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JUDITH D. STUPP
COMMISSIONERS

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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

AGENDA COMMISSIONERS' MEETING TUESDAY, MARCH 17, 2009 AT 1:30 P.M.

-
1. Meeting of the Board of Canvassers
 - a) February 24, 2009 Special Election, Queens – 21st & 32nd CD
 - b) February 24, 2009 Special Election, Richmond – 49th CD
 2. Minutes
 - a) 01/27/09
 - b) 02/03/09
 - c) 02/10/09
 - d) 02/17/09
 - e) 03/03/09
 3. Marcus Cederqvist
 - a) HAVA Update
 - b) NYSBOE Annual Election Officials' Conference – April 27-29, 2009 in Albany
 - c) Report on March 12, 2009 City Council Governmental Operations Budget Hearing
 - d) Report on State Government Information and Education Day – March 10, 2009
 4. Steven H. Richman
 - a) Designating Petition and Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election
 - b) Procedure for the Processing of Voters Reported to Have Been Convicted of a Felony
 5. Joseph LaRocca
 - a) Draft – Notice to All Candidates
 6. John Ward
 - a) Comparative Expenditures
 - b) Vacancy Report

7. Executive Session
 - a) Litigation

For Your Information

- NYS Board of Elections Weekly Status Report for the Weeks of February 27, 2009 through March 5, 2009
- Amended – NYS Board of Elections Weekly Status Report for the Weeks of March 7, 2009 through March 12, 2009
- Election Law Proposals for 2009
- Letter to Christopher Coates, Esq. – Chief Voting Section, Civil Rights Division, U.S. Department of Justice
- Conflicts of Interest Board Advisory Opinion No. 2009-1
- Analysis of the Mayor's Fiscal 2010 Preliminary Management Report for the Board of Elections – Thursday, March 12, 2009
- Testimony of Marcus Cederqvist, Executive Director, Board of Elections in the City of New York before the New York City Council Committee on Governmental Operations – Fiscals Year 2010 Preliminary Budget – March 12, 2009
- FY2010 Preliminary Budget Hearing, March 12, 2009 – Testimony by Commissioner Martha K. Hirst, Department of Citywide Administrative Services
- Testimony of Amy Loprest, Executive Director, New York Campaign Finance Board – March 12, 2009
- The City of New York, Office of the City Clerk – Offices for the November 3, 2009 General Election
- HAVA Replacement Fund Deadline Extended to November 1, 2010
- United States v. New York State Board of Elections, et. al. Civil Action No. 06-CV-0263 (GLS)
- Public Notice – March 5, 2009
- Certificate of Vacancy – Borough Presidency of the Bronx
- Letter from the U.S. Department of Justice, Civil Rights Division
- 2009 March Certification
- Letter from SBOE to All County Boards

News Items of Interest

- *The Daily News*: Mike's Facing Justice Day
- *The New York Times National*: Maryland Official for Civil Rights Post
- *The Daily News*: Budget Cuts Endangering City Elections, Board Says
- *The New York Times*: Voting Rights Elude Some Florida Ex-Felons, Study Says
- *OpEdNews*: Obama's Omnibus Appropriations Act May Save Lever Voting System
- *The New York Times*: Hurdles to Voting Persisted in 2008
- *The New York Times*: Narrowing the Voting Rights Act
- *The New York Times*: A Love Affair With Lever Voting Machines
- *The New York Times*: Justices, 5-4, Set Limit on Sweep of Voting Law
- *The New York Post*: Furor Over Bogus Ballots
- *Times Union*: Audit Reveals Absentee Ballot Lapses
- *The New York Times*: Pick a Ballot, Any Ballot: Votes Counted in S.I. Race

- *The New York Times*: Votes Counted in Staten Island Race
- *Staten Island Advance*: Mitchell and Rose Neck and Neck as Vote Count Nears End
- *Staten Island Advance*: Mitchell Opens 228-Vote Edge in Recount
- *Staten Island Advance*: Paper Ballot Recount is Painstaking Process
- *Staten Island Real-Time News*: Recount in Staten Island Race Could Last Through Weekend



STATE BOARD OF ELECTIONS

James A. Walsh
Co-Chair

Gregory P. Peterson
Commissioner

Todd D. Valentine
Co-Executive Director

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

Stanley L. Zalen
Co-Executive Director

February 27, 2009

Dear Commissioners:

The New York State Board of Elections' Annual Election Officials Conference is Monday, April 27 through Wednesday, April 29, 2009 at the Holiday Inn on Wolf Road, Albany, New York.

HOTEL REGISTRATION: The Holiday Inn will be offering a "two-night package plan". Please see the hotel registration form enclosed (p.6). If you need overnight accommodations, but are not purchasing the two-night package plan, please call the hotel direct at 518-458-7264. If you choose not to stay at the Holiday Inn, we have included a list of Hotels/Motels close by (p.7). The hotel registration cut-off date is **Friday, March 27, 2009**.

HOTEL PAYMENT: Please make checks or vouchers payable to the Holiday Inn. If you are paying by credit card, please enter your information on the enclosed hotel registration form, otherwise your reservation will not be guaranteed.


CONFERENCE REGISTRATION FORM: Anyone who is attending this year's conference should complete the enclosed State Board of Elections' Conference Registration Form (p.4). This form is used to create name tags, conference packets, and final counts for walk-in meals and breaks.

WALK-IN MEALS: If you are not purchasing the package plan, individual meal tickets will be sold at the State Board of Elections registration table (cash or check only please, payable to the Holiday Inn. **YOU MUST PROVIDE A TAX EXEMPT CERTIFICATE IF PURCHASING WALK-IN MEALS AS THE PRICE EXCLUDES TAX**). See menu items on page 2.

CONFERENCE REGISTRATION FEE: There will be a \$20.00 conference fee per conference attendee. For those purchasing the hotel package plan, the fee is included in the package price. (cash or check only please).

If you have any questions, please call John Conklin or Donna Mullahey, State Board of Elections, at 518-474-1953. We look forward to seeing you at this year's event.

Sincerely,


John Conklin
Director of Public Information

Encl.

CONFERENCE MENU AND COSTS OF WALK-IN MEALS

[YOU MUST PROVIDE A TAX EXEMPT CERTIFICATE IF PURCHASING WALK-IN MEALS AS THE PRICE EXCLUDES TAX]

Monday, April 27, 2009:

6:00 p.m. Reception: One hour of hotel complimentary cheer, Cheese & Crackers, Vegetable Cruautés with Dip, Sliced Fresh Fruit (cost included in Dinner price)

7:00 p.m. Capital Dinner Buffet: Fruit Salad, Tossed Salad with Dressings, Dinner Rolls, Fennel Rubbed Pork Loin, Cheese Tortellini topped with Fresh Marinara Sauce, Toasted Parmesan Pan Seared Salmon with an Herbed Butter Sauce, Oven Roasted Red Bliss Potatoes, Chef's Seasonal Vegetables, Assorted Cakes and Tarts, Freshly Brewed Coffee and Teas.....**\$ 51.00***

Tuesday, April 28, 2009:

7:00 - 8:45 a.m. Breakfast Buffet: Fresh Fruit Salad, Assorted Cereals, Scrambled Eggs with Chives, Hash Brown Potatoes, Smoked Bacon, Country Sausage, Chilled Juices and Freshly Brewed Coffee and Teas
..... **\$18.00***

12:45 - 2:00 p.m. Sandwich Buffet: Mixed Italian and Grilled Vegetable Subs, Chicken Salad Wraps and Turkey Croissants, Kosher Dill Pickles, Assorted Chips, Pepperoni Pasta or Potato Salad and Assorted Mini Desserts, Coffee, Decaf, Tea and Soda.....**\$17.40***

6:00 p.m. Reception: One hour of hotel complimentary cheer, International & Domestic Cheese Display, Scallops Wrapped in Bacon, Mini Chicken Cordon Blue, Chicken Brochettes, Vegetable Egg Rolls (cost included in Dinner price)

7:00 p.m. Sit-down Dinner includes: The Grille's House Salad with Assorted Dressings, Dinner Rolls and Butter, White Chocolate Swirl Cheesecake, Freshly Brewed Coffee, Decaffeinated Coffee and Selection of Hot Teas.
Entrée Selections are: 1) **Roasted New York Sirloin** – Whole Roasted Sirloin Sliced Thin and Served with a Rich Demi-Glace and Roasted Yukon Gold Potatoes
2) **Chicken with Prosciutto and Fontina** – Pan Fried Chicken Breast Topped with Thin Sliced Prosciutto Ham and Melted Fontina Cheese Served with Fettuccine and a Creamy Garlic Sauce. **YOUR ENTREE SELECTION MUST BE FILLED IN ON THE STATE BOARD REGISTRATION FORM (pg4).....\$61.00***

Wednesday, April 29, 2009

8:30 - 10:30 a.m. Breakfast Buffet: Fresh Fruit Salad, Breakfast Pastries, Assorted Cold Cereals, Scrambled Eggs with Chives, Hash Brown Potatoes, Smoked Bacon, Country Sausage, Chilled Juices and Our Freshly Brewed Coffee and Teas..... **\$18.00***

*** All prices inclusive of a 20% Service Charge**

**DRAFT Agenda
New York State Board of Elections
Annual Conference
April 27-April 29, 2009**

Monday, April 27, 2009

- | | |
|------------------------|--|
| 10:00 a.m. - 5:00 p.m. | SBOE Registration Desk Open - Please register, purchase walk-in meal tickets, pay \$20.00 registration fee and pick up conference packet - attendees on their own for lunch. |
| 1:00 p.m. - 2:30 p.m. | New Commissioners' Workshop (Anna Svizzero, Joe Burns, SBOE) |
| 3:00 p.m. - 3:30 p.m. | Opening Remarks (Todd Valentine, Stanley Zalen, SBOE) |
| 3:30 p.m. - 5:00 p.m. | NYSVoter Update/Statewide Database Discussion (George Stanton, Patrick Campion, Vicki Gonzalo, SBOE) |
| 6:00 p.m. | Reception |
| 7:00 p.m. | Dinner (buffet) |

Tuesday, April 28, 2009

- | | |
|-------------------------|---|
| 7:00 a.m. - 8:45 a.m. | Buffet Breakfast |
| 8:30 a.m. - 5:00 p.m. | SBOE Registration Desk Open |
| 9:00 a.m. - 9:45 a.m. | Local News Anchor, invited |
| 9:45 a.m. - 10:45 a.m. | State legislative Update with invited State Legislators (Kim Galvin, Paul Collins, invited Legislative Staff) |
| 10:45 a.m. - 11:00 a.m. | Coffee Break |
| 11:00 a.m. - 12:00 p.m. | Poll Worker Training Update and SOE Software Update (John Conklin, Bob Brehm, SBOE; Chris Peifer, SOE)

Voter Education Presentation (John Conklin, Bob Brehm, SBOE; Richard Novik, NYSBA; SunyNET) |
| 12:00 p.m. -12:45 p.m. | Petition Review/Legal Update (Kim Galvin, Paul Collins, SBOE) |
| 12:45 p.m. - 2:00 p.m. | Buffet Lunch |
| 2:00 p.m. - 3:30 p.m. | Voting Systems Policy and Procedure (Anna Svizzero, Joe Burns, SBOE) |
| 3:30 p.m. - 3:45 p.m. | Break |
| 3:45 p.m. - 4:30 p.m. | Local Campaign Finance Update: Disclosure Filing Discussion (Liz Hogan, Bill McCann, SBOE) |
| 4:30 p.m. - 5:00 p.m. | General Questions and Answers (SBOE Staff) |
| 6:00 p.m. | Reception |
| 7:00 p.m. | Sit-down Dinner |

Wednesday April 29 2009

- | | |
|---|--|
| 8:30 a.m. - 10:30 a.m.
(Buffet breakfast will NOT be available before 8:30 a.m.) | Breakfast: (will include a BEST PRACTICES awards ceremony for county boards so we ask all conference attendees to attend even if you are NOT purchasing your breakfast at the Holiday Inn) |
|---|--|

New York State Board of Elections' Annual Conference Registration Form

April 27-April 29, 2009 Holiday Inn on Wolf Road, Albany, NY

Please complete this form even if you are NOT staying at the Holiday Inn and mail or fax the form (FAX number: 518-473-8315) AT YOUR EARLIEST CONVENIENCE but NO LATER than Friday, April 3, 2009 to: Donna Mullahey or John Conklin, State Board of Elections.

