

**Minutes of the New York State Board of Canvassers
May 25, 2021**

The meeting of the Commissioners of the New York State Board of Elections, held remotely by WebEx, was called to order at approximately 12: 30 p.m. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Douglas Kellner, Andrew Spano, and Anthony Casale. Staff members present were Robert Brehm, Todd Valentine, Brian Quail, Kim Galvin, Nicholas Cartagena, William McCann, Tom Connolly, Brendan Lovullo, John Conklin, Cheryl Couser and Bill Cross.

Minutes from April 22, 2021 - Minutes were approved as written. The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).

Unit Updates:

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

- Answering independent petition filing questions from the county boards.
- Early voting starts June 12th for the 22nd Primary; as such, the voter registration deadline is May 28th.
- Call with Executive Group to set agenda for the monthly County Election Commissioner’s Assoc. meeting focusing on independent petitions.
- Nine chapter laws were signed into law, and three bills have passed both houses but have not been signed by the Governor yet. The Legislature is in session until June 10th. Chapter 110, which addresses county boards desiring flexibility for early voting poll sites, was passed May 21, 2021.
- There will be four ballot propositions for the General election. NYS BOE will work the Attorney General as required to develop the question and the abstract.

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

- Continue to manage and track all open litigation matters. There have been final settlement discussion planned for Hernandez v. BOE in regard to accessible ballots. In addition, the board is close to closing League of Women Voters II case in regard to timing of the cures that were returned after Election Day; SBOE will be reissuing absentee ballot cures guidance that will be adjusted for a prior executive order that was in place last year. Since the last board meeting, the board has been served with new litigation, Ross v. NYSBOE, challenging the "illness" provision in the absentee ballot application. Additionally, the board was served with another case regards to a party raiding matter in Monroe County.
- Continued to work with County Boards, Caucuses, and individual members to answer questions on new legislation or independent nominating petitions.
- Compliance Training Unit has webinars schedule for the end of May and throughout June and July, as well as continuing CPE and CLE credits.
- Compliance staff continues to work with IT on the FIDAS updates.
- Mentioned folks who are retiring Kathy Roff and Josie Jackson.
- Compliance statistics, including referrals from Enforcement to Hearing Officers, which are zero in 2021 to date, zero in 2020, and two in 2019.

- Comm. Kosinski asked Counsel if there is any ability for a hearing officer to be appointed with the Enforcement Counsel position vacant, to which Counsel Quail responded he didn't think so, and that is main enforcement problem we have right now.
- Comm. Kellner stated the vacancy in the Enforcement Counsel position was on the Governor's radar and he expected an appointment to be made before the Legislative session ended.
- Comm. Kosinski wished Kathy and Josie well in their retirements.

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

- Aiding county boards in their preparation for the June primary, and assisting them to ensure their unique ballot styles are made accessible.
- Visited the Oneida CBOE and met the two new commissioners and their staff to go over operational processes.
- Visited the Westchester CBOE on May15th to discuss an unusually high number of blank and void ballots for the 2020 General Election. A formal report is being drafted and will be shared before the next meeting.
- Testing has been completed on the Ranked-Choice Voting Universal Tabulator software. Both SLI and NYSTEC have submitted reports which have been provided to the Commissioners.
- Continued conversations with Democracy Live, Clear Ballot, Hart and Dominion on submissions of systems expected this year.
- Working internally as well as with NYSTEC on the process that new voter registration systems have to comply with.
- Site visits to Chautauqua, Chemung, Essex, Ontario, Tioga and Warren County and New York City to perform acceptance testing on newly delivered systems.
- Comm. Kellner suggested Election Ops look at Election Assistant Commission (EAC) Voluntary Voting System Guidelines 2.0, which were adopted earlier this year, and consider revising our regulation to require compliance with the current guidelines.
- Comm. Kosinski asked if the State is currently complying with the new EAC regulations, even if State regulations don't require them to, to which Tom Connolly responded "even though 2.0 was passed by the ECA, the two Voting System Test Laboratories are not yet prepared to be testing them to the new requirements. They were waiting on the EAC to provide them with some additional information." Mr. Connolly and Mr. Lovullo will touch base with testing lab SLI. And the ECA is working to figure out a timeline for getting the necessary information out, so that all can be testing to the new guidelines.

