you should let me vote?

Bob Brehm: In some instances, it isn't your name, but they signed, the wrong person signed on the wrong line, but they still won't let you vote in some instances. So, whatever, both of those usually are the reasons or perhaps when they're making their list to get ready for Tuesday on Election Day, they did voter history wrong in order to make that information that moves from the ED's from early voting to the Tuesday. So, either or any of those combinations of issues could happen but at the point they're entitled to vote an affidavit...

Peter Kosinski: I'm just trying to understand the situation. So, I come in to vote, and this is now early voting has already taken place and I show up on Election Day and I think my assumption is if I already voted early voting my name is not in the book anymore. Is that true? Do you take my name out or your name is there?

Douglas Kellner: No, it's the same book.

Bob Brehm: It could be the same book and it's already got a signature in it.

Peter Kosinski: It's just my signature place has been filled in?

Bob Brehm: If it were electronic poll book it would not...

Todd Valentine: It would give some indication....

Bob Brehm: ...you could see it, but it couldn't activate to let you sign again because it would let you see that something happened.

Douglas Kellner: There was just one example that you gave that someone else's name was signed within your signature block. My signature block says, Douglas A. Kellner and the person has signed John Smith in that signature block. It is my view that the inspector should not...

Bob Brehm: Oh, I agree with you...

Douglas Kellner: ...should allow them to vote and find a place where you can sign your own signature. But that's not a proper basis for the inspector to ask you to do an affidavit ballot.

Peter Kosinski: That's Board error. That shouldn't preclude me...

Bob Brehm: That has happened in the past. I don't agree with it, but we want to train to not do that.

Douglas Kellner: I just didn't want the record to suggest that we thought that that was a proper procedure. Okay. So, the motion before us is to approve the resolution, approving the revised affidavit envelop. Those in favor say aye. (Chorus of ayes; 4-0) So the resolution is adopted. Alright, next is the resolution to amend regulation 6217.7 on County-to-County Voter Registration Transfers. Can you just give us 2 sentences on why we're doing this?

Brian Quail: I will try to keep that brief.

Gregory Peterson: Otherwise, the lights will go out.

Brian Quail: And obviously available for any questions. This amendment to 6217.7 is designed to effectuate Chapter 3 the Laws of 2019 that provided for statewide transferability of voter registrations. For your reference, draft guidance document to counties is attached to it designed to potentially pick up. What is presently happening is an intra-county process and make it able to be executed across county lines; that is its purpose. It would be amended as an emergency regulation and at the same time we would publish it for public comment for a permanent adoption because the statute requires that the process be in place by March 25th. There was a 60 days timeframe for implementation.

Douglas Kellner: Any questions?

Peter Kosinski: Yeah, just short. So, if I then move from one county to another, the old county is somehow notified that I've moved I presume. There's a mail check or something has happened at the county that I move from has been notified that I moved to a new address and I assume they've also been told where I move. And so, they would then send a notice to the county where I've moved that you have a new voter in your county?

Brian Quail: In many instances Commissioner, yes. In some instances, the notification initially goes to the new county, so they already have that information. The Department of Motor

Vehicles sends address changes to the new county already but in the instances of mail checks, returned mail and national change of address, those noticed will be received by the “from” county, in this parlance, which will then provide that information to the “to” county to process the transfer.

Peter Kosinski: So, right now if I go into DMV and I update my record and say I’ve moved from Schenectady to Albany, DMV will notify Albany that you have a new voter? This person moved from Schenectady. Will they also notify Schenectady that you’ve lost a voter?

Brian Quail: No.

Peter Kosinski: They just notify the new...

Brian Quail: Yes.

Bob Brehm: NYSVoter will, so, in your example, Albany received the notice, Albany under current now would be able to put you on the computer roles in Albany county, NYSVoter will send a message back to Schenectady that there is the traditional dupe management that we already have built into NYSVoter will happen, Schenectady will get that notice.

Peter Kosinski: That’s done through NYSVoter, DMV doesn’t...

Brian Quail: Yes, that’s correct.