Your County Board Name: _____
 Number of persons from your county board attending the conference: _____

Please TYPE or PRINT below, names and titles of persons attending the conference:
 Check (✓) EITHER two night package plan (and your Tuesday night dinner choice) OR walk-in meals you want to purchase OR that you are NOT buying any meals

NAME	TITLE	TWO-NIGHT PACKAGE PLAN [OR] <input type="checkbox"/>	Monday Dinner* (4/27) \$51.00	Tuesday Breakfast (4/28) \$18.00	Tuesday Lunch (4/28) \$17.40	Tuesday Dinner* (4/28) \$61.00 SELECT ENTREE BELOW	Wednesday Breakfast (4/29) \$18.00 [OR] <input type="checkbox"/>	NOT BUYING ANY MEALS
1.						NY Sirloin Chicken Breast		
2.						NY Sirloin Chicken Breast		
3.						NY Sirloin Chicken Breast		
4.						NY Sirloin Chicken Breast		
5.						NY Sirloin Chicken Breast		
6.						NY Sirloin Chicken Breast		
7.						NY Sirloin Chicken Breast		
8.						NY Sirloin Chicken Breast		

(* Dinner prices include: one hour of hotel complimentary cheer with hors d'oeuvres, dinner & 20% Service Charge)

Special dietary needs _____
 (please give name of person and explain dietary need(s))

Walk-in meal tickets and the \$20.00 conference registration fee (for non-package plan attendees) should be paid for at the SBOE registration table by cash or check ONLY.....no vouchers or credit cards please.

New York State Board of Elections ♦ 40 Steuben Street ♦ Albany, NY 12207-2108



REGISTRATION INFORMATION

TWO NIGHT PACKAGE PLAN RATES: Below are rates based on a (2) night stay, April 27, 2009 – April 30, 2009. If you require lodging OTHER THAN what is listed below, (i.e. Sunday, April 26, 2009, please see the Early Arrival / Late Departure information on the Hotel's Reservation Form.

Package Plan Rate Includes:

- Two Nights of Lodging at the Holiday Inn Albany on Wolf Road (April 27th and 28th, 2009)
- Monday, April 27th Reception and Dinner
- Tuesday, April 28th Breakfast, Lunch, Reception, and Dinner
- Wednesday, April 29th Breakfast
- \$20.00 Conference Fee

Single Occupancy	TAX EXEMPT	\$443.40 per room (Two Night Package Plan)	NON-TAX EXEMPT	\$494.35 per room (Two Night Package Plan)
Double Occupancy	TAX EXEMPT	\$314.40 per person (Two Night Package Plan)	NON-TAX EXEMPT	\$347.28 per person (Two Night Package Plan)

IMPORTANT: HOLIDAY INN ALBANY ON WOLF ROAD GENERAL INFORMATION

ROOM CANCELLATION: Cancellations and Changes will not be Accepted After Monday, April 20, 2009 at 3pm. There will be no refunds after 3pm on April 20, 2009

CHECK IN TIME: 4pm **CHECK OUT TIME:** 12 noon

COMPLIMENTARY AIRPORT SHUTTLE SERVICE: Leaves the Hotel every 30 minutes on the Half Hour beginning at 4am and runs until 12 midnight. Call Hotel directly at 518-458-7250 for more details.

CHECK CASHING POLICY: No Personal Checks Cashed. ATM is available on property.

DRY-CLEANING / LAUNDRY: Yes, Laundry is to be Dropped off by 8:30am and it will be back by 6pm on the same day Monday – Friday. Washers and Dryers are also available on site.

PETS: \$35.00 per night no refundable fee. Call Hotel Directly at 518-458-7250 to make arrangements.

DIRECTIONS TO THE HOLIDAY INN ALBANY ON WOLF ROAD

From NYC and South

Take the New York State Thruway North to Exit #24. Bear Right through the toll and take the I-87 North (Airport / Montreal) Exit. Follow I-87 North to Exit #4 (Wolf Road / Albany Airport Exit). At the bottom of the ramp, turn right on Wolf Road. The Holiday Inn will be on the Left about ¼ of a mile.

From Canada and North

Follow the I-87 South (the Northway) to Exit #4 (Albany Airport Exit). Turn Left at the first Traffic Light. At the next light turn left onto Route 155. Go under the underpass and at the light turn right onto Wolf Road. Follow Wolf Road for approximately ¼ mile. The Holiday Inn will be on the Left.

From Buffalo and West

Take the New York State Thruway / I-90 East to Exit #24. Bear Right through the toll and take the I-87 North (Airport / Montreal) Exit. Follow I-87 North to Exit #4 (Wolf Road / Albany Airport Exit). At the bottom of the ramp, turn right on Wolf Road. The Holiday Inn will be on the Left about ¼ of a mile.

From Boston and East

From the Massachusetts Turnpike, Take Exit #B1 (I-90 Extension). Follow I-90 for approximately 15 Miles. Take Exit #1N towards Montreal / Saratoga (I-87 North). Follow I-87 North to Exit #4 (Wolf Road / Albany Airport Exit). At the bottom of the ramp, turn right on Wolf Road. The Holiday Inn will be on the Left about ¼ of a mile.

NYS BOARD OF ELECTIONS ANNUAL CONFERENCE

Monday, April 27, 2009 – Wednesday, April 29, 2009
Holiday Inn Wolf Road ~ 205 Wolf Road ~ Albany, New York 12205
Phone Number: 518-458-7250 Fax Number: 518-458-7377

**** ALL STARRED ITEMS MUST BE COMPLETED OR YOUR RESERVATION FORM WILL BE RETURNED FOR COMPLETION. ****

CONTACT INFORMATION

**** NAME:** _____
**** COMPANY / AGENCY:** _____
**** OTHER PERSON (S) IN ROOM:** _____
**** ADDRESS:** _____
**** CITY / STATE / ZIP CODE:** _____
**** BUSINESS PHONE NUMBER:** () _____ **** FAX NUMBER:** () _____
**** HOME PHONE NUMBER:** () _____ **** EMAIL:** _____

RESERVATION INFORMATION

**** DATE OF ARRIVAL:** / / **** DATE OF DEPARTURE:** / /
**** ROOM PREFERENCES** One Bed Two Beds Smoking
(based on availability)

RATES AND PACKAGE INFORMATION

The below rates are **inclusive** of service charge and tax where applicable and will include: Reception and Dinner on Monday – Breakfast, Lunch, Reception and Dinner on Tuesday – Breakfast on Wednesday – Overnight Accommodations on Monday and Tuesday. Package rates are for a minimum of (2) nights and include Monday and Tuesday ONLY. The packages can not be transferred to other dates.

<input type="checkbox"/> ** Single Occupancy Tax Exempt – \$443.40 per room	<input type="checkbox"/> ** Single Occupancy Taxable - \$494.35 per room
<input type="checkbox"/> ** Double Occupancy Tax Exempt – \$314.40 per person	<input type="checkbox"/> ** Double Occupancy Taxable - \$347.28 per person
<input type="checkbox"/> Early Arrival (arriving prior to Monday, April 27, 2009) - \$129.00 per room per night	<input type="checkbox"/> Late Departure (departing after Wednesday, April 29, 2009) - \$129.00 per room per night

CANCELLATION: If you find that you need to cancel your reservation please do so by 3pm on April 20, 2009. Reservations cancelled after 3pm on April 20, 2009 will be billed the full amount of the package.

PAYMENT INFORMATION

A check deposit is not required. If you wish to send a check it should be made payable to the Holiday Inn Albany on Wolf Road. All reservations will require either a Credit Card or a Purchase Order which must be provided at the time the reservation is submitted.

**** CREDIT CARD NUMBER:** _____ **** EXPIRATION DATE:** _____
**** NAME OF CARD HOLDER:** _____ **** SIGNATURE:** _____
**** PURCHASE ORDER:** _____ **** NAME OF AGENCY:** _____

TAX EXEMPTION INFORMATION

Exemption from NYS and Local Taxes will only apply if the Hotel is supplied with the proper Exemption Certificate prior to arrival. Tax Exemption Forms should be included when submitting your Reservation Form to the Hotel. Please note that your form of payment must match your Exemption Form to be considered exempt. If the Exemption Form is not on file prior to arrival, you will be billed as part of the Taxable Package.

RESERVATION CUT OFF DATE: MARCH 27, 2009

ALL RESERVATION FORMS MUST BE RECEIVED TO THE HOTEL NO LATER THEN 3PM ON MARCH 27, 2009. AFTER THIS DATE THE HOTEL WILL OFFER THE BEST AVAILABLE RATE AND MEALS WILL NEED TO BE RESERVED THROUGH THE BOARD OF ELECTIONS

Other Hotels in close proximity to The Holiday Inn

1. Courtyard By Marriott
168 Wolf Road
Albany, New York (518)482-8800

2. Desmond Hotel
660 Albany Shaker Road
Albany, New York (518)869-8100

3. Hampton Inn
10 Ulenski Drive
Albany, New York (518) 438-2822



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STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 498-5338
Fax: (212) 497-5342
E-Mail:
srichman@boe.nyc.ny.us

March 16, 2009

TO: The Commissioners of Elections

FROM: Steven H. Richman, General Counsel

COPIES: Marcus Cederqvist, George Gonzalez, Pamela Perkins, Joseph LaRocca, John Owens, Charles Webb and Steven Denkberg

RE: DESIGNATING PETITION AND OPPORTUNITY TO BALLOT PETITION RULES FOR THE SEPTEMBER 15, 2009 PRIMARY ELECTION

By memorandum dated February 27, 2009, I provided you with a copy of the Adopted 2008 BOE Rules for Designating and OTB Petitions, which were adopted by the Commissioners on April 1, 2008, submitted for pre-clearance by the Attorney General of the United States on April 7, 2008 and was granted pre-clearance on June 5, 2008.

I requested that you review the same and provide me with any recommendations or amendments you wish to be included in the final draft of the DESIGNATING PETITION and OPPORTUNITY TO BALLOT PETITION RULES FOR THE SEPTEMBER 15, 2009 PRIMARY ELECTION.

To date, I have received no responses.

I respectfully requested consideration and adoption of the rules for the September 15, 2009 Primary Election at your meeting to be held on Tuesday, March 17, 2009 so that the submission to DOJ can be made by April 1, 2009. That will start the clock running for DOJ action under Section 5 of the Voting Rights Act (60 days from the date of submission). This will ensure that the rules are in effect prior to the commencement of the petitioning period. I renew that request.

I have attached another copy of the Adopted 2008 Rules for your convenience.

As always, if you have any questions or require additional information, please contact me.

Thank you for your consideration of this matter.

Attachment



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
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February 27, 2009

TO: The Commissioners of Elections

FROM: Steven H. Richman, General Counsel

COPIES: Marcus Cederqvist, George Gonzalez. Pamela Perkins, Joseph LaRocca, John Owens, Charles Webb and Steven Denkberg

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Please review the same and provide me with any recommendations or amendments you wish to be included in the final draft of the DESIGNATING PETITION and OPPORTUNITY TO BALLOT PETITION RULES FOR THE SEPTEMBER 15, 2009 PRIMARY ELECTION.

-

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As always, if you have any questions or require additional information, please contact me.

Thank you for your consideration of this matter.

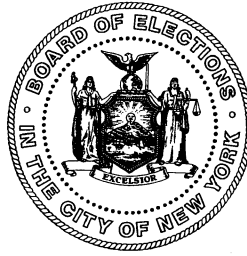
Attachment

JAMES J. SAMPEL
PRESIDENT

FREDERIC M. UMANE
SECRETARY

ANTHONY COMO
JULIE DENT
NERO GRAHAM, JR
TERRENCE C. O'CONNOR
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DESIGNATING PETITION AND *OPPORTUNITY TO BALLOT PETITION* RULES FOR THE SEPTEMBER 2008 PRIMARY ELECTION

Adopted: April 1, 2008

These Rules are adopted by the Board of Elections in the City of New York pursuant to Election Law § 6-154 (2). Everyone is urged to consult the Election Law and Regulations of the New York State Board of Elections, 9 NYCRR §6215, as well as these Rules.

