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MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
FAX (212) 487-5349
www.vote.nyc.ny.us

AGENDA COMMISSIONERS' MEETING TUESDAY, DECEMBER 22, 2009 AT 1:30 P.M.

1. Meeting of the Board of Canvassers
2. Minutes
 - a) 11/17/09
 - b) 11/24/09
 - c) 12/01/09
 - d) 12/08/09
3. Marcus Cederqvist
 - a) HAVA Update
 - b) Report on December 18, 2009 Conference Call Concerning Poll Site Accessibility Legislation
 - c) 2010 ECA Winter Conference
4. Rosanna Rahmouni
 - a) 2010 Poll Site Flow and Generic Procedures
5. John Ward
 - a) Vacancy Report

For Your Information

- HAVA Weekly Status Report, Week Ending December 17, 2009
- New York State Board of Elections, Election Operations Unit – Recommendation to Certify Precinct – Based Optical Scan Voting Systems
- State of New York Supreme Court, Appellate Division, Third Judicial Department – Fingar, as Chair of the Columbia County Republican Committee, et. al., Respondents, v Virginia Martin, as a Commissioner of the Columbia County Board of Elections, et. al., Appellants, et. al., Respondents – Memorandum and Order
- NYSBOE Machine Certification Resolutions
- Center for Independence of the Disabled, NY – CIDNY

News Items of Interest

- *December 2009/The New York County Lawyer:* Election Law Committee
- *The Daily News:* Pardon him, Governor
- *Register-Star:* Appellate Division Hands Down Ballot Decision
- *The Daily News:* Poll Workers Get Paid
- *The Daily News:* New fed heat on Working Families Party
- *The Daily News:* Making a Bad Call?
- *Timesunion.com:* Results are in: Voting machines approved by BOE
- *Newsday:* Mangano Names New County Attorney
- *Newsday:* Dems blast Mangano's hire

Marcus Cederqvist

From: Marcus Cederqvist
Sent: Wednesday, December 16, 2009 12:32 PM
To: Steven H. Richman; 'Williams, Steve'
Cc: George Gonzalez; Pamela Perkins; John P. O'Grady
Subject: RE: Any news on my request for a conference call or meeting prior to our Thursday call with Governor's office?

We discussed this with our Commissioner's at yesterday's weekly meeting. They directed that we participate in the calls but collectively expressed concern that it may not be a meaningful meeting without a detailed discussion in advance of the fiscal impact of the proposal and, while the Board has not conducted such a study, the Mayor's Office has reportedly indicated that there is a fiscal impact of up to \$1 billion. There was also concern that others should be involved in the meetings, such as the Office of Management and Budget and staff from the City Council's Finance and Governmental Operations Divisions.

Marcus

Marcus Cederqvist
 Executive Director
 Board of Elections in the City of New York
 32 Broadway, 7th Floor
 New York, NY 10004
 Tel: (212) 487-5412
 Fax: (212) 487-5349

-----Original Message-----

From: Steven H. Richman
Sent: Tuesday, December 15, 2009 4:42 PM
To: 'Williams, Steve'
Cc: Marcus Cederqvist
Subject: RE: Any news on my request for a conference call or meeting prior to our Thursday call with Governor's office?

At their public meeting held this afternoon, the Commissioners directed that the Board's Executive Director Marcus Cederqvist lead the Board of Elections' participation in these discussions.

He can be reached at (212) 487-5412.

STEVEN H. RICHMAN

3

General Counsel
Board of Elections in the City of New York
32 Broadway, 7th Floor
New York, NY 10004-1609
Tel: (212) 487-5338
Fax: (212) 487-5342
E-Mail: srichman@boe.nyc.ny.us

-----Original Message-----

From: Williams, Steve [<mailto:swilliams@cityhall.nyc.gov>]
Sent: Monday, December 14, 2009 2:48 PM
To: Steven H. Richman
Subject: RE: Any news on my request for a conference call or meeting prior to our Thursday call with Governor's office?

Thank you.

From: Steven H. Richman [<mailto:srichman@boe.nyc.ny.us>]
Sent: Monday, December 14, 2009 2:45 PM
To: Williams, Steve
Subject: RE: Any news on my request for a conference call or meeting prior to our Thursday call with Governor's office?

This matter is on the agenda for the Commissioners of the Board of Elections meeting tomorrow at 1:30 PM.

STEVEN H. RICHMAN
General Counsel
Board of Elections in the City of New York
32 Broadway, 7th Floor
New York, NY 10004-1609
Tel: (212) 487-5338
Fax: (212) 487-5342
E-Mail: srichman@boe.nyc.ny.us

-----Original Message-----

From: Williams, Steve [<mailto:swilliams@cityhall.nyc.gov>]
Sent: Monday, December 14, 2009 1:13 PM
To: Steven H. Richman
Subject: Any news on my request for a conference call or meeting prior to our Thursday call with Governor's office?

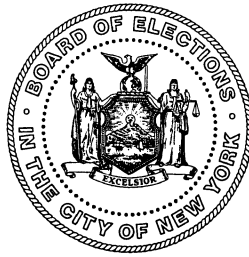
Hi Steve,

Just following up to see if we can do this before Thursday?

Thanks,

Steve Williams, Deputy Director
State Legislative Affairs
Office of the Mayor - City of New York
119 Washington Avenue, First Floor
Albany, New York 12210
(518) 447-5200

253 Broadway
New York, NY 10007



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ADMINISTRATIVE MANAGER

JOHN J. WARD
FINANCE OFFICER

DATE: December 22, 2009
TO: Commissioners

FROM: John Ward
Finance Officer.

RE: Vacancies

					Inc.	New.
1	Assistant General Counsel					\$75,000
2	Valerie Marshall	Adm. Asst.	N.Y.	Dem.	\$42,659	\$40,628
3	Robert Helenius	VMT	Bklyn	Rep.	\$30,088	\$28,655
4	Lisa Sattie	Adm. Asst.	S.I.	Dem.	\$42,659	\$40,628
5	Angela Petit	Clerk.	Bklyn	Rep.	\$29,323	\$27,927



State of New York
STATE BOARD OF ELECTIONS

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40 STEUBEN STREET
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website: www.elections.state.ny.us

Todd D. Valentine
Executive Director
Robert A. Brehm
Executive Director
Kimberly A. Galvin
Special Counsel
Paul M. Collins
Deputy Counsel

December 18, 2009

Honorable Gary L. Sharpe
United States District Court
for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Status Report of the Defendant New York State Board of Elections for the week ending December 17, 2009.

Respectfully submitted,

s/ _____
Kimberly A. Galvin (505011)
Special Counsel

s/ _____
Paul M. Collins (101384)
Deputy Special Counsel

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 12/11/09-12/17/09

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

PLAN A

Overall Compliance Status Summary

Overall, activities and progress toward HAVA compliance are on schedule with the revised timeline.

