

FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
FAX (212) 487-5349
www.vote.nyc.ny.us

AGENDA **COMMISSIONERS' MEETING** **TUESDAY, DECEMBER 8, 2009** **AT 1:30 P.M.**

1. Minutes
 - a) 11/17/09
 - b) 11/24/09

2. Marcus Cederqvist
 - a) HAVA Update
 - SBOE Conference Call – December 4, 2009
 - Upcoming Schedule Related to New Voting System Certification
 - b) Report on Meeting with Senator Schumer's Staff – December 3, 2009 and New York City Council Staff – December 4, 2009
 - c) LAP Advisory Committee Meeting – December 7, 2009

3. John Ward
 - a) Vacancy Report

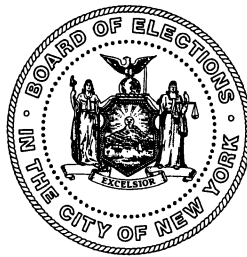
4. John P. O'Grady
 - a) Privacy Booth Presentation

For Your Information

- HAVA Weekly Status Report, Week Ending December 3, 2009
- Election Commissioners' Associate – re: Democratic Deputy Commissioner, Barbara McCann
- Board of Election – Statement of Cost October 2009
- VAC Annual Public Hearing
- Testimony Before the NYS Senate Committee on Elections, Robert A. Brehm, Co-Executive Director, NYS Board of Elections – November 30, 2009

News Items of Interest

- The New York Times: Vote Recount in Nassau Approaches Completion



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
www.vote.nyc.ny.us

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

JOHN J. WARD
FINANCE OFFICER

DATE: December 08, 2009
TO: Commissioners

FROM: John Ward
Finance Officer.

RE: Vacancies

					Inc.	New.
1	Assistant General Counsel					\$75,000
2	Valerie Marshall	Adm. Asst.	N.Y.	Dem.	\$39,440	\$37,562
3	Robert Helenius	VMT	Bklyn	Rep.	\$27,818	\$26,493
4	Lisa Sattie	Adm. Asst.	S.I.	Dem.	\$39,440	\$37,562
5	Angela Petit	Clerk.	Bklyn	Rep.	\$27,111	\$25,820



State of New York
STATE BOARD OF ELECTIONS

James A. Walsh
Chair
Douglas A. Kellner
Chair
Gregory P. Peterson
Commissioner
Evelyn J. Aquila
Commissioner

40 STEUBEN STREET
ALBANY, N.Y. 12207
Phone: 518/474-6367 Fax: 518/486-4546
website: www.elections.state.ny.us

Todd D. Valentine
Executive Director
Robert A. Brehm
Executive Director
Kimberly A. Galvin
Special Counsel
Paul M. Collins
Deputy Counsel

December 4 , 2009

Honorable Gary L. Sharpe
United States District Court
for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Status Report of the Defendant New York State Board of Elections for the week ending December 3, 2009.

Respectfully submitted,

s/ _____
Kimberly A. Galvin (505011)
Special Counsel

s/ _____
Paul M. Collins (101384)
Deputy Special Counsel

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 11/27/09-12/03/09

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

PLAN A

Overall Compliance Status Summary

Overall, activities and progress toward HAVA compliance are on schedule with the revised timeline.

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- o OGS is working with Dominion and ES&S on their most recent regular add requests.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule

- o Overall progress of testing :
 - NYSTEC & SBOE have continued to meet, consistent with the schedule for the final stages of certification tasks required so that at the December 15th Board Meeting the Commissioners have all the information they need to vote on certification.
 - SBOE hosted multi-day meetings with both Dominion and ES&S to discuss the testing reports. NYSTEC and SysTest attended the meetings as well.
 - SBOE will be meeting with CEMAC, NYSTEC and Systest on December 7th to review the various testing documents and reports.
 - NYSTEC met with SBOE to discuss its draft report on compensating controls and summary report on the testing effort.

NEW YORK STATE BOARD OF ELECTIONS

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: on schedule

- Acceptance Testing is continuing on the balance of Dominion machines.
- SBOE and the DOJ again discussed the fact that there are still two counties that have not ordered the balance of machines required for 2010 compliance. A staff recommendation will be made to the Board at the December 15th Board meeting regarding this situation.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

NYCBOE responded to the SBOE inquiry. SBOE is formulating a strategy to move forward and has advised the Department of Justice of the City Board's response. A decision regarding what action will be taken will be made early next year.



