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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, NOVEMBER 17, 2009 AT 1:30 P.M.

1. Minutes
 - a) 09/24/09 *Special Meeting*
 - b) 10/13/09
 - c) 10/13/09 *Finance Committee*
 - d) 10/27/09
 - e) 11/10/09
2. Marcus Cederqvist
 - a) HAVA Update
 - Status Update of New Voting System Implementation Project
3. John Ward
 - a) Comparative Expenditures
4. Executive Session
 - a) Personnel Matters

For Your Information

- HAVA Weekly Status Report, Week Ending November 13, 2009
- SBOE Co-Executive Directors Letter dated October 14, 2009 regarding Statewide Voter Registration List

News Items of Interest

- *The Ithaca Journal*: New voting system passes audit
- *Newsday*: More Nassau votes than voters?
- *The New York Times*: New York's 2010 Primary Could Arrive a Little Early
- *The Legislative Gazette*: More NYC Democrats are voting upstate



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

November 13, 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 November 12, 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 11/6/09-11/12/09

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 time line.

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- OGS is discussing regular add requests with both vendors to work through any outstanding issues.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule

- Overall progress of testing :
 - NYSTEC will continue to work with SysTest during their test case cleanup (11/9-11/18) with the goal of finishing the review of all test cases.
 - SysTest has advised that testing on both vendors' systems has been completed and the process of writing the report to SBOE for certification determinations has begun.
 - Election Operations staff reviewing test results as they become available, to ensure sufficient and logical reporting.
 - SBOE to monitor how County BOE's do their election audit to determine if the procedures and draft forms work and identify any possible improvements.

NEW YORK STATE BOARD OF ELECTIONS

- As discussed in the 11/9 Status meeting, NYSTEC will provide test case written reviews on all test cases. SBOE has also requested that NYSTEC provide the compensating controls and risk evaluations for any security requirements failures.
- Conference calls with both vendors continue when requested by each vendor.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: on schedule

- Acceptance testing on the balance of Dominion machines continues.

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 and will be discussing the matter with the DOJ on their next status call.



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JOHN J. WARD
FINANCE OFFICER

DATE: November 17, 2009
TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

FY10	P.S. Projection through 11/13/09 Payroll:	\$ 7,153,500
FY10	P.S. Actual through 11/13/09 Payroll:	<u>\$12,114,685</u>
	Difference	(\$ 4,961,185)

Overtime pays two weeks ending 10/30/09

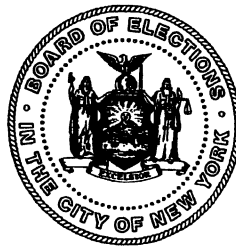
OVERTIME USAGE

General Office	87,897
Brooklyn	157,795
Queens	77,919
Bronx	37,495
New York	106,078
Staten Island	<u>15,167</u>
Total	\$482,351

Respectfully submitted,

Finance Officer

Comments
FYI



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November 10, 2009

New York State Board of Elections
40 Steuben Street
Albany, NY 12207-2108
Attn: Robert A. Brehm, Co-Executive Director
Todd D. Valentine, Co-Executive Director

Re: SBOE Co-Executive Directors Letter dated October 14,
2009 regarding Statewide Voter Registration List

Gentlemen:

On behalf of the Commissioners of Elections in the City of New York (the "Commissioners"), I write to provide their response to your letter addressed to me, dated October 14, 2009.

In that letter, the State Board once again failed to address the City Board's fundamental concern and objection that the current process, procedures, rules and regulations that you have designed into the "Statewide Voter Registration List or NYS Voter" fails to meet the constitutional and statutory requirements for the conduct of voter registration activities in the State of New York. Please note that we have articulated that concerns in multiple written submissions as well as discussions with each of you, the State Board Commissioners and other members of the State Board staff.

The Commissioners believe that the State Board's continued failure to require bi-partisan electronic signatures on every transaction made by or done within the NYS Voter system means that such system does not comply with this State's Constitutional and Statutory requirements, which is permitted under Federal Law.

Bipartisanship is a basic tenant of New York's election law and procedure, and is a principle that is especially crucial to voter registration and qualification. Your recent adoption of amendments removing the requirement that county boards of elections electronically document their compliance with the bipartisanship provisions of § 6217.5(3)(a) and the Election Law, have decreased accountability and transparency and makes it even more difficult to assure all that these most important list maintenance functions are performed in accordance with the State Constitution and the Election Law and clearly and easily documented.