Bob Brehm: In the instance where a county receives a notice, you know, mail check or NCOA, this individual has now moved to a new county, they will do their confirmation process of their existing listing now, communicate to the address in the home county and that’s to make sure it’s not wrong, and get the voter the postage-free ability to confirm either yes I did move or no, I didn’t so that it can be corrected. But then that board will also have to, once they take that action in their county would have to provide notice to the county that there’s a change of address and here’s the information that’s necessary for you to be able to...

Todd Valentine: Start the registration process.

Bob Brehm: ...take action.

Peter Kosinski: Now are there timeframes for these notifications to occur?

Bob Brehm: The statute provides the traditional 21, 25 days depending upon which notices we’re sending out in order to communicate with the voter that they processed a form. So, in one instance it would be an acknowledgement, or the confirmation was already built into the statute they did not change that notification process with the law. So those are the traditional ones that have been in there since NVRA passed in the 90s.

Douglas Kellner: All this regulation does is... it doesn’t change the procedures other than to apply them across the state as opposed to just within the county.

Bob Brehm: It kind of cleans up the old language was that if they move within your county, now it speaks to if you move within the state and then we try to accommodate the “what ifs?”.

Douglas Kellner: Any other questions? So, we’ll call for a vote on the resolution. Those in favor say ayes. (Chorus of ayes; 4-0) Opposed? So, the amendment to regulation 6217.7 is adopted.

Alright, the next is the amendment to regulation 6217.9 regarding pre-registration for 16-year-old’s, also to implement on an emergency basis the statute recently adopted.

Brian Quail: Actually Commissioner, this one would be on a regular course because our friends in the legislature were kind enough on this one to make an effective date of January 1, 2020 and we are actually, this was so easy to do, we could not help ourselves but to recommend that we do it forthwith even though it would not be applicable until January 1, 2020. We excited our friends in the Rules & Regulatory Review Unit when we asked them how to adopt something in February that doesn’t take effect until next January and they were very impressed with us.

Douglas Kellner: Thank you and I stand corrected. Is there any other discussion? Alright those in favor say aye. (Chorus of ayes; 4-0) Opposed? Alright the resolution is unanimously adopted.

Next is the draft opinion on candidate liability. Commissioner Kosinski do you want to summarize it, or do you want to have staff summarize it?

Peter Kosinski: I can speak to it if you’d like. This is an opinion related to the legal liability of candidate’s visa via the filing requirements related to their authorized candidate committees. This really comes up I think because of what I consider to be really a failure of the hearing process that’s occurring in this state since we changed the process a few years ago where there’s an administrative hearing regarding failures-to-file. And what’s happened, and we reviewed it is that over the last 4 years there have been 21 hearing officer processes related to failures-to-file. The problem is that within the context of those hearing, while there is a complaint and allegations made by the Counsel, there is not the defense that was anticipated being raised by the candidate and/or their committee to the allegations made in the Counsel’s complaint. So, we’re not getting the give and take that would normally occur in a hearing process situation or in a court situation. And this issue is a legal issue of whether or not when a candidate basically turns over the obligation for filing to their authorized committee, if that committee then fails to make the requisite filings whether the candidate remains legally liable for their failure to do so. The opinion analyzes that under the law whether or not that liability still attaches to the candidate and the ultimate conclusion is no, that that is in fact the incentive the candidate has for turning over that obligation to the committee is that now the committee has assumed that obligation, and specifically the treasurer of the committee as the person who signs the documents that are submitted here has that legal obligation and if there’s a failure-to-file, that the hearing and/or court proceedings that would follow would then be against the treasurer absent some extenuating factual circumstances that would somehow incorporate the candidate or some other person, some other actor in that process. But the assertion that was made in the