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- OGS is working with NYSBOE and both vendors to finalize their most recent add requests.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule

- Overall progress of testing :
- At the December 15th Board meeting the Board voted unanimously to certify the Dominion Imagecast scanner and ballot marking device, the ES&S DS200 and the AutoMark ballot marking device for use in New York State.
- In addition, the Board unanimously approved a resolution directing further review and remediation of any outstanding findings against any of the certified systems. Meetings are currently being scheduled to set a timetable for the remediation process.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: on schedule

- Acceptance testing continues at Building 3.

NEW YORK STATE BOARD OF ELECTIONS

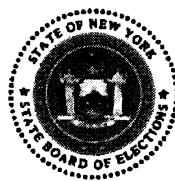
- The Board will meet again on January 14, 2010, at which time they will consider choosing a voting system for both NYC and Nassau County in the event that those jurisdictions have not chosen a voting system by that time.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

NYCBOE responded to the SBOE inquiry. SBOE is formulating a strategy to move forward and has advised the Department of Justice of the City Board's response. A decision regarding what action will be taken will be made early next year.

County
FY 2



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Co-Chair

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Commissioner

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STATE BOARD OF ELECTIONS

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NEW YORK STATE BOARD OF ELECTIONS ELECTION OPERATIONS UNIT

RECOMMENDATION TO CERTIFY PRECINCT-BASED OPTICAL SCAN VOTING SYSTEMS

In 2007, the New York State Board of Elections adopted state voting system requirements (NYCRR Part 6209), in which compliance with the US Election Assistance Commission's 2005 Voluntary Voting System Guidelines was incorporated. Subsequent thereto, the State Board entertained requests from multiple voting system vendors for a system certification that would legally authorize their systems for sale and use in New York State. In furtherance of developing our certification process, in 2007, the New York State Board of Elections procured the services of an independent testing lab, SysTest Labs Inc. which would conduct the actual system testing, as well as, the services of the New York State Technology Enterprise Corporation (NYSTEC), which would be responsible for and act as an independent security advisor with regard to the voting systems security testing.

In 2008, several vendors sought a New York certification of their voting systems. After the County Boards of Elections made their initial voting system choice, it was clear that two of the five companies were preferred and only two systems remained in the certification program, through completion. The two firms which completed the certification process are Dominion Voting Systems, which submitted their ImageCast, a precinct-based optical scan system available with or without an attached ballot marking device, and Election Systems and Software (ES & S), which submitted their DS-200 precinct-based optical scan system and its companion AutoMark ballot marking device.

Also in 2008, New York had to meet new obligations, in implementing an updated federal court order which required New York's compliance with the Help America Vote Act (HAVA) via the placement of a minimum of one ballot marking device in each polling place in New York, to serve all voters including those with disabilities. In order to comply with the order of the court in a manner which provided a high level of confidence in using uncertified ballot marking devices, a preliminary and baseline HAVA test protocol was implemented, to help ensure the systems could be deployed with a high degree of accuracy. A component of that baseline testing was a review of the systems under consideration at that time, by New York's Citizens' Election Modernization Advisory Committee (CEMAC). The committee is statutorily charged with assisting the state in the evaluation of voting systems, particularly with an eye toward the manner in which voters with disabilities are served by new voting technologies.

Begun in 2008, the certification testing process has been an unexpectedly long one, with a high learning curve and numerous obstacles. As New York is the first state in the nation to adopt the EAC's voluntary federal guidelines as regulations, it necessarily subjects any voting system submitted for certification in New York to the most rigorous testing protocols in the nation. Testing voting systems to these never-before tested requirements comes at a cost, in effort, time and money that is unavoidable with the breaking of this new ground. The interpretation of new requirements by vendors as they built systems, and by New York State as we determined the applicability of the requirements in our own elections realm, added to the testing entities' constant need for interpretations of the many vague requirements, in order to develop appropriate test cases. This significant coordination of effort required the constant monitoring and combining of oftentimes very different skill sets. The lessons learned in New York will be reflected in the systems we and others ultimately consider for certification.

The process itself began with the development of a fully-articulated requirements matrix, reflecting the 1,524 requirements of New York's statute, regulations, and the EAC's 2005 voluntary voting system guidelines. From this matrix, 26 unique test cases were created for each vendor, and within those test cases, 6,730 test steps were developed, to ensure testing to each requirement. A dry-run of test steps was conducted, to identify that the test cases would test all of our requirements. This process was followed by the run-for-record, and test reports were produced.

The documents which accompany this recommendation include report findings of both SysTest Labs and NYSTEC, each with compensating controls appended to them, as well as summary reports from both firms. Also for the consideration of the board is the resolution of New York's Citizens' Election Modernization Advisory Committee, in which certification is recommended.

The evaluations of any voting system must take into consideration all of the technological reviews and tests that we conducted, however, it is critical that such technological findings be reviewed with a "real world" functional perspective. There must be a harmony that connects these two aspects of whether or not voting systems can be used securely and accurately.

The two systems before the Board for consideration today have been tested harder and against more requirements than any other system in the nation. The review of test findings has been extensive, and centered on the ability to determine whether these voting systems are in substantial and material compliance with statute and regulations. A review of the documentation of over 13,000 individual test steps has revealed that a handful of minor requirements may require some remediation as we go forward with these systems. While our report must demonstrate that systems may have issues with particular requirements, we must note that these systems are the most robust voting systems on the market today, and incorporate a significant number of positive features totally lacking in any other system on the market.

An integral component of this review is the practical perspective garnered by monitoring the use of these voting systems in live elections. In 2009, the Commissioners of the State Board authorized the use of these two voting systems in pilot projects in both the primary elections conducted on September 15 and in the General Election on November 3. Forty-seven of the State's sixty-two counties participated in the pilot project, to varying degrees. Some counties opted to pilot the systems in a single town or city, some in multiple sites, and perhaps most importantly, nineteen counties opted to pilot the systems countywide. The pilot project was a resounding success, as was the post-election audit process, which overwhelmingly confirmed that these scanners accurately record and report the ballot selections made by voters. It is important to note that the opportunity to participate in the pilot project was not offered lightly.

Prior to the approval of the pilot project by the Commissioners of the State Board, Unit staff conducted significant functional testing of these two systems. The report of this round of functional testing has been provided to the Board, to augment the documentation the Commissioners will consider in making their decision on certification.

This pilot implementation provided an opportunity for the systems to be exercised outside of pristine lab conditions, and ensured feedback not just on the technology's use, but how that system was implemented using new security procedures and data integrity protocols. Reports on a myriad of real-world election scenarios and experiences must be considered hand-in-hand with the technological reviews submitted, so that the Board can consider multiple aspects of voting system operations in order to make its decision. The reports of the on-site observations of Election Operations Unit staff are provided for the Board to so consider, and include comments from voters, poll site workers and elections administrators.