**ELECTION COMMISSIONERS' ASSOCIATION
OF THE STATE OF NEW YORK
2009 - 2010**

William W. Scriber
President
185 E. Seneca Street, Box 9
Orangetown, NY 13126
Phone: 315-349-8350

Joan M. Silvestri
First Vice-President

Laura P. Costello
Second Vice-President

Scott P. Kiedrowski
Third Vice-President

Diane M. Wade
Secretary - Treasurer
50 West High Street
Ballston Spa, NY 12020
Phone: 518-885-2249
Fax: 518-884-4751

Thomas R. Ferrarese
Chairman,
Executive Committee

Jerry O. Eaton
Chairman,
Legislative Committee

TO: REGION CHAIRS

FROM: DIANE WADE, SECRETARY ECA

Democratic Deputy Commissioner, Barbara McCann, passed away yesterday. A memorial service is planned for Sunday at Doran Funeral Home, 4 East Bayarde St, Seneca Falls. The phone number for the funeral home is 315-568-5700, if you want more information about the funeral.

Cards can be sent to her husband

**Charles McCann
40 Spring St.
Seneca Falls, NY 13148**

**Thanks,
Diane Wade**

Could all Region Chairs pass along to the Counties in their region

Comm Mtg
FY1

Steven H. Richman

From: Majerus, Kenneth [kmajerus@law.nyc.gov]
Sent: Wednesday, December 02, 2009 3:05 PM
To: Marcus Cederqvist; Steven H. Richman
Subject: BOARD OF ELECTION - STATEMENT OF COST October 2009.PDF

Your agency's statement for October 2009 is attached to this email. Cases have been arranged by division to assist you in identifying the matters. We have included all or part of both the plaintiff and defendant names, also to help identify the matters. A running total of each division's hours is located after the last matter for each division.

As before, if you see a case you believe is erroneously attributed to your agency, please let me know.

Thank you.

Ken Majerus
Chief of Operations
City of New York Law Department
100 Church Street
New York, NY 10007
(212) 788-0373
(212) 788-0386 - fax
kmajerus@law.nyc.gov



Date: 11/24/2009
 Summary Charges to BOARD OF ELECTIONS
 for Oct. 1, 2009 - Oct. 31, 2009

Number of Matters	10					
Total Attorney Hours	67.25	Attorney Hours YTD		329.75		
Total Attorney Charges	\$10,751.96	Attorney Charges YTD		\$50,989.00		
Total Disbursement	\$0.00	Disbursement YTD		\$0.00		
Total Workers' Compensation Administrative Cost	\$414.00	WC Admin Cost YTD	20 claims	\$1,642.00		
Tort - Labor Attribution Summary	\$0.00	Tort Labor Costs YTD		\$0.00		
Grand Total	\$11,165.96	Grand Total YTD		\$52,631.00		
Total Workers' Compensation Actual Expenditure	\$13,468.00	Workers' Comp Actual Expenditure YTD *		\$99,097.00		

YTD = July 1, 2009 to Present
 * = WC Actual Expenditure July 1, 2009 to Present
 Tuesday, November 24, 2009

Appendix A

Matters Detail BOARD OF ELECTIONS

for Oct. 1, 2009 - Oct. 31, 2009

<i>Caption</i>	<i>Matter Number</i>	<i>Date</i>	<i>Staff</i>	<i>Hour Rate</i>	<i>Description</i>	<i>Amount</i>
Appeals						
ADAMES, JOSE VS ELECTIONS, BOARD OF, NYC	2009034870	10/13/2009	DOLGOW, PAMELA	0.75	\$158.66 Case Review	\$119.00
ADAMES, JOSE VS ELECTIONS, BOARD OF, NYC	2009034870	10/15/2009	DOLGOW, PAMELA	0.75	\$158.66 Case Review	\$119.00
				Total Hours:	1.50	
				Case Attorney Total YTD:	\$237.99	Case Attorney Total: \$237.99
				Disbursement YTD:	\$0.00	Disbursement Total: \$0.00
				Matter Total YTD:	\$237.99	Matter Total: \$237.99
IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	10/9/2009	COLLEY, DRAKE	6.00	\$157.47 Brief Preparation	\$944.82
IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	10/13/2009	COLLEY, DRAKE	7.75	\$157.47 Brief Preparation	\$1,220.39
IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	10/14/2009	COLLEY, DRAKE	1.50	\$157.47 Brief Preparation	\$236.21
IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	10/19/2009	COLLEY, DRAKE	1.50	\$157.47 Court Appearance	\$236.21
IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	10/21/2009	HART, EDWARD	4.00	\$169.34 Supervision/Management	\$677.38
				Total Hours:	20.75	
				Case Attorney Total YTD:	\$3,315.00	Case Attorney Total: \$3,315.00
				Disbursement YTD:	\$0.00	Disbursement Total: \$0.00
				Matter Total YTD:	\$3,315.00	Matter Total: \$3,315.00

Appendix A

Total Hours: 22.25

Division Attorney Total YTD: \$7,035.05 **Division Attorney Total:** \$3,553.00
Disbursement YTD: \$0.00 **Disbursement Total:** \$0.00
Matter Total YTD: \$7,035.05 **Matter Total:** \$3,553.00