HAVA, in 42 USC § 15485 specifically provides that with respect to the Computerized statewide voter registration list requirement (42 USC § 15483) "The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State". It is clear that nothing in the federal law abridges New York State's Constitutional and statutory framework for the conduct of all election activities.

Specifically, The New York State Constitution Article II, § 8 requires that "[a]ll laws creating, regulating or affecting boards or officers charged with the duty of qualifying voters . . . shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes." Under the Election Law, each application for registration must be "received by two members of the local board of inspectors, representing respectively the two political parties as provided herein for the appointment of inspectors." Election L. § 5-202(2). Cancellation of a voter's registration must be approved by two members of the county board of elections or two employees of the board representing different political parties. Election L. § 5-404(1). Whenever a voter's registration is challenged, a bipartisan team of workers must investigate the voter's status. Election L. § 5-702(1).

Part 6217 of the Rules and Regulations of the State Board of Elections was adopted pursuant to § 5-614 of the Election Law, which created the Statewide Voter Registration List, a computerized list of

registered voters known as NYSVoter. Part 6217 is comprised of “regulations in relation to the operation of . . . NYSVoter,” including the creation and maintenance of the computerized list. N.Y. Comp. Codes R. & Regs. tit. 9, § 6217.1(1). Reflecting the importance of bipartisanship to voter registration, the regulation requires that “[a]ll voter registration activity must be done by a bipartisan team of workers to ensure fairness and uniformity in the process.” N.Y. Comp. Codes R. & Regs. tit. 9, § 6217.5(3).

Under the prior version of § 6217.5(3)(a), before the information in an application for voter registration is sent to NYSVoter, the application must be reviewed by a member of each of the two major political parties, each of whom must electronically sign his or her work. Contrary to principles of bipartisanship, the recently adopted amendments to § 6217.5(3)(a) remove the electronic signing obligation and provide no alternative method for documenting compliance with the bipartisanship requirements of the regulation. The State Board of Elections, county boards, and voters are now left with absolutely no means of verifying compliance with the bipartisanship requirements of Election Law § 5-202(2) and the Rules and Regulations of the State Board of Elections.

The Commissioners consider your adoption of the amendments a move in the wrong direction. Indeed, rather than *removing* the electronic verification requirements from § 6217.5(3)(a), the State Boards *should have added* electronic verification requirements throughout § 6217, to ensure adherence to the Election Law’s bipartisanship requirements in all aspects of NYSVoter’s creation and maintenance. See e.g., N.Y. Comp. Codes R. & Regs. tit. 9, §§ 6217.7 (processing of voters who move between counties, including cancellation of registration); 6217.9 (determining voter registration status, including purged status); 6217.10 (voter registration list changes and list maintenance, including cancellation of registration).

Until such time as the State Board of Elections takes the necessary steps to insure full compliance with the foregoing constitutional and statutory provisions, the Commissioners of Elections in the City of New York, consistent with their Oath of Office and constitutional and statutory responsibilities will not permit this Board to participate in an unconstitutional and illegal system for voter registration activities.

The Commissioners trust that the State Board of Elections will immediately undertake the necessary remedial measures to bring the NYS

Voter system into compliance with the mandates of the New York State Constitution and the Election Law enacted pursuant thereto.

Very truly yours,

THE BOARD OF ELECTIONS IN
THE CITY OF NEW YORK

By: 

Marcus Cederqvist, Executive Director

Copy: Peter J. Kiernan, Counsel to the Governor
Jeffrey Pearlman, Assistant Counsel to the Governor
Kathleen O'Keefe, Team Leader- Program and Counsel Staff,
New York State Assembly
Christopher Higgins, Assistant Counsel to the Majority, New
York State Senate

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James A. Walsh, Co-Chair
Evelyn J. Aquila, Commissioner
Gregory O. Peterson, Commissioner

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Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Steve Ferguson, Director, Management Information Systems
Charles Webb, III, Esq., Counsel to the Commissioners
Steven Denkberg, Esq., Counsel to the Commissioners
John Owens, Esq., Director of Campaign Finance
Reporting Enforcement
Beth Fossella, Coordinator, Voter Registration

NEW YORK CITY LAW DEPARTMENT

Michael A. Cardozo, Corporation Counsel

ithacajournal.com

Community
FYI

November 9, 2009

New voting system passes audit

Voters in the City of Ithaca used an optical scan voting system for the first time for the November 3 General Election. On Friday November 6, the Board of Elections conducted an audit to see if the machines tabulated correctly, as per New York State election law.

