

**Approved**  
**January 4, 2007**

**Minutes of The New York State Board of Elections**  
**November 29, 2006**

The regular meeting of the State Board of Elections was called to order at 12:30 p.m. at the New York State Board of Elections, 40 Steuben Street, Albany, New York. Commissioner Kellner chaired the meeting. Commissioners present were Neil Kelleher, Evelyn Aquila and Helena Donohue. Staff present were: Peter Kosinski, Stanley Zalen, Todd Valentine, Michael Johnson, Lee Daghlian, Bob Brehm, Anna Svizzero, Allison Carr, Michael Johnson, Bill McCann and Deirdre Hammer. Guest list is attached.

**Minutes of November 1, 2006** - accepted

**Unit Updates:**

**Legal Unit:** - Todd Valentine reported that the State Board has joined in filing a petition for a writ of certiorari to the United States Supreme Court in the Lopez-Torres case. The Second Circuit Court of Appeals had ruled that New York judicial nominating conventions were unconstitutional. It was moved by Commissioner Kellner to join the suit. The Commissioners voted 4-0 to confirm that action and to authorize Theodore Olsen to represent the State Board in the US Supreme Court on a pro bono basis. Commissioner Kellner expressed his concerns about orders to show cause signed by State Supreme Court Justices that altered canvassing procedures without consent of the Commissioners. Commissioner Kellner proposed that we agree in advance of the election on how to respond to these court cases in order to avoid orders that dictate policy, and interfere with the canvass process. He reminded the Commissioners about the NYC Board's successful challenge to such actions in *People for Ferrer v. NYC Board of Elections* in the Second Department in 2001. There was some discussion and the feeling was that we should discuss this issue at the conference for the Election Commissioners Association in January.

**Election Operations:** Anna Svizzero reported that (1) the official results are coming in from the counties. We don't have all of them yet, but we are unaware of any problems. (2) the AIR third round of testing was held at the Albany Law School. Everyone felt that it went well and AIR should deliver its report by December 6<sup>th</sup>. If we wish, they will come here for the next board meeting to discuss it. At this time it was discussed and decided that the certification will be in Albany on December 14<sup>th</sup>.

**NVRA/PIO:** Lee Daghlian reported that the business of the PIO on Election Day and leading up to it was normal. Very few problems arose and dissemination of information was at a relatively low level compared to prior years. Also, DMV complaints were minor. Mr. Daghlian requested approval for the State Fair booth for 2007. The Commissioners voted 4-0 to approve.

**Campaign Finance:** Michael Johnson reported that his unit is working on some problems with e-mails for the reports and also some of the pin numbers for filers have been creating some problems. They are fixing both of those and continue to work on the case backlog.

**ITU:** George Stanton reported that

(1) the network contractors are out to the counties working to put that network together. They should be finished by the 31<sup>st</sup> of December. Commissioner Kellner asked if anyone knew how much of \$20 million HAVA appropriation had already been sent. No one knows. He asked if there was a budget for us of the HAVA funds.

(2) The gap analysis is being conducted and the standards committee will meet next week to discuss that.

(3) The hardware and software - they had a reviewing purchasing requirements to keep the job going. There was a discussion and a report attached about the budget proposals for the cost of the hardware and software. There was a long discussion that these budget proposals and the reasons for the increases should be thoroughly vetted with not only the committees involved but with the Senior staff. There was further discussion on the need to have such an expensive redundancy. George made the point that it needs to be a good secure reliable redundancy system or if the original system goes down then you have nothing.

There was further discussion about this. Commissioner Kellner asked many questions, some to do with which appropriation pays for this additional cost. Peter Kosinski said that this would be out of the 20 million that's been appropriated and possible a re-appropriation for that or if additional funds are needed we would ask for it. George stressed the fact that many of these costs were just estimates and that if they get into further discussion of the actual requirements that the costs could be different and lower. Commissioner Kellner requested that we need alternatives to the back-up plan, not just one plan. He asked that an alternative be reviewed and considered before committing such a large expenditure of funds. Commissioner Kellner stated that he would approve the 4 million requested for the primary system but proposed to put off for two weeks any approval of the back up; he asked for Stanley Zalen and Peter Kosinski to review the budget situation and to actually prepare a HAVA budget and let the Commissioners see it. Commissioner Kelleher asked if this would delay the project and George said it would not. This question was moved by Commissioner Kellner, there was a vote of 3-1 with Commissioner Kelleher voting no. The request was passed.