Caption	Matter Number	Date	Staff	Hour Rate	Description	Amount
General Litigation						
ADAMES, JOSE VS ELECTIONS, BOARD OF, NYC	2009030266	10/7/2009	KITZINGER, STEPHEN	0.50	Intra Office Conf/Communicatn	\$79.99
				Total Hours:	0.50	
				Case Attorney Total YTD:	\$559.92	Case Attorney Total: \$79.99
				Disbursement YTD:	\$0.00	Disbursement Total: \$0.00
				Matter Total YTD:	\$559.92	Matter Total: \$79.99
BOYLAND, TRACY VS. HERBERT, ANTHONY L., ET AL.	2009035196	10/8/2009	KITZINGER, STEPHEN	4.00	Court Appearance	\$639.91
				Total Hours:	4.00	
				Case Attorney Total YTD:	\$1,759.75	Case Attorney Total: \$639.91
				Disbursement YTD:	\$0.00	Disbursement Total: \$0.00
				Matter Total YTD:	\$1,759.75	Matter Total: \$639.91
CHUSID, ALAN S. VS ELECTIONS, BOARD OF NYC	2009034626	10/2/2009	KITZINGER, STEPHEN	4.00	Court Appearance	\$639.91
CHUSID, ALAN S. VS ELECTIONS, BOARD OF NYC	2009034626	10/29/2009	KITZINGER, STEPHEN	0.50	Communication with Client	\$79.99

Appendix A

		<i>Total Hours:</i>			
		4.50			
<i>Case Attorney Total YTD:</i>		\$959.86		<i>Case Attorney Total:</i>	\$719.90
<i>Disbursement YTD:</i>		\$0.00		<i>Disbursement Total:</i>	\$0.00
<i>Matter Total YTD:</i>		\$959.86		<i>Matter Total:</i>	\$719.90
GEN LIT ADM TIME - ELECTIONS, BOARD OF	04GL900014	10/1/2009	KITZINGER , STEPHEN	1.00	\$159.98
vs					
GEN LIT ADM TIME - ELECTIONS, BOARD OF	04GL900014	10/6/2009	KITZINGER , STEPHEN	1.00	\$159.98
vs					
GEN LIT ADM TIME - ELECTIONS, BOARD OF	04GL900014	10/28/2009	KITZINGER , STEPHEN	0.50	\$79.99
vs					
GEN LIT ADM TIME - ELECTIONS, BOARD OF	04GL900014	10/28/2009	KITZINGER , STEPHEN	0.50	\$79.99
vs					
GEN LIT ADM TIME - ELECTIONS, BOARD OF	04GL900014	10/29/2009	KITZINGER , STEPHEN	0.50	\$79.99
vs					
GEN LIT ADM TIME - ELECTIONS, BOARD OF	04GL900014	10/29/2009	KITZINGER , STEPHEN	1.00	\$159.98
vs					

		<i>Total Hours:</i>			
		4.50			
<i>Case Attorney Total YTD:</i>		\$3,839.45		<i>Case Attorney Total:</i>	\$719.90
<i>Disbursement YTD:</i>		\$0.00		<i>Disbursement Total:</i>	\$0.00
<i>Matter Total YTD:</i>		\$3,839.45		<i>Matter Total:</i>	\$719.90
IGHILE, OSARETIN VS ELECTIONS, BOARD OF,	2009034486	10/5/2009	KITZINGER , STEPHEN	1.00	\$159.98
NYC					
IGHILE, OSARETIN VS ELECTIONS, BOARD OF,	2009034486	10/6/2009	KITZINGER , STEPHEN	1.00	\$159.98
NYC					
IGHILE, OSARETIN VS ELECTIONS, BOARD OF,	2009034486	10/13/2009	KITZINGER , STEPHEN	2.00	\$319.95
NYC					
IGHILE, OSARETIN VS ELECTIONS, BOARD OF,	2009034486	10/14/2009	KITZINGER , STEPHEN	2.00	\$319.95
NYC					
IGHILE, OSARETIN VS ELECTIONS, BOARD OF,	2009034486	10/21/2009	KITZINGER , STEPHEN	0.50	\$79.99
NYC					
IGHILE, OSARETIN VS ELECTIONS, BOARD OF,	2009034486	10/22/2009	KITZINGER , STEPHEN	1.00	\$159.98
NYC					

Appendix A

IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC 2009034486 10/26/2009 KITZINGER, STEPHEN 0.50 \$159.98 Intra Office Conf/Communicatn \$79.99

Total Hours: 8.00

Case Attorney Total YTD: \$2,719.61 **Case Attorney Total:** \$1,279.82
Disbursement YTD: \$0.00 **Disbursement Total:** \$0.00
Matter Total YTD: \$2,719.61 **Matter Total:** \$1,279.82