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

- Answered many questions on independent petitions, signature requirements, change of enrollment, the campaign finance disclosure reporting page, and primary early voting.
- Updated the instructions on the Voter Registration form as to felons pursuant to chapter 103.
- Continued working group meetings for automatic and online voter registration projects as we go through the bid process.
- Continued meetings with IT and Compliance on the upgrades to FIDAS and the public reporting site, as well as a webinar with the Legislative Correspondence Assoc. who provided good feedback.
- Participated in monthly ECA call with counties.

- Reissued Cybersecurity training module for county boards and the county IT staff as well as State Board staff.
- Working on a proposal to the New York Press Service on how much it would cost to advertise five ballot proposals for the fall that must be advertised in newspapers around New York State.
- Posted the legislative package approved at last meeting. The changes are qualifications for voting pursuant to Chapter 103.
- Posted an online version of the 2021 Law Book that had to be sent out to be remediated for accessibility compliance.
- No county visits for the NVRA Program.
- The fourth accessibility report was due on May 17th and given to the co-executive directors. IT unit is working with our vendor, Level Access, to make sure the SBOE website is compliant with all web content and accessibility guidelines.
- Grants update includes working on a contract amendment and cover letters for the Aids to Locality Early Voting and E-Poll Book grants which were sent to all counties on May 17th. Once returned, the counties are able to receive the money. Finalizing contract language with Office of General Services (OGS) on two large grants provided in the Budget, the Technology Innovation and Elections Resource Fund and the Early Voting Expansion Grant. Expected to have final comments back from OGS soon and it will take them a week or so to finalize and get NYSBOE a contract. Also persistently contacting county boards who have not submitted a fully complete contract for the Cyber Remediation Grant program.

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

- Continue to make numerous updates and improvements to the CAPAS/FIDAS public reporting system on weekly release schedule. Largest improvement this period has been the contribution search and search speed, which was mostly based on feedback. Continuing to do the same for all searches, including the twenty-four-hour notices.
- Publishing all filing data through the New York State Open Data platform.
- Continue to work with OGS on revised RFP for online and automatic voter registration. Expecting revised RFP to be completed this week and released in next couple weeks.
- Completed the ability for County boards to upload and update their list of poll sites through an online process through NYSVoter.
- Absentee ballot portal is now live, with 3700 requests as of this board meeting.
- Began preparation for Primary election, including contingency plans for the website hosting, and updating contacts and communication plans, with our partner agencies and entities, including the Chamber, NYS Homeland Security, ITS, Dept of Public Services, Election Infrastructure, ISAC, DHS, FBI, etc.
- Working with NYSEC and the County Boards with their remediation plans and working with PIO to review, approve and reimburse the Counties.
- Following up with County Boards as each County was allocated a number of consulting hours with NYSTEC, only twenty-two counties of which took advantage of to date.
- Cyber regulations remain out for comment until June 1st.
- Continue to work on development and documentation standards for the Voter Registration systems.
- Working with SUNY Center for Technology and Government on envisioning the future in Elections Infrastructure.
- Making multiple security efforts to NYSBOE's infrastructure, and generally including enhanced logging, scanning, ticketing, inventory, etc.

- Website statistics are at normal levels with approximately 160,000 views.
- Com Kosinski asked Bill Cross if he felt like the needs of the public are being met as far as having access to our information through the State's financial disclosure website. Mr. Cross said IT continues to work on the feedback received, as well as weekly releases of any updates.

Enforcement – Enforcement Division did not attend the board meeting and did not present a unit report.