DEFINITIONS:

- Petition:*** A “petition” is all of the sheets which may be filed with the Board in one or more volumes, together with any required cover sheet, which designate the same candidate for a particular public office or party position.
- Petition Volume:*** A “petition volume” is the securely fastened grouping of petition sheets for one or more candidates or group of candidates.
- Cover Sheet:*** A “cover sheet” is the form (as set forth in Rule C of these Rules) to be filed with the Board which summarizes what petition volume or volumes comprise the Petition for each candidate for a particular public office or party position.

A. GENERAL REQUIREMENTS

- A1. Sheets of a designating petition shall be securely fastened together in one or more petition volumes. The sheets in each petition volume shall be numbered sequentially at the bottom of each sheet
- A2. All papers required to be filed pursuant to Section 1-106 of the Election Law shall, unless otherwise provided, be filed between the hours of 9:00 a.m. and 5:00 p.m. at the Executive Office of the Board of Elections, 32 Broadway, 7th Floor, New York, N.Y. 10004. If the last day for filing shall fall on a Saturday, Sunday, or legal holiday, the next business day shall become the last day for filing. The Board of Elections shall be open for the receipt of any document from 9:00 a.m. until Midnight on the last day to file any such document. Failure of any person or entity to deliver any such document to the Board of Elections on or before the last day to file same shall be a fatal defect.

B. IDENTIFICATION NUMBERS

- B1. No one is required to apply for a petition volume identification number before filing any petition volume. However, any person may apply for a petition volume identification number by submission of an Identification Number Application Form. Identification Number Application Forms are available at the Candidate Records Unit, 32 Broadway, 7th Floor, New York, NY 10004. If a petition Volume identification number has been assigned before the petition volume is filed, the petition volume identification number must appear prominently on the top of the petition volume. The Board requests that petition volume identification numbers **not** be placed on the petition volume's binding.
- B2. The Board will inscribe petition volume identification numbers on all application forms. These forms will be retained in a binder for public inspection.
- B3. A pre-assigned petition volume identification number shall be used only by the candidate/s or applicant/s named in the application. Petition volume identification numbers are not transferable or assignable.
- B4. A pre-assigned petition volume identification number shall be used only for the election event for which the application is made.

- B5. Whenever a petition volume is filed without a pre-assigned petition volume identification number, the Board will assign a petition volume identification number at the time the petition volume is filed.

C. COVER SHEET

- C1. A cover sheet must be filed for all petitions containing ten or more sheets in one volume or consisting of more than one volume. The cover sheet **SHALL BE FILED SEPARATELY** from the petition volume(s). It shall not be attached to any petition volume.
- C2. A cover sheet shall contain the following information:
- a) the office, the political party's name and district number (where appropriate) for which each designation and nomination is being made;
 - b) the name and complete residence address of each candidate;
 - c) the total number of volumes comprising each petition;
 - d) an identification of the volumes comprising the petition; when multiple volumes are filed, a single cover sheet may be filed consistent with the Regulations of the New York State Board of Elections, 9 NYCRR §6215.2 (a) (2), with the volumes identified by listing the identification number of each volume, either individually or cumulatively;
 - e) a statement that the petition contains the number, or in excess of the number, of valid signatures, required by the Election Law;
 - f) a place for the optional designation of a contact person to be notified to correct noncompliance with the Rules and to receive copies of any specifications of objections (a candidate may be designated as the contact person);
 - g) when more than one candidate is designated or nominated on the same petition volumes, the candidates may be grouped together on a cover sheet so that the number of volumes comprising the petition need not be repeated;
 - h) a cover sheet may consist of more than one page.
- C3. The names and addresses of candidates for county committee may be set forth by election district of candidacy on a schedule to be annexed to the cover sheet. Such cover sheet/schedule for the position of county committee shall include all the information required by Rule C2, and in addition, a list by

election district of the identification numbers or the volume number, and page number where such signatures appear for each election district.

- C4. An amended cover sheet must clearly identify the original cover sheet which it is amending or attach a copy of the original cover sheet which it is amending. The amended cover sheet must contain all the information required of a cover sheet. Amended cover sheets must contain the following authentication: "This is to certify that I am authorized to file this amended cover sheet." Said authentication must be signed and dated and shall include the printed name, address, and may include the office telephone number and fax number of said candidate or representative.
- C5. An amended cover sheet must be filed on or before the last day to file the petition unless the amended cover sheet is filed to cure a failure to comply with the Rules after the Board has made a determination of non-compliance with these Rules.

D. DETERMINATIONS; CURES PURSUANT TO §6-134 (2) OF THE ELECTION LAW

- D1. Within two (2) business days of the receipt of a petition, the Board will review the petition to determine whether the petition complies with the cover sheet and binding requirements of these Rules. Such review shall be limited to matters apparent on the face of the cover sheet, the binding of each petition volume, and the number of petition volumes. Such review and such determination shall be without prejudice to the Board's determination of objections and specifications of objections filed pursuant to the provisions of the Election Law and these Rules.
- D2. In the event that the Board determines that a petition does not comply with these Rules, the Board shall forthwith notify the candidate or candidates named on the petition of its determination and the reasons therefore.
- D3. Notification of a determination of noncompliance shall be given by written notice by depositing such notice on the day of such determination with an overnight delivery service, for overnight delivery, on the next business day after the determination to the candidate or contact person, if designated, at the address stated on the petition. Notification shall be given by overnight delivery unless the candidate shall have filed with the Board written authorization, signed by the candidate, for the Board to give notification by facsimile transmission. In the event that the candidate shall have authorized notification by facsimile

transmission, then the Board shall notify the candidate or the contact person, if designated, by facsimile transmission on the day of the determination to the number set forth by the candidate and shall, in addition, mail a copy of the determination to the candidate.

- D4. A candidate may, within three (3) business days of the date of a determination that the petition does not comply with these Rules, cure the violation of these Rules. Cover sheet deficiencies may be corrected by the filing of an amended cover sheet. Such cure or correction must be received by the Board of Elections no later than the third business day following such determination. Such cure or correction will be reviewed by the Board to determine if it is in compliance with the Election Law and these rules.
- D5. If the petition is one for an opportunity to ballot, then the first named person on the committee to receive notices or applicant(s) for the identification number or numbers under which the petition was filed shall be deemed to be the "candidate" for purposes of these Rules.
- D6. If the Board determines that an attempt to cure a defect does not comply with these Rules or the Election Law, the Board shall upon expiration of the (3) business days set forth in Rule D4, notify the candidate or candidates named on the petition/cover sheet of its determination and the reasons therefore. The Board shall give written notice of such determination and the fact that the candidate (s) will not appear on the ballot by depositing such notice on the day of such determination with an overnight delivery service, for overnight delivery, on the next business day after the determination to the candidate or contact person, if so designated, at the address stated on the petition, cover sheet and/or amended cover sheet, as applicable. Notification shall be given by overnight delivery unless the candidate shall have filed with the Board written authorization, signed by the candidate for the Board to give notification by facsimile transmission. In the event that the candidate shall have authorized notification by facsimile transmission, then the Board shall notify the candidate or the contact person, if designated, by facsimile transmission on the day of the determination to the number set forth by the candidate and shall, in addition, mail a copy of the determination to the candidate by first class mail.

E. PRIMA FACIE MATTERS

- E1. The Board of Elections reviews each Cover Sheet and Petition to insure compliance with the New York State Election Law. On occasion, the Board determines that it appears that a Cover Sheet and/or Petition, on its face, fails to comply with the requirements of the New York State Election Law and is not subject to a cure under Section 6-134(2) of the Election Law. In that event, the Board shall notify the candidate or designated contact person in writing, of the Board's preliminary finding of a Prima Facie defect and advise the candidate/contact person that he/she may appear at the commencement of the Board's hearings on said petitions to contest such preliminary finding. Such review, preliminary finding and final determination shall be without prejudice to the Board's subsequent determination of objections and specifications of objections filed pursuant to the provisions of the Election Law and these Rules.

F. EXAMINATION AND COPYING OF PETITIONS

- F1. The Commissioners of the Board, or in their absence, the Executive Director, Deputy Executive Director, the Chief Clerks, Deputy Chief Clerks or such other staff as may be designated by the Executive Director, shall control the requisition, examination and copying of any document filed with the Board in order to assure that candidates, objectors or potential objectors and their representatives have an equal and fair opportunity to examine or copy such documents consistent with the needs of the Board to process petitions and specifications of objections.
- F2. Any person may obtain a copy of any document filed with the Board upon written application and payment of 25¢ per page.
- F3. No document shall be unfastened or taken apart (except by authorized employees of the Board of Elections) while examining the document; nor shall pen and ink or indelible pencil be used while examining documents. Red pencil only is to be used while examining any document. No other writing instrument may be used while examining any filed document.

G. GENERAL OBJECTIONS

- G1. A general objection to a petition must be filed at the Executive Office of the Board of Elections, 32 Broadway, New York, N.Y. 10004, 7th Floor. The last day for filing general objections shall be three days after the latest date on which any part of such petition or cover sheet was filed, even if said petition or cover sheet is subsequently not claimed by the candidate(s) appearing thereon.
NOTE: The Board reserves the right to conduct an inquiry into the facts and circumstances of the filing of any document and the application of Rule G1.
- G2. In the event an amended cover sheet is filed to cure noncompliance with these Rules after the last day to file a petition, the general objection and specifications filed in support of such general objection shall address only issues raised by the amended cover sheet. Such a general objection and specifications are without prejudice to any other issues addressed in any timely filed general objection and supporting specifications which are addressed to the petition. In order to expedite a determination by the Board, objectors are urged to file specifications of an objection addressed to an amended cover sheet filed to cure after a determination of noncompliance at the time when the general objection is filed.
- G3. The general objection shall state the name and address of the objector and candidate, party name and public office or party position on the petition to which the objection is addressed and shall be signed by the objector. If the objection is directed to a petition for opportunity to ballot the objection shall identify the public office or party position and petition volume identification number.
- G4. The general objection shall include a place for the optional designation of a contact person to receive notice of any rulings on the objection. The general objection should include any telephone numbers and fax numbers which can be used to provide notice regarding rulings on the objection.

H. SPECIFICATIONS OF OBJECTIONS

- H1. Specifications of objections shall state the name and address of the objector and the candidate and public office on the petition to which the objection is addressed and shall be signed by the objector. The specifications of objections shall be securely fastened together in one or more volumes. The specification

of objections in each and every volume shall be numbered sequentially at the bottom of each page of the specification.