LEROY, MIREILLE P. VS ELECTIONS, BOARD OF, NYC 2009030302 10/14/2009 KITZINGER, STEPHEN 1.00 \$159.98 Brief/Motion \$159.98

LEROY, MIREILLE P. VS ELECTIONS, BOARD OF, NYC 2009030302 10/15/2009 KITZINGER, STEPHEN 1.50 \$159.98 Brief/Motion \$239.97

LEROY, MIREILLE P. VS ELECTIONS, BOARD OF, NYC 2009030302 10/15/2009 KITZINGER, STEPHEN 1.00 \$159.98 Communication with Client \$159.98

Total Hours: 3.50

Case Attorney Total YTD: \$3,599.48 **Case Attorney Total:** \$559.92
Disbursement YTD: \$0.00 **Disbursement Total:** \$0.00
Matter Total YTD: \$3,599.48 **Matter Total:** \$559.92

LEROY, MIREILLE, P. VS ELECTIONS, BOARD OF, NYC, ET AL. 2009035756 10/7/2009 KITZINGER, STEPHEN 1.50 \$159.98 Brief/Motion \$239.97

LEROY, MIREILLE, P. VS ELECTIONS, BOARD OF, NYC, ET AL. 2009035756 10/13/2009 KITZINGER, STEPHEN 1.00 \$159.98 Administrative Tasks \$159.98

LEROY, MIREILLE, P. VS ELECTIONS, BOARD OF, NYC, ET AL. 2009035756 10/13/2009 KITZINGER, STEPHEN 0.50 \$159.98 Communication with Client \$79.99

LEROY, MIREILLE, P. VS ELECTIONS, BOARD OF, NYC, ET AL. 2009035756 10/16/2009 KITZINGER, STEPHEN 1.00 \$159.98 Review of Documents \$159.98

LEROY, MIREILLE, P. VS ELECTIONS, BOARD OF, NYC, ET AL. 2009035756 10/23/2009 KITZINGER, STEPHEN 1.00 \$159.98 Review of Documents \$159.98

Appendix A

		<i>Total Hours:</i>		<i>5.00</i>			
		<i>Case Attorney Total YTD:</i>		<i>\$799.88</i>		<i>Case Attorney Total:</i>	
		<i>Disbursement YTD:</i>		<i>\$0.00</i>		<i>Disbursement Total:</i>	
		<i>Matter Total YTD:</i>		<i>\$799.88</i>		<i>Matter Total:</i>	
THOMSON, JAMES, ET AL. VS DATA AND FIELD SERVICES, INC., ET AL.	2009041121	10/26/2009	KITZINGER , STEPHEN	1.00	\$159.98	Communication with Adversary	\$159.98
THOMSON, JAMES, ET AL. VS DATA AND FIELD SERVICES, INC., ET AL.	2009041121	10/26/2009	KITZINGER , STEPHEN	1.00	\$159.98	Intra Office Conf/Communicatn	\$159.98
THOMSON, JAMES, ET AL. VS DATA AND FIELD SERVICES, INC., ET AL.	2009041121	10/27/2009	KITZINGER , STEPHEN	1.00	\$159.98	Communication with Adversary	\$159.98
THOMSON, JAMES, ET AL. VS DATA AND FIELD SERVICES, INC., ET AL.	2009041121	10/27/2009	KITZINGER , STEPHEN	0.50	\$159.98	Communication with Client	\$79.99
THOMSON, JAMES, ET AL. VS DATA AND FIELD SERVICES, INC., ET AL.	2009041121	10/28/2009	KITZINGER , STEPHEN	1.00	\$159.98	Communication with Adversary	\$159.98
THOMSON, JAMES, ET AL. VS DATA AND FIELD SERVICES, INC., ET AL.	2009041121	10/28/2009	KITZINGER , STEPHEN	1.00	\$159.98	Communication with Client	\$159.98
THOMSON, JAMES, ET AL. VS DATA AND FIELD SERVICES, INC., ET AL.	2009041121	10/30/2009	KITZINGER , STEPHEN	4.00	\$159.98	Court Appearance	\$639.91
THOMSON, JAMES, ET AL. VS DATA AND FIELD SERVICES, INC., ET AL.	2009041121	10/30/2009	KITZINGER , STEPHEN	1.00	\$159.98	Review of Documents	\$159.98
		<i>Total Hours:</i>		<i>10.50</i>			
		<i>Case Attorney Total YTD:</i>		<i>\$1,679.76</i>		<i>Case Attorney Total:</i>	
		<i>Disbursement YTD:</i>		<i>\$0.00</i>		<i>Disbursement Total:</i>	
		<i>Matter Total YTD:</i>		<i>\$1,679.76</i>		<i>Matter Total:</i>	
WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	10/9/2009	KITZINGER , STEPHEN	0.50	\$159.98	Communication with Adversary	\$79.99
WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	10/23/2009	KITZINGER , STEPHEN	1.00	\$159.98	Review of Documents	\$159.98
WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	10/26/2009	KITZINGER , STEPHEN	3.00	\$159.98	Court Appearance	\$479.93