Old Business:

· N/A

New Business:

· VOTE on Resolution 21-10 to approve Accessible Absentee Balloting for 2021. The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).

· Discussion on Resolution 21-11 to approve the Ranked Choice Voting Universal Tabulator. Comm. Kosinski shared that he feels the adoption of Ranked-Choice Voting by the New York City BOE is outside their authority and the Election Law because it has not been approved by the State. He believes it is troublesome legally, that it conflicts directly with a NYS statute regarding run off voting in NYC, and that generally when there is a conflict between state law and city law, State law governs. Comm. Kosinski noted that in the Ranked-Choice Voting Resolution, there is a reference to other state laws that have been superseded by this provision, sections 9-110 and 9-112 have been amended by this. He continued with saying he agrees we should go ahead with the approval now that it has been through the testing process by our testing agents SLI and NYSTEC; however, this should not be interpreted as him agreeing with NYC passing its own resolutions to conduct elections the way they see fit. Furthermore, Comm. Kosinski questions why local governments then wouldn't enact new election processes in their localities for the local offices that supersede State law like voter ID. It would create a mishmash of voting around the state, with no oversight, without any state authority which can ultimately lead to confusion of the voters. Commissioner Kosinski stated that there is a state regimen for elections in this state, done statewide, to be consistent and so the voter knows how to vote. That being said, Commissioner Kosinski stated that counting ballots through a system like this is better than counting them by hand. By hand is the worst way to count ballots. Localities should not be using voting systems or any voting software that has not been approved and tested by the State, and Comm. Kosinski is glad they would not use this software until it had been put through a testing regimen conducted by the State. He is puzzled by the Legislature's inaction in this area and it may mean they don't approve of Ranked-Choice voting.

Comm. Kellner thanked the Ops unit for completing their task in ten weeks since NYC vendor only submitted the software in the first week of March. There were some minor issues found in this software and he is proud that New York has the gold standard when it comes to the certification of our voting systems and voting equipment. The testing is to anticipate problems before they arise, by testing in advance, and not learning the hard way through negative experience.

On the legal issue, Comm Kellner believes that Article 9, section 2 of the NYS Constitution explicitly provides that every local government shall have the power to adopt and amend local laws relations to the mode of selection of its officers. On two separate occasions, the Court of Appeals has upheld local jurisdictions who have adopted their own procedures for election of officers. The first time in 1927, in the case of *Barron v. City of Rochester*, and in 1963, *Blakey v. Power* in Schenectady, NY; the Court of Appeals has upheld local adoption of procedures for choosing their officers that vary from State Election Law. State Election Law itself says that in section 1-102 that where a specific provision of the law exists

and any other law which is inconsistent with the provisions of the Election Law, such provisions shall apply, unless a provision of the Election Law specifies that such provision shall apply notwithstanding any other provision of law. Furthermore, no lawsuit was brought directly against the New York City Charter Amendment, and the court has ruled twice against granting any kind of preliminary injunction.

Comm. Kellner continued the security gap that was identified in the course of certification testing, in order for this tabulation system to work, the cast vote records from the scanners have to be imported into this tabulation system. In short, how do you know the records being fed into the tabulation system are the same records that came out of the scanners? The recommendations that are contained in the testing lab's report require the City Board to adopt security procedures to ensure the records being fed into the tabulation system are the same records that came out of the scanners. The City Board still needs to repair those security procedures as well as the procedures for using this tabulation system and for doing mandatory audits that the Election Law and City Charter will require post-election. He certainly supports the resolution as drafted.