A review of the various procedures provided to the County Boards which used only the ballot marking devices, as well the versions provided to those who participated in the pilot project will also enable the Board to understand the safeguards and processes that help to ensure the integrity of the election process, from end to end. This list reflects a sampling of the processes we have developed to date:

- Pre-election testing – requiring the testing of ballot configurations using live ballots while the system is in election mode and not in test mode
- Quarterly maintenance test protocols, to ensure system integrity and battery readiness
- Security protocols for voting system storage sites and office spaces, to ensure no unauthorized access to systems or databases
- Chain-of-custody and documented travel manifests, to track unit deployments both to and from poll sites
- Ballot accountability and reconciliation, from receipt of ballot shipments from printers, through delivery to poll sites, and the return of all election day materials

- Web-based poll site worker training, to compliment in-person training sessions, so workers can refresh lessons and materials delivered by election trainers
- The conduct of a 3% random audit of voting systems used, to validate system accuracy

As with any procedures, those listed here and those to be drafted in the weeks to come, are living documents, meant to be reconsidered regularly, to reflect useful changes stemming from the impact of their use in a variety of election settings. The implementation of all procedures related to the maintenance and use of optical scan technology will also contribute greatly to the standardization of election administration and Election Day services across New York.

This recommendation of the Election Operations Unit was arrived at in a deliberative and reflective manner, considering the voting systems themselves, the sum of certification testing, and perhaps most importantly, functional testing which encompasses tests performed by unit staff, lessons learned in the centralized acceptance testing process and the actual use of these systems in the 2009 election cycle. There will always be room for voting system improvements, for as long as elections administrators and voters continue to contribute constructive suggestions for the care and use of scanners and ballot marking devices. In general, vendors must continue to upgrade their systems, to provide even more security features which will further enhance the suite of protections for election data, as well as provide enhanced access for more and more of New York's voters. County Boards of Elections must implement these new systems in as seamless a way as possible, to ensure voter confidence and ease of use. The State Board must continue to provide support and oversight to all County Boards of Elections, so that all that has come before this Board and from this Board, throughout this process, is realized.

This road has been a long one, and most certainly a hard one, but in the end, after an extensive review of the testing materials submitted by SysTest and NYSTEC, we have no doubt these systems can be used safely and properly by voters at elections under the conditions prescribed in Election Law, the requirements of HAVA, and with the compensating controls properly implemented. We are confident in recommending that the Commissioners of the New York State Board of Elections vote to certify the ImageCast optical scanner and ballot marking

device, as submitted by Dominion Voting Systems, and the DS-200 optical scanner with its companion AutoMark ballot marking device, as submitted by Election Systems and Software.

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Comments
FyT

Decided and Entered: December 18, 2009

508350

In the Matter of GREGORY C.
FINGAR, as Chair of the
Columbia County Republican
Committee, et al.,
Respondents,

v

MEMORANDUM AND ORDER

VIRGINIA MARTIN, as a
Commissioner of the Columbia
County Board of Elections,
et al.,
Appellants,
et al.,
Respondents.

Calendar Date: December 16, 2009

Before: Peters, J.P., Rose, Lahtinen, Kavanagh and Garry, JJ.

Willkie, Farr & Gallagher, L.L.P., New York City (Daniel M. Burstein of counsel), for Virginia Martin, appellant.

Kathleen O'Keefe, Earlton, for Christopher Nolan and others, appellants.

John Ciampoli, Albany, and James E. Walsh, Schenectady, for Gregory C. Fingar and others, respondents.

Per Curiam.

Appeal from an order of the Supreme Court (Nichols, J.), entered December 8, 2009 in Columbia County, which, in a proceeding pursuant to Election Law § 16-106, denied a motion by

respondent Virginia Martin to dismiss the petition.

Petitioners commenced this proceeding pursuant to Election Law § 16-106 challenging absentee ballots cast in the November 3, 2009 general election. On the limited record¹ before us, it appears that the grounds for petitioners' challenges purportedly included, among other things, that signatures on the absentee ballots did not match specimens on the voters' registration forms, there was inadequate information on absentee applications and information on certain applications included incorrect or untrue information. Respondent Virginia Martin, the Democratic Commissioner of the Columbia County Board of Elections, moved to dismiss the petition. Martin and respondents Chair of the Columbia County Democratic Committee and the Democratic Party candidates for the public offices at issue contend that, in essence, this is a dispute as to the absentee voters' choice of residency since they each have more than just a local residence. Supreme Court denied the motion to dismiss and said respondents now appeal.

Petitioners have set forth sufficient allegations to avoid dismissal under the liberal standard applicable to CPLR 3211 motions (see generally Kovach v Hinchey, 276 AD2d 942, 943 [2000]). However, to the extent that petitioners do, in fact, premise any challenges on voters' dual residency, we note that the law regarding a voter choosing among residences for election purposes is interpreted broadly (see Matter of Willkie v Delaware County Bd. of Elections, 55 AD3d 1088, 1089-1090 [2008]), and a challenge to such residency should be made pursuant to the procedure to challenge the issuing of the absentee ballots and not, as here, after those ballots have been cast (see Election Law § 8-402; Matter of Messina v Albany County Bd. of Elections, 66 AD3d 1111, 1114 n [2009], lv denied ___ NY3d ___ [Oct. 29, 2009]; Matter of Mondello v Nassau County Bd. of Elections, 6 AD3d 18, 25-26 [2004]). Moreover, the failure to join the voters as necessary parties reflects, under the circumstances of this

¹ Notably, the stipulation referred to by County Court, in which petitioners apparently "narrowed the assertions contained generally in their pleadings," is not in the record.

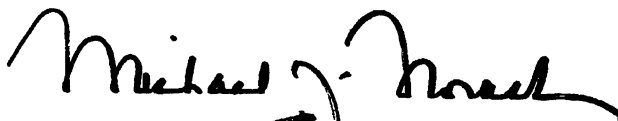
case, that their representation regarding residency to become registered voters is not being challenged (cf. Matter of Messina v Albany County Bd. of Elections, 66 AD3d at 1113).²

The remaining issues have been considered and found unavailing.

Peters, J.P., Rose, Lahtinen, Kavanagh and Garry, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court

² It is unclear from this record whether the issue of nonresidency (see Matter of Delgado v Sutherland, 97 NY2d 420 [2002]; Matter of Dorman v Scaringe, 245 AD2d 949 [1997], lv denied 91 NY2d 813 [1998]) was raised before County Court.

George Gonzalez

From: JOHN CONKLIN [JCONKLIN@elections.state.ny.us]
Sent: Friday, December 18, 2009 12:01 PM
To: George Gonzalez; Marcus Cederqvist; Steven H. Richman; WEBMAIL_PerkinsP
Cc: ANNA SVIZZERO; JOSEPH BURNS; ROBERT BREHM; TODD VALENTINE
Subject: NYSBOE Machine Certification Resos
Attachments: AutoMARK Resolution Final 12-15-09.pdf; Dominion Resolution Final 12-15-09.pdf; ES&S Scanner Resolution Final 12-15-09.pdf; Remediation Resolution Final 12-15-09.pdf

As requested.

