

**Minutes of the New York State Board of Elections  
March 19, 2019**

The meeting of the Commissioners of the New York State Board of Elections held at the offices of the New York State Board of Elections, 40 North Pearl Street, Albany, New York in the 5<sup>th</sup> Floor Conference Room was called to order at 12:25 p.m. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Douglas Kellner, Gregory Peterson and Andy Spano by WebEx. Staff members present were Robert Brehm, Todd Valentine, Brian Quail, Kim Galvin, Nick Cartagena, Bill McCann, Tom Connolly, Brendan Lovullo, John Conklin, Cheryl Couser and Bill Cross. Guests in attendance were: Susan Cohen – Accessibility Advocate, Lisa Tarricone - Westchester ILC, Jeff Buley – Brown & Weinraub, John Poulos – Dominion Voting and Gio Constantiello – Dominion Voting.

**Minutes of February 27, 2019** – Minutes were approved as written. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**

**Unit Updates:**

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

- Discussed budget issues.
- Conference call with the counties to discuss voter transfer regulations.
- Working on regulations for early voting.

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

- Updated training materials regarding the LLC changes.
- Filed the regulations on cross county registration and 16-year-old pre-registration.
- Begun outreach to filers for the new CAPAS/FIDAS requirements.

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

- Running different scenarios on voting machines to understand their limits for early voting.
- Working on requirements for electronic poll books.
- Becoming familiar with ballot on demand printers.

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

- Processed 116 FOIL requests.
- Attended meetings the monthly ECA and Cybersecurity.
- Continue working on accessibility issues on the website.

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

- Held a demo on the new FIDAS for the working group.
- Secure Election Staff working with county boards.
- Working with staff on implementation of new legislation.

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

## **Old Business:**

## **New Business:**

- Consensus agreement to examine Dominion ImageCast Evolution as discussed.
- Next Board Meeting is April 29<sup>th</sup>.
- Motion to adjourn the meeting. **The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Peterson voting in the affirmative; 4 Yes and 0 No).**

**The meeting was adjourned at 2:10 p.m.**

## **New York State Board of Elections Approved Resolution**

### **RESOLUTION TO EXAMINE DOMINION IMAGECAST EVOLUTION 4.14.5 PURSUANT TO ELECTION LAW § 7-201 (3)**

**WHEREAS**, Election Law § 7-201 (3) provides that “[i]f at any time after any machine or system has been approved,...the state board of elections has any reason to believe that such machine or system does not meet all the requirements for voting machines or systems set forth in this article, it shall forthwith cause such machine or system to be examined again;” and

**WHEREAS**, Andrew W. Appel, the Eugene Higgins Professor of Computer Science in the Department of Computer Science at Princeton University, have written, “*after you mark your ballot, after you review your ballot, the voting machine can print more votes on it!*” (emphasis in original), and Richard A. DeMillo, Charlotte B. and Roger C. Warren, Distinguished Professor of Computing in the Department of Computer Science at the Georgia Institute of Technology, have opined that Professor Appel has identified “a vulnerability in Dominion’s ICE and that--absent a thorough and convincing design and code review--there is no way to be confident that the system is immune from the ballot stuffing attack he describes;” and

**WHEREAS**, Election Law § 7-201 requires that the State Board of Elections examine and approve each type of voting machine or voting system before it can be used in New York State, and the examination criteria for certification of voting equipment are set forth in Regulation 6209.6, requiring that the vendor include detailed documentation regarding software security, and, in particular “the vendor shall identify each potential point of attack,” and “for each potential point of attack, the vendor shall identify the technical safeguards embodied in the voting system to defend against attack.”

**WHEREAS**, the submission for the Democracy Suite System Security Specification version 4.14 E:436 did not include any provision that addresses the point of attack or threats identified by Professors Appel and DeMillo; and

**WHEREAS**, Section 6209 (e) of the Board of Elections Regulations requires that “[p]rior to certifying a voting system, the state board shall designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with these Regulations. At a minimum, such review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to

that voting system;” and

**WHEREAS**, SysTest Labs Inc. (SLI) was retained to conduct the required security review as well as the review of source code required by the State Board’s regulation, and New York State Technology Enterprise Corporation (NYSTEC) was designated to review the test plans and to verify the security requirements reviewed by SLI, and

**WHEREAS**, both SLI and NYSTEC issued reports for the State Board that formed the basis for the State Board’s approval and certification of the Dominion ImageCast Evolution optical scan voting system, and

**WHEREAS**, none of the SLI or NYSTEC reports addressed the vulnerabilities described by Professors Appel and DeMillo, and

**WHEREAS**, Election Law § 7-202(1)(j) requires that every voting machine or system “retain all paper ballots cast or produce and retain a voter verified permanent paper Record,” and such provision goes on to confirm the purpose of the voter verified permanent paper record is so that “such ballots or record shall allow a manual audit,” and Election Law § 9-211 requires a random audit of the voter verifiable records; and

**WHEREAS**, one of the principal mitigations to malware threats is the audit of the voter verified paper ballots, and thus if there is a serious possibility that an insider could install malware that could program the printer to add marks to a ballot without the possibility of verification by the voter, then the entire audit process is compromised and not meaningful because it cannot confirm that the ballot was counted in the manner intended by the voter, and

**WHEREAS**, in view of the omission of the security threats identified by Professors Appel and DeMillo in the submission by Dominion in support of its application for certification of the ImageCast Evolution, and in view of the absence of any analysis of this issue in the SLI and NYSTEC reports;

**NOW THEREFORE BE IT RESOLVED**, that the State Board does hereby direct the Election Operations Unit of the State Board pursuant to Election Law § 7-201 (3) re-examine the ImageCast Evolution to consider whether a vulnerability of the voting system exists that would allow the printer to be programmed to add marks to ballots without verification by the voter, and that SLI and NYSTEC supplement their reports with respect to these issues.

Approved March 19, 2019  
VOTE 4-0