After a random drawing, 5 of the 10 machines were selected to be audited. Two bipartisan teams manually counted the original paper ballots, and the results were compared to the machine's totals. No discrepancies were found.

Next year all polling places in Tompkins County will use the optical scan voting system. A video showing how the new system works can be viewed at votetompkins.com.

The Board of Elections is located at 128 E. Buffalo Street, Ithaca, NY, and open M-F 8:30 - 4:30. For more information, go to votetompkins.com, or contact Commissioners Elizabeth W. Cree (R) or Stephen M. DeWitt (D) at 607-274-5522.

More Nassau votes than voters?

- Dems probe whether machine totals, sign-ins match
- May seek new election if enough votes in question

BY WILLIAM MURPHY AND CELESTE HADRICK

william.murphy@newsday.com
celeste.hadrick@newsday.com

A lawyer for Nassau County Democrats said Friday that the party's legal team is investigating over-votes in some districts and may actually call for a new election if there are enough votes in question.

"We are ascertaining whether the number of votes on the machines reflect the number of people who actually signed in to vote," attorney Steven Schlesinger said. "We know there are instances of more votes in an election district than people who signed in. We are investigating."

Schlesinger said his team is counting 20 poll books to see if there are over-votes, adding, "We selected ones where we thought there were public counter discrepancies." He said reconciliation between the poll books and machine is not usually done. "It's a ton of work."

His comments came after a brief court session in which

lawyers for Democrats and Republicans informed Justice Edward McCarty of State Supreme Court in Mineola of the ballot count, and recount, to date for county executive and three other contests.

The attorneys said Republican challenger Edward Mangano had a 459-vote lead over Democratic incumbent Thomas Suozzi in the race for county executive, and Republican challenger George Maragos had a 948-vote lead over incumbent Democrat Howard Weitzman in the race for county comptroller.

Schlesinger cited a 51-41 difference between votes on a machine and voters who signed in at a Malverne election district. He said there are a number of court decisions and the key is whether the questionable votes are enough to change the election results.

"The question is whether the number of votes in the machine which are in excess of those that should be are sufficient to affect the outcome of the election. For instance, if we find 200 more votes than



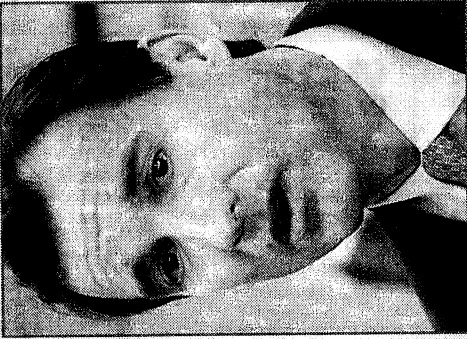
Republican Edward Mangano is leading in the recount.

there should be and Suozzi or Mangano lose by 100, we may have a do-over."

Asked if he meant those districts would be a "do-over," he said, "The whole election is a do-over."

However, another Democratic attorney, Thomas Garry, representing Democratic Elections Commissioner William Biamonte, told the judge that the Malverne incident was the only case so far of an over-vote.

Garry said that happened because Board of Elections workers mistakenly allowed



Democrat Thomas Suozzi was ahead on election night.

voters to sign in and then use either of two machines, apparently unaware that there were different local races on the ballots in them.

He added that there was legal precedent for allowing those votes to be counted for countywide races, even if the vote for the local race was voided.

Mangano said Schlesinger was "grasping at straws. It's a desperate tactic. It will be difficult to overcome a 459 plurality. Let's move this election along and find out how the people voted."

Innocent errors can be to blame

While fraud may be the first possible explanation that comes to mind when more votes are counted in a district than there were people who signed in to vote, errors also play a major role, officials say.

For example, in some areas, after you sign in, you're told to go to a specific voting machine for the district in which you're registered. If you go to the wrong machine and vote, that would be considered an over-vote because the number of votes wouldn't match the number of people who signed in for that district.

Also, a tired elections inspector can get distracted after finding a voter's name in the registration books and forget to have the voter sign before sending the voter to the machine.

New York's 2010 Primary Could Arrive a Little Early

By DAVID W. CHEN

It is hard enough to get New York voters to the polls for any September primary. But a proposal that was easily passed by the United States Senate last month could move next year's primary to a date that may be even more challenging — the end of August. That is the conclusion of the State Board of Elections and election lawyers who have examined the bill.