John W Conklin
Director of Public Information
NYS Board of Elections
40 Steuben Street
Albany, NY 12207-2108
518-474-1953



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PROPOSED RESOLUTION

CERTIFICATION OF ELECTION SYSTEMS & SOFTWARE AutoMARK VOTER ASSIST TERMINAL (BMD)

Whereas, Election Systems & Software Inc. (ES & S) has submitted an application for certification of the AutoMARK Voter Assist Terminal ballot marking device including the following components:

AutoMARK v.1.6.0.0 and VAT Previewer v.1.6.0.0

*Unity Suite 3.0.0.0: EDM v.8.2.0.0, Electionware v.2.0.0.0, Event Log Service v.1.0.0.0,
Removable Media Service v.1.0.0.0*

Whereas, such voting system was delivered to SysTest Labs Inc. which has been designated the independent testing authority for the New York State Board of Elections; and

Whereas, SysTest Labs Inc. has conducted certification testing of said system, to ascertain compliance with the provisions of the applicable sections of New York State Election Law, the State Board's regulations, 9 NYCRR Part 6209, and the U.S. Election Assistance Commission's 2005 Voluntary Voting System Guidelines, including a thorough review and testing of any electronic or computerized features of the system; and

Whereas, NYSTEC (New York State Technology Enterprise Corporation), having been selected as the New York State Board of Elections' independent security reviewer, and has conducted an independent security review of said system; and

Whereas, the reports of both SysTest and NYSTEC have been provided to the Board; and

Whereas the Citizens' Election Modernization Advisory Committee has met and reviewed the AutoMark Voter Assist Terminal and the findings of both SysTest and NYSTEC, and has provided its Resolution recommending system certification for the consideration of the Board; and

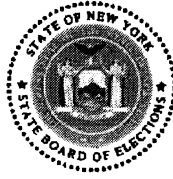
Whereas, the Election Operations Unit has reviewed the findings and compensating controls for the AutoMark Voter Assist Terminal submitted by SysTest and NYSTEC, and has provided a summary report for the consideration of the Board which reports that said voting system meets the requirements of Election Law § 7-202, with minor findings; and

Whereas, the Election Operations Unit reports that the system so examined, with the recommended compensating controls, can safely and properly be used by voters and local boards of elections at elections under the conditions prescribed in the Election Law and the requirements of the federal Help America Vote Act; and

Whereas, the AutoMark Voter Assist Terminal has been successfully used in prior elections conducted in New York State since 2006 and in many jurisdictions throughout the United States; and

Whereas, having considered the totality of certification test artifacts, summary reports, findings logs with corresponding compensating controls, the on-site evaluations of pilot project county and poll site operations, and the results of functional testing conducted by the Election Operations Unit, and the Elections Operations Unit having recommended the certification of said system as herein defined; now, therefore

Be it resolved, that the Commissioners of the New York State Board of Elections do hereby certify in accordance with Election Law § 7-201 that the AutoMark Voter Assist Terminal ballot marking device with the recommended compensating controls can safely and properly be used by voters and local boards of elections at elections under the conditions prescribed in the Election Law and the requirements of the federal Help America Vote Act.



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Co-Chair

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PROPOSED RESOLUTION

CERTIFICATION OF DOMINION VOTING SYSTEMS' PRECINCT-BASED OPTICAL SCAN VOTING SYSTEM

Whereas, Dominion Voting Systems, Inc. has submitted an application for certification of Dominion's Democracy Suite 3.0.3 Voting System, which includes the following components:

Dominion Democracy Suite 3.0.3: ImageCast ICP v.1.30.6, BMD v.2.22, Kernal v.4.0.8, EED v.3.0.3, AS v.3.0.3, RTR v.3.0.3, DCM v.3.0.3

Whereas, such voting system was delivered to SysTest Labs Inc. which has been designated the independent testing authority for the New York State Board of Elections; and

Whereas, SysTest Labs Inc. has conducted certification testing of said system, to ascertain compliance with the provisions of the applicable sections of New York State Election Law, the State Board's regulations, 9 NYCRR Part 6209, and the U.S. Election Assistance Commission's 2005 Voluntary Voting System Guidelines, including a thorough review and testing of any electronic or computerized features of the system; and

Whereas, NYSTEC (New York State Technology Enterprise Corporation), having been selected as the New York State Board of Elections' independent security reviewers, has conducted an independent security review of said system; and

Whereas, the reports of both SysTest and NYSTEC have been provided to the Board, and

Whereas, the Citizens' Election Modernization Advisory Committee has met and reviewed the Democracy Suite 3.0.3 Voting System and the findings of both SysTest and NYSTEC, and has provided its Resolution to the Board that recommends the certification of said system; and

Whereas, the Election Operations Unit has reviewed the findings and compensating controls for the Democracy Suite 3.0.3 Voting System submitted by SysTest and NYSTEC, and has provided a summary report for the consideration of the Board which reports that

said voting system meets the requirements of Election Law § 7-202, with minor findings;
and

Whereas, the Election Operations Unit reports that the system so examined, with the recommended compensating controls, can safely and properly be used by voters and local boards of elections at elections under the conditions prescribed in the Election Law and the requirements of the federal Help America Vote Act; and

Whereas, a pilot project in the 2009 Primary and General Elections was successfully conducted in forty-seven (47) counties across New York State, including nineteen counties which opted to conduct the pilot on a county-wide basis; and

Whereas, having considered the totality of certification test artifacts, summary reports, findings logs with corresponding compensating controls, the on-site evaluations of pilot project county and poll site operations, and the results of functional testing conducted by the Election Operations Unit, and the Elections Operations Unit having recommended the certification of said systems as herein defined; now, therefore

Be it resolved, that the Commissioners of the New York State Board of Elections do hereby certify in accordance with Election Law § 7-201 that the Dominion Democracy Suite 3.0.3 Voting System with the recommended compensating controls can safely and properly be used by voters and local boards of elections at elections under the conditions prescribed in the Election Law and the requirements of the federal Help America Vote Act.



James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

STATE BOARD OF ELECTIONS

40 STEUBEN STREET
ALBANY, N.Y. 12207-2108
Phone: 518/474-6336 Fax: 518/474-1008
URL: <http://www.elections.state.ny.us>

Douglas A. Kellner
Co-Chair

Evelyn J. Aquila
Commissioner

Robert A. Brehm
Co-Executive Director

PROPOSED RESOLUTION

CERTIFICATION OF ELECTION SYSTEMS & SOFTWARE DS-200 PRECINCT-BASED OPTICAL SCAN VOTING SYSTEM

Whereas, Election Systems & Software Inc. (ES & S) has submitted an application for certification of its Unity Suite 3.0.0.0 Voting System and DS-200 v.2.1.0.0 precinct-based scanner, which includes the following components:

DS-200 v.2.1.0.0

Unity Suite 3.0.0.0: EDM v.8.2.0.0, Electionware v.2.0.0.0, ERM v.8.1.0.0, Event Log Service v.1.0.0.0, Removable Media service v.1.0.0.0

Whereas, such voting system was delivered to SysTest Labs Inc. which has been designated the independent testing authority for the New York State Board of Elections; and

Whereas, SysTest Labs Inc. has conducted certification testing of said system, to ascertain compliance with the provisions of the applicable sections of New York State Election Law, the State Board's regulations, 9 NYCRR Part 6209, and the U.S. Election Assistance Commission's 2005 Voluntary Voting System Guidelines, including a thorough review and testing of any electronic or computerized features of the system; and

