

## Table of Contents

Opening of Regular Meeting.....	1
Approval of Minutes.....	2
Unit Updates	
a. Executive.....	2
b. Legal.....	8
c. Election Operations.....	9
d. Public Information.....	10
e. Campaign Finance.....	11
f. Information Technology.....	12
Old Business:	
a. MOVE Act.....	14
New Business:	
a. Resolution on Required Single Audit.....	15
b. Resolution on Data Replication.....	15
c. Discussion on Overvote Procedures.....	16
Executive Session.....	25
End.....	25

>> JAMES WALSH: Good afternoon, everyone. My name is Jim Walsh and I have the honor and pleasure of chairing today's event.

I would like to introduce my fellow -- fellow commissioners introduce themselves.

>> Doug Kellner

>> Evelyn Aquila

>> Gregory Peterson

>> Todd Valentine

>> Kimberly Galvin

>> Paul Collins

>> Joe Burns

>> Anna Svizzero

>> John Conklin

>> George Stanton

## February 18, 2010 NYSBOE Board Meeting

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>> Will McCann

>> Bob Brehm

>> >> Bob Warren, Board of Election Operations

>> Tom Wood, NYSTEC

>> Sue Stewart, League of Women Voters

>> Amy Allaud, League of Women Voters

### Approval of Minutes

>> JAMES WALSH: Thank you, everyone. Approve the minutes from our previous meeting, January 14, 2010, have a motion?

>> DOUGLAS KELLNER: So moved.

>> JAMES WALSH: Second?

>> GREGORY PETERSON: Second.

>> JAMES WALSH: All in favor?

>> Ay.

>> JAMES WALSH: Opposed?

### Unit Updates

Carried. Unit Updates. Co-Executive Directors, Bob Brehm and Todd Valentine.

### Executive

>> TODD VALENTINE: The original report is there; our focus, we have several focuses that we continue to work on; obviously the transition to the optical scan voting systems remains our highest priority at the moment. We did meet with the County Board of Elections at the end of January to go over those issues. We have had some contacts with outside entities that have to

## February 18, 2010 NYSBOE Board Meeting

---

deal with that transition as well.

Again, it's not their use of the machine that we're concerned about. They need to understand what our position is, so we're just making sure that we reach out to other organizations that do use the lever machines, and make them understand what is going on with the transition. That's the State Education Department, for the school districts, we'll need to reach out to the New York Conference of Mayors to deal with the villages and cities that might have special elections or run their own elections, as well as the Association of Towns, which do run special elections, the odd county special election, which some counties do run, but those are pretty much run by the county boards, as well as the Fire District Association. We have to deal in time with who is coming first, you have to understand, so we've been slowly working on that and we continue with other administrative functions. We're eagerly awaiting the result of the budget negotiations with the Governor and the Legislature to see how that finally ends up, our cuts, where they end up. All in all, a lot of meetings occurred but it has been a very positive month moving forward.

>> BOB BREHM: And compliance with MOVE is the other big project we're working on.

>> TODD VALENTINE: Yes, that's our other big project. Since the President signed that in the fall, we've been engaged in a series of interviews or meetings with a number of vendors that have approached us. We've been very open about it, to try to explore the various solutions that we have, certainly for the immediate year, because it is applicable to 2010, but also going forward for the years beyond that.

The federal government has proposed a program that they would, under the Department of Defense, through the Federal Voting Assistance Program, provide, actually pay for a vendor to provide some of the services that we would need for that.

The problem that we've encountered with them is that they are not far enough along that we

## February 18, 2010 NYSBOE Board Meeting

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don't think they will have that program in place for this year. We don't think so, but it doesn't look good. They don't even have a request out on the street to solicit the vendors' solutions that we could then choose from and they would pay, so we're looking at we have to forge ahead on our own, and the positive side is that was some funds available under the last -- appropriation in the 2010 budget that will allow us to access some funds for that.

The less we spend on that, the more the counties can use for other things and we can use for other things, so we don't want to spend money on a solution that we are just going to use and throw away. We'd like to leverage that for this year and then going forward, so that's where we've really been at; we've had a team of staff meeting with a number of vendors on that and we have more meetings next week.

>> EVELYN AQUILA: Does each state pick its own vendor?