Comm. Kosinski countered with a few comments. He does not believe the legal cases cited dealt with a direct statutory contradiction as in State Law specifically calling for a runoff election if there is a certain election result or primary that is now being superseded by a local city law. Comm. Kosinski asked Tom Connolly if there are a number of processes that this tabulator software will allow that is not approved for NYC use. How can we make sure the City is not going to use the software that's not approved by the State's approval process? Mr. Connolly responded that the Resolution sets out the conditions of use. The functionality is listed in both the Resolution and the report and are items that are not actually used by the NYC model. There is no need for them to be using those functions of the software, in some of the testing reports from our partners, it was suggested those features be removed from a future release. State Board's Election Operations would work with the City Board to ensure the software is configured properly on the proper hardware. In response to the City's additional procedures that are needed, specifically about the about the potential gap between Cast Vote Records from the ES&S Electronic Management System, and the separate RCV tabulator system, State Election Ops has already identified a similar process that the City Board uses for encryption and hashing of those files that would allow for there to be confirmation that the files when they leave the one system, are indeed unchanged when they arrive to the other system. State Election Ops have already begun discussions with the City Board, but they are waiting on the State Board approval before moving forward with the development of those procedures.

Comm. Kosinski asked if that's because the tabulator used here is being used in other jurisdictions, and do they engage these particular processes?

Tom Connolly responded there are a number of different ways to run Ranked-Choice Voting; sometimes there is a single winner as in NYC and sometimes there are multi-winners. There's also a tiebreaker as mentioned in the Resolution. The New York City Charter Amendment and City Board have already set forth a procedure for breaking a tie, so that functionality would not be used in this tabulator. The software was submitted on a Windows, Apple, and Linux platform. Due to time constraints for testing, Commissioner approval, and to be on time for the June Primary, they decided to solely focus on the configuration expected to be used in NYC, which is the Windows configuration.

Comm. Kosinski asked if it would be used for tabulating Election Day balloting as well as absentee, affidavit, and other paper balloting, to which Tom Connolly responded in order to run the Ranked-Choice Voting calculations, they needed to know the universe of ballots, and that would include early voting, election day, and other paper ballots such as absentee and affidavit.

Comm. Casale wanted to share why he will vote for this resolution. He doesn't think it's fair the hard-working employees of the NYC Board be forced to do a hand recount when this technology is available.

By no means though does he want his vote to be construed as either supporting or endorsing Ranked-Choice Voting, as he agrees with Comm. Kosinski and believes it was not properly implemented.

· VOTE on Resolution 21-11 to approve the Ranked Choice Voting Universal Tabulator. The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).

· VOTE on Resolution 21-12 to approve authorized salary adjustments. The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).

· Motion to adjourn. The motion was approved unanimously (Commissioners Kellner, Kosinski, Spano and Casale voting in the affirmative; 4 Yes and 0 No).

Next meeting scheduled for July 28, 2021.

The meeting was adjourned at 2 p.m.

APPROVED RESOLUTION 21-11

May 25, 2021

APPROVAL OF RANKED CHOICE VOTING (RCV) UNIVERSAL TABULATOR v1.2.0

WHEREAS, Title II of Article 7 of the Election Law *inter alia* provides for the examination of and process for approving voting systems and their components for use at elections in the State of New York; and

WHEREAS, pursuant solely to New York City Local Law 91 of 2018, the Board of Elections in the City of New York submitted the Ranked Choice Voting Resource Center's RCV Universal Tabulator software for examination; and

WHEREAS, New York State law makes no provision for Ranked Choice Voting; and

WHEREAS, there are no existing New York State or Federal standards for approving Ranked Choice voting system; and

WHEREAS, SLI Compliance (SLI) conducted a review of the source code and performed functional and security testing to ascertain compliance with the provisions of the U.S. Election Assistance Commission's 2005 Voluntary Voting System Guidelines, the State Board's regulations, Part 6209 of 9 NYCRR, and the applicable sections of New York State Election Law; and

WHEREAS, the report of SLI Inc. was provided to the Board for consideration and has been duly considered; and

WHEREAS, the New York State Technology Enterprise Corporation (NYSTEC), conducted a review of all testing performed by SLI Inc. and facilitated a secondary examination of the source code; and

WHEREAS the report of NYSTEC was provided to the Board, for their consideration and has been duly considered; and