Whereas, NYSTEC (New York State Technology Enterprise Corporation), having been selected as the New York State Board of Elections' independent security reviewer, and has conducted an independent security review of said system; and

Whereas, the reports of both SysTest and NYSTEC have been provided to the Board, and

Whereas, the Citizens' Election Modernization Advisory Committee has met and reviewed the Unity Suite 3.0.0 Voting System and DS-200 v.2.1.0.0 precinct-based scanner and the findings of both SysTest and NYSTEC, and has provided its Resolution to the Board that recommends the certification of said system; and

Whereas, the Election Operations Unit has reviewed the findings and compensating controls for the Unity Suite 3.0.0 Voting System and DS-200 v.2.1.0.0 precinct-based scanner submitted by SysTest and NYSTEC, and has provided a summary report for the consideration of the Board which reports that said voting system meets the requirements of Election Law § 7-202, with minor findings; and

Whereas, the Elections Operations Unit reports that the system so examined, with the recommended compensating controls, can safely and properly be used by voters and local boards of elections at elections under the conditions prescribed in the Election Law and the requirements of the federal Help America Vote Act; and

Whereas, a pilot project in the 2009 Primary and General Elections was successfully conducted in forty-seven (47) counties across New York State, including nineteen counties which opted to conduct the pilot on a county-wide basis; and

Whereas, having considered the totality of certification test artifacts, summary reports, findings logs with corresponding compensating controls, the on-site evaluations of pilot project county and poll site operations, and the results of functional testing conducted by the Election Operations Unit, and the Elections Operations Unit having recommended the certification of said systems as herein defined; now, therefore

Be it resolved, that the Commissioners of the New York State Board of Elections do hereby certify in accordance with Election Law § 7-201 that the Unity Suite 3.0.0 Voting System and DS-200 v.2.1.0.0 precinct-based scanner with the recommended compensating controls can safely and properly be used by voters and local boards of elections at elections under the conditions prescribed in the Election Law and the requirements of the federal Help America Vote Act.



James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

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STATE BOARD OF ELECTIONS

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URL: <http://www.elections.state.ny.us>

PROPOSED RESOLUTION

REGARDING REMEDIATION OF MINOR ISSUES

Whereas, Election Systems & Software Inc. (ES & S) has submitted applications for certification of its Unity Suite 3.0.0 Voting System and DS-200 v.2.1.0.0 precinct-based scanner and the AutoMARK Voter Assist Terminal ballot marking device; and

Whereas, Dominion Voting Systems has submitted an application for certification of Dominion's Democracy Suite 3.0.3 Voting System, including the ImageCast precinct-based scanner; and

Whereas, the findings of SysTest Labs, Inc., the independent testing authority designated by the Board, and of NYSTEC, the independent security reviewers designated by the Board, contain several findings of non-compliance with provisions of the State Board's regulations, 9 NYCRR Part 6209, that do not affect the ability to use the systems safely and accurately with the recommended compensating controls; and

Whereas, the contracts for the sale of such voting systems require that such systems comply in all respects with the provisions of the State Board's regulations; and

Whereas, the State Board, NYSTEC and SysTest have discerned that some of the requirements contained in the State Board's regulations are inapplicable or immaterial to the voting systems; now, therefore,

Be it resolved, that the Commissioners of the New York State Board of Elections direct that the Election Operations Unit review with Election Systems & Software, Inc., and Dominion Voting Systems, Inc. the findings of non-compliance and where applicable prepare a schedule for their prompt remediation; and

Be it further resolved that the Election Operations Unit shall notify each county board of elections and the Board of Elections in the City of New York of the compensating controls for each voting system used by that board.

F.Y.I.



CIDNY

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Center for Independence of the Disabled, NY

December 16, 2009

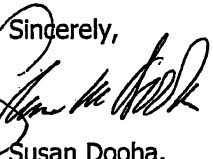
David A. Paterson
State Capitol
Albany, NY 12224

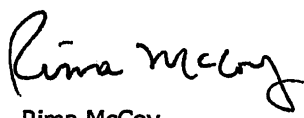
Dear Governor Paterson:

CIDNY is pleased to hear that your office is following up on your veto message regarding the Poll Site Access Bill (Assembly Bill 584A) by initiating a conversation with the NYC Office of the Mayor and the NYC Board of Elections. In the spirit of the bill, which called for "consultation with persons, groups or entities with knowledge about public access," we would welcome the opportunity to be brought into the dialogue to help achieve a positive outcome. CIDNY has over 30 years experience working to break down barriers that prevent people with disabilities from participating fully in mainstream life.

Based on our experience surveying over 460 NYC poll sites for accessibility since 2003, we believe that a resolution of accessibility concerns is achievable and not too expensive for New York City to implement. For example, the City has raised the concern that it would be required to provide "at least two dedicated and accessible parking spaces at each poll site." The New York City Board of Elections promulgated this view in a letter dated, August 7, 2009 to Peter J. Kiernan, Counsel to the Governor of the State of New York. However, according to the ADA Guidelines for Poll Site Accessibility, "when parking is provided for voters, staff and volunteers, accessible parking must be provided for people with disabilities." In other words, if no parking space is provided there is no need to provide accessible parking. This interpretation was verified by communication with the Department of Justice and the DBTAC Northeast ADA Center at Cornell University. This verification was given by CIDNY to Steven Richmond, Esq., attorney for the NYCBOE, on July 31, 2009.

In 2006, you spoke out against, "the noncompliance of New York State with the Help America Vote Act, and the embarrassing way in which disabled people have been treated through the process of trying to get the most unique opportunity we have in this country, the right to vote." We hope that you will prevail upon the parties to include the disability community in the discussion to enact legislation for poll site accessibility.

Sincerely,

Susan Dooha,
Executive Director


Rima McCoy
Voting Rights Coordinator

cc: Peter J. Kiernan, Counsel to the Governor of the State of New York
Margi Trapani, Communications & Education Director, CIDNY
Marcus Cederqvist, Executive Director, NYC Board of Elections
Helen Benlisa, Project HAVA Coordinator, Catskill Center for Independence

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COMMITTEE REPORT

Election Law Committee

By Lawrence A. Mandelker



NYCLA's Election Law Committee offers a convivial gathering at which current issues of election law and administration are discussed, analyzed and mastered. Over the past 12 months, the topics covered have included:

1. Election Day 2008 from the perspective of an attorney who volunteered in Ohio and attorneys and election officials serving in New York City.
2. Discussion of litigation in the Eastern District of New York, which challenged the 2008 amendment to New York City's term limits law.
3. Hearing before the State Senate Election Law Committee and, in particular, bills that would allow for same-day voting registration, enrollment and change of enrollment.
4. Various Campaign Finance Board advisory opinions.
5. *Northwest Austin Municipal District No. 1 v. Holder*: In June 2009, the Supreme Court ruled that all individual jurisdictions should have the opportunity to bail out of a provision in the Voting Rights Act requiring federal pre-clearance for changes in election procedures. However, the Court did not rule on the constitutionality of the provision itself.
6. *Citizens United v. FEC*: This ongoing legal case reviews the constitutionality of the federal ban on independent expenditures and, perhaps, direct politi-

cal contributions in federal elections. Our discussion included initial exploration of the consequences of a declaration of unconstitutionality.