>> TODD VALENTINE: Yes, each state is up to its own solution.

>> EVELYN AQUILA: That's what I thought.

>> TODD VALENTINE: What the federal voting assistance people want to do is set a standard of what each vendor is supposed to do.

That hasn't even happened yet. It's, I'm not going to say it's like HAVA, but it's almost like HAVA in the sense that you've got to set the standards and meet this and that's why we're concerned, because the Department of Justice is charged with enforcing this as well.

They want it done fast; they didn't really give us a lot of time. And everybody supports it, so it's not a question of fighting whether you do it or not.

It's just there's a lot of parts that have to come together. The voters are military and overseas voters so they're not really here.

## February 18, 2010 NYSBOE Board Meeting

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You have to communicate to them what they need to do, the county boards have to get the ballots from them, they then have to give the ballots back out to them and somehow we have to coordinate all that, somehow. We've got some ideas, so we have some very positive ideas from the vendors that we've met with so far, but nobody has a perfect solution, of course, so it's just going to be a question of trying to figure out what recommendation to make to what road we take. I think really we were always kind of targeting that in March. We've been doing our research now so we can come back to the board with here's what we believe the solution is or this is the path we need to take for 2010, and then probably looking ahead to what we're doing in the out years '011 and '12 and going forward with that.

>> DOUGLAS KELLNER: And at some point we have to make the application for a waiver of the 45 day rule.

>> TODD VALENTINE: Yes, Bob is Chief Election Official; that's his responsibility (laughter), but before he does that he needs to have a plan from the state, because he can't obviously comply on his own.

>> BOB BREHM: I may have to have the waiver process. When I spoke to...

>> TODD VALENTINE: Which doesn't exist, right.

>> BOB BREHM: First of all, in this program, we heard from the Federal Voting Assistance Program in November.

They promised us things would move along in December. In December we received a press release which reiterated what they told us in November. In January, when we went to the conference, they stood in the front of the room and told us what they put in the press release in December, and we still are like, this is ok, great. I think we learned for the first time in January that their plan was to pay for it. We thought that was a brilliant idea and we specifically asked

## February 18, 2010 NYSBOE Board Meeting

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how hard it is for federal procurement; how do you think you'll get this done in time? We're busy rolling out new voting equipment. We can't put something on the county's desk at the last minute.

We need it now. They didn't give us a good answer, and that was at the end of January; it's now moving along in February and all the phone calls we keep receiving from people interested in this business or getting this accomplished are saying the same thing. Nothing has come out yet, we don't have the RQ on the street yet, we don't have the solution yet, we don't know how we're going to meet the deadline yet. So we've been moving along on a parallel track. We've let the federal government know that our intention is we certainly do have a plan; if it meets our requirements and you're willing to pay for it, it sounds like the best plan we've heard so far.

But we don't think you're going to get done in time, so we have to have parallel track and at the point where we really have to make a decision, maybe we have to pay for it the first year and try to get them to reimburse us or maybe we pay for it in the first year and we go forward and in the future they pay for it, as long as one of the vendors we select is also one that they select. So I think we want a good solution for New York. We want a timely solution that we can implement this year. But the waiver, they still don't have the waiver process, they're negotiating with the Justice Department as to the magic words. We asked them to please let us know as soon as possible because our intent was to submit something to them. Our theory is we'll have our research done in February and have a solution planned for March, and that would be when we would like to submit a waiver. And I did suggest to them, if they don't have a plan in place by March, we would just type up our own request and submit it anyway. Because if they reject our waiver application, we at least have time to respond to it or to deal with the consequences. So we can't let them do to the waiver like they're doing with their implementation

## February 18, 2010 NYSBOE Board Meeting

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and we find out the day before the primary that we had to have moved it. They promised to get us answers and we promised to keep asking them questions. But other than that, I think from our perspective, there are a number of solutions that will allow us to comply this year. I think what we're looking for in the long run is how to make that a more seamless process for the county boards. We have few options for this year as to what is doable because of the time.

>> JAMES WALSH: -- the cost, do you know how much that would be, any idea?

>> BOB BREHM: I have some ideas but we don't have all the cost estimates in yet so maybe we could share them if they are part of our contract negotiations, off-line, in executive session.

>> EVELYN AQUILA: Bob, will it be completely funded by federal money or will it be federal and state money?

