

**Minutes of the New York State Board of Elections  
April 27, 2020**

The meeting of the Commissioners of the New York State Board of Elections held remotely by WebEx and was called to order at approximately 12:10 p.m. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Douglas Kellner and Andrew Spano. Staff members present were Robert Brehm, Todd Valentine, Brian Quail, Kim Galvin, Tom Connolly, Brendan Lovullo, John Conklin, Cheryl Couser, and Bill Cross.

**I. Minutes from February 28, 2020** – Minutes not approved, will be reviewed at next Board meeting.

**IV. New Business**

**a. Ballot Access Rulings (Taken out of order)**

The Board first considered ballot access rulings. Staff prepared over 140 determination recommendations in its staff report. Commissioner Kellner expressed concern with the Prima facie report in relation to the LaLota determination. The determination relates to an objection to the designating petition of Senate candidate Nicholas LaLota, who is the Suffolk County Elections Commissioner. The report recommended that the determination be deferred as there is a pending court action related to the designating petition. Election law 3-200, subdivision 6 provides that an election commissioner shall not be a candidate for public office unless they cease being commissioner by resignation or otherwise prior to the nomination or designation. Commissioner Kellner stated that while Commissioner LaLota submitted a leave of absence, he did not follow procedures to take a leave of absence and that it is not clear that there was a proper leave of absence. Further, Commissioner Kellner stated that Commissioner LaLota is still listed as the Suffolk County Commissioner on our own website, and that in his reported leave of absence, he reserves the right to resume his status as commissioner at any time. Kellner stated that fact puts him in effective control of the Deputy Commissioner, which is contrary to the statutory intent. For these reasons, Commissioner Kellner made a motion to amend the staff report to find that the objections to the LaLota petitions are proper and that the candidacy is invalid. Commissioner Kosinski stated that this is a matter of first impression; that the matter is properly in litigation; and that the Court is in a better position to make this legal determination, rather than the Board. The motion failed due to a lack of majority (Commissioners Kellner and Spano voting in the affirmative; Commissioner Kosinski voting in opposition; 2 Yes and 1 No). Commissioner Kellner then made a motion to adopt the report as prepared by staff. The motion was approved unanimously (Commissioners Kellner, Kosinski, and Spano voting in the affirmative; 3 Yes and 0 No).

**II. Unit Updates:**

**Executive** – Todd Valentine and Robert Brehm reported on several issues including:

- Prima Facie report and ballot access Determinations

- Executive Orders and unresolved issues including pertaining to village elections, designating and independent nominating petitions and absentee ballots.
- Absentee ballot voting and mail and costs and logistics.

**Legal** – Kim Galvin reported on activities related to the Counsel/Compliance unit including:

- 27 petition litigation matters.
- Received new litigation challenging new thresholds to become a Party.
- Status of Public Financing Commission.

**Election Operations** – Tom Connolly reported that the Election Operations unit is working on several ongoing issues including:

- Reported on petition filings received and new intake process during Pandemic to minimize exposure to NYSBOE Staff.
- Vendor status updates on ES&S, Dominion, and Clear Ballot.
- For electronic pollbook systems, vendors KNOWiNK, Tenex and Robis submitted modifications for the Board’s review.

**PIO/NVRA** – John Conklin reported that the PIO/NVRA unit is working on several issues:

- Answered a magnitude of calls regarding absentee ballots and all recent changes in elections.
- Continuously posting updates to calendar along with all petition, objection, acceptance reports and the like.
- The kickoff of the 2020 CARES Act Grant and Cybersecurity Remediation Grant.

**ITU** – Bill Cross reported on projects IT is working on:

- Provided BOE staff with remote access capability.
- Worked with all units to help develop the 2020 Cybersecurity plan.
- A series of tabletop exercises For Counties planned for July timeframe, as well as a project to upgrade county-based connections to the State.

**Enforcement** – Risa Sugarman did not attend the board meeting and did not present a unit report.

### **III. Old Business:**

Discussion on SAM Party name. Commissioner Kosinski raised the issue of the name of the SAM Party. In litigation, the SAM party indicated that “SAM” stands for “Serve America Movement.” Commissioner Kosinski stated that section 2-124 of the Election Law prohibits any variation of the word “American” in a party’s name. Comm. Kellner stated that, while legal papers may state the name is the “Serve America Movement,” “SAM” is what appears on the ballot and how the party is known in New York, which does not violate 2-124. Comm Kosinski stated that while it used SAM in its party rules, it became clear through litigation that SAM means “Serve America Movement.” Commissioner Kosinski asked that, given it is apparent the