- H2. The specifications shall include the name and mailing address of any contact person other than the objector to receive notice of any rulings on the specifications designated in the general objection. The specifications should include any telephone numbers and fax numbers which can be used to provide notice regarding rulings on specifications. The specifications may indicate separate numbers to be used on the Saturday and Sunday prior to the date scheduled for Commissioners' hearings.
- H3. When an objector files an objection which presents a factual issue which cannot be determined from documents on file with the Board, the specifications must set forth the factual allegations with particulars. The objector shall submit with the specifications, copies of any documents or affidavits that are required in order for the Board to rule on the issue.
- H4. If the specifications of objections claim that there are an insufficient number of valid signatures, the specifications must state the total number of signatures contained in the petition and the total number of signatures which the objector claims to be invalid.
- H5. Any specific objection to an individual signature or witness statement shall set forth the Board-assigned petition volume identification number, page number and line number and shall set forth with specificity the nature of each objection to that signature or witness statement.
- H6. The following abbreviations are acceptable:

AI	Address illegible or so abbreviated it cannot be identified.
ALT	Alteration (date/signature)
DI	Date incomplete
DUP v. _p. _l. _	Duplicate of same signature located in the petition at volume identification # ____, page ____, line __
DSP	Date of witness statement is prior to date of signature
F	Forgery
ILLS	Illegible signature
ILLD	Illegible date
NA	No address stated
ND	No date stated
NE	Not enrolled in the party for which the petition is filed

NFN	No first name\name is so abbreviated it cannot be identified
NPN	No page number –petition page not sequentially numbered
NR	Not registered as stated in BOE records
OD	Out of the district of the contest
P	Pencil or not in ink
PR	Signature is printed or not handwritten
SH	Similar handwriting
TE	Date of signature is prior to first day for circulating petitions
TL	Date of signature is subsequent to last day for circulating petitions or subsequent to date of witness signature
SAP v. _ p. _ l. _	Signed another petition for the same office on same or prior date designating another candidate, at petition volume identification # _____ page ____, line ____.
SW	Signature is that of the subscribing witness to the page
SWALT	Subscribing Witness information altered (not initialed)
SWNE	Subscribing witness is not enrolled in the party for which the petition is filed
SWNQ	Subscribing witness not qualified
SWNR	Subscribing witness not registered, as stated
SWDI	Date incomplete in subscribing witness statement
SWA	No address or wrong address stated in subscribing witness statement
SWND	No date stated in subscribing witness statement
SWNN	Name of subscribing witness omitted from body of subscribing witness statement
SWNS	Signature of subscribing witness omitted
SWNSO	Number of signatures omitted from subscribing witness statement
SWWNS	Wrong number of signatures stated in subscribing witness statement
SWTE	Date of signature is prior to first day for circulating petitions
SWTL	Date of signature is subsequent to last day for circulating petitions
WA	Wrong address stated on petition

Objectors may use other abbreviations or symbols as long as they are clearly defined in the specifications.

- H7. Objectors are warned not to include in the specifications broad, non-specific or generic claims or claims which are not supported by documents filed with the Board. The Board may dismiss the entire objections as frivolous if specifications include such claims.
- H8. Because the Board believes that the appropriate forum for determination of allegations of forgery or fraud is in an invalidating proceeding commenced in the Supreme Court pursuant to Election Law §16-102, the Board does not ordinarily rule on such allegations. In the rare case where an objector seeks to obtain a ruling from the Board on an issue of fraud, or on a factual issue which cannot be determined from documents already filed with the Board (such as petitions, registration records, party call, party rules, etc.), the specifications must set forth the factual allegations with particularity. The objector should submit with the specifications copies of any documents or affidavits that are required in order for the Board to rule on the issue. Notwithstanding such a submission, the Board will generally decline to rule on any allegation of fraud.
- H9. (a) For petitions designating a candidate for public office, the objector must serve a copy of the specifications personally or by certified mail upon the candidate for public office before filing such specifications with the Board.
- (b) For petitions designating a candidate for party position, the objector must serve a copy of the specifications personally or by certified mail upon the first person listed under the committee to fill vacancies or the contact person before filing such specifications with the Board.

For petitions designating a candidate for party position for which no committee to fill vacancies or contact person has been designated, copies of the specifications, clearly labeled "copy one" and "copy two" on the face of the specifications must be filed with the Board. The Board shall be deemed the agent for service of specifications of objections for all candidates for whom neither a committee to fill vacancies appears on the petition nor a contact person appears on the cover sheet. The second copy shall be available at the Executive Office for inspection or copying.

- H10. Specifications of objections must be filed within six (6) days after the filing of general objections, in person, at the Executive Office, Board of Elections, 32 Broadway, 7th Floor, New York, N.Y. 10004. The Executive Office will be open during the period for filing objections and specifications until midnight of each day (except Saturday and Sunday) to permit the filing of such papers in person.

The Election Law does not authorize the extension of time for filing objections or specifications.

- H11. Proof of service of specifications (which must identify the specification it is related to by including the borough and General Objection/Specification number or attaching a copy of the first page of the specification) must be filed in person at the Executive Office, Board of Elections, 32 Broadway, New York, N.Y. 10004, no later than the day after specifications are filed. The Board will issue a receipt for proof of service upon filing.
- H12. Upon receipt of Specifications of Objection in a borough office, the Chief Clerk and Deputy Chief Clerk (or their designees) shall review said specifications of objections on their face and determine if said specifications appear to be frivolous or if the objectors lack standing to file such specifications. Upon such a preliminary determination by the Chief Clerk and Deputy Chief Clerk, they shall refer their preliminary determination to the Executive Director and General Counsel of the Board for review. If the Executive Director and General Counsel confirm that the specifications of objection appear to be frivolous or that the objector(s) lack standing to file such specifications, they shall confirm the preliminary determination of the Chief Clerk and Deputy Chief Clerk and direct that the specifications of objections not be worked by the borough office staff. Such findings and confirmation thereof shall be reported to the Commissioners at the commencement of the hearings for their review.

I. CLERKS'/COUNSEL'S REPORT

- 11. The Chief Clerk and Deputy Chief Clerk of each borough shall assign staff to examine the specifications of objections and to prepare a report to the Commissioners on the objections.
- 12. As soon as the borough office has prepared the report to the Commissioners, the borough office shall fax copies of the summary report (without line-by-line rulings) to the contact persons designated on the petition cover sheet and on the specifications to receive notices at the fax number indicated. Candidates or objectors who are unable to receive faxes must check with the Chief Clerk or Deputy Chief Clerk of the respective borough office if the candidate or objector wishes to review the Clerks' Report prior to the Commissioners' hearing.
- 13. At least twenty-four hours before each date for Commissioners' hearings, each borough office shall prepare a list of Clerks' Reports, which have not been completed and shall immediately transmit a copy to the Executive Office and

shall make the list available to the public. The Commissioners' hearing on Clerks' Reports included on the list will be automatically postponed from the immediate hearing date to the next hearing date scheduled by the Commissioners unless there is consent from the objector and the candidate to rule on the Clerks' Report as scheduled.

14. Once the borough office has prepared the report to the Commissioners, the original specifications of objections with the line by line rulings of the clerks will be made available for examination or copying by the objector, candidate or representative, provided that the specification is not being used by the clerks for the review of any other specifications of objections.
15. The rules regarding examination and copying of petitions shall also apply to specifications of objections showing the clerks' line by line rulings. The use of nominating or designating petitions and specifications by the clerks for the preparation of their report shall have priority over any request for examination or copying by any objector, candidate or their representative.
16. In the event that the specifications of objection present legal rather than or in addition to factual issues, said specifications of objections shall be referred to the Office of the General Counsel of the Board who shall assign staff to examine such specifications of objections and prepare a report to the Commissioners on the legal issues raised in the specifications. The notice and inspection provisions found in Sections 12, 14 and 15 of these Rules shall apply to such Counsel's Report.

J. HEARINGS

- J1. The Commissioners shall render a ruling on specifications of objections after they receive the Clerks' or Counsel's Report. Candidates or objectors who wish to be heard by the Commissioners should review the Clerks'/Counsel's Report and individual line-by-line rulings prior to the Commissioners' hearing. Candidates or objectors are encouraged to present to the Commissioners a list of exceptions which identifies with specificity each ruling by the clerks which is claimed to be erroneous. In view of the short deadlines and urgency of obtaining final rulings by the Board, the Board may reject any application for an extension of time to review the Clerks'/Counsel's Report when the candidate or objector received notice of the Clerks' Report at least 24 hours prior to the hearing (*including* weekends and holidays), or the candidate or objector failed to designate a fax number for the receipt of notice.

- J2. Attorneys appearing on behalf of a candidate or objector must file a Notice of Appearance on the Board prepared form, which shall include the current address, telephone number and fax number of the attorney.
- J3. An individual, other than an attorney (including a candidate or objector), representing a candidate or an objector must file a Notice of Authorization that must be signed by said candidate or objector. Notices of Appearance and/or Authorization can be obtained from the Candidate Records Unit.
- J4. The hearings held by the Board shall be transcribed by a professional reporter and/or tape recorded and preserved in the Board's permanent records. Any person may obtain a copy of the transcript or tape recording by making a written request to the Executive Director or Deputy Executive Director (or their designees) and paying the applicable fee.
- J5. Whenever there is not a quorum of Commissioners present on any day scheduled for Commissioners' hearings, a committee of the Commissioners shall rule on the Clerks' or Counsel's Reports. The committee is constituted pursuant to Election Law §3-212 (5). The committee shall consist of the largest equal number of Commissioners from each of the political parties represented on the Board who are available and designated by the President and Secretary of the Board, who may make such designation by telephone. In the absence of the President or the Secretary, the Commissioner of the same political party with the greatest length of service on the Board who is available shall make such designation. The President and Secretary, or senior Commissioners present shall attempt to confer with the other Commissioners of the same political party before making such designation. The committee shall serve only for that hearing date, or until a quorum of the full Board is present, whichever is shorter, unless the full Board shall provide otherwise.
- J6. The Board may reconsider any determination or the determination of any committee of the Board. In such event, the Board will provide notice to any objector, candidate and representative.

NOTICE:

The sample forms listed below (prepared by the New York State and or City Board of Elections) follows these rules:

- ❑ Designating Petition Sheet;
- ❑ Opportunity To Ballot Petition Sheet;
- ❑ Cover Sheet;
- ❑ Amended Cover Sheet;
- ❑ General Objection;
- ❑ Specifications Of Objection;
- ❑ Certificate Of Acceptance;
- ❑ Certificate Of Declination;
- ❑ Certification Of Authorization;
- ❑ Certificate Of Substitution By Committee To Fill Vacancies After Declination, Death Or Disqualification;
- ❑ Certificate of Substitution by Party Committee after Declination, Death or Disqualification.
- ❑ Notice of Appearance and/or Authorization for Petition Hearings, Death or Disqualification.
- ❑ Sample Specification of Objection Worksheet

Copies of the:

- ❖ **Election Law of the State of New York and**
- ❖ **the Rules and Regulations of The State Board of Elections**

are available for purchase at the Reception Desk at 32 Broadway, 7th floor, New York, N.Y. 10004.

The Election Law and State Board Rules and Sample Forms can also be viewed and downloaded from the State Board of Elections website:

<http://www.elections.state.ny.us/law/elaw.pdf>

Please note that these Rules were adopted unanimously by the Commissioners of Elections in the City of New York, at their public meeting held on Tuesday, April 1, 2008.



STEVEN H. RICHMAN
GENERAL COUNSEL


TEL. (212) 487-5338
FAX: (212) 487-5342
E-MAIL:
srichman@boe.nyc.ny.us

BOARD OF ELECTIONS

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

MEMORANDUM

TO: The Commissioners of Elections in the City of New York

FROM: Steven H. Richman, General Counsel 

RE: Statutory Procedure for the Processing of Voters Reported to Have Been Convicted of a Felony

DATE: February 3, 2009

At your meeting last week, you directed Board staff to work with the State Board's staff and obtain the list of persons reported to have been convicted of felony or died within the City and State of New York. You further directed that the Notice of Intent to Cancel Procedures used by this Board with respect to potential duplicate voters not be used for persons who the Board believes have died or convicted of a felony.

Following the meeting, I have a telephone call from Jerry Koeing who continued to express concern over the process for potential felons. I have reviewed the relevant statutory provisions and my findings and recommendation is outlined below:

Section 5-400 provides for eight (8) grounds for the cancellation of a voter's registration [including conviction of a felony – See EL §5-400 (b)].

Section 5-402 of the Election Law prescribed the process by which a Board of Elections Cancels a voter's registration and mandates notice to voters. §4-402(2) provides that a notice of intent to cancel shall be sent in all instances when the Board of Elections believes that a voter is no longer qualified to vote with only three specified exceptions:

1. For a voter who has made a personal request to be removed;
2. Four year inactive voters who do not vote in two successive federal elections;
3. For a voter who has died.

It appears that under the statutory framework created by Title IV of the Election Law, the Board of Elections should send a notice of intent to cancel when a voter appears to have been convicted of a felony.

Attached hereto are copies of §§ 5-400 and 5-402 of the New York State Election Law.

Therefore, I recommend that the Commissioners' reconsider their determination made last week and direct the Board staff to use the Notice of Intent to Cancel procedure for potential felons as well.

Thank you for your attention to this matter.