Appendix A

	<i>Total Hours:</i>	4.50		
<i>Case Attorney Total YTD:</i>	\$2,799.60		<i>Case Attorney Total:</i>	\$719.90
<i>Disbursement YTD:</i>	\$0.00		<i>Disbursement Total:</i>	\$0.00
<i>Matter Total YTD:</i>	\$2,799.60		<i>Matter Total:</i>	\$719.90
	<i>Total Hours:</i>	45.00		
<i>Division Attorney Total YTD:</i>	\$41,787.95		<i>Division Attorney Total:</i>	\$7,198.96
<i>Disbursement YTD:</i>	\$0.00		<i>Disbursement Total:</i>	\$0.00
<i>Matter Total YTD:</i>	\$41,787.95		<i>Matter Total:</i>	\$7,198.96
<hr/>				
<i>Agency Attorney Total YTD:</i>	\$50,989.00		<i>Agency Total Attorney Dollars:</i>	\$10,751.96
<i>Disbursement YTD:</i>	\$0.00		<i>Total Disbursement:</i>	\$0.00
<i>Matter Total YTD:</i>	\$50,989.00		<i>Grand Matter Total:</i>	\$10,751.96

FYI

Marcus Cederqvist

From: Marcus Cederqvist
Sent: Tuesday, December 01, 2009 11:27 AM
To: *Commissioners
Cc: George Gonzalez; Pamela Perkins; Steven H. Richman
Subject: FW: VAC Annual Public Hearing

FYI... (I just received this, so it's too late to get it in today's meeting agenda...)

-----Original Message-----

From: Yusuf, Bibi [mailto:byusuf@cityhall.nyc.gov]
Sent: Tuesday, December 01, 2009 11:02 AM
Subject: FW: VAC Annual Public Hearing

Attn: Chair, Commissioners & Representatives:

VAC Annual Public Hearing is scheduled to be held on:
Tuesday, December 15, 2009
City Council Chambers, City Hall.
6:00 p.m.

The Agenda to follow soon.

Please save this date in your calendar.

Please respond with any questions.

Thanks very much

Bibi N. Yusuf
Office Manager
Voter Assistance Commission
100 Gold Street, 2nd Floor
New York, NY 10038
Tel.: 212-788-8384
Fax: 212-788-2527
Email: byusuf@cityhall.nyc.gov
website: www.nyc.gov/voter

FYI



James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

NEW YORK STATE BOARD OF ELECTIONS
40 STEUBEN STREET
ALBANY, N.Y. 12207-2108
Phone: 518/474-6220
www.elections.state.ny.us

Douglas A. Kellner
Co-Chair

Evelyn J. Aquila
Commissioner

Robert A. Brehm
Co-Executive Director

**TESTIMONY BEFORE THE
NEW YORK STATE SENATE
COMMITTEE ON ELECTIONS**

ROBERT A. BREHM
Co-Executive Director, New York State Board of Elections
November 30, 2009

New York committed itself to full testing of each voting system before certifying compliance with the federal Voluntary Voting System Guidelines (VVSG). Although New York has encountered delays in bringing new, fully compliant voting systems into use, we have had our commitment to our groundbreaking testing initiatives reaffirmed, as those delays uncovered major flaws in the certification testing process previously used by the national certification authorities. New York's exposure of the inadequacies of the old process has led to major reforms at the Election Assistance Commission. Indeed, New York should be proud that its standards have become the gold standard for certification testing. Both ES&S and Dominion Voting Systems, the two companies that have submitted voting systems for certification to New York's high standards deserve praise for their commitment to the process, and the recognition that if they obtain certification from New York, they will have met the highest industry standards that will enhance their ability to market their systems nationally and internationally.

The certification process is almost complete, and we anticipate that the State Board will be certifying the ES&S DS-200 and the Dominion ImageCast precinct based voting systems in December. We are advised that to date, there are no "showstopper" issues, and we remain committed to full compliance with

the standards, as provided in our contracts with the vendors. On the other hand, if we do identify a problem in the testing that remains outstanding, we will still insist on the modifications necessary to achieve compliance with the New York State regulations and the VVSG.

The Pilot Project

The State Board of Elections concluded that there would be substantial advantages using the new voting systems in selected jurisdictions as a pilot project. In recognition that we are using equipment that is not fully certified, the State Board imposed additional security and verification procedures in order to assure the accuracy of the results.