party's name is the "Serve America Movement" Party, could the commissioners agree the party would be prohibited from using that term in its literature, campaigning, ballot purposes, etc., and must only use "SAM" to comply with the statute. Comm. Spano said he agrees that the SAM Party should not use the "Serve America Movement" name. Comm. Kosinski asked if the SAM Party was found to be using the term "Serve America Movement," could the commissioners require it to cease and desist from using the term. Comm. Spano stated he did not know what the legalities are, and that would have to be worked out. Comm. Kellner agreed that the party cannot use "Serve America Movement" as the party name but is uncomfortable with proscribing future political speech in literature or public relations documents. Comm Kosinski asked if that meant that the statute only applied to communications with the SBOE and not communications with the voter. Comm. Kellner stated if the party used "Serve America Movement" in its rules, he would agree it could not do that, nor could it use the word "America" on the ballot. Commissioner Kellner noted that many politicians use the word "America" in their literature, and he does not want to start picking and choosing which slogans may be used in literature. Comm. Spano stated that he believes using America in a tag line was different than claiming you are the "Save America Movement". Counsel Brian Quail stated that the statute did not prohibit "America" but "American, "and any abbreviation thereof." While there was not much case law the use of the word, "American" suggests a designation on behalf of the country, but use of "America", a direct object, may not violate the statute based on the limited case law. He also stated that the statute prohibited the use of "New York State" in its name but almost all official parties refer to themselves and the New York State Democratic Party or the New York State Republican Party and that should be kept in mind. Comm Kosinski conceded there may be some disagreement, but once the court papers were filed and stated their name as "Serve America Movement", that fit within our statute and it should be enforced fairly and uniformly across the board. If the party continues to use "Serve America Movement" he wants to revisit the issue and determine if that is an appropriate use of the name for a party in New York.

#### **IV. New Business:**

##### **b. Regulations**

i. · VOTE on Resolution 20-06 to approve final adoption of Part 6200.20 related to filing of post June primary campaign statements. The motion was approved unanimously (Commissioners Kellner, Kosinski, and Spano voting in the affirmative; 3 Yes and 0 No).

c. · VOTE on Resolution 20-07 to approve updated version of electronic poll books. The motion was approved unanimously (Commissioners Kellner, Kosinski and Spano voting in the affirmative; 3 Yes and 0 No).

d. · VOTE on Resolution 20-08 to determine that the New York City Campaign Finance Board meets the prerequisites outlined in Election Law §14-105 (1). The motion was approved unanimously (Commissioners Kellner, Kosinski and Spano voting in the affirmative; 3 Yes and 0 No).

· Next board meeting is scheduled for May 27, 2019.

· Motion to adjourn the meeting. The motion was approved unanimously (Commissioners Kellner, Kosinski, and Spano voting in the affirmative; 3 Yes and 0 No).

The meeting was adjourned at 2:00 p.m.



20-06

**APPROVED RESOLUTION 04/27/2020**

**Resolution to Amend 9 NYCRR Subtitle V Part 6200.2 Related to Filing of Post June Primary Campaign Statements, Pursuant to State Administrative Procedures Act (SAPA) § 202**

**WHEREAS**, on January 24, 2019, the Governor signed into law Chapter 5 of the Laws of 2019, which moved the September primary election to June; and

**WHEREAS**, Election Law § 14-108 provides for the filing of disclosure statements for each election and 9 NYCRR § 6200.2 presently provides for a ten day post-primary report as well as a July 15 periodic disclosure report, resulting in the post June primary report and the July 15 periodic report to be due within two weeks of one another; and

**WHEREAS**, amending Part 6200.2 to permit the July periodic report to serve as the post June primary report does not appear to reduce meaningful disclosure but would reduce the filing burden on treasurers; and

**WHEREAS**, by the unanimous vote of the Commissioners present at a meeting held in Albany, New York, on February 28, 2020, the New York State Board of Elections, pursuant to the authority of Election Law §§ 3-102(1), (17) and 14-108(1) resolved that an amendment of Subtitle V Part 6200.2 of the Official Compilation of Codes, Rules and Regulations of the State of New York be the subject of Proposed Rule Making; and

**WHEREAS**, said proposed rule making of Part 6200.2, with accompanying submissions as required by law, were duly filed with the Department of State and thereafter duly published in the New York State Register on January 15, 2020 (ID Number SBE-02-20-00002-P), and

**WHEREAS**, no public comments have been received related to the proposed rule making during the time provided by law for comment;

**NOW THEREFORE BE IT RESOLVED** that the amendments to Part 6200.2, attached hereto, are hereby adopted and the Office of Counsel is authorized to file a Notice of Adoption indicating that such Part shall be effective upon publication in the New York State Register, and that further authority is granted to the Office of Counsel to file such other documents as may be required for the publication of such Notice of Adoption in

the New York State Register and to effectuate the amendment of Part 6200.2 to Title 9 of the NYCRR.