WHEREAS, having considered the reports and the results of functional testing conducted, the Election Operations Unit recommends the approval of said system as herein defined;

- RCV Universal Tabulator v1.2.0

; and

WHEREAS, the Election Operations Unit has prepared a summary report of the testing process and findings dated May 18, 2021, which has been provided to the Board for their consideration; and

WHEREAS, the Election Operations Unit has identified conditions of use for the software as described above which shall include the following:

- Only the "Winner Election Mode: Single-winner majority determines winner" setting can be utilized. The "Multi-pass IRV" setting is not approved for use.
- Only the "Overvote Rule: Exhaust Immediately" setting can be utilized. The "Exhaust if Multiple Continuing" is not approved for use.
- The "Hare Quota" setting is not approved for use.

- The “Tabulate by Precinct” function is not approved for use.
- The RCV Universal Tabulator is not approved to automatically determine the winner of a tied contest. However, if there is a tie, the "Stop counting and ask" setting can be enabled to stop counting and permit the user to break a tie manually.
- The “Large” configuration, as described in the URCVT v.1.2.0 System Hardware Specification v.1.0.0 document contained in the final TDP, is the only hardware configuration permitted to be used.
- The PC on which the software is to be installed should be hardened according to the provided guidance and should not be allowed to connect to any external network, similar to machines running certified Election Management System software.
- That all procedures listed below be followed when using the RCV Universal Tabulator software.
 - a. URCVT v.1.2.0 07-NY System Security Specification Requirements v.1.0.0
 - b. URCVT v.1.2.0 08-NY System Operations Procedures v.1.0.0
 - c. URCVT v.1.2.0 10-NY Personnel Deployment and Training v.1.0.0
 - d. URCVT v. 1.2.0 16-NY System Hardening Procedures v. 1.0.0
 - e. URCVT v.1.2.0 18-NY User Guide v.1.0.0
 - f. URCVT v.1.2.0 200-NY Installation Instructions for Universal RCV Tabulator - Windows OS v.1.0.0
 - g. URCVT v.1.2.0 230-NY HashCode Instructions - Windows OS v.1.0.0
 - h. URCVT v.1.2.0 420-NY Post-Election Audit and Clearing URCVT from System v.1.0.0
 - i. NYSBOE Voting System Security Policy
 - j. NYSBOE Voting System Facility Guidelines for Storage, Power and Transportation
 - k. NYSBOE Removable Media Recommendations

; and

NOW THEREFORE BE IT RESOLVED that the Commissioners of the New York State Board of Elections do hereby approve the RCV Universal Tabulator software as described above to be used consistent with the conditions of use set forth herein and otherwise described in the Election Operations Unit’s summary report.

Approved May 25, 2021; VOTE 4 YES – 0 NO



**New York State Board of Elections
APPROVED RESOLUTION 21-12**

**Resolution to Authorize Salary Adjustments for the Co-Executive Directors of
the New York State Board of Elections**

WHEREAS, on April 10, 2019, the Governor signed into law Part D of Chapter 24 of the Laws of 2019, which, among other things, authorizes a 2% general salary increase to eligible Management/Confidential employees; and

WHEREAS, on April 17, 2019, the Division of Budget (DOB) issued Budget Bulletin D-1140, and in May 21, 2021, DOB issued Budget Bulletin D-1142 which provides guidelines related to the implementation of Part D of Chapter 24 of the Laws of 2019; and

WHEREAS, pursuant to Part D of Chapter 24 of the Laws of 2019 and Budget Bulletin D-1140, the Co-Executive Directors of the New York State Board of Elections are eligible to receive said salary adjustments;

NOW THEREFORE BE IT RESOLVED: that the New York State Board of Elections does hereby authorize the Co-Executive Directors to receive the 2020 uniform state agency Management Confidential salary adjustments.

**Approved May 25, 2021
VOTE: 4 YES – 0 NO**