>> BOB BREHM: So far, I don't know what the total solution will be, but certainly that we have enough 2010 requirement payment to at least cover what we think the anticipated costs will be and probably have some requirement payment left over.

>> DOUGLAS KELLNER: And that's the real issue, as Todd said, is how much will be left over.

>> EVELYN AQUILA: Yes, --

>> BOB BREHM: So I think if the feds are willing to pay for it, that will be a large chunk and then what do we do to integrate it with our existing system to make the counties long term use of the system more user-friendly, so they don't have to do certain tasks twice, they could maybe more seamlessly do those. We'd like to give them that functionality as early as possible, but the procurement to touch the county's system and make any change between their system and our system is going to take more time than will allow this year, and we don't want to be butting up against this fall's election with changes that will negatively impact on the time they need to roll out new voting equipment also.

## February 18, 2010 NYSBOE Board Meeting

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>> JAMES WALSH: Thank you, any more questions? Legal, Kim Galvin.

### Legal

>> KIM GALVIN: Thank you, Commissioner. I don't know if Todd mentioned, but we all attended the ECA's Winter Conference, learned a lot there from the counties. We participated in many of the County Commissioner calls and the MOVE Act meetings and discussions. We answered a variety of calls from the various people throughout the state regarding upcoming village elections and the machine transitions. And, of course, what I and I think Paul spent most of our time on, is supporting the operations unit with the machine rollout. We spent a considerable amount of time working with that and working with OGS on the ad requests and contractual issues they may have, and also monitoring, I think when we last met there were two counties that had not submitted machine requisition orders. We followed that process through; they did in fact submit their requisitions. And we had increased communication with the Department of Justice; we worked with the acceptance testing folks on monitoring the number of machines and what the timeline means with regard to the federal court order. And just when you think that you have it all straightened out, we were served with an order to show cause -- tomorrow, asking for a restraining order with regard to the New York City choice and machine selection.

So, that's basically what the unit has been doing. Paul, do you have anything to add?

>> PAUL COLLINS: Not really. Finally we resolved an appellate division case out of the second department, the -- case, -- a PAC down in White Plains. It was an interesting decision because the court upheld the lower court's granting of discovery in a five voter action, to go look at the books and records of the PAC. So that's kind of an interesting twist.

>> JAMES WALSH: Any more questions? Thank you. Election operations, Anna.

### Election Operations

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## February 18, 2010 NYSBOE Board Meeting

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>> ANNA SVIZZERO: Thank you, Commissioners. We're happy to review anything that is in the written report.

We don't have much to add to that other than to advise you that with acceptance testing needs, the Westchester and Suffolk units that they purchased are being acceptance tested now and are being moved out of the building as quickly as possible. The Nassau County purchase order has been finalized and now that that is in place, acceptance testing on those units will commence, and we expect them to see their first units later next week. We have been efforting some research regard to overvotes for a conference call that we will be having next week with advocates. We have been responding to some of the issues that county boards raised at the conferences that we attended, both in person in January and on the phone with the pilot review committee to determine how those impact systems and if we need to revisit regulations or procedures or both. We're in a significant procedure writing / editing mode with NYSTEC, which is daunting to say the least. It seems like every procedure that you touch to tweak based on pilot project feedback kind of spider webs and touches 15 others.

So it's quite the process but we are moving through that as well.

We are efforting getting election results from the four counties that conducted special elections earlier in the month, and we did provide paperwork to New York City for the special elections going to be conducted in March.

I don't have anything else to add; unless there is something you would like us to elaborate on.

Joe, do you have anything?

>> JOE BURNS: The progress with respect to the outstanding issues from voting machine certification.

>> ANNA SVIZZERO: We've had an initial conference call with both vendors. Bob Warren did

## February 18, 2010 NYSBOE Board Meeting

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with NYSTEC. We clarified what we expected the feedback would be. We gave them an initial deadline for the documentation findings to be resolved and we have a conference call scheduled for, I think late next week or the following week.

>>--

>> ANNA SVIZZERO: Right, so that we can get those responses and a timeline for when those submissions can come in and what kind of testing would be resulting from how they approach those findings.