7. Military & Overseas Voter Empowerment Act: This bill, pending in the U.S. Senate, would require military ballots to be mailed out at least 45 days before an election. The discussion included an exploration of the ability of election officials to comply with the legislation were it to pass and the amendments to the election calendar that would be required.

In addition to these mini-seminars, the Committee hosted a well-attended public forum last December, moderated by *New York Post* City Hall Bureau Chief David Seifman, where panelists discussed the pros and cons of partisan primaries. We have formed a subcommittee to review the manner in which the City funds the operations of the Board of Elections. (Although the Board is not a mayoral agency, it is funded through the Mayor's executive budget.) The City and the Board have an ongoing dispute about whether the Board is being adequately funded. The City believes that the Board has failed to provide the metrics to allow the Office of Management and Budget to quantify performance as well as needs. The Board, asserting its independence, believes the City fails to understand the Board's needs and operations. We are examining the issue and intend to report on the process (See *Election Law Committee on page 12*)

Election Law Committee

(Continued From Page 6)

and the parties' respective positions.

The Election Law Committee's next meeting is on December 16 at the Home of Law at 6:00 PM. All are welcome to attend. Please rsvp Jisha V. Dymond,

committee secretary, at JDymond@gbvlaw.com.

Mr. Mandelker, chair of the Election Law Committee, is a partner at Kantor, Davidoff, Wolfe Mandelker, Twomey & Gallanty, P.C. His practice includes federal and state business issue litigation, arbitration and government relations.

DAILY NEWS EDITORIAL

Pardon him, governor

A top state court has moved to rectify a long-standing miscarriage of justice by restoring the law license of the only New Yorker convicted of a crime simply for voting since suffragist Susan B. Anthony was put on trial in 1873.

The Brooklyn Appellate Division wisely let political activist John O'Hara again serve as an attorney despite his automatic disbarment as a felon. In doing so, the court officially recognized the patently unfair nature of O'Hara's prosecution.

It is beyond doubt that O'Hara was the victim of a criminal justice vendetta ginned up by enemies in the Brooklyn Democratic Party who were fed up with his constant challenges. As a special committee of lawyers reported to the court: "Mr. O'Hara, accurately it appears, claims that the machine went gunning for him."

The weapon of choice was Brooklyn District Attorney Joe Hynes, who hauled O'Hara into three trials on seven felony charges that carried the potential for years in jail. What was O'Hara's supposed crime? Follow this:

He lived and had a law office on 61st St. in Brooklyn for years. He was registered to vote there. In 1992, he moved into an apartment 14 blocks away, intending to purchase the building. He registered to vote at the new address and cast ballots in state and local elections. The purchase fell through. In 1993, he returned to his residence on 61st St. and shifted his voter registration back.

Hynes trumped those facts up into an indictment alleging that O'Hara had kept his primary

residence on 61st St. throughout — and had thus violated a law that requires voters to register at their primary residences.

Then the DA pursued the case with a vengeance, even though O'Hara had voted only once in each election and even though both addresses were in the same voting district. After one conviction was overturned and a second trial ended with a hung jury, a third panel agreed that O'Hara had run afoul of a hypertechnical reading of the law.

The state's highest court upheld O'Hara's conviction, with the dissent correctly pointing out that, absent fraud, questions of residency in voting are uniformly hashed out by boards of election. The dissent also raised concerns about criminalizing "politically charged disputes such as this" without clear legal standards.

O'Hara was sentenced to 1,500 hours of community service, five years of probation and a \$20,000 fine. He has been fighting ever since to clear his name.

The panel of lawyers that recommended his reinstatement to the bar gave him a big boost by expressing "grave doubts that Mr. O'Hara did anything that justified his criminal prosecution."

At heart, the case was an example of selective and overzealous prosecution. For perspective on how selective, consider the fact that Bronx state Sen. Pedro Espada lives openly in Westchester while voting in and representing the Bronx.

Now, O'Hara has set his sights on exoneration. He has petitioned Gov. Paterson for a pardon. 'Tis the season, governor. Grant O'Hara's wish.

Rushing to the polls

Nine years after the voting fiasco in Florida made a nightmare of a presidential election, eight years after a federal law required electronic voting, three years after missing the deadline and being sued by Washington, the state Board of Elections has gotten its act together. Kind of.

The board has chosen a system of paper ballots that will be read by optical scanners. It has also certified for use the optical scanners and computers that are manufactured by two companies. Local voting officials, such as the city's Board of Elections, will have to choose one or the other.

So far so good. Optical scanning of paper ballots should avoid the disasters that were suffered by states that experimented with ATM-like computers. But where the state board has gone haywire is in requiring city officials to award a \$50 million-plus contract for machines by Jan. 14.

That gives an organization never known for efficiency less than a month to evaluate which of two machines and which of two companies seems more reliable for use in thousands of polling places come next year's party primaries.

Why the headlong rush? The reason is that, after dragging its feet and fumbling every which way, the state board has been ordered by a federal judge to get the job done now. Ahead we go, potential screwups be damned.

The competing machines, on display last week in Brooklyn, Queens and Staten Island and this week in the Bronx and Manhattan, appeared similar in design and function at a brief tryout.

A voter gets a paper ballot, goes to a booth, fills in bubbles with a pen or pencil and gets in line to put the ballot in the machine. The machine reads and tallies the marks and drops the ballot into a locked box for safekeeping as the official record of the vote. In a disputed or close contest, the paper ballot count will trump the machine tally.

We haven't a clue as to which of the two machines would be the better choice. Nor do we have hope for great illumination of the matter. The city board will hold a two-hour public hearing on the selection Dec. 29 and choose on Jan. 5.

After all these years, this, again, is no way to decide how voters will exercise the franchise.

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NEWS

Appellate Division hands down ballot decision

Print Page

By Francesca Olsen and Andrew Amelinckx

Published:
Saturday, December 19, 2009 2:14 AM EST

The state of New York Supreme Court, Appellate Division, released its decision regarding the validity of 66 absentee ballots for the town of Taghkanic, and the validity of the arguments that go along with them.

The court ruled that if Republican Party lawyers John Ciampoli and James Walsh were going to challenge residency, then the challenges should have been made prior to the absentee ballots being cast.

The decision also says that because Ciampoli and Walsh didn't join the voters as necessary parties to the case, then that means that they were not intending to challenge them on the basis of residency.

But it's not the end of the story: the case will resume in Columbia County court again, as soon as a date can be set.

"The decision here actually is broader than any of us could have expected and it is a real significant win for voters, particularly absentee ballot voters," said Kathleen O'Keefe, who has been representing the county Democratic Party for the duration of the case. "Basically, what the court has said is that you can't challenge an absentee ballot after the election. You have to challenge the issuance of the ballot before the election."