**Approved April 27, 2020**  
**VOTE 3 YES – 0 NO**



## **APPROVED RESOLUTION 20-07**

### **Approval of Electronic Poll Book Systems**

**WHEREAS**, Part XX of Chapter 55 of the New York Laws of 2019 authorizes the use of Electronic Poll Book Systems (EPBS) in New York State during elections; and

**WHEREAS**, said chapter law provides that the State Board of Elections "shall promulgate minimum security standards" for EPBSs being used in New York State; and

**WHEREAS**, said chapter law provides that the State Board shall "promulgate a list of devices that are approved for use" as EPBSs during elections; and

**WHEREAS**, multiple vendors have submitted system modifications to be considered for approval as EPBS configurations for use in New York State; and

**WHEREAS**, the Election Operations Unit is tasked with evaluating the systems to ensure they meet security standards and other relevant standards; and

**WHEREAS**, the Election Operations Unit has conducted an evaluation of said systems, and has provided summary reports for the consideration of the Board; and

**WHEREAS**, vulnerability scanning was performed on the systems submitted, to the extent practicable, by the New York State Technology Enterprise Corporation (NYSTEC), and reports of their findings have been provided for the consideration of the Board; and

**WHEREAS**, having considered the reports and the results of evaluation conducted by the Election Operations Unit, we do hereby recommend the approval of system configurations submitted by the following vendors for use;

- KNOWiNK

- Robis Elections, Inc.
- Tenex Software Solutions, Inc.

**NOW THEREFORE BE IT RESOLVED** that the Commissioners of the New York State Board of Elections, at their meeting convened on April 27, 2020, do hereby approve the EPBS configurations submitted by the vendors above. Such approval is based on the specific EPBS hardware and software submitted by each vendor and reviewed by the State Board of Elections. Should the vendor make, or plan to make, any modifications or alterations to the EPBS configuration approved, such modifications or alterations shall be reviewed by the State Board of Elections for approval, consistent with all change management procedures and the use of such systems shall comply with all related State Board procedures and requirements.

**Approved April 27, 2020**  
**VOTE 3 YES – 0 No**



20-08

## APPROVED RESOLUTION 04/27/2020

### **Resolution Related to Determination that the New York City Campaign Finance Board Meets the Prerequisites Outlined in Election Law § 14-105(1)**

**WHEREAS**, on November 8, 2019, the Governor signed into law Chapter 465 of the Laws of 2019, enacting Election Law § 14-105; and

**WHEREAS**, said law provides that campaign finance statements filed with a campaign finance board shall be deemed to satisfy the filing requirements of Article 14 of the Election Law if the State Board of Elections determines that: “(i) the filing format, standards and review and audit of filings of such campaign finance board meet or exceed the requirements imposed by this article; and (ii) the campaign finance filing data of such local campaign finance board is publicly available in a manner at least substantially equivalent to the board of elections publication of campaign finance filings; and (iii) such local campaign finance board will provide the chief enforcement counsel of the state board of elections notice of filing delinquencies and non-filings.”

**WHEREAS**, said law also provides that, upon such determination, the State Board of Elections shall provide a link on its website to the public disclosure and search functions of the website of such local campaign finance board.

**WHEREAS**, by letter date April 20, 2020, the Executive Director of the New York City Campaign Finance Board (“CFB”) and has documented that “the CFB Rules (“Board Rules”; Exhibit 1), forms, procedures, and standards combined with anticipated additions and modifications to the Board Rules meet or exceed the requirements of Election Law § 14-100 et. Seq;” and

**WHEREAS**, the Compliance Unit of the State Board of Elections has conferred with the CFB, and reviewed its process in relation to campaign finance statement filings, and recommends the State Board of Elections determine that the CFB complies with the prerequisites outlined in Election Law § 14-105(1); and

**WHEREAS**, such a determination would eliminate the need of candidates or political committees authorized by a candidate who file campaign finance statements with the CFB to file campaign finance statements with the State Board of Elections.



**NOW THEREFORE BE IT RESOLVED:** that, pursuant to the recommendations of the Compliance Unit, the Commissioners of the State Board of Elections hereby determines that the New York City Campaign Finance Board meets the prerequisites outlined in Election Law § 14-105(1); and

**BE IT FURTHER RESOLVED:** that the Compliance Unit is authorized to work with the New York City Campaign Finance Board in effectuating a process where candidates or authorized political committees of a candidate who file campaign finance statements with the New York City Campaign Finance Board are terminated from the State Board of Elections system, and no longer be required to file campaign finance statements with the State Board of Elections; and

**BE IT FURTHER RESOLVED:** that, pursuant to Election Law § 14-105(2), the Public Information Office is authorized to post a link to the public disclosure and search functions of the website of the New York City Campaign Finance Board on the State Board of Elections website.

**Approved April 27, 2020**  
**VOTE 3 YES – 0 NO**