But we thought at least the documentation issues being the most important if they affect the manuals and how the materials are distributed in the county and how they are to be interpreted was critical. So we expect that to be done in another session in a week and a half or so and then we'll see if we have to have on-site meetings for anything beyond that.

### Public Information / NVRA

>> JAMES WALSH: Further questions? Thank you, Anna. NVRA / Public Information, John Conklin.

>> JOHN CONKLIN: Good afternoon, Commissioners. I, like Anna, have very little to add to the written report submitted.

I would just say that with regard to our meetings with the New York State Broadcasters' Association about the media campaign and the voter education campaign for the fall, we're trying to coordinate with New York City because they have a very complicated media market down there that we'd like to have included in the plan.

Those meetings are ongoing and going forward.

>> JAMES WALSH: Questions?

>> EVELYN AQUILA: John, could I ask John, is language a big thing in New York City?

## February 18, 2010 NYSBOE Board Meeting

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>> JOHN CONKLIN: We are incorporating as part of the campaign, Chinese and Korean.

The hope is to have both of those on radio stations in New York City. Spanish will also be on the radio as well.

>> EVELYN AQUILA: I was going to say, what happened to Spanish?

>> JOHN CONKLIN: I jumped to the Asian languages; Spanish will also be part of the radio campaign and we're also making plans to do a Spanish television spot.

>> EVELYN AQUILA: Good. Ok, thank you, John.

>> JOHN CONKLIN: Sure.

### Campaign Finance / Enforcement

>> JAMES WALSH: Campaign Finance, Bill McCann.

>> BILL McCANN: Thank you, Commissioner. Just to highlight a couple of things in the written report, we had record activity with regard to the January periodic filing. The late notices that we sent out to more than 2000 individuals statewide, resulted in the largest mailing ever done by the unit. The end result of that, again our goal is not to get people but to get the filings; the original over 2000 people that received the late notices, we ended up to date with the order to show cause, we sued 486 people. So while that is a record number also, we did get market compliance as a result of the late notices and the process that we have. It was the biggest mailing that we've ever done.

>> DOUGLAS KELLNER: Bill, that's 486 against how many filings? It's like...

>> BILL McCANN: Well we have well in excess of 11-12 thousand registered filers, so again, it seems like a lot, and 486 is the record, but on the other hand, we've seen an exponential increase in the number of filers we have. We're hoping, with our educational process, we will tend to see as we work toward full implementation of local filing, we hope that number will go down. Again,

## February 18, 2010 NYSBOE Board Meeting

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we do see a large level of compliance overall, and we do get a good response from our late notices. I just wanted to make you aware that the volume is the largest, the record that we ever had. Our staff downstairs, intake and processing unit, is doing a great job. They are again under the gun, but they are to be commended. Other than that, we're doing the regular business of the board and I'd be happy to entertain any questions.

>> JAMES WALSH: Thank you, Bill. ITU, George Stanton.

### Information Technology

>>GEORGE STANTON: I know how everybody's eyes love to glaze over when I start talking.

(laughter) Like everybody else, I don't really have a lot to add to what is in the written report, just to highlight doing the usual day-to-day work of monitoring -- which in itself is a pretty good sized task. We have had a couple of counties in the last couple of months change the ways they communicate with us. They keep changing Internet service providers and things like that. We have a couple of them right now we are working to get reconnected. It sometimes takes a week or so to get them going again. The development of the operating system neutral campaign finance software is coming right along. Actually, we're getting so we think we're getting somewhere near the end of it. We're anxious to show it to campaign finance again. It's looking good. One drawback we have to that is, even if we wanted to release it, we'd be a little bit afraid to right now because that ethics bill that got vetoed by the Governor actually had an extra filing in there and before we can release the filing software, we have to know if there is going to be a new filing and when it is going to be so we can build it in to the software. So that complicates things a little bit. And this has become less of an issue, really, because most of the Mac users out there now realize they can run the Windows software anyway on their operating system, so I don't think it has been a very big issue lately.

## February 18, 2010 NYSBOE Board Meeting

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Of course, the help desk staff worked with finishing the January periodic filing, getting those all audited and into the database, printed the certified mailers for campaign finances five day letters and that kind of thing. We did attend an additional kick-off meeting with the Office for technology.