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
GREGORY C. SOUMAS
JUDITH D. STUPP
MARYANN YENNELLA
COMMISSIONERS

BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
FAX (212) 487-8231
www.vote.nyc.ny.us

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

JOSEPH LA ROCCA
COORDINATOR
CANDIDATE RECORDS UNIT

DRAFT **NOTICE TO ALL CANDIDATES**

March 16, 2009

TO: All Persons who are candidates in the
April 21, 2009 Special Election:

Pursuant to the applicable provisions of the Election Law of the State of New York, the Rules and Regulations of the New York State Board of Elections and the Rules, Regulations, Policies and Procedures adopted by the Commissioners of Elections in the City of New York, please take notice of the following information:

All activities relating to any type of paper ballot will be conducted at each Borough Office of the Board of Elections (locations of which are set forth in Schedule A).

All activities relating to the mechanical voting machines and Ballot Marking Device(s) (BMD's) will be conducted at each Borough Voting Machine Facility of the Board of Elections (locations of which are set forth in Schedule A).

1. Optical Scanning System Test

Pursuant to the provisions of New York State Board of Elections Rule 6210.11, you or your representative designated in writing may attend a test of the optical scanning system used to canvass and/or recanvass paper ballots used in the Special Election. You or your representative designated in writing, may appear and observe the test(s) in the applicable Borough(s) where you are a candidate, which will be conducted in accordance with the following schedule:

<u>BOROUGH</u>	<u>DATE & TIME OF TEST</u>
-----------------------	---------------------------------------

Bronx	Friday, April 17, 2009 at 10:00 AM
--------------	---

2. Inspection of Voting Machines, BMD's & Paper Ballots

- (a) Pursuant to the provisions of Section 7-128(2) of the NYS Election Law, you or your representative designated in writing may inspect the voting machines & BMD' to be used in the 2009 Special Election on **Tuesday, April 14, 2009 between the hours of 10:00 A.M. and 3:00 P.M.**
- (b) Pursuant to the provisions of Section 7-128(1) of the NYS Election Law, you or your representative designated in writing may inspect the paper ballots (including the Ballot Marking Devices-BMD's ballots) to be used in the 2009 Special Election on **Tuesday, April 14, 2009 between the hours of 10:00 A.M and 3:00 P.M.**

Note: This inspection will take place at the Borough Voting Machine Facility, not the Borough Office.

3. **CANVASS AND/OR RECANVASS OF VOTING**

MACHINES AND PAPER BALLOTS

- (a) Pursuant to the provisions of Sections 9-102 and 9-208 of the NYS Election Law, (as amended by Chapter 92 of the Laws of New York State 2001) you or your representative designated in writing may be present and observe the recanvass of votes cast on the voting machines and the canvass of any and all write-in votes cast on the voting machines. This canvass/recanvass will commence on **Tuesday, April 28, 2009 at 10:00 A.M.** and will continue until such canvass/recanvass of all machines is completed.
- (b) Pursuant to the provisions of Sections 9-200 and 9-209 of the NYS Election Law, you or your representative designated in writing may be present and observe the canvass or recanvass of any emergency and BMD ballots votes cast in the Special Election. This canvas and recanvass will commence on **Wednesday, April 29, 2009 at 10:00:00 A.M.** and will continue until completed.
- (c) Pursuant to the provisions of Sections 9-200 and 9-209 of the NYS Election Law, you or your representative designated in writing may be present and observe the canvass of votes cast on any and all valid absentee and/or affidavit ballots. This canvass will commence on **Wednesday, April 29, 2009**, immediately following the recanvass of emergency ballots (if any), and will continue until completed.

If you have any questions or require additional information, please contact the appropriate Chief Clerk/Deputy Chief Clerk in the respective borough. Thank you for your cooperation and understanding in these matters.

Very truly yours,

Joseph LaRocca
Coordinator,
Candidate Records Unit

Attachment (Schedule A)

SCHEDULE A

Bronx Borough Office

1780 Grand Concourse – 5th Floor
Bronx, NY 10457
718 - 299-9017

Dawn Sandow, Deputy Chief Clerk
Anna Torres, Deputy Chief Clerk

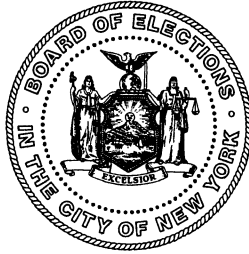
VOTING MACHINE FACILITIES

BRONX

1780 Grand Concourse
Bronx, NY 10457
718 - 299-9017

BRONX (BMD's only)

1932 Arthur Ave.
Bronx, NY 10457
No Telephone #



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
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GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

JOHN J. WARD
FINANCE OFFICER

DATE: March 10, 2009

TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

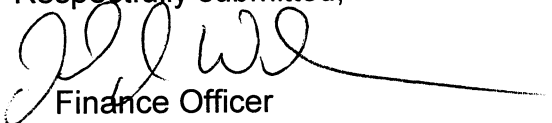
FY09	P.S. Projection through 3/06/09 Payroll:	\$14,295,500
FY09	P.S. Actual through 3/06/09 Payroll:	<u>\$19,406,445</u>
	Difference	(\$ 5,110,945)

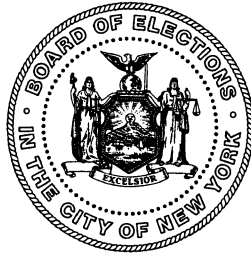
Overtime pays two weeks ending 2/20/09

OVERTIME USAGE

General Office	22,061
Brooklyn	9,619
Queens	12,677
Bronx	1,186
New York	2,164
Staten Island	1,358
Total	<u>\$49,085</u>

Respectfully submitted,


Finance Officer



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

BOARD OF ELECTIONS

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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

JOHN J. WARD
FINANCE OFFICER

DATE: March 17, 2009
TO: Commissioners

FROM: John Ward
Finance Officer.

RE: Vacancies

					Inc.	New.
1	Jean Lettiere	Adm Assoc.	S.I.	Dem.	\$46,878	\$44,646
2	Assistant General Counsel					\$75,000
3	Valerie Marshall	Adm. Asst.	N.Y.	Dem.	\$39,440	\$37,562
4	Robert Helenius	VMT	Bklyn	Rep.	\$27,818	\$26,493



State of New York
STATE BOARD OF ELECTIONS

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Douglas A. Kellner
Chair
Gregory P. Peterson
Commissioner
Evelyn J. Aquila
Commissioner

40 STEUBEN STREET
ALBANY, N.Y. 12207
Phone: 518/474-6367 Fax: 518/486-4546
website: www.elections.state.ny.us

Todd D. Valentine
Executive Director
Stanley L. Zalen
Executive Director
Kimberly A. Galvin
Special Counsel
Paul M. Collins
Deputy Counsel

March 6, 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 March 5, 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 02/27/09 – 03/05/09

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 in jeopardy per the project timeline for Plan A.

Contracting with Voting System Vendors

Status of tasks in this category: *on schedule*

- OGS and SBOE have met with ES&S and Sequoia regarding contract modifications. The other regular add from Sequoia/Dominion was to be resubmitted, but to date, SBOE has not received a withdrawal request or a resubmission from Sequoia. ES&S withdrew its original regular add request and has resubmitted its request which was sent to SBOE by OGS on 3/2 for approval.
- A new Performance bond was due from Sequoia by cob February 6th. Sequoia did provide a bank check for \$175,000 which OGS Finance is holding. SBOE is discussing whether to amend the performance bond provision in the contract to allow for either a bond or cash. ES&S did submit its bond.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *in jeopardy and behind schedule*

- Weekly status meetings were held with NYSTEC to review progress with regard to Plan A.
 - Overall progress of testing :
 - NYSTEC is continuing to work on outstanding issues that the vendors and SysTest will need resolved before testing can resume.
 - Conference calls were held with both Dominion and ES&S this week to continue to discuss ballot marking/scanner questions, answer any questions on the latest test case released (Crypto)

NEW YORK STATE BOARD OF ELECTIONS

and to continue to push the vendors to make hash checking easier, particularly with regard to the surety test.

- NYSTEC continues to work on completing the remaining test cases which will be finalized and provided to the vendors as soon as all outstanding issues are resolved. NYSTEC estimates it will finish the GENSEC test case by the end of the second week of March (best case) or third week of March (worst case).
- NYSTEC provided feedback on the white paper draft from SysTest for the last three test cases on 3/2.
- On March 5, 2009, SysTest received notice from the ECA that the ECA has lifted their suspension and renewed their accreditation.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: *on schedule*

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

SBOE staff communicated with NYCBOE on technical issues on March 2nd and is awaiting NYCBOE's response.

AMENDED HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 3/07/09 - 3/12/09

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 behind schedule and in jeopardy per the project timeline for Plan A.

Contracting with Voting System Vendors

Status of tasks in this category: *on schedule*

- The discussions surrounding the proposed contract changes have continued between the SBOE, the vendors and OGS.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *in jeopardy and behind schedule*

- Weekly status meetings were held with SysTest Labs and NYSTEC to review progress with regard to Plan A.
 - Overall progress of testing by SysTest:
 - A conference call was held with SysTest on 3/12 concerning resumption of testing plans and activities. Preliminary dates and deadlines were established.
 - It was determined that NYSTEC and SysTest will have finalized the remaining test cases and they will be provided to the vendors by 3/31/09.
 - SBOE directed SysTest to supply a realistic timeline for the completion of testing preparation which is expected by close of business 3/16.
 - A resume work order will be provided to SysTest 3/13 and weekly status calls with them will resume next week.
 - SBOE and NYSTEC continued work on and refine the pre-election testing policies and procedures.

NEW YORK STATE BOARD OF ELECTIONS

- ES&S and Sequoia/Dominion continued their review of the completed test cases and are working with NYSTEC for clarification when needed.
- Weekly conference calls between SBOE, NYSTEC and the vendors continue.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: *on schedule*

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

SBOE is still awaiting response from NYC to its most recent communication.

NEW YORK STATE BOARD OF ELECTIONS



State of New York
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Election Law Proposals for 2009

The following is a brief description of the State Board of Elections legislative proposals to address the administration of elections for 2009.

- SBE 09-01 ***Poll Watcher Qualifications:*** This bill amends subdivision 4 of §8-500 of the Election Law to prohibit candidates from being poll watchers in those districts where they are running for office.
- SBE 09-02 ***Filing of Papers by Express Courier:*** This bill adds a new subdivision (3) to §1-106 of the Election Law to recognize delivery services other than the United States Postal Service for the delivery of papers under the Election Law. The bill also amends §5-210(3) to include the State Board of Elections as an entity to receive timely voter registration forms.
- SBE 09-03 ***Ballots Counted by Machine:*** Section 7-121 of the Election Law is amended to provide that all ballots printed for use on a voting system approved by the State Board of Elections may be printed and arranged in a manner which would permit them to be counted by such machine. Allows flexibility and consistency in printing and ballot layouts to be utilized with the new voting systems.
- SBE 09-04 ***Exempt Election Workers from Jury Duty:*** This bill amends Judiciary Law §524 to provide an exemption from jury duty for election inspectors, poll clerks and election coordinators.
- SBE 09-05 ***Polling Site Designation:*** This bill will allow County Boards the flexibility to take into consideration the technology provided for with the new voting systems when determining and designating their polling sites.

- SBE 09-06 **Polling Site Access:** This bill would require that each polling place be in compliance with guidelines set forth in the federal Americans with Disabilities Act. It would also require the State Board to provide guidance to the County Boards on how to meet those standards.
- SBE 09-07 **Absentee Ballot Requirements:** This legislation provides for a streamlined absentee ballot application process by allowing qualified voters to apply for absentee ballots if they meet one of the criteria in the Constitution without invading the privacy of the voter.
- SBE 09-08 **Campaign Financial Disclosure Filings:** This bill would increase the possible fine for a campaign filing violation from \$500 to \$1,000 dollars.
- SBE 09-09 **Campaign Financial Filing Information:** This bill would allow the State Board flexibility in the administration of updating certain required information for certain statements and would also require certain candidates to provide certain financial information.
- SBE 09-10 **Publication of Election Results:** This bill would eliminate the outdated and costly requirement that certified election results be printed in certain legal ads.
- SBE 09-11 **Military Ballot Receipt Times:** This bill would make permanent the current provisions that set forth the time frames for the timely receipt of military ballots. Allowing those ballots (otherwise valid) received within 7 days of a primary election or 10 days of a general election to be cast and counted.
- SBE 09-12 **Form of Paper Ballots - Undervote Error Message:** This bill would require that ballots have a box, oval or other marking area that the voter may intentionally fill in to alert the voting system that any and all undervotes on the ballot had been done so intentionally. This, in turn, would allow the system to cast the ballot without returning an “undervote error message” to the voter.
- SBE 09-13 **Delivery of Paper Ballots to the Voter:** This legislation will allow the State Board to promulgate and modify regulations regarding the casting and delivering of paper ballots to the voter.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL # A.