(4) There was also a discussion on the data center. George Stanton stated that if it is going to be in this building, improvements will have to be made - increased aid conditioning and power. The landlord needs to do the work, probably about \$200,000.00 to do the work. That is an estimate. If OFT hosts it, it will cost about \$200,000.00 a year. George will need direction from the Board, in other words, do we upgrade or do we go outside.

**Old Business** : None

**New Business** : (1) Lee Daghlian requested approval of the RFP for the Web-based training program for poll workers that had been distributed to the Commissioners; also requested approval for the three contracts for the grants to counties to be signed by the county boards so that they can be reimbursed. All items were approved by the Board 4-0.

(2) There was an update on the voting machine certification program with NYSTEC and CIBER (both present) and one of the testing labs in Alabama (by phone). Anna reported that the process has been speeded up by doing conference calls rather than meetings and by doing memos or e-mails. Bob Gronczniak from NYSTEC distributed a new time-line and an analysis. There was a discussion that followed. They had some discussion on the remediation process by Kelly Rohacek on the phone and the third remediation and Ed Bassett from Ciber also discussed testing codes and that would start in early December and Bob Gronczniak of NYSTEC stated that this is

the first time this level of testing has been done in the US and that is why there is some frequent changes in the time line to discuss what exactly has to be done. Commissioner Kellner suggested that we need to do a freeze date from any modifications from the vendors. Anna stated that the software from the vendors changes are limited to remediation, not any new things that we need to do this cut-off date or freeze. Commissioner Kellner asked Anna and Allison to circulate a draft of this proposal of the cut-off or freeze date as soon as possible for review and it was approved 4 0 by the Commissioners.

(3) Configuration of the ballot for Sequoia Op-Scan. Apparently Sequoia's portrait lay out does not conform to the New York State Law and Ciber wants to stop testing. The State Law in question is Election Law Section 7-104. Accordingly to Allison, this is a legal issue and she recommended that the Commissioners refer the issue to Todd and Pat for an opinion, and they should circulate when ready. We need to let the vendor know as soon as possible. We heard from the vendor and they want to conclude testing to get US certification. Sequoia feels we waved that requirement of 7-104 by the October 11<sup>th</sup> letter to the vendors. We don't agree. The vote was 4-0 by the Board for Todd and Pat to review the matter and to draft a letter for circulation.

(4) Commissioner Kellner started a discussion regarding the requirement of the NY Election Law Section 7-208 that requires that all software and source code be submitted in escrow. He explained that the statutory escrow requirement is separate from the source code testing procedures set forth in the 2005 Voluntary Voting System Guidelines adopted by the US Election Assistance Commission. Ciber needs to report what source code affects the voting machine and this step must be added to the time line. Commissioner Kellner also complained that Ciber's report describing which source code is required by the VVSG for testing was labeled "proprietary". He has asked Ciber if we can release the report to the public. Can we reconsider the date for delivery of machines required in 6209.9 of our regulations. We do not want to violate our own rules. Commissioner Kellner suggested that we either amend the regs or go by our old regs. We would need to check with the Justice Dept as well, Commissioner Kellner suggested another alternative is to stick to the guidelines, any change we could do on an emergency basis. On this issue of delivery time, Peter Kosinski feels this is a county issue and we should poll the county boards about this. Commissioners agreed. Anna will see how this works with OGS and meet with county boards in December and bring up the issue of delivery deadlines.

(5) NYSTEC needs to extend their contract in order to finish their work. The Commissioner's approved the extension 4-0.

(6) Commissioner Kellner reported on the Spitzer transition. The Board of Elections is being reviewed by the Committee on Government Reform. Peter Fishbein is the committee member assigned to report on the State Board. They are meeting with Stanley next week and would like to meet with the Republican side in Albany the following week.

The next meeting of the Commissioners was scheduled for December 14 , 2006 in Albany. The meeting was adjourned to Executive Session at 2:30 pm to review court cases.

### **Preliminary Determination**

CMP05-31 - Closed  
CMP05-58 - Closed  
CMP 05-61 - Tabled  
CMP 05-65 - Closed  
CMP 05-72 - Closed

**Complaint Without Preliminary Determination**

CMP05-60 -Closed

CMP06-78 - Closed

**The Board adjourned the Executive Session and the General Session at 2:45pm.**