As the Governor announced in January, everyone is going to be forced to go to a unified statewide e-mail system which is run by OFT. Most everybody knows, including OFT, if they're watching, I'm not a big fan of OFT, but this is one good thing. I think it's a positive thing for the state to be on one e-mail system. One of the benefits it's actually going to give us, that we've run into problems over the last few years, especially with the implementation of HAVA, is we get requests for e-mails, and it's really difficult in our current system to find e-mails related to a certain subject.

The archiving they do will allow us to do, one person to search everybody's e-mail on a given subject and find all the e-mails pertaining to it for any court cases or foils or whatever.

Other than that, we've also been involved with looking at the MOVE act, solutions that are out there and see what can be done about that. I'm open to questions.

>> EVELYN AQUILA: Bill, I'm sorry to go back to you, but have we issued any judgments -- coming along or anything.

>> BILL McCANN: Sure, that's part of our regular course of business. For instance, with today's lawsuit, we will sue 486 people because at the end of that, people who are into the lawsuit are directed to make their filing and pay a penalty. At the end of that, on the return the date, we'll update the court on the statuses of those people and then the court will enter judgment against those people.

>> EVELYN AQUILA: That wasn't really... I understood that when you were talking about the 486

## February 18, 2010 NYSBOE Board Meeting

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earlier.

I'm talking about the judgments that are out there, that have been issued in the past, are we getting any percentage of payments or people paying attention to that. I know it doesn't come to us, it goes to general fund.

>> BILL McCANN: Sure, as you know our process is the judgment gets filed in Albany County Court and we send out a notice of entry and a letter explaining what the process is and we give them about a month or so to pay and settle.

If they don't we then file the judgment in their county of residence of the person then that attaches to the real property then goes on to their credit etc. We found through that process that we do get a steady stream of compliance. Eventually people go to sell their real property or they run a credit report, that kind of thing; we see a lot of that. Again, with the resources that we have, we find that we do get a steady stream.

>> EVELYN AQUILA: I know our first effort is to educate. We really don't want to file judgments against them. But I was just wondering if the state let us know how many judgments have been paid.

>> BILL McCANN: We track that.

>> EVELYN AQUILA: You track it. Ok. Is there any kind of a steady...

>> BILL McCANN: Sure.

>> EVELYN AQUILA: Thank you.

### **Old Business: MOVE Act**

>> JAMES WALSH: Old business, I think what we're going to be hearing more of in the future is MOVE. You've heard it several times this morning. I have an update on our progress toward implementing MOVE, which is Military and Overseas Empowerment Act.

Who will take the lead on that?

>> DOUGLAS KELLNER: I think we just did that.

>> EVELYN AQUILA: We kind of just touched that.

>> DOUGLAS KELLNER: Maybe I jumped the gun.

>> TODD VALENTINE: I don't know if there's anything more to add.

### **New Business: Resolution on Required Single Audit**

>> JAMES WALSH: All right. New business. Vote on a Resolution to Approve Costs Associated with the Completion of Required Single Audit. Bob Brehm and Todd Valentine.

>> BOB BREHM: We participated last year for the first time in the federal single audit because we had spent over the required amount of money.

We completed that process, little did we know that we also get billed for participating in the federal single audit.

This is our share of the state cost to do the audit and because it was an audit of our implementation of the federal program, we can pay the audit money out of HAVA funds, so that is the proposal, is to pay for the audit out of HAVA funds.

>> DOUGLAS KELLNER: So moved.

>> JAMES WALSH: Second?

>> GREGORY PETERSON: Second.

>> JAMES WALSH: All in favor?

>> Ay.

### **Resolution on NYSVoter Data Replication**

>> JAMES WALSH: Opposed? Carried. Item B. Vote on a Resolution to Approve the Maintenance

## February 18, 2010 NYSBOE Board Meeting

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Contract for Services Related to NYS Voter Data Replication to the Disaster Recovery Database.

>> EVELYN AQUILA: That's yours, George.

>> GEORGE STANTON: Well here again, I could probably make eyes glaze over. But the short stick is Replistore is the software used to keep our NYS voter database current in both this location and our disaster recovery location too.

Because this location with the code and the disaster recovery location and all the voters would be there and everything would be up to date. The resolution is just to authorize to approve to renew this for \$10,080 per year, utilizing HAVA requirement funds.

>> DOUGLAS KELLNER: So moved.