SENATE BILL # S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE: An act to amend the election law in relation to qualifications of poll watchers.

SUMMARY OF PROVISIONS:

This bill amends subdivision 4 of §8-500 of the election law to prohibit candidates from being poll watchers in those districts where they are running for office.

JUSTIFICATION:

The possibility of active or passive electioneering, or the appearance thereof, is eliminated by prohibiting candidates from being poll watchers in the districts where they are candidates on the ballot.

LEGISLATIVE HISTORY:

The State Board proposed this as legislation in 1998, 1999, and 2005.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Immediately.

New York State Board of Elections Legislative Proposal SBE 09-01

AN ACT to amend the election law in relation to qualifications of poll watchers.

The People of the State of New York, represented in the Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 4 of section 8-500 of the election law is
2 amended to read as follows:

3 4. Each watcher must be a qualified voter of the city or county in
4 which he is to serve and no person shall be appointed or act as a
5 watcher who is a candidate for any public office to be voted for by
6 the voters of the district in which he is to serve.

7 §2. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL# A.

SENATE BILL# S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE: An act amend the election law in relation to filing of papers.

SUMMARY OF PROVISIONS:

This bill adds a new subdivision (3) to §1-106 of the Election Law to recognize delivery services other than the United States Postal Service for the delivery of papers under the Election Law.

The bill also amends §5.210(3) to include the State Board of Elections as an entity to receive timely voter registration forms.

JUSTIFICATION:

The Election Law was developed when the only trusted delivery service was the United States Postal Service. Since that time many reliable private courier services have come into existence, such as Federal Express, United Parcel Service, and other "overnight" courier services. This bill adopts the system used by both the New York State Division of Tax and Finance and the Federal Internal Revenue Service in only allowing recognized delivery services.

Currently if a person sends their voter registration information in a timely manner to an erroneous County Board of Elections, the correct Board of Elections will deem that registration information as timely and process the information. This amendment would clarify that if that information is erroneously sent to the New York State Board of Elections, but is otherwise timely, that this information will be deemed timely and processed by the correct County Board of Elections upon their receipt.

LEGISLATIVE HISTORY:

None, new bill for 2009.

FISCAL IMPACT:

None.

EFFECTIVE DATE:

This act shall take effect immediately.

New York State Board of Elections Legislative Proposal SBE 09-02

AN ACT amend the election law in relation to filing of papers.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1. Section 1-106 of the election law is amended by adding
2 a new subdivision (3) to read as follows:

3 3.(A) Any reference in this title to the United States mail shall
4 be treated as including a reference to any delivery service
5 designated by the secretary of the treasury of the United States
6 pursuant to section seventy-five hundred two of the internal
7 revenue code and any reference in this title to a postmark or a
8 postmark by the United States mail shall be treated as including a
9 reference to any date recorded or marked in the manner described in
10 section seventy-five hundred two of the internal revenue code by a
11 designated delivery service. If the State Board of Elections finds
12 that any delivery service designated by such secretary is
13 inadequate for the needs of the state, the State Board of Elections
14 may withdraw such designation for purposes of this article. The
15 State Board of Elections may also designate additional delivery
16 services meeting the criteria of section seventy-five hundred two
17 of the internal revenue code for purposes of this article, or may
18 withdraw any such designation if the State Board of Elections finds
19 that a delivery service so designated is inadequate for the needs
20 of the state. Any reference in this title to the United States
21 mail shall be treated as including a reference to any delivery
22 service designated by the State Board of Elections and any

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

1 reference in this title to a postmark by the United States mail
2 shall be treated as including a reference to any date recorded or
3 marked in the manner described in section seventy-five hundred two
4 of the internal revenue code by a delivery service designated by
5 the State Board of Elections.

6 (B) Any equivalent of registered or certified mail designated by
7 the United States secretary of the treasury, or as may be
8 designated by the State Board of Elections pursuant to the same
9 criteria used by such secretary for such designations pursuant to
10 section seventy-five hundred two of the internal revenue code,
11 shall be included within the meaning of registered or certified
12 mail as used in this title. If the State Board of Elections finds
13 that any equivalent of registered or certified mail designated by
14 such secretary or the State Board of Elections is inadequate for
15 the needs of the state, the State Board of Elections may withdraw
16 such designation for purposes of this article.

17 § 2. Section 5-210(3) is amended to read as follows:

18 3. Completed application forms, when received by any [county] board
19 of elections.

20 § 3. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL # A.

SENATE BILL # S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE: An act to amend the election law in relation to ballots which are counted by machine

SUMMARY OF PROVISIONS:

Section 7-121 of the election law is amended to provide that all ballots printed for use on a voting system approved by the State Board of Elections may be printed and arranged in a manner which would permit them to be counted by such machine.

JUSTIFICATION:

While New York's full-face ballot requirements remain intact, with the implementation of op-scan technology in poll sites, information on ballots must be able to be configured in a manner that will allow scanners to sufficiently and adequately discern votes cast by voters. Ballot information includes instructions to voters, a variety of shapes for voting positions, candidate names, party endorsements, office titles, ballot proposals, party emblems, 'vote for' information, terms of office and other similar information.

The modification in this section ensures consistency in the creation of optical scan ballots, ensures ballots can be configured in a manner that will allow scanners to sufficiently and adequately discern votes cast by voters and eliminates outdated ballot layout provisions.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE:

Immediately.

New York State Board of Elections Legislative Proposal SBE 09-03

AN ACT to amend the election law in relation to ballots which are counted by machine

The People of the State of New York, represented in the Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 7-121 of the election law is amended to
2 read as follows:

3 § 7-121. Ballots which are counted by machine.

4 [A board of elections may provide, by resolution adopted at least
5 two months before an election at which voting machines are used,
6 that all ballots cast for such election, other than on the voting
7 machines,] All ballots printed for use on a voting system [shall
8 be counted by a machine of a type] approved by the state board of
9 elections [and that all ballots printed for use at such election]
10 may be printed and arranged in a manner which would permit them
11 to be counted by such machine.

12 §2. This act shall take effect immediately,

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL # A.

SENATE BILL # S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE: An act to amend the judiciary law in relation to providing an exemption from jury duty for service as an election inspector, poll clerk or election coordinator

SUMMARY OF PROVISIONS:

This bill amends Judiciary Law section 524. This act provides for an exemption from jury duty for service as an election inspector, poll clerk or election coordinator

JUSTIFICATION:

Providing an exemption from jury duty for election day workers is a reward for this public service

LEGISLATIVE HISTORY:

This proposal has been submitted by the Board in past years.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This law shall take effect on the first day of January next succeeding the date on which it shall have become law.

New York State Board of Elections Legislative Proposal SBE 09-04

AN ACT amend the judiciary law in relation to providing an exemption from jury duty for service as an election inspector, poll clerk or election coordinator.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1. Subdivision (a) of section 524 of the judiciary law is
2 amended to read as follows:

3 (a) A person who has served on a grand or petit jury in any court
4 of the unified court system or in a federal court or acted as an
5 election inspector, poll clerk or election coordinator pursuant to
6 title IV of article 3 of the election law shall not be competent to
7 serve again as a trial or grand juror in any court of the unified
8 court system for four years subsequent to the last day of such
9 service, provided, however, that any person who serves on a grand
10 or petit jury for more than ten days shall not be competent to
11 serve again as a trial or grand juror for a period equal to the
12 period authorized by this subdivision or subdivision (c) of this
13 section, as appropriate, plus four years.

14 § 7. This act shall take effect on the first day of January next
15 succeeding the date on which it shall have become a law.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL# A.

SENATE BILL# S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE:

An act to amend the election law, in relation to the designation of polling places.

SUMMARY OF PROVISIONS:

Section 4-104 of the Election Law is amended to allow County Boards the flexibility to assess the need for, and designate polling places based upon the technology being provided for with the new voting systems. The legislation also makes statewide the requirement in cities with a population of over one hundred thousand that various premises be available as polling places.

JUSTIFICATION:

The Election Reform and Modernization Act of 2005 (Chapter 181 / Laws of 2005) requires that new voting systems be implemented throughout New York State. With the implementation of new voting systems, new logistics have to be considered when assigning voting machines for use by one or more election districts. In addition, when designating polling places, county boards must consider how each site is able to accommodate the number of workers and election resources (voting machines, privacy booths, etc.) in sufficient numbers to adequately serve the numbers of voters eligible to vote in such polling place

LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE:

Immediately.

New York State Board of Elections Legislative Proposal SBE 09-05

AN ACT amend the election law in relation to designating poll sites.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1. Section 4-104 of the election law is amended to read as
2 follows:

3 Paragraph 3(a) is amended to read as follows:

4 3-a. [In cities with populations of more than one hundred thousand,
5 a]Any person or entity which controls a building for which a tax
6 exemption, tax abatement, subsidy, grant or loan for construction,
7 renovation, rehabilitation or operation has been provided by any
8 agency of the state or any political subdivision thereof on or
9 after the effective date of this subdivision shall agree to make
10 available for registration and voting purposes the room or rooms in
11 such building which the board or body empowered to designate
12 polling places determines are suitable for registration and voting,
13 are accessible to physically disabled voters and are as close as
14 possible to a convenient entrance to such building. Notwithstanding
15 any other provision of law, any agency of the state or any
16 political subdivision thereof may deny a tax exemption, tax
17 abatement, subsidy, grant or loan for construction, renovation,
18 rehabilitation or operation to a building in any such city which is
19 otherwise eligible for such exemption, abatement, subsidy, grant or

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

1 loan if the person or entity which controls such building refuses
2 to agree to make available for registration and voting purposes the
3 room or rooms in such building which the board or body empowered to
4 designate polling places determines are suitable for registration
5 and voting, are accessible to physically disabled voters and are as
6 close as possible to a convenient entrance to such building. The
7 provisions of this subdivision shall not apply to buildings used
8 solely for residential purposes which contain less than twenty-five
9 dwelling units.

10 Paragraph 4 is amended to read as follows:

11 4. Where an election district is so situated or the only
12 facilities available therein are such that public convenience would
13 be served by establishing a polling place outside such district,
14 the board or body empowered by this chapter to [establish election
15 districts]designate a polling place may so designate a polling
16 place in [a contiguous]another election district within the same
17 town or city.

18 A new paragraph 5(d) is added to read as follows:

19 5. (d) Notwithstanding any other provision of this section,
20 polling places designated for any one such election district that
21 will be utilizing any voting machine or system certified after
22 April 1, 2009 for use in New York State pursuant to Chapter 181 of

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

1 the Laws of 2005, may be the polling place of any other district or
2 districts, provided the voting system used in such polling place
3 produces separate and distinct vote totals for each election
4 district voting in such polling place on such voting machine or
5 system.

6 Paragraph 6 is amended as follows:

7 6. Each polling place designated, whenever practicable, shall be
8 situated on the main or ground floor of the premises selected. It
9 shall be of sufficient area to admit and comfortably accommodate
10 [at least ten]voters in numbers consistent with the deployment of
11 voting systems and privacy booths, pursuant to NYCRR Title 9,
12 Subtitle V, Part 6210.19. Such deployment of voting systems,
13 election workers and election resources shall be in a sufficient
14 number to accommodate the numbers of voters eligible to vote in
15 such polling place.[at one time and to allow for the placement in
16 such meeting place, of booths, furniture and equipment, as provided
17 by law.]

18 Paragraph 9 is amended to read as follows:

19 9. Whenever the board of elections shall determine that there is
20 no building within an election district available and suitable for
21 the meetings for the registration of voters[or for any election],
22 or that for reasons of efficiency or economy it is desirable to

EXPLANATION: Matter underscoring is new; matter bracketed [] is
old law to be omitted.