Forty-six counties opted to participate in a 2009 pilot project. Thirteen of those counties did not have primaries, leaving thirty-four counties in the Primary Pilot Project. All machines used were subject to functional testing to validate the logic and accuracy of the systems, and each machine was subject to thorough acceptance testing. As a further safeguard the State Board required:

- Full compliance with the audit provisions contained in Election Law §9-211 and the audit provisions contained in the proposed regulation 6210.18.
- Conduct a 100% hand audit of all ballots in election districts when the difference in the result of the election between the potential winning and losing candidates in any contested election on the ballots is 1% or less AND,
- Randomly select 3 % from all the devices used in each county, or, borough within NYC, and hand audit all of the ballots tabulated by that device. If the outcome does not match the canvass report, then a 100% hand audit is to be conducted.

We are happy to report that the Pilot Project for the 2009 General Election successfully accomplished our goals of introducing the new voting systems and identifying election administration issues that will require greater attention both for our county boards of elections and the State Board.

As was reported to the Commissioners of the State Board of Elections at their meeting on November 10, 2009, the General Election Pilot Project successfully accomplished our goals of introducing the new voting systems and identifying election administration issues that will require greater attention both for our county boards of elections and the State Board. While not without a few

incidents, perfection was not expected, as the Election Day optical scan technology was new to voters across New York, and to County Boards of Elections. We are grateful to the County Boards of Elections which opted to participate in the Pilot Project, and in particular to those Boards which opted for a county-wide pilot deployment.

State Board of Elections staff teams observed Election Day observations in eighteen General Election Pilot Counties and during the Primary Election, seventeen Primary Election Pilot Counties were visited.

There is still room for improvement, however it is important to note that Boards which fully embraced the challenge of this pilot and the use of this technology, experienced a greater level of success in the conduct and administration of the election as well as in the ease of use and positive feedback of their voters. It is key that voters, candidates, advocates, stakeholders and others understand that the optical scanners which were used in this pilot project, and which will be used in all future elections, offer a level of security that has never been possible with lever machines – regardless of any number of election day scenarios, Boards of Elections will always have the ballots which voters marked, thus ensuring that elections are recoverable and every vote will be accurately cast and counted.

In addition two scenarios merit explanation. For Dominion systems, the pre-election testing conducted by the Franklin County Board of Elections revealed an anomaly in the system's software, which manifested itself when certain potential voting patterns appeared in certain multiple vote-for candidate voting positions. In such instances, the system 'froze', making it impossible to scan subsequent ballots. The vendor was contacted, and it was determined that the issue was related to the memory required to store images of scanned ballots. Prior to Election Day, the vendor reviewed all ballot styles for all of its customers, made a configurable file change to eliminate this problem in the pilot project and pre-election testing was completed on all systems prior to their use on election day. Also, Dominion corrected the software submission they had delivered for New York's voting system certification effort.

Unfortunately, in that the review of ballot styles to pinpoint where the problem might manifest itself was a human review, some of the ballots styles were mistakenly tagged as acceptable. The problem did occur on Election Day, and in those instances, voters proceeded to vote on emergency ballots, which were ultimately either scanned in an alternate, replacement scanner, or were

hand-counted according to existing county board of elections emergency procedures.

For ES&S, a programming issue made by the Erie County Board of Elections was not discovered until Election Day, which resulted in certain candidates in a multiple vote-for contest not aggregating all of their results. On Election Day, in the affected districts, voting continued on emergency ballots which were scanned on the day after the election, using corrected ballot configurations. It was determined that the problem was evident in the pre-election test results, however as humans were reviewing the test results, the anomaly of votes not being aggregated correctly was missed in the review and validation of pre-election test results.

The lessons learned from this Pilot Project are valuable ones, and will be included in the Board's final General Election Pilot Test report which will soon be completed. As the use of these systems becomes more prevalent, the ease with which Election Day workers and voters use them will increase. Frequency of use will nurture confidence and expertise. The State Board will review outstanding issues with each specific Board of Elections, and will take steps to ensure that all procedures and corresponding forms are reviewed, with an eye towards reflecting real-world usage suggestions collected by Election Operations staff. A preliminary list of the observations includes:

1. Boards must review each poll site, and **draw floor plans for the optimum placement of scanners and privacy booths**, to better ensure as much privacy as possible for the marking and scanning of ballots. Drawings and/or photos showing inspectors the proper placement of all Election Day work stations should be reviewed in training sessions, and provided to inspectors with their Election Day supplies. If current poll sites cannot accommodate new equipment in a manner that affords voters privacy, comfort and safety, alternate poll sites should be identified.
2. As is evidenced by the photos and comments contained in this report, Boards and inspectors need to **make consistent use of privacy hoods** vendors make available for affixing to the scanner itself. Further, election inspectors must offer **privacy sleeves** to each voter with their respective ballot, thus allowing the voter the option of using the sleeve when accessing the scanner to cast their ballot.
3. **The conduct of pre-election testing is critically important, as is the validation of the results of that testing.** The State's testing requirements are extensive, and the preparation for and conduct of the testing does take a fair amount of time, but

the issues it can uncover will help ensure that County Boards can recover from situations in a timely and more responsible manner, and do so before Election Day.