>> JAMES WALSH: Second?

>> GREGORY PETERSON: Second.

>> JAMES WALSH: All in favor?

Ay. Opposed? Carried. Thank you.

### Discussion on Overvote Procedures

Item C. Discussion Regarding Overvote Procedures on Optical Voting Systems. Commissioner Kellner.

>> DOUGLAS KELLNER: This is an issue that has been brought to our attention by a letter that was addressed from a large number of voter integrity and good government groups and advocacy groups. A study was done of the screens that are used on scanners to notify voters that their ballot contains an overvote; in other words, where the voters for contest than is allowed and so the vote for that contest would be invalid, because they voted for more than the allowed number of people.

What the study pointed out is that the way the screens now notify voters skews the information



## February 18, 2010 NYSBOE Board Meeting

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given to the voter that makes it more likely that the voter will just press the override button, so that the voter ends up casting an invalid vote, than to take the ballot back and correct the error. Two states, Wisconsin and Florida, have addressed this issue by revising their screens, so the advocacy groups have asked New York to take a look and do the same thing. Now I understand that the staff had a meeting last week with the advocacy groups, and perhaps Anna could report on that, or Bob?

>> ANNA SVIZZERO: I'd be happy to defer to anybody. I think it was more information gathering. They told us what their issues were and also told us what they wanted the outcome to be. From those conversations, we have diverted Bob, unfortunately from acceptance testing the requirements to try to do some initial research on this. We're compiling that. We haven't had a chance to meet in house yet to review the research that we can put together on what the systems do and what it will take to modify both of the systems that the board has certified.

But once we do that, I think we'll be prepared for that follow up conference call with those groups, which I think is scheduled for next week at some point, Thursday I think.

>>DOUGLAS KELLNER: I would urge you to continue with that. I think specifically the groups are asking for two things.

One is that they're asking that we revise the notices that go up on the screen. The second thing that they're asking is that the ballot automatically be rejected if there is an overvote. My initial reaction on this is that I think they make a valid point on the screens. So, for example, the notification that comes up on the screen says "You've overvoted" and a green button comes up that says "Override this" and a red button comes up that says "Take your ballot back to correct the error." So it does sort of skew it into pushing the override rather than the red button that is in the form of a stop sign that says "Take your ballot back." And I saw what Florida had just done

## February 18, 2010 NYSBOE Board Meeting

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in revising this, just to reverse it. In big letters: "Warning, your vote will not count in this contest. Please correct the error. "

And then the green button is to correct the error and the red button is to override. It just changes it. Now the other thing that the advocates have been asking is that the machine automatically rejects the ballot and not let the voter do the override. I'm not sure that they're right, that that's the best way to do it. All of this, unfortunately, does require work on the part of staff, and if we're going to change it, the vendors will have to modify the software and submit it for re-certification.

Now ES&S already did this in Florida, so if it was done properly and re-certified in Florida, then we shouldn't have to go through a whole rigmarole in doing it in New York. We don't know yet what Dominion's response to it will be.

>> EVELYN AQUILA: I think there has to be a definition of what overvote means. If you've gone out on the street and said,

"What would it mean if you voted and it came up overvote?"

"Gee, I don't know"

I just asked five people. Out of the five people, three of them did not know. And they were across the scan.

I made sure I asked someone in their early 20s, someone who is about 50 and then I asked a senior citizen.

Only two had an idea. "Well I must have voted for the same person twice and I must have voted one more than I was supposed to."

But the other people said, "Overvote. What's an overvote?"

So I think there's a definition. We understand because we do this, but I think there's a question

## February 18, 2010 NYSBOE Board Meeting

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about people understanding.

>> DOUGLAS KELLNER: Well you have to look at the screens, the text of the screens.

>> EVELYN AQUILA: I have to. I haven't seen the screen or how it does it, but I even think there's a question of the simplest language, sometimes, confusing people. And I think we need to pay attention to that. I'm not trying to add another dimension to fixing this problem, but try it.

Ask a few people that you know who just go out and vote and really don't think about it the other 363 days a year, and see what answers they give you. I was shocked.

>> GREGORY PETERSON: I agree with you.

I wouldn't be that shocked.

Would an overvote on a council -- race or town board race, would that invalidate the entire ballot?