When asked if the decision sets a precedent, O'Keefe said, "I think it does ... at least with respect to the dual residence voters, they're making it very clear. You cannot make this challenge after the election."

The text of the court's decision says "a challenge to such residency should be made pursuant to the procedure to challenge the issuing of absentee ballots and not, as here, after the ballots had been cast."

It also says that "the law regarding a voter choosing among residences for election purposes is interpreted broadly."

To challenge a voter, a party must challenge on the basis of voter qualifications. An individual has to be a citizen age 18 or older and be a resident of the district they are voting in. When a voter is challenged in person at a polling place on Election Day, state election law says they must sign an oath swearing they are a legal resident of that district, over 18, and a citizen of the United States.

"When you challenge the oath, you've got to say which of those three qualifications are false. The oath really goes to the residency issue too," O'Keefe said.

O'Keefe added that when the case goes back to court, she is going to make the argument that based on this decision, all the challenges to dual residents should be thrown out and that those ballots should be opened.

"That may leave a few other ballots that are not covered by this decision," she said. "There may still be open issues here ... this is only the issue of dual residence and if you can challenge it after the election."

County Democratic Party Chairman Chris Nolan said he was happy with the decision.

"I certainly stand by the fact that we're gratified that the court understood our position, and upheld it," he said.

According to Nolan, the court "sided with the Democratic Committee in upholding second-home owners' right to choose from which residence to vote."

This both affirms the objections to the Republican attorneys' tactics, he stated in a release, and "made it clear that the voter suppression tactics used by the Republican Committee in this case are not permitted."

Republican attorney Ciampoli also claims a victory in the court's decision.

"Winning is good," said Ciampoli Friday. "I think the decision was favorable."

He said that while the other side may trumpet what they feel is a victory concerning "residency," he can still challenge the "veracity of the statements" made by the voters in obtaining the absentee ballots.

There were two objections, he said, the first being whether the voters were qualified to vote in Columbia County and the second concerning statements made to obtain the ballots.

According to Ciampoli, they are challenging the ballot, not the voter registration.

"They're similar tests," he said.

In comparable challenges in Dutchess County, said Ciampoli, he successfully had ballots thrown out by several Rhinebeck voters who remain on the voter rolls.

"We're taking a look at the opinion and we'll decide how to move forward from here," he said.

Judge Jonathan Nichols said he planned to confer with the attorneys before proceeding. A date must be scheduled. Nichols added that the court would probably take place outside the courthouse to accommodate the volume of people in attendance, as well as the fact that some of them have limited mobility (the courthouse is not compliant with the Americans with Disabilities Act).

Ciampoli and Walsh, when asked in county court, told Nichols that they were only challenging qualifications of voters on the basis of residence, not age or citizenship.

"This is a significant, pro-voter decision," O'Keefe said. "It's very exciting. As somebody that believes everyone should get a chance to vote, I'm very excited to have been a part of this."

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Poll workers to get paid

POLL WORKERS: The check's in the mail.

More than 30,000 people who manned the voting stations during the Nov. 3 election should get paid next week — after a delay that prompted both the mayor and the city controller to slam the Board of Elections.

According to a spokesman for city Controller William Thompson, workers should receive checks by Monday.

Celeste Katz

Friday, December 18, 2009

DAILY NEWS

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New fed heat on Working Families Party

THREE MORE incoming city councilmen now acknowledge being approached by the feds about their dealings with the Working Families Party in this year's elections.

The Manhattan U.S. attorney has asked Councilmen-elect Brad Lander, Jumaane Williams and James Van Bramer for information about their campaigns' transactions with the party's for-profit arm, Data and Field Services.

Many candidates who received the party's endorsement also hired DFS, which provides paid campaign services like canvassing and get-out-the-vote operations.

Critics — including a group of voters who have filed a separate lawsuit against another incoming party-backed Council member, Staten Islander Debi Rose — say the party used DFS to circumvent campaign spending rules.

The Working Families Party says it has abided by all campaign finance laws, and Williams, for one, called the inquiry “the biggest example of sour grapes [I’ve] ever seen.”

“I think it’s being pushed up to this level by people who didn’t get the support they wanted or wished they had from the Working Families Party,” he said.

Public Advocate-elect Bill de Blasio of Brooklyn, who is also cooperating with the subpoena, yesterday said his campaign “paid fair market value” for the services of DFS.

David Birdsell of the Baruch College School of Public Affairs said the federal inquiry doesn’t necessarily reflect badly on individual candidates.

“I don’t think this casts a cloud over the people who earned the support of the Working Families Party,” he said. “This is clearly a question of the internal organization [of] the party.”

**Elizabeth Benjamin
and Celeste Katz**

70 Friday, December 18, 2009

DAILY NEWS

Your **Brooklyn**

MAKING A BAD CALL?

BY ERIN DURKIN
DAILY NEWS WRITER

AN ATHEIST group and a priest sued Brooklyn’s Catholic Diocese yesterday, charging Bishop Nicholas DiMarzio broke the law with “robocalls” aimed at swaying voters in a tight City Council election.

A recorded message from DiMarzio expressing support for Brooklyn Democratic boss Vito Lopez went out days before the November election to every registered voter in the Bushwick district where Lopez’s handpicked candidate, Maritza Davila, was mounting a challenge to Councilwoman Diana Reyna.

Two suits filed yesterday ask a

B’klyn Diocese sued for pre-election msgs.

judge to revoke the Diocese’s tax-exempt status, charging the calls violated IRS rules that bar tax-exempt groups from “directly or indirectly” supporting political candidates.

“He clearly broke the law,” said Kenneth Bronstein, president of New York City Atheists. “It’s very dangerous for democracy when you start having religion ... endorsing candidates.”

The second suit was brought by advocates against clergy sexual abuse, led by the Rev. Robert Hoatson. They alleged DiMarzio backed Lopez’s preferred candidates to reward him for helping

scuttle a bill that would have given abuse victims more time to sue the church.

“He...effectively killed the clergy abuse legislation here in New York, saving the Catholic Church billions of dollars,” said plaintiff John Aretakis, a suspended attorney who previously represented sex abuse victims.

“You don’t have to be a rocket scientist to make the connection. There was a quid pro quo,” he said.

Msgr. Kieran Harrington, a spokesman for the Diocese, declined to comment on the lawsuits. He previously denied the

robocalls were meant as an endorsement of Davila, telling the New York Times the Bishop’s “intent was to thank Vito, who has taken the greatest grief for helping us.”

Hoatson said if that were true, the calls would not have been targeted at registered voters in one Council district. “Why not robocall all the Catholics in the diocese?” he said. “There’s no doubt that this was done to affect an election.”

Davila, an organizer at the Ridgewood Bushwick Senior Citizens Council, failed to unseat Reyna, a former Lopez protege now locked in a feud with the party boss.

Lopez declined to comment. 31

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timesunion.com

Results are in: Voting machines approved by

BOE

State election officials approve electronic devices that move it toward federal compliance

By RICK KARLIN, Capitol bureau

Click byline for more stories by writer.