4. County Boards of Elections are urged to review the number of spare scanners they have purchased to date, and **consider acquiring additional units**, in a number sufficient to ensure that Boards can put such units into poll sites on Election Day, to better serve voters and poll sites when problems arise, or a particular election season's higher turnout warrants the deployment of more units.
5. **Hands-on training for all election day workers is essential**, so that a full array of voter services is available throughout election day. Boards can certainly train some election day staff as specialists in the delivery of various tasks related to services, however each person working in a poll site should be able to provide assistance to voters at every juncture of the voting experience.
6. **The return of voted ballots and memory cards to Boards of Elections after the close of polls is a critical security requirement that cannot be diminished.** Boards should explore every option available to them for the return of these key items, including centralized pick-up of security bags; the assistance of law enforcement officials, voting equipment technicians, custodians and other voting system facility staff in collecting and delivering security bags; reconsidering and re-prioritizing close-of-polls tasks, so that inspectors can complete essential tasks and return security bags as quickly as possible.
7. County Boards of Elections must be **more diligent in the creation of informational notices sent to candidates and others**, as required by statute. Samples of these notices have been provided in the past, and will be reviewed again, so that the best of them can become models for all Boards to adopt. This concept is consistent with our inclusion of 'Best Practices' in the procedures we have delivered to Boards thus far, and those yet to come.
8. Boards must arrange for **extensive training in their respective vendor's Election Management System**, so that Board staff members charged with this responsibility can become much more adept at building ballots, and where possible, increasing font size, to better address voter concerns for the legibility of ballot information. The State Board can serve as a resource in this area, and stands ready to assist, once Boards have completed their vendor's EMS training program.

Additional Legislation

Now that it is clear that all New York jurisdictions will be using poll site based ballot scanning, it has become apparent that there are significant revisions to New York's rules governing poll sites, election districts and election staffing that would better take advantage of the features of the new scanning systems.

The law currently provides for the division of each town or city into election districts. Election Law 4-100 contains strict rules for the formation of election districts that were based on the features of lever voting machines and the need to have all voters in the election district voting on the same ballot style form. Particularly in densely populated urban and suburban areas, it is not unusual to locate multiple election districts at the same poll site.

Scanners allow the use of multiple ballot styles. Therefore, it is no longer necessary that all of the voters have the same ballot form (although it is essential that election officials give each voter the correct ballot form). Most other states, therefore, do not restrict the number of voters at a voting precinct and organize each poll site to accommodate the number of voters at that site.

New York's current law that provides for four inspectors assigned to each election district at a poll site is inefficient. Instead, New York should look to the model in other states and should appoint and organize election workers based on the *poll site* not on the *election district*. The Election Commissioners Association of the State of New York has been considering proposals to address this issue, and I urge that the Election Committees of the Senate and Assembly also focus on this issue—which could lead to substantial economies for the counties, and the more efficient operation of poll sites.

Lever Voting Machines

New York enacted the Election Reform and Modernization Act of 2005. (L. 2005, c. 181 amended L.2007, c. 506.) Section 11 of the law prohibits the use of lever voting machines once the State Board of Elections certifies precinct based ballot scanners or direct recording electronic machines that comply with Election Law § 7-202.

Section 301(a) of the federal Help America Vote Act sets forth minimal standards for all voting systems used in federal elections. The Federal Election Commission issued an advisory opinion, No. 5 of 2005, that concluded that lever voting machines failed to meet four standards contained in HAVA § 301(a).

- Audit Capacity (HAVA §301(a)(2)(B)(i)) – “produce a permanent paper record with a manual audit capacity...” for use in a recount.
- Error Rate (HAVA §301(a)(5)) – requires that all voting systems have a test error rate that complies with error rate requirements of §3.2.1 of the VVSG.
- Alternative Language Accessibility (HAVA §301(a)) – requires voting systems provide alternative language accessibility pursuant to the requirements of the Voting Rights Act of 1965 (42 U.S.C. §1973aa-1a).
- Accessibility for Individuals with Disabilities (HAVA §301(a)) – at a minimum, election officials must provide at least one voting system equipped for individuals with disabilities at each polling place. Such system must provide voters with disabilities the same opportunity for access (including privacy and independence) as other voters.

The United States Department of Justice brought suit against the State of New York to compel replacement of the lever voting machines in order to comply with the Help America Vote Act. The federal court entered an order on June 2, 2006 that required New York to replace all lever voting systems with HAVA-compliant voting systems. New York State also applied for and accepted nearly \$50 million in federal funds pursuant to Title 1 of HAVA appropriated solely for the purpose of replacing lever voting systems.(New York has also received an additional \$158 million in non-earmarked HAVA funds that are available for new voting systems.)

