

Approved

**Minutes of The New York State Board of Elections
September 6, 2006**

The regular meeting of the State Board of Elections was called to order at 12:20 p.m. at the New York State Board of Elections, 40 Steuben Street, Albany, New York. Commissioner Kellner who chaired the meeting. Commissioners present were Neil Kelleher, Evelyn Aquila, Helena Donohue, and staff present were: Peter Kosinski, Stanley Zalen, Todd Valentine, Michael Johnson, Lee Daghlian, Bob Brehm, Anna Svizzero, George Stanton, Allison Carr, Pat Murray, Bill McCann and Deirdre Hammer. Guest list is attached.

Minutes of August 15, 2006 -tabled

Unit Updates:

- **Legal Unit:** - Todd Valentine reported on the Second Circuit's decision in the *Lopez v. Torres* case concerning the election of justices to the State Supreme Court. The Second Circuit affirmed the District Court's ruling that the current procedure for nomination by judicial nominating convention is unconstitutional. The parties have 90 days to file a petition for certiorari to the United States Supreme Court.

Next, Todd produced the updated time line for the voting machine systems, re: the certification, purchase and delivery of the machines. He stated that the time line is reworked frequently as they meet on this subject every Friday. The latest changes which are in blue type are attached. Some changes regarding contractual issues were made at the request of OGS.

- **Election Operations:** Anna Svizzero reported that changes were made to the Avante Plan B machine has to be re-authorized as changes were made for the New York City machines that require authorization. It was so moved and voted by the Commissioners to do so by a 4-0 vote. Memorandum is attached.

Next, Anna produced a budget memo for approval by the Commissioners for the cost of testing. The Commissioners approved this with a 4-0 vote.

Anna discussed a memorandum regarding testing site options for the Commissioners to review, this report is attached. The Commissioners moved to approve with a 4-0 vote.

The testing sites for usability tests to be conducted by AIR were reviewed. We are trying to find three test sites for that purpose, to possibly include Rochester, Schenectady and New York City.

Next Anna produced a report which was an inventory of products and hardware received by the Board for the purpose of certification from vendors. There was some discussion on confidentiality issues of some of these documents. The list is attached. Anna proposed that if some vendors have not provided the required information by September 20, 2006, their certification will go to the bottom of the list until the information is provided.

Commissioners Aquila stated that there should be no exceptions to this rule. Commissioner Kellner agreed and stated that some source codes are third party and we can't comply which could impact the whole issue on making certain information public. Stan Zalen interjected that CYBER states this shouldn't be a real issue and wouldn't delay the process since they have had to do this for other states and federal certifications. CYBER said that all source codes need to be tested whether they are third party or off the shelf. Commissioner Kellner agreed. After further discussion, Commissioner Kellner stated that if this issue delays the time line, then so be it. Anna asked for direction as to what action to take for companies who submitted non full face ballot machines. Should they be taken out of the rotation or get a report from CYBER? The Commissioners feel that we should reject the machine if it's not full faced.

The master test plan has been posted on our web site.

- **NVRA/PIO:** Lee Daghlian reported that the state fair booth was a great success this year and again thanked the volunteers from this Board who spent the time to man the booth. He also expressed thanks again for the county boards, particularly Onondaga County who spent many volunteers to the booth. We will get an official county from Onondaga county the number of registrations and change of address that we processed at the state fair. Lee estimates that figure to be about 2500 which would be a record for our operation at the state fair since we began having the booth six years ago.

County funds group: the two new accounting employees for this operation will be starting tomorrow. Marie Stamoulis and Kate Orsino will immediately begin the task of completing the review of the Plans sent to us from the counties and then once contracts are finalized, they will be responsible for processing contracts and vouchers with the counties. We are working with OGS on finalizing the standard contract forms for the three different grants that the counties will be applying for.

- **Campaign Finance:** Michael Johnson reported that they are interviewing people for a few campaign finance slots and that will continue for a while. Also, county board information as to which local filers should be filing. Some information has come in but some counties are not responding and he'll have to stay on top of this. He also stated that they have met with ITU to discuss on-line filing. They hope by next year to have a web based filing procedure. Commissioner Kellner agreed that we have to continue this effort and to get an implementation plan to find out what the cost would be.
- Bill McCann stated that he will continue the effort with the counties and the IT unit. Commissioner Aquila asked Michael about the hiring of a second investigator, which has been on the table for quite some time. Michael replied that they are trying to fill that slot sometime in the near future.
- **ITU:** George Stanton reported that the BPN connection and the hardware for NYSVOTER II has been purchased. Contracts from the counties are being gathered. The installation schedule will be done by area and should be finished by the end of November. George also stated that the SABER contract should be finished soon. We are waiting for the Comptroller to finish his work. IBM is asking for a debriefing as they want to know why they didn't get the contract. George said he would take care of that when he had

more time. Gartner is contracting to do the oversight of SABER's work. We have to sign off from OGS and from the Comptroller soon. The contract is not to exceed \$508,325 and he needs Board approval.

The Board approved the Gartner proposal for quality assurance and project oversight for NYSVOTER II implementation with a 4-0 vote.

George also stated that the duplicate voter processing continues. They keep getting updates from the counties. This is the third time through and there are approximately 30,000 duplicates left. Commissioner Kellner asked if we have heard anything from the counties about the cost of connectivity. George said that we haven't because we are paying for it. We have only seen one bill so far, so we'll wait and see.

- **Old Business** : The Board needs to certify that the regulations submitted for adoption are an exact copy of the regulations adopted by the Agency. Pat submitted a document to be signed by the Co-chairs for that purpose. It was approved and signed by the Commissioners with a 4-0 vote.
- **New Business** : Regarding Independent Nominating petitions; attached are two reports that include the prima facie review and the objection hearing determinations. There were only one hearing held per Mr. Valentine. The recommendations on these two forms need to be approved by the Commissioners. The Commissioners accepted all recommendations by the staff with a 4-0 vote. These documents are attached.

Also, a letter from NYPIRG, Asian American Legal Defense Fund, Common Cause, DEMOS, League of Women Voters, Independent Living Council and the New Yorkers for Verified Voters concerning the limited access to the Plan B machines for the primary. There was some discussion about the use of the machines, and consensus that use is a voter option and not a county board option. We should send an e-mail to the county boards that any voter who shows up at the polling site be allowed to use these machines, if they so choose. We should attach guidelines for such use when we send the e-mail. All agreed. Commissioner Kellner reiterated a request to make it formal that county boards advise inspectors to record those who vote with assistance., We need those numbers to help set the number of voters per machine for usability purposes. The state statute requires that information to be on the challenge report that comes out of each polling site. All agreed.

The next meeting of the Board will be September 27th, 2006 at Noon.

Commissioner Kellner adjourned the General Session at 1:25 pm and immediately commenced the Executive Session to discuss cases and personnel matters.

The Executive Session and the General meeting adjourned at 1:30 p.m.

Preliminary Determination

CMP05-13 - closed/send letter

CMP05-17 - closed

Complaint Without Preliminary Determination

CMP04-73 - closed

CMP05-1 - closed

Final Determination

CMP04-29-SC06-01 - tabled

The Board adjourned the Executive Session and the General Session at 2:20pm.