Such a change would complicate the calculus for next year's races for United States Congress, governor, attorney general and other offices.

The possible date change is the byproduct of a little-noticed amendment sponsored by Senator Charles E. Schumer in the annual defense authorization bill, which passed the Senate on July 23 and is now in a House-Senate conference committee. The amendment's goal was to give those serving overseas in the military more time — 45 days, to be exact — to receive their absentee ballots for the general election on Nov. 2, 2010, and to mail them back in.

Military personnel have long complained about the difficulty in getting their votes counted, and the issue was especially pronounced during last year's presidential election. General election ballots, of course, cannot be printed and sent out until after the primary.

But New York's primary is traditionally in mid-September, which is later than in most other states. So that 45-day provision would mean that next year's Sept. 14 primary would have to move up by at least two weeks, said Douglas A. Kellner, a co-chairman of the State Board of Elections.

"My belief is that it is literally impossible to comply with the new federal law if the primary date is any later than Aug. 31, 2010, and even Aug. 31 puts a lot of pressure on the county boards of election," Mr. Kellner said. "But there's an issue with August, because August is a month when people are traditionally on vacation, then you have to see whether you have the primary in August, or whether you have the primary in June."

Mr. Kellner mentioned June because that was when New York held its primary until 1974, when the Legislature pushed it to mid-September. But whether the Legislature would agree to return to holding primaries in June, when lawmakers are usually still in session, remains to be seen.

It is also not clear whether Congress will amend the proposal. But few substantive changes are expected, if the overwhelming bipartisan support for Mr. Schumer's amendment is any indication. Under the Senate bill, New York could apply for a waiver under the amendment. So

could nine other states with September primaries, including Massachusetts, Maryland and Minnesota.

But Mr. Kellner said in an Aug. 3 memo to state officials and Democratic leaders that he thought it was unlikely that the federal government would grant such a waiver, in part because of New York's poor track record in modernizing its electoral process. And Lawrence A. Mandelker, chairman of the election law committee of the New York County Lawyers Association, agreed.

"We're the last state to implement electronic voting machines, so why should the federal government be sympathetic to us?" he said.

In an interview, Mr. Schumer played down the possibility of a date change, saying, "I am not very concerned."

He said the state could, for example, post the ballots on a Web site so that military personnel could download them and mail them in.

"New York has three choices," he said. "Only one is unacceptable, and that is to deprive soldiers of voting. The other two are

Ripples from a bid to ensure that soldiers' votes are counted.

to modernize their system or change their primary date, and I hope they will modernize the system."

Publicly, anyway, Gov. David A. Paterson and the Assembly speaker, Sheldon Silver, both Democrats, say that they are supportive of any effort to ensure that the votes of military personnel overseas are counted.

"Speaker Silver is aware of this issue, and it's something that he will be discussing with his conference," said Dan Weiller, a spokesman for Mr. Silver.

But privately, Democrats say an earlier date could be problematic for Mr. Paterson, who needs as much time as possible, especially if he has a strong Democratic primary challenger, to improve his poor approval ratings.

Should New York be forced to change the date, the process will not be easy.

"If we were dealing with a functional Legislature this would not be a huge problem," said Mr. Mandelker. "But you have to move all the other dates related to the primary: when do you start petitioning, when do you start the challenges to the petition, when do you start the election law litigation, when are you preparing the ballot, when do the absentee and military ballots get printed prior to the primary. It will all have a domino effect."

THE NEW YORK TIMES NEW YORK SATURDAY, AUGUST 29, 2009

The Legislative Gazette

August 24, 2009 Vol. 32 Number 51 www.legislativegazette.com

More NYC Democrats are voting upstate

By VALERIE BAUMAN
The Associated Press

Mary Woods, a real estate manager in Greenwich Village, is a Democrat in Manhattan where there are six Democratic votes for every Republican.

There, her ballot is a drop in a very blue bucket.

That was part of the 69-year-old's recent decision to switch her registration to vote in a region where Republicans have a narrow enrollment advantage. She has a part-time home in Pine Plains, about 90 miles north of New York City.

"There's a gazillion people who vote like me in New York City," Woods said. "There's not so many up here."

These weekend and holiday upstaters

See Upstate on page 11

Upstate

Continued from page 1

may have helped seal a narrow win in March by newcomer Democrat Scott Murphy in the 20th Congressional District, a traditionally Republican and mostly rural district stretching from Dutchess County to near the Canadian border.