context of the hearings was that there were two obligations that the candidate had related to their filings; first, they had to file what's called I believe a CF-16 is the number of the form we have which is the candidate saying to us I'm not going to make any filings, my committee is going to do it on my behalf, but then there was a second obligation that was being placed on them that if the committee didn't make the filings, the candidate still had the obligation to file and if those filings weren't made they were still being sued and held legally liable. It's my belief that that's a misreading of the law. I think this opinion goes into why that's a misreading of the law. I also think it goes to the public policy behind the whole process of having candidates turn over their financial obligations to a committee that that separates the candidate from their financial fund-raising mechanism. I think that is something that we should be furthering by saying that the candidate should turn over that obligation, should remove themselves in large part from that obligation so that it's the committee that's doing the fund-raising and that in essence separates the candidate. We see that certainly in the judicial area where by regulation the judiciary is prohibited from engaging in any campaign finance obligations or endeavors that their committee may take on. This I think, though it doesn't go that far, says that the candidate is separated from their committee, is not tied into it anymore. Otherwise there would be no incentive for a candidate to turn over that obligation. In fact, there would be every incentive not to turn it over because while I'd be turning over the obligation, I would retain the legal liability of the committee. So why would I turn over the obligation when I retain the liability? That wouldn't make any sense. I think we should be encouraging candidates to turn that over and I think this opinion goes along ways towards doing that.

Douglas Kellner: I agree with everything that you've said in your comments. We received yesterday a 9-page memorandum from the Chief Enforcement Counsel commenting on the draft advisory opinion and I want to indicate, I spent many hours both yesterday and this morning studying the Enforcement Counsel's memorandum and I'm a little bit disappointed that neither she nor anyone else in the Enforcement Unit choose to attend the meeting so that we could discuss some of those comments because I had a few questions on comments that are contained in the memorandum that I think either beg the question or seem to be factually unsupported and include interpretations that I think are a far stretch from what is intended by the statute. But, furthering Commissioner Kosinski's comments that I read 14-104 of the Election Law the way he does and the way that the Board had practiced for as long as I was aware of that once a candidate filed the committee authorization form, then the filing obligations switched from the candidate to the committee. Now, there are points that are made in the Enforcement Counsel's memorandum that I think are acknowledged at the end of our report, is that just because a candidate files an authorization for committee does not immunize the candidate from other conceivable campaign finance obligations or violations. And the last sentence of the opinion acknowledges that the opinion is directed only to the authorized treasurer's failure-to-file the required disclosure report. Obviously, if the candidate has received funds personally and has not deposited them within the committee, well then, the candidate still has the obligation to report. If the candidate aids and abets a fraud on the part of the treasurer with respect to filing or indeed if the candidate solicits the treasurer not to file. Well those are obligations that are not covered by our opinion and our opinion is not intended to foreclose prosecution or penalties with respect to those exceptional types of conduct. And my response to the Enforcement Counsel with respect to her memorandum is to the extent that she thinks that advisory opinions are warranted

with respect to any of that exceptional conduct, I for one would be willing to consider them and that the Enforcement Unit is certainly welcome to submit their suggestions in that regard.

Gregory Peterson: Those are patently obvious I would feel. So, it's like don't go through a red light and go through a red light is wrong, end of story. It's not really that questionable especially the examples that you utilized. So, my thing, our opinion is right on and I don't think needs any further explanation or illustrations.

Douglas Kellner: I agree.

Peter Kosinski: Yeah, I would just commend that I did read the Enforcement Counsel's comments as well. I think that the opinion as written should be read, it's relatively narrow. It's not intended to cover every situation where a campaign finance violation might occur. It's a relatively narrow holding that in the failure-to-file context there is no what I would call "strict liability" attaching to the candidate, it attaches to the treasurer. I think that her analysis goes far afield from that. I think a lot of her analysis analyzes issues that are tangential but not on point. So, while I take her comments it doesn't affect my opinion that the opinion as written is correct and that we should adopt it.

Douglas Kellner: And I agree with that.

Bill McCann: I will just point out that this will be a formal opinion.

Douglas Kellner: Let Commissioner Spano speak first. Go ahead Commissioner Spano.