If they hit override, they would lose their vote on that particular race.

I agree that there's no way that someone is going to understand that by pressing an override button.

>>EVELYN AQUILA: Someone said, you know, they give you a list sometimes for judges: vote for four and they give you a list for eight.

Some people just go down the list, and then you've got an overvote.

>> GREGORY PETERSON: With the lever machines at least the thing locked on you and you said "What's wrong?" and the inspector says, "Why are you taking so long?"

"The machine jammed."

"No it didn't. You tried to vote five times when it only wanted four votes." You're going to get a lot more of that with the paper ballot here. I don't know, however, whether we have the time for the elections of 2010 to get this done.

## February 18, 2010 NYSBOE Board Meeting

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That's the problem. I agree with what they're saying, I agree that the appropriate thing is to make those changes.

But to get it done, certified, etc.; we're under a tremendous time constraints here. I don't know how we'll get it done.

>> DOUGLAS KELLNER: Well I suggest that they continue to look at it.

>> BOB BREHM: Our communication with the group was one, and we explained our technical staff, Bob and his team, are all up at the acceptance testing center. We told them we had a preliminary call to listen to their concern and to hear firsthand what their questions were, other than what was in the letter, and that we would use the two weekend period of time to find out what we could about what the systems did and what it would take perhaps to change them, not saying we all agreed to change anything, but if we had to change something, how long would it take, what would the process be, and that we would get back to them next Thursday.

One of the other issues that we talked about is the reality is going through these new machines, there may be other changes that come along, that we document that we need to do, so one, the procedure for changes, we need to make sure we're ready for, and we're looking for information on our voter education page.

I know John mentioned what we're trying to do for voter education this year for the state, to go to the website and to learn how to use the equipment. We thought we could put more information however the machine will be for the election, whether it is changed in time or not, to put more information on that education website as to what the voter experience will be if they see such a message on a machine, to make sure we get as much information out to the voters as possible so that they at least understand what happens.

And I think also comes to mind a little bit because the Chautauqua County case just made it to the

## February 18, 2010 NYSBOE Board Meeting

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Court of Appeals last week, and a number of us watched, either on the webcast or Paul and I had gone over in person and the court was somewhat concerned about a number of things but they were the two ballots that the scanner was unable to scan for whatever reason.

They never really got into the issues in court, why the scanner couldn't read them, but when the scanner couldn't read them, what should happen. The lower court upheld our regulation that said if the ballot was otherwise unreadable or machine processable, that they are counted by hand to the extent they can be and they are added to the totals. The lower court upheld that.

And a lot of the issues came up to, was when the ballot went into the machine, what training is there for the voter to know, wait 8 seconds because it may kick right back at you. Or what are they supposed to do once they put it in.

We trained the poll worker what to expect, but by the time the poll worker turned around and saw one of the pieces of paper in there, one of the voters had already left. So the training and education, having sat through that session in the court and now hearing the same issue raised by many of the advocates, we have to update the voter education information anyway and we are going to spend some money to drive voters to that site to learn how to use it; we want to make sure it includes some of these examples, so at least the voter knows ask for assistance, wait for something to happen, so you know the machine accepted your ballot, or if it kicks it back out or if it gives you a warning, what is the proper information to get to that?

>> GREGORY PETERSON: Is there any kind of simplistic explanation that we could put forth in each of the collection districts?

>> KIM GALVIN: In the privacy booths, posted in the privacy booths?

>> GREGORY PETERSON: Posted in the booth: overvote means, whatever we feel is the most important faux pas that they may make.

## February 18, 2010 NYSBOE Board Meeting

---

If it happens to be an overvote, overvote means you have voted more than once, more than you can.

I can't even explain it now. (laughter)

Put it out as succinctly as possible.

>> EVELYN AQUILA: In the most simple language.

>> GREGORY PETERSON: This will not count, press red button not green button so at least they will know. Something along those lines, which would be a relatively inexpensive cure, band-aid approach.

>> EVELYN AQUILA: Like we say if we educate the inspector, the inspector is talking to five people maybe because they are going to be very busy.

>> GREGORY PETERSON: Yes they are.

>> EVELYN AQUILA: And some people say, "The heck with it; I'll go home." So I think we want to make the voter comfortable, that's very important.

And simple minded.

