

**Minutes of The New York State Board of Elections
Friday, February 15, 2008**

The regular meeting of the State Board of Elections was called to order at 12:10 p.m. at the New York State Board of Elections, 40 Steuben Street, Albany, New York. The meeting was chaired by Commissioner Douglas Kellner. Commissioners present were Helena Donohue and new Commissioner and Co-Chair James Walsh who replaces Commissioner Kelleher. Staff present were: Stanley Zalen, Todd Valentine, Lee Daghlian, Bob Brehm, Anna Svizzero, Allison Carr, Paul Collins, William McCann, George Stanton, Deirdre Hammer and Greg Fiozzo. Guest list is attached.

Minutes of January 23, 24 and February 8, 2008 - approved as written

Unit Updates:

- **Legal Unit:** - Allison Carr reported several issues:
 - An update was provided and discussion followed concerning State Court actions concerning voting system vendors Avante and Liberty.
 - Avante: A request in Federal Court by Avante to extend the time period for county orders from February 8th to February 28th was denied. The State Court proceeding with Avante continues.
 - Liberty: A notice of appeal of the Supreme Court Order of Judge O'Connor was filed by respondent Commissioners Aquila and Kellner. The State Board responded to the contempt motion against the Board and its Commissioners. Liberty withdrew the proceeding as against Commissioners Kelleher, Donohue and Aquila.
 - The Department of Justice in the Federal Court, there are ongoing weekly status meetings and conference calls with Justice continue and they have reported that they are on schedule for the Plan B portion of the Plan.
 - There is a legal issue in the 48th Senate District Special Election concerning the candidate who should be on the Independence line. There are competing nomination papers and the Court has instructed that at this time the Board certify the ballot to facilitate mailing military and absentee ballots and at this time nobody would be on that line.
- **Election Operations:** Anna Svizzero reported on several issues having to do with voting equipment certification and certification of the ballot for the 48th SD Special Election. The State Board hosted on February 12th, Brian Heffernan, Counsel with the Department of Justice to view the ballot marking devices and their operation. Also, Commissioner Kellner inquired and a discussion ensued about the request by several county boards of elections to use their new systems as Lot I systems this year.
- **NVRA/PIO:** Lee Daghlian reported on several issues:
 - The status of the HAVA Funds Committee and the poll worker training program

with SOE.

- The preparation for the April conference in Syracuse.
 - Upcoming NVRA training in New York City.
 - Request for some temporary help this summer to help open the mail which will be very heavy later in the summer with new voter registrations.
 - Also reported on some outstanding poll site issues raised in the NYSILC report - we are still working on them.
- **Campaign Finance:** Bill McCann reported on several projects:
 - Efforts are ongoing to begin a project to scan into a computer file certain campaign finance paper documents.
 - The RFP process for process servers
 - The Staff continues to work on the 2006 audit for over contributions by corporations.
 - Upcoming seminars this summer. Approximately fifteen will be held across the state.
 - An Order To Show Cause was filed today against 475 respondents that failed to file the 2008 January Periodic report.
 - The State Board will meet with staff from the Governor's Office of Regulatory Reform (GORR) to move forward on amendments to the Part 6200 Regulations concerning Filing Statements of Campaign Receipts and Expenditures.
 - Work continues to finalize our HAVA internal complaint process.
- **ITU:** George Stanton, reported on several issues:
 - There continues to be some minor clean ups for the statewide database that have been completed. He is running some tests for the other thing process with the counties. He will have a full report at a later date.
 - Clarification was provided to address a misconception that there were 800,000 fewer voters that should have been included in NYSVoter. The interim statewide list (NYSVoter I) included previously canceled voters. When NYSVoter II went live, only voters in Active and Inactive status were included. A test run that IT performed on the NYSVoter I data file of canceled voters indicated just about 800,000 records.
 - ID verifications: the State Board has tested a procedure with NTS and the Niagara County Board of Elections wherein we selected every voter in the statewide list that was registered on or after January 1, 2003 with the implementation of HAVA where their ID verification was required and they had either a DMV client number or the last four digits of their Social Security Number. The test is ongoing. However, preliminary results indicate that it is working well and we may reach a 75% to 80% reduction in the number of persons that require ID at the polls. Once this procedure has been reviewed, we will want to include all of the counties.
 - The Steering Committee is working to prepare a process to monitor NYSVoter. A draft document has been prepared and will be discussed on March 4th at a meeting of the Steering Committee and two NYSVoter advisory panels – the Policy Committee and the Standards Committee.

- **Old Business:**

- Proposed Amendments for Part 6204 of the regulations to be held over until the next meeting.
- The Resolution on Open Source Voting which has been carried over was raised. It was decided to put that over until we meet on the 27th or the following meeting, in deference to Commissioner Walsh, so he can be brought up to date.

- **New Business:**

- The determination of voting machines for Erie County. Commissioner Mohr (who was present) reported on his choice and Commissioner Ward (connected by phone) reported on his choice also. After discussion, and listening to both sides, a motion was made by Commissioner Donohue based on the failure of the Erie County Board of Elections to agree to choose a Lot 2 ballot marking device and arguments having been made by both Commissioners to the State Board on the record today pursuant to Election Law Section 7-203, moved that ES&S Model A300 be selected to be used in Erie County. Motion was seconded by Commissioner Walsh. Commissioner Donohue and Commissioner Walsh vote yes, Commissioner Kellner voted no. **The motion did not pass.** Per Todd Valentine, this impasse will be sent on to the Justice Department and the Federal Court the following day.
- Arrangements were made to accommodate the Citizens Election Modernization Advisory Committee (CEMAC) on the 21st of February around noon time to review the selections that were made by the counties and to give us their advice. Aimee Allaud from the League of Women Voters made a statement on the record, which is attached. The Commissioners formally agreed to have access to all official papers concerning testing as long as all the confidentiality papers have been properly signed.
- The Avante decision arrived from the Court and Allison Carr after reading it stated that the Court deemed that Avante does not meet the full face ballot requirement. At this time it was moved to go into Executive Session to discuss this issue. **Motion passed 3-0.**

Adjourned to Executive Session at 2:15p.m. Back into regular session at 2:45p.m.

- The Court order on Avante vacated and annulled the prior order and it directed the Board to reinstate the two Avante machines to the list for possible purchase as BMD:s (ballot marking devises). The Commissioners moved to accept the following resolution that Avante be put back on the list. **The vote was 3-0 to adopt.**

RESOLUTION ON COURT ORDERED VOTE ON VOTING MACHINES

The Court has ordered that the State Board's prior determinations regarding Avante's two systems, the EVC 308 SPRBMD and EVC 308FFBMD are vacated and annulled.

The Court has directed the State Board of Elections to approve the Avante EVC 308 SPRBMD and EVC 308FFBMD voting system on or before February 20, 2008.

The State Board of Elections concludes that with respect to Avante that this determination shall not affect the general condition applicable to all approved ballot marking devices that petitioners' system must still pass the performance testing to be conducted upon all initially approved machines and systems.

The Court further ordered that the Board of Elections is directed immediately to examine petitioners' systems the Avante EVC 308 SPRBMD and EVC 308FFBMD and that all counties are directed that they may re-rank their choices to include the EVC 308 SPRBMD on or before February 19, 2008.

As such:

In furtherance of the Court orders set out above, reserving all rights previously set forth, be it resolved that:

The Avante EVC 308 SPRBMD is immediately included in the vendor selection process and that any information regarding that system not previously disseminated to the counties be done so immediately.

The next board meeting will be February 27th at noon in Albany.

The meeting was adjourned at 2:40p.m.