First published: Wednesday, December 16, 2009

ALBANY -- Eight years after Congress ordered all 50 states to modernize their voting machines, New York's Board of Elections on Tuesday signed off on the new gear.

The unanimous vote by the four-person board certifies two types of electronic voting machines, from Dominion and ES&S, for state use. The certification means the state is moving toward compliance with a federal court order that new machines must be in use by the 2010 elections.

It also follows years of intense lobbying by voting machine manufacturers and an arduous vetting process in which the machines, which will eventually replace lever devices, were tested and re-tested for reliability.

"This has been a monumental job," Board of Elections member Evelyn Aquila said before joining her three counterparts in voting to certify the Dominion and ES&S machines.

Even watchdog groups, who over the years had pushed for more stringent testing, said they were satisfied.

"Today was an important milestone," said Bo Lipari, a software expert who had worked with several groups, including the New York State League of Women Voters, to ensure that the state selected reliable machines.

New York had previously earned slowest-in-the-nation status to adopt the machines, prompting a federal lawsuit and court order. But Board of Elections members and others said the delay may ultimately prove advantageous because it allowed the state to run an unprecedented number of reliability tests.

Congress passed the Help America Vote Act to force states to modernize their voting systems after the chaotic 2000 presidential vote, which ran into a lengthy delay due to problems such as Florida's now-famous "hanging chads" of paper ballots.

"We have no doubt these systems can be safely and properly used," Anna Svizzero, the

board's director of election operations, told the members.

Tuesday was the day the board and federal Judge Gary L. Sharpe had agreed to certify the machines as part of an agreement with the federal Department of Justice, which resorted to legal action to get New York off the dime.

The next major milestone will come in 2010 when, as per the court agreement, the state actually implements use of the machines on a broad scale.

That may not be as easy as it sounds, however, due to the resistance in some quarters to embracing the new electronic devices and abandoning the old lever-action machines.

A statewide group, Save New York Levers, wants to stick with the old machines, which their supporters believe are more reliable than electronic devices.

And some county elections commissioner, such as Columbia County's Virginia Martin, may try to keep the lever-action machines in use during next year's elections. "We want to use both," she said.

Martin wants to have the ballots that are electronically marked counted by hand rather than optically scanned -- a move that could put her in conflict with the state.

The new machines allow voters to electronically mark a paper ballot, which is then scanned and counted on a computing device.

Advocates such as Lipari fought for that style of machine rather than units with purely electronic counting mechanisms. That's because optical scanning machines create a paper trail of votes that can be audited if there is a dispute or problem.

ES&S is based on Omaha; Dominion is from Toronto, although it uses numerous New York suppliers and vendors and assembles the devices in Ogdensburg, according to a company spokesman.

Rick Karlin can be reached at 454-5758 or rkarlin@timesunion.com.

Mangano names new county attorney

BY WILLIAM MURPHY
william.murphy@newsday.com

A leading election lawyer will be named county attorney, incoming Nassau County Executive Edward Mangano said yesterday as he also reached out to some of Long Island's senior statesmen in the public sector.

The new county attorney will be John Ciampoli, Mangano said. Ciampoli most recently worked for the Nassau GOP in monitoring the tally of paper ballots in which Republican Mangano held on to win by some 400 votes over incumbent Democrat Thomas Suozzi.

Ciampoli, who will be responsible for all litigation involving the county, also worked for Republican James Tedisco who lost in the upstate 20th Congressional District earlier this year, and for Republican Frank Padavan, who

won in the 11th State Senate District in Queens last year.

He also represented the losing Republican side in the court case under which Gov. David A. Paterson was eventually allowed to appoint Richard Ravitch as lieutenant governor.

"He's an individual with a rock-solid reputation," said Desmond Ryan, executive director of the Association for a Better Long Island. "He will try to adjudicate cases before they go to court, but if they go to court he will be prepared."

Mangano also said it was "likely" that he would appoint Eldia Gonzalez, a campaign supporter and Freeport real estate agent, as head of the county's Coordinated Agency for Spanish Americans.

Meanwhile, Mangano said he had a breakfast meeting yesterday in Bethpage with Frank Zarb, an executive in the financial ser-

vices industry who once chaired the fiscal watchdog Nassau County Interim Finance Authority and the Long Island Power Authority.

Neither Mangano nor Zarb would discuss the specifics of their conversation, but sources said Zarb is advising him on budget and financial issues. "I am consulting with those who have experience, wisdom and no agenda for some frank advice," Mangano said.

People close to Mangano, asking not be identified, said he will reach out to Robert Cattell, former chairman and CEO of KeySpan and former chairman of National Grid.

Cattell said yesterday that he met Mangano last week at a Christmas party at Mangano's current law firm — Rivkin, Radler Llp — and had offered his help. He said he has not yet met with Mangano, but, "my experience clearly is in the energy field."

NEWSDAY, TUESDAY, DECEMBER 15, 2009 www.newsday.com

NEWSDAY, WEDNESDAY, DECEMBER 16, 2009

LONG ISLAND

Dems blast Mangano's hire

BY WILLIAM MURPHY
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Even before they take power, Nassau Republicans have broken a campaign promise by hiring an upstater as the county attorney, Democrats said yesterday.

Incoming County Executive Edward Mangano, a Republican, said Monday that he was appointing John Ciampoli, a GOP election lawyer from Kinderhook, about 18 miles south of Albany, to the county's top legal job.

But Jay Jacobs, the Nassau County and state Democratic chairman, said yesterday: "We should be moving ahead to

better days, not going back to the bad old days of Republican machine party politics."

During the campaign, Mangano criticized incumbent Democrat Thomas Suozzi for hiring nonresidents for top county jobs.

"Ed Mangano will discontinue Tom Suozzi's ill-conceived policy of hiring nonresidents to highly-paid county positions," Mangano's political blog stated. "Nassau County residents deserve policymakers who are subject to their own fees and taxes."

The Ciampoli appointment was "the height of hypocrisy" and "the first GOP broken campaign promise," Jacobs said.

Mangano did not return a telephone call for comment yesterday. Aides working on his transition released a statement calling Ciampoli "a great lawyer who is ready to help Ed put the county back on track."

"John grew up in Floral Park, graduated Hofstra Law School and intends to move back to his home county — Nassau County," the statement said. "It's time for all to understand that the election is over. The people want the partisan bickering to stop so that we can all work together for a better Nassau County."

Ciampoli, who will be responsible for all litigation involving

the county, was the third major appointment by Mangano, following the hiring of Long Island Power Authority financial official Timothy Sullivan as the top deputy for budget and finance last week, and the appointment of Assemb. Rob Walker (R-Hicksville), his campaign manager, as chief deputy county executive.

The issue of hiring non-county residents has been kicked around for years by lawmakers. About a year ago, the Republican minority leader of the county legislature, Peter Schmitt of Massapequa, criticized Suozzi for hiring Ted Jankowski, a New Hampshire resident, as county tax assessor.

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