The Attorney General's office and our own legal staff have repeatedly advised us that there is no way for New York to retain its lever voting machines without an amendment to the Help America Vote Act. Many people have discussed such an amendment with members of our Congressional delegation, but no one has introduced such a bill, and there is virtually no chance of enacting such legislation.

New York State is under court order to replace our lever voting machines. New York has adopted some of the most progressive regulations in the nation to insure the integrity of the new voting systems. Our certification testing system is the most comprehensive in the nation and has become the model for other states.

We simply do not have the option to retain lever voting machines. The movement to retain them is misdirected because it cannot succeed without an act of Congress. Instead, the efforts of advocates of retaining lever machines would be much more productive if they were directed to insuring the best possible procedures for transparent, accurate and verifiable use of the new machines in each county.

Vote Recount In Nassau Approaches Completion

By ANGELA MACROPOULOS

MINEOLA, N.Y. — Nearly three weeks after Election Day, the recount in the race for Nassau County executive is expected to conclude on Monday. Edward P. Mangano, the Republican challenger, has a slight lead over the Democratic incumbent, Thomas R. Suozzi.

Although Mr. Suozzi held a 237-vote lead on election night out of about 245,000 ballots cast, he has trailed Mr. Mangano since the recount began on Nov. 9. As of Wednesday, with all but a handful of the ballots counted, Mr. Suozzi trailed by 217 votes. Tallying was halted for Thanksgiving and will resume on Monday morning. But the results may not be conclusive.

The tight race has required a laborious recount, which is taking place in a windowless, hard-ed room with video cameras at the Nassau County Board of Elections headquarters.

About 25 people, including lawyers for the Republican and Democratic election commissioners and for each candidate, are reviewing the validity of about 8,000 paper ballots. They include 7,000 absentee ballots and so-called affidavit ballots cast on Election Day by voters who said they were registered, even though there was no record of their registration.

The lawyers check absentee ballots for timely postmark and signatures that match the applications for them, said John A. DeGrace, the Republican elec-

A difference of 217 votes, out of nearly a quarter-million cast.

tions commissioner. The affidavit-ballot review involves not only counting them, but verifying that the people who cast them were eligible.

On Monday, 623 absentee ballots from the 21st Assembly District will be counted. William T. Biamonte, the Democratic elections commissioner, said the 21st was the last to be counted.

It is still unclear when the election results will be certified. On Wednesday, lawyers for the candidates are to appear in State Supreme Court to report findings agreed on by both sides and to discuss more than 500 ballots for which objections have been filed.

Steven R. Schlesinger, a lawyer for Mr. Suozzi, said he would meet with Democratic county officials and Mr. Suozzi on Tuesday to discuss several technical challenges, including a possible request for a new election because of overpolling, in which the number of votes registered on voting machines exceeds the number of voter signatures recorded at the polls. Mr. Mangano has been in the recount room every day since the recount began, and Mr. Suozzi has appeared several times.

"I feel very optimistic," Mr. Mangano said during a telephone interview on Friday. "Statistically, the 21st Assembly District is a Republican-leaning district."

Mr. Suozzi said he believed that county residents would appreciate a resolution, either way.

"We'll let the process continue," he said. "I'm as anxious as everyone else."

THE NEW YORK TIMES NEW YORK MONDAY, NOVEMBER 30, 2009

Comm Mtg
F41

THE NEW YORK TIMES NEW YORK TUESDAY, DECEMBER 1, 2009

Vote Recount in Nassau Executive Race Ends

Edward P. Mangano, the Republican challenger for Nassau County executive, expanded his lead over the Democratic incumbent, Thomas R. Suozzi, as the vote recount in the race concluded on Monday.

With the last paper ballots counted, Mr. Mangano, a county legislator, held a 390-vote lead out of the nearly 250,000 ballots cast on Election Day. Although Mr. Suozzi led by 237 votes on

Nov. 3, Mr. Mangano was ahead by 217 votes by the end of last week.

Despite Mr. Mangano's lead, the results will not be certified until lawyers for both candidates appear Wednesday in State Supreme Court in Mineola. Justice Edward W. McCarty III is expected to rule on which contested ballots will be counted. Objections to 700 to 800 ballots have been filed, elections officials said.

Steven R. Schlesinger, a lawyer for Mr. Suozzi, said he and his client would meet Tuesday to dis-

cuss which ballot challenges if any they wish to pursue.

But John Ciampoli, a lawyer for Mr. Mangano, said he believed that Mr. Mangano's lead was large enough to ensure that none of the contested ballots would change the outcome. He also said there was insufficient grounds to conduct a new election.

Mr. Mangano stayed at the County Board of Elections recount room all day Monday. "I've been ahead the whole time during the recount, and I expect to be ahead at the conclusion," he said by phone Monday night.