>> BOB BREHM: A lot of the counties are spending their education money printing up brochures, so if there were some uniform language that we came up with, we could provide it to the counties as, "here's the language we think is clear, please include it in any mailing."

Especially if we're helping pay for the mailing, maybe we could suggest more strongly that they include it or they could at least put it in the website. Any of that standard language, that helps.

We're all learning with the new equipment.

>> PAUL COLLINS: Commissioner Peterson, you're not alone in your question because that's what the Court of Appeals was very, very interested in. What were the instructions in the, they kept using the term "polling place."

## February 18, 2010 NYSBOE Board Meeting

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I'm not quite sure they comprehended the difference between the privacy booth and the scanning area but they wanted to know what were the instructions that were posted, where were they posted.

>> GREGORY PETERSON: I'll bet they couldn't come up with language like I just did either.

(laughter)

>> KIM GALVIN: I'll bet you the traditional races are where it happens most often.

>> That's true.

>> KIM GALVIN: That's why they are paying so much attention to it. (laughter)

>> EVELYN AQUILA: I think that the brochure is a very good idea but I think it also may be very daunting to some people.

They see a brochure and think, I have to read twelve pages to go vote. It has to be these simple things: Do A, B, C, D and you can vote.

It can't be now read this and that, because it will discourage people from voting and it will give them more things to make mistakes with.

>> JAMES WALSH: I think it is obvious that we are in unanimous agreement here and that it is a very legitimate request and some more discussions will have to take place with some various entities, but please keep us informed and help us to come to a solution if we can.

>> ANNA SVIZZERO: We'll do that. I just wanted to point out that if you did overvote, if your over vote was for the same person more than once, that vote will count one time. For example...

>> DOUGLAS KELLNER: It's not technically an overvote.

>> ANNA SVIZZERO: On these scanners now, that vote will actually count, so that won't be voided, but if you voted for five people instead of four in a four race then that's clearly an overvote and that's where the voter becomes disenfranchised in that race only as you put it

## February 18, 2010 NYSBOE Board Meeting

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down.

>> EVELYN AQUILA: In other words, --, what you're saying is if I vote for Joe Blow on the Democratic line and on the Peoples -- line and on the Conservative line, that vote would only count once. But if you voted where it says "Vote for three" but you voted for four, you have an overvote. I understood that but I just wanted to be clear.

>> JAMES WALSH: Which party would be recorded as the vote?

>> ANNA SVIZZERO: The first appearance of the candidate's name.

>> JAMES WALSH: And when there are four on one side, four on the other, how is that numerically laid out? Is it vertical?

>> ANNA SVIZZERO: We're still staying consistent with the ballot layout in that column order, so your name would always appear in the same column, only on multiple lines. So if you were on a Republican line, Conservative line, Working Families line, the Republican vote would count, whatever the first appearance of that candidate's name is.

>> BOB BREHM: So if you were there on three lines, Republican, Conservative, Working Family. If they voted you Conservative, Working Family, it would be the first appearing, so Conservative, it starts at the top. So it wouldn't move it up to Republican if they didn't vote for that person. It's where they first voted for that candidate, the highest appearing, where they are first appearing.

>> EVELYN AQUILA: In New York City sometimes they are across the ballot. You know what I mean?

>> It's the same idea.

>> EVELYN AQUILA: The same idea, whoever they hit first counts.

>> JAMES WALSH: Executive session, do we have a motion?



## February 18, 2010 NYSBOE Board Meeting

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>> DOUGLAS KELLNER: Before we do that, could we set the date for the next meeting. And I don't think there is anything for us to vote on after Executive Session.

>> EVELYN AQUILA: The week of March 13th I'll be away.

>> DOUGLAS KELLNER: Well I was suggesting maybe the 22nd or the 23rd. The 22nd is a Monday, the 23rd is a Tuesday.

>> Tuesday is a little easier.

>> Tuesday, March 23rd.

>> DOUGLAS KELLNER: Ok, as I said, I don't think there is anything we need to vote on in Executive Session, so we can terminate the camera. We won't be coming back. My motion is that we go into Executive Session to discuss pending litigation and the investigations and campaign financing.

>> Second.

>> All in favor.

>> Ay.

>> Opposed. Apparently we have Executive Session.

**Executive Session**

**End**