"Quite frankly, they're stealing my vote," said Joseph Mondello, chairman of the state Republican Committee and a Long Islander.

"It appears to me that their vote counts more than someone who has to vote where they live," said Christopher Callaghan, a Republican and former Saratoga County Treasurer who ran unsuccessfully for state comptroller in 2006.

Records show at least 153 New Yorkers actively registered in both New York City and at their upstate homes voted in the 20th Congressional District's special election in March, 76 percent of whom were enrolled Democrats, according to elections records obtained by The Associated Press. Nearly 250 more in the district are actively registered upstate and down, but didn't vote in that particular election.

It's illegal to be registered in two places at once, but the state Board of Elections said it probably happens because New York City boroughs are behind on eliminating voters from the city database after they switch their registration. The votes won't be thrown out and there aren't penalties to the voter.

The board said people are legally required to vote from their primary residence, but that's not clearly defined.

"Certainly if you voted in the morning in Manhattan and then drove to your summer home and voted there the same day, that would absolutely be illegal," said Bob Brehm, a spokesman for the state Board of Elections. "If you're at your summer home and there's a local election — that's where the debate (over registration) is."

Mondello said the party is investigating. He suspects at

least some of the trend comes by design — an assertion Democrats deny.

Barry Burden, a professor of political science at University of Wisconsin-Madison who focuses his research on U.S. elections, says New York may be ripe for strategic voting, because it has a partisan split between upstate and downstate voters and a high volume of city residents owning upstate homes.

"Any election system is going to encourage that kind of thing if voters learn to maximize their leverage," he said. "I'm not surprised."

After a monthlong count, Murphy won by 726 votes of more than 160,000 cast in the 20th district. It has 70,000 more enrolled Republicans than Democrats.

"It did play a role in the 20th Congressional District (race)," said June O'Neill, the executive chair of the state Democratic Committee. "And, in that instance, it obviously accrued to our advantage, but people have the legal right to choose where they want to cast that vote."

O'Neill said she first heard about the issue when Republicans started complaining about imported votes during the 20th Congressional race. But she said it's hard to track and impossible to know voter motivation.

New York's Republican Party has grown more concerned about these so-called imported votes with each passing election as their influence wanes. Democrats currently hold every statewide elected office and control both houses of the Legislature.

The effect of the exported New York City Democratic vote is magnified in rural Republican towns, like picturesque Pine Plains where Pine Plains United, a community group, has reached out to New York City voters with homes in the area, encouraging them to move their vote upstate.

That's where Woods got involved at her upstate home, pushing for a local politician who supported zoning laws. The candidate won.

"Some of those races go by 10 votes," said Mondello, the state GOP chairman. "You get 10 or 15 people to do that and you can change the outcome of an election."

Charles Napoli, chairman of the Town of Pine Plains

Republican Committee, said he's aware of the increase in weekend home owners shifting their registration upstate, but that just means his party has to reach more people.

"When you're confronted with the opposition party increasing its numbers rapidly, you have to increase yours, too," he said.

Dale Peterson, 60, says he made the switch to vote upstate because he's gradually felt more connected to Columbia County, where he's owned a home in the 20th Congressional district for more than 20 years. He and his wife became increasingly interested in local issues and elections. He voted for Murphy.

He moved his registration to his upstate address in time for the general election in November.

"Certainly, as long-term property owners begin to retire and spend more and more time upstate, you get a bigger and bigger influence of people who are from the city — and I would expect that to continue," said the Democrat, who lives most of the time on Manhattan's West Side.

While he says the races upstate are "more competitive," he didn't have a strategy behind his switch.

"I'm not making the argument that you should sort of pick which district you're voting in, 'where it counts the most,'" he said. "I'm saying we identify with that district, and we want to be represented by people we agree with."

For Deborah Masters, the registration was practical and political. She and her boyfriend rented in Brooklyn, but owned property in Columbia County that they wanted to be eligible for a tax rebate. The 58-year-old artist has been spending most of her time in recent months at her upstate residence.

Concerned about the environment and agriculture industry in upstate New York, the Democrat was already considering changing her registration. The 20th Congressional race was the catalyst she needed.

"I just kind of knew it was a very Republican area when I moved here," said Masters, who voted for Murphy. "I knew my vote would count more, which was very exciting to me."