Andy Spano: No, I was just from a practical standpoint looking back on how these operate in reality. You've got say a high-flung campaign with lots of money coming in. You hire someone, I'm sure Greg can relate to this, hire someone to take a look at these things before they're filed. Someone goes over and you call people to make sure that they, the candidate can't be involved in all that process, and to hold them responsible at that particular point... you ask about it, you take some due diligence, is everything okay, but you can't be responsible for every single thing, that's why you have a treasurer. And usually you get someone who's really good at numbers and doing this kind of work, even a CPA.

Gregory Peterson: Normally, as far as the candidate's involvement is concerned, I can tell you straight out that when you have somebody that's doing that for you it's a big relief because you have too many other things to do. We had a committee that actually cleared the checks to make sure there weren't any conflicts of interest and then beyond that, as a candidate I would say, "We're going on TV can we afford it?" That's about it. It's going to cost X amount of dollars whatever and that's the extent of any candidate's position. Bottom line is that's why you do this and that's why you have a treasurer.

Andy Spano: That's correct.

Gregory Peterson: To involve a candidate I think would be ludicrous and it's not written in the law.

Bill McCann: I would just merely point out that this is a Formal Opinion it doesn't relate to 14-130, which would be the Advisory Opinion.

Douglas Kellner: I'm sorry if I misspoke. Okay. So those in favor of adopting the Formal Opinion say aye. (Chorus of ayes; 4-0) Opposed? Alright so it's adopted unanimously.

I had one issue I wanted to add to the agenda to discuss very briefly which is the issue and the litigation that started in this last week between the New York City Board of Elections and the Mayor regarding interpreters at New York City poll sites. My own view is that both sides are wrong in how they're trying to address this. That the State Constitution is pretty clear that poll sites have to be operated in a bipartisan manner and that our laws implementing that constitutional provision put the New York City Board and the County Boards of Elections in charge of that. On the other hand, I think the Mayor is trying to accomplish a laudable goal in trying to increase the number of interpreters that are available and providing the funding for it. And that the New York City Board may be excessively obstinate in accepting that additional funding and trying to address the problem that the Mayor is trying to address. So, to that end, I would suggest that our Operations Unit contact the parties to provide us with information on the litigation and to see if the State Board can provide a productive role in trying to mediate a resolution of the dispute. And, of course, we could then explore further if the mediation is unsuccessful because neither side is or one side is unwilling to accept our views on how to proceed, then we can explore whether to intervene in their negotiation.

Peter Kosinski: That's fine. Yeah, I agree that I'm troubled too by the Mayor's insertion of himself into the poll sites. I think that the Constitution not to mention again a public policy argument that the bipartisan Board of Elections is in charge of poll sites for good reason as they are in charge of Election Operations in general and having the Mayor insert himself into a poll site like this, I think is troubling. So, I would agree that we should look into this and see what we can do. If there's some way of resolving the issue that's great, but I do have a threshold problem with that. I don't know where the court case is visa via the authority of the Mayor to insert people into poll sites, but I think that's a very troubling precedent that could lead to any number of other insertions of a mayor or county executive, any number of political persons into our poll sites which I think is a very bad precedent to set here in New York State. So that's an issue but I would also...

Douglas Kellner: And I would just say but the unwillingness to provide for additional interpreters when the local government is prepared to pay for it invites that kind of intervention. And that's why I think we could provide a productive role in trying to get the parties to resolve the dispute.

Peter Kosinski: Well if we can help work something out that'd be good. So, if we can look into that that'd be good and see what's what.

Douglas Kellner: Commissioner Spano do you agree?

Andy Spano: I agree.

Douglas Kellner: Alright so we all agree to ask the Operations Unit to follow up on that.

Gregory Peterson: You guys wanted another job, didn't you? (Laughing).

Tom Connolly: My schedule is clear.

Brendan Lovullo: Your nights are no longer free.

Douglas Kellner: I'm not aware of any need for Executive Session and I think we've already scheduled our next meeting?

Bob Brehm: March 19th and April 29th.

Peter Kosinski: The next two meetings...

Douglas Kellner: So, if there's no further business I'll accept a motion to adjourn.

Gregory Peterson: Move to adjourn.

Peter Kosinski: Second.

Douglas Kellner: Alright we're adjourned.