New York State Board of Elections Legislative Proposal SBE 09-05

1 consolidate such meetings of one or more districts in one place,
2 such board may designate a building for such voter registration
3 purpose in another [adjoining]election district in the same
4 village, city or town and there may be as many distinctly separate
5 meeting[s or polling places]lawfully located in the same building
6 as public convenience may require. Wherever possible, public
7 schools, fire houses, municipal buildings or other buildings exempt
8 from taxation shall be designated for such meetings[and polling
9 places]. Such a determination shall be made only after notice to
10 the chairpersons of the county committees of all political parties
11 and reasonable opportunity for them to be heard.

12 § 2. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL# A.

SENATE BILL# S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE:

An act to amend the election law, in relation to requiring polling places to be accessible to voters with disabilities.

SUMMARY OF PROVISIONS:

Section 4-104 of the Election Law is amended to require that each polling place shall provided access to people with disabilities which is consistent with the accessibility guidelines set forth in the federal Americans with Disabilities Act.

In addition, the bill requires the State Board to publish and distribute to the County Boards, a guide describing the required standards and what constitutes compliance therewith. Each County Board shall then be required to conduct a poll site accessibility survey which shall be forwarded to the State Board.

JUSTIFICATION:

By mandating that all polling places comply with these accessibility guidelines, the law will provide the same opportunity for access to and participation by persons with disabilities. One of the fundamental barriers that preclude persons with disabilities from fully participating in the voting process is the accessibility of polling sites. Voting access for people with disabilities may be impeded by a variant of physical features at polling places. The primary responsibility for assuring accessibility of polling places, through the selecting, inspecting, and/or modifying polling places rests with the county boards of elections and in the City of New York, with the New York City Board of Elections.

Too often waivers allow a jurisdiction to avoid ADA compliance. This amendment will continue to allow the County Boards flexibility to make all polling sites accessible and compliant in a timely fashion.

LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE: Immediately.

New York State Board of Elections Legislative Proposal SBE 09-06

AN ACT amend the election law in relation to polling site access for physically disabled voters.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1. Section 4-104 of the election law is amended to read
2 as follows:

3 § 4-104. Poll Place Access.

4 1-a. Each polling place shall[have at least one entrance
5 that provides access, by ramp or otherwise, to physically
6 disabled voters, provided, however, that this requirement may be
7 waived in writing by the county board of elections upon a
8 petition to the board by the legislative body of the city or town
9 designating such polling places showing good and sufficient
10 cause. In the city of New York and in counties in which polling
11 places are designated by the board of elections, the board shall
12 specify in writing why it has determined that it is unable to
13 comply with the provisions of this subdivision. Such petition,
14 waiver, and written determination, as provided for in this
15 subdivision, shall be filed in the office of the board and be
16 available for public inspection. Such a waiver may be granted and
17 filed or such a written determination may be filed only where the
18 board of elections determines, with regard to each specific

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

New York State Board of Elections Legislative Proposal SBE 09-06

1 polling place for which a waiver is sought or a written
2 determination is to be filed, (1) that an alternative accessible
3 polling place is not reasonably available in the election
4 district or a contiguous election district and that specific
5 efforts were undertaken in cooperation with persons with
6 disabilities who have contacted the legislative body of the city
7 or town which requested such waiver or the board of elections
8 which filed such written determination to locate such an
9 alternative accessible polling place and such efforts are listed
10 in the petition or written determination, (2) that compliance
11 with the polling place accessibility requirements of this
12 subdivision would require that unreasonable expenses be incurred
13 and paid, pursuant to section 4-136 of this article and that
14 specific information regarding expenses for compliance is listed
15 in the petition or written determination, and (3) that
16 substantial efforts will be undertaken in cooperation with
17 persons with disabilities who have contacted the legislative body
18 of the city or town which requested such waiver or the board of
19 elections which filed such written determination during the
20 period for which the waiver is effective to achieve compliance
21 with the polling place accessibility requirements of this

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New York State Board of Elections Legislative Proposal SBE 09-06

1 subdivision and that the specific substantial efforts to be
2 undertaken to achieve compliance are listed in the petition or
3 written determination.] be accessible to citizens with
4 disabilities and comply with the accessibility guidelines of the
5 Americans with Disabilities Act of 1990. [For purposes of this
6 subdivision, the term "persons with disabilities" shall mean
7 persons with disabilities who shall be entitled to vote in the
8 election district for which a waiver is sought and service
9 centers for independent living established pursuant to article
10 twenty-three-A of the education law and other entities which
11 represent the interests of persons with disabilities. A request
12 for a waiver shall be filed at the same time that the list of
13 polling places is submitted to or established by the board of
14 elections. The board of elections shall forthwith prepare a list
15 of all election districts for which a waiver is sought or a
16 written determination filed. Such list together with all such
17 petitions for waiver and written determinations shall be public
18 records at the office of the board of elections. Not later than
19 May seventh of each year, the board of elections shall mail a
20 copy of said list by first class mail to every person who has
21 made a written request for such list within the two preceding

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New York State Board of Elections Legislative Proposal SBE 09-06

1 calendar years. The board of elections shall either grant or deny
2 the waiver no later than June first of the year in which the
3 request is made. The state board of elections shall promulgate
4 regulations necessary to ensure proper execution of the
5 provisions of this subdivision.] The state board of elections
6 shall publish and distribute to each board of elections with the
7 power to designate poll sites, a concise, non-technical guide
8 describing standards for voting access for individuals with
9 disabilities poll site accessibility, including a polling site
10 access survey instrument, in accordance with the Americans with
11 Disabilities Act accessibility guidelines (ADAAG) and methods to
12 comply with such standards. Such guide and procedures shall be
13 developed in consultation with persons, groups, entities with
14 knowledge about public access as the state board of elections
15 shall determine appropriate.

16 1-b. The county board of elections shall cause an access survey
17 to be conducted for every polling site to verify substantial
18 compliance with the accessibility standards cited in this
19 subdivision. Completed surveys shall be submitted to the state
20 board of elections and kept on file as a public record by each
21 county. Each polling site shall be evaluated prior to its

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New York State Board of Elections Legislative Proposal SBE 09-06

1 designation. A site designated as a polling place prior to the
2 effective date of this paragraph shall be evaluated within two
3 years of the effective date thereof by an individual qualified to
4 determine whether or not such site meets the existing state and
5 federal accessibility standards. Any polling place deemed not to
6 meet the existing accessibility standards must make necessary
7 changes and/or modifications, or be moved to a verified
8 accessible polling place within six months.

9 1-c. The state board of elections shall promulgate any rules and
10 regulations necessary to implement the provisions of this
11 subdivision.

12 § 2. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

SENATE BILL #: S.

ASSEMBLY BILL #: A.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE: An act to amend the election law, in relation to absentee ballots

SUMMARY OF PROVISIONS: The bill amends Section 8-400 subdivisions I, 3 and 4 of the election law that sets forth the information that qualified voters must provide in an absentee ballot application. Pursuant to the bill, &qualified voter would be permitted to vote by absentee ballot if he or she is:

- * Absent from the county (or city) of his or her residence;
- * Unable to appear personally at the polling place of the election district in which he or she is a qualified voter because of illness or disability or duties related to the care of one of more individuals who are ill or physically disabled;
- * An inmate or patient of a veteran`s administration hospital;
- * Detained in jail awaiting action by a grand jury or awaiting trial, or confined in jail or prison after a conviction for an offense other than a felony, provided that he or she is qualified to vote in the election district of his or her residence;

The applicant would have to provide, in the application for an absentee ballot, his or her full name, date of birth, residence address, and a statement that the applicant is a registered voter. The applicant would also be required to provide a statement, as appropriate, that on the day of such election he or she expects in good faith to be absent for any of the reasons stated in the above paragraph. The applicant would be able to apply for an absentee ballot covering more than one election, even if they occur in different calendar years, by providing the beginning and end dates of the absence.

JUSTIFICATION: During January and February of 1993, the New York State Board of Elections gathered testimony which addressed the complexity of the voter registration form, the campaign finance disclosure form and the absentee ballot application form. One major complaint was that voters were asked a series of lengthy questions that provided information of little value to the Board of Elections. Article II, section 2 of the New York State Constitution permits absentee voting if the voter is absent from his or her county, ill or unable to appear at the poll site because of illness or physically disabled. However, the absentee ballot application contains a long list of required information that goes far beyond questions regarding absence, illness or physical disability. The addition of the date of birth requirement is to assist Board of Election personnel in differentiating between people with the same name.

Besides burdening the voter with a needlessly complex task, requiring such detail could jeopardize his or her safety and privacy. For example, the Election Law requires a person

seeking an absentee ballot based on illness or physical disability to identify his or her medical practitioner and/or the hospital in which he or she are or expects to be a patient.

When a voter will be out of the county of his or her residence, the Election Law also specifies that applicants must report the details regarding employment or studies necessitating such absence, or the beginning and end dates they will be on vacation and the name of his or her employer, or the details necessitating such absence because the voter is accompanying a spouse, child or parent.

Voters who have second residences or go on extended trips are also forced to apply for absentee ballots for each election, often preventing their participation in elections that occur within weeks or months of each other. This legislation would provide them with the opportunity to apply for an absentee ballot for more than one election.

The New York state Constitution does not require the disclosure of personal details and because the application is a public document that anyone has access to under the Freedom of Information Act, this information could put a voter, or his or her property, at risk. Moreover, the absentee ballot application is the equivalent of a sworn statement and a voter's signature or mark should be sufficient to satisfy the constitutional mandate.

This legislation provides for a streamlined absentee ballot application process by allowing qualified voters to apply for absentee ballots if they meet one of the criteria in the constitution without invading the privacy of the voter.

LEGISLATIVE HISTORY: A.5453-A and S.5172 of 2007/2008 A.5748 of 2005/2006 A.6370 and S.4553 of 2003-2004 A.5768 and S.977 of 2001-2002 A.1966-B and S.1267-B of 1999-2000 A.6364 and S.3471 of 1997-1998 S.3052 of 1995-96 S.8125 of 1993-1994

FISCAL IMPLICATIONS: Costs associated with printing new forms.

EFFECTIVE DATE: Immediately.

New York State Board of Elections Legislative Proposal SBE 09-07

AN ACT to amend the election law in relation to Absentee Voting

The People of the State of New York, represented in the Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 1, 3 and 4 of section 8-400 of the election
2 law is amended to read as follows:

3 1. A qualified voter may vote as an absentee voter under this
4 chapter if, on the occurrence of any village election conducted
5 by the board of elections, primary election, special election,
6 general election or New York city community school board district
7 or city of Buffalo school district election, he [will] or she
8 expects to be:

9 (a) [unavoidably]absent from the county of his or her residence,
10 or, if a resident of the city of New York absent from said city[,
11 because his duties, occupation, business, or studies require him
12 to be elsewhere on the day of election]; or

13 (b) [absent from such county or city because he is on vacation
14 elsewhere on the day of election; or

15 (c)]unable to appear personally at the polling place of the
16 election district in which he or she is a qualified voter because
17 of illness or physical disability, whether permanent or
18 temporary, or because he will be or is a patient in a hospital or

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

1 is engaged in duties related to the care of one or more
2 individuals who are ill or physically disabled; or

3 [(d) he is a person entitled to a ballot because he is a
4 qualified voter registered as]

5 (c)an inmate or patient of a veteran's administration hospital;
6 or

7 [(e) absent from the county of his residence, or if a resident
8 of the city of New York, absent from said city, because of his
9 accompanying a spouse, parent or child who would be entitled to
10 apply for the right to vote by absentee ballot if a qualified
11 voter; or]

12 (d[f]) absent from his or her voting residence because he or she
13 is detained in jail awaiting action by a grand jury or awaiting
14 trial, or confined in jail or prison after a conviction for an
15 offense other than a felony, provided that he or she is qualified
16 to vote in the election district of his or her residence.

17 2. A qualified voter desiring to vote at such election as an
18 absentee voter for any reason specified in subdivision one hereof
19 must make application for an absentee ballot on a form to be
20 obtained and filed as provided herein or by letter as provided in
21 paragraph (d) of this subdivision.

22 (a) Application forms shall be furnished by and may be obtained
23 from any board of elections at any time until the day before such

EXPLANATION: Matter underscored is new; matter bracketed [] is
old law to be omitted.

1 election. Application forms shall also be supplied by the board
2 of inspectors of the election district in which applicant is a
3 qualified voter on all of the days provided for local
4 registration. In addition, application forms shall be supplied
5 upon the request of the person authorized to vote pursuant to
6 this section, any such person's spouse, parent or child, a person
7 residing with the applicant as a member of his household, or the
8 applicant's duly authorized agent. Application forms sent outside
9 of the United States to a country other than Canada or Mexico,
10 shall be sent airmail. Any reference to "board of elections" in
11 the remaining provisions of this section, except with respect to
12 the furnishing and obtaining of applications for absentee
13 ballots, means only the board of elections of the county or city
14 in which the applicant is a qualified voter.

15 (b) Applications may be filed either with the board of elections
16 or in person with the board of inspectors of the election
17 district in which the applicant is a qualified voter, on one of
18 the days provided for local registration.

19 (c) All applications must be mailed to the board of elections not
20 later than the seventh day before the election for which a ballot
21 is first requested or delivered to such board not later than the
22 day before such election.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

New York State Board of Elections Legislative Proposal SBE 09-07

1 (d) The board of elections shall mail an absentee ballot to every
2 qualified voter otherwise eligible for such a ballot, who
3 requests such an absentee ballot from such board of elections in
4 a letter, which is signed by the voter and received by the board
5 of elections not earlier than the thirtieth day nor later than
6 the seventh day before the election for which the ballot is first
7 requested and which states the address where the voter is
8 registered and the address to which the ballot is to be mailed.
9 The board of elections shall enclose with such ballot a form of
10 application for absentee ballot.

11 3. The application for an absentee ballot when filed must contain
12 in each instance the following information:

13 (a) Applicant's date of birth, full name and residence address,
14 including the street and number, if any, rural delivery route, if
15 any, mailing address if different from the residence address and
16 his or her town or city and an address to which the ballot shall
17 be mailed. If such ballot is to be mailed to an address other
18 than the residence address, the voter shall clearly specify the
19 date after which such ballot shall be mailed to an alternate
20 address, and shall provide such alternate address.

21 (b) A statement that the applicant is a qualified and registered
22 voter[, and that he does not know of any reason why he is no
23 longer qualified to vote].

EXPLANATION: Matter underscored is new; matter bracketed [] is
old law to be omitted.

1 (c) A statement, as appropriate, that on the day of such election
2 the applicant expects in good faith to be in one of the following
3 categories:

4 (i) [unavoidably]absent from the county of his or her residence,
5 or if a resident of the city of New York absent from said city,
6 [because his duties, occupation, business or studies require him
7 to be elsewhere on such day, and where such duties, occupation,
8 business or studies are not of such a nature as ordinarily to
9 require such absence, a statement briefly describing the special
10 circumstances requiring such absence and]the dates when he or
11 she expects to begin and end such absence; or

12 (ii) [absent from the county of his residence, or if a resident
13 of the city of New York absent from said city, because he will be
14 on vacation elsewhere on such day, the dates upon which he
15 expects to begin and end such vacation, the place or places where
16 he expects to be on such vacation, the name and address of his
17 employer, if any, or if self-employed or retired a statement to
18 such effect]unable to appear at the polling place because of
19 illness or physical disability; or

20 (iii) has duties related to the care of one or more individualas
21 who are ill or physically disabled [ill or physically disabled;
22 that he has been advised by his medical practitioner or christian
23 science practitioner, giving said practitioner's name and

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1 address, that he will not be able to go to his polling place for
2 such election, and whether said illness is permanent or
3 temporary; if he expects to be a patient in a hospital he shall
4 state the name and address of said hospital]; or

5 (iv) [entitled to a ballot because he is a qualified voter
6 registered as]an inmate or patient of a veteran's administration
7 hospital; or

8 (v) detained in jail awaiting action by a grand jury or awaiting
9 trial or confined in jail or prison after a conviction for an
10 offense other than a felony and stating the place where he or she
11 is so detained or confined; or

12 [(vi) absent from the county of his residence, or if a resident
13 of the city of New York absent from said city, because of his
14 accompanying his spouse, parent or child who falls within one of
15 the foregoing categories; a statement that the applicant resides
16 in the same election district as such spouse, parent or child,
17 the name and address of such spouse, parent or child, and, unless
18 the application accompanies the application of such spouse,
19 parent or child, the information as to the status of such spouse,
20 parent or child required by the applicable category.]

21 (d) Such application shall permit the applicant to apply for an
22 absentee ballot for either a primary election or the general
23 election in any year and for those persons who will be

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1 continuously absent from their county of residence during the
2 period between the fall primary election and the general election
3 in any year to apply for ballots for both such elections in such
4 year. A voter who applies for an absentee ballot shall be sent
5 an absentee ballot for any special election or winter primary
6 that occurs during the period of absence specified in the
7 application.

8 4. A voter who claims permanent illness or physical disability
9 may make application for an absentee ballot and the right to
10 receive an absentee ballot for each election thereafter as
11 provided herein without further application, by filing with the
12 board of elections an application which shall contain a statement
13 to be executed by the voter[showing the particulars of his
14 illness or disability]. Upon filing of such application the board
15 of elections shall [investigate the facts stated therein and if
16 satisfied as to the truth thereof, shall]cause the registration
17 records of the voter to be marked "Permanently Disabled" and
18 thereafter shall send an absentee ballot for each succeeding
19 primary, special or general election to such voter at his or her
20 last known address by first class mail with a request to the
21 postal authorities not to forward such ballot but to return it in
22 five days in the event that it cannot be delivered to the

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1 §2. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL# A.

SENATE BILL# S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE:

An act to amend the election law in relation to civil penalties for non compliance with financial disclosure mandates.

SUMMARY OF PROVISIONS:

Election Law §14-126 is amended to increase the civil penalty for failure to file mandated campaign financial disclosure reports from \$500 to \$1000.

JUSTIFICATION:

The civil penalty was last increased in 1996. A lawsuit resulting in a civil penalty is brought by the State Board as a last step in a process that involves repeated attempts to work with mandated filer to obtain requisite campaign financial disclosure. Every effort is made to assist those who have not made the required filing.

FISCAL IMPLICATION:

No cost to the State. The revenue to the State is undetermined.

LEGISLATIVE HISTORY:

This is a new bill.

EFFECTIVE DATE:

This act shall take effect 120 days after it shall have become a law.

New York State Board of Elections Legislative Proposal SBE 09-08

AN ACT to amend the election law, in relation to increasing penalties.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1:

2 §14-126. Violations; penalties. 1. Any person who fails to file
3 a statement required to be filed by this article shall be subject
4 to a civil penalty, not in excess of [five hundred]one thousand
5 dollars, to be recoverable in a special proceeding or civil action
6 to be brought by the state board of elections or other board of
7 elections.

8 2. Any person who knowingly and willfully fails to file a
9 statement required to be filed by this article within ten days
10 after the date provided for filing such statement or any person who
11 knowingly and willfully violates any other provision of this
12 article shall be guilty of a misdemeanor.

13 3. Any person who knowingly and willfully contributes, accepts
14 or aids or participates in the acceptance of a contribution in an
15 amount exceeding an applicable maximum specified in this article
16 shall be guilty of a misdemeanor.

17 4. Any person who shall, acting on behalf of a candidate or
18 political committee, knowingly and willfully solicit, organize or
19 coordinate the formation of activities of one or more unauthorized
20 committees, make expenditures in connection with the nomination

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

New York State Board of Elections Legislative Proposal SBE 09-08

1 for election or election of any candidate, or solicit any person to
2 make any such expenditures, for the purpose of evading the
3 contribution limitations of this article, shall be guilty of a
4 class E felony.

5 §2: This act shall take effect 120 days after enactment.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL # A.

SENATE BILL # S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE:

An act to amend the Election Law in relation to the ability of the State Board of Elections to administratively set standards for accepting changes to the mailing address on certain statements it maintains; in relation to candidates required to file financial statements providing depository information.

SUMMARY OF PROVISIONS:

Section One: Election Law §14-118 (1) is amended to allow the Board to determine how changes to mailing addresses may be made in order to promote administrative efficiency and reduce costs.

Section Two: Election Law §14-118 (3) is renumbered 3(a) and is amended to eliminate a text error. A new 3 (b) is created which requires candidates who are required to file disclosure reports of campaign financial activity to provide the name and address of the depository at which they maintain the account(s) from which they conduct their own campaign financial activity.

JUSTIFICATION:

The law mandates that changes to information in registration documents be made in the same manner the initial document is filed, i.e. with a subsequent original document. Changes to the mailing address are common, and the Board believes that allowing changes to be made by other methods (e.g. telephone, email or fax) would be reliable, and make it easier for committee treasurers and the Board. Additionally, this would enable the Board to maintain more up to date contact information. This would greatly reduce the quantity of returned mail, and significantly reduce the administrative time and expense necessary to process and correct returned mail.

Committees that file disclosure reports of financial activity must maintain a bank account, and disclose to the Board the name and address of the bank. This is not required of the candidates who are required to file disclosure reports of all or part of their own campaign financial activity. The amended language would provide a measure of consistency.

FISCAL IMPLICATION:

None to the State

LEGISLATIVE HISTORY:

This is a new bill.

EFFECTIVE DATE:

This act shall take effect 90 days after it shall have become a law. Further, that effective immediately, the addition, amendment and/or repeal of any rule(s) or regulation(s) by the state board of elections necessary for its implementation on its effective date are authorized to be made on or before such effective date.

New York State Board of Elections Legislative Proposal SBE 09-09

AN ACT amend the election law in relation to the ability of the Board to administratively set standards for the change of mailing address and in relation to requiring a candidate to provide the State Board with depository information.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1.

2 § 14-118. Treasurer and depository of political committee; filing
3 of name and address. 1. Every political committee shall have a
4 treasurer and a depository, and shall cause the treasurer to keep
5 detailed, bound accounts of all receipts, transfers, loans,
6 liabilities, contributions and expenditures, made by the committee
7 or any of its officers, members or agents acting under its
8 authority or in its behalf. All such accounts shall be retained by
9 a treasurer for a period of five years from the date of the filing
10 of the final statement with respect to the election, primary
11 election or convention to which they pertain. No officer, member
12 or agent of any political committee shall receive any receipt,
13 transfer or contribution, or make any expenditure or incur any
14 liability until the committee shall have chosen a treasurer and
15 depository and filed their names in accordance with this
16 subdivision. its statements a treasurer and depository, a statement
17 giving the name and address of the treasurer chosen, the name and
18 address of any person authorized to sign checks by such treasurer,
19 the name and address of the depository chosen and the candidate or

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

1 candidates or ballot proposal or proposals the success or defeat of
2 which the committee is to aid or take part; provided, however, that
3 such statement shall not be required of a constituted committee and
4 provided further that a political committee which makes no
5 expenditures, to aid or take part in the election or defeat of a
6 candidate, other than in the form of contributions, shall not be
7 required to list the candidates being supported or opposed by such
8 committee. Such statement shall be signed by the treasurer and all
9 other persons authorized to sign checks. Any change in the
10 information required in any statement shall be reported, in an
11 amended statement filed in the same manner and in the same office
12 as an original statement filed under this section, within two days
13 after it occurs except that any change to the mailing address on
14 any such statement filed at the State Board may also be made in any
15 manner deemed acceptable by the State Board . Only a banking
16 organization authorized to do business in this state may be
17 designated a depository hereunder.

18 2. No candidate, political committee, or agent thereof may
19 receive from any one person an aggregate amount greater than one
20 hundred dollars except in the form of a check, draft or other
21 instrument payable to the candidate, political committee or
22 treasurer and signed or endorsed by the donor; except that such a
23 candidate, political committee or agent may receive contributions

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

1 in amounts greater than one hundred dollars which are made by
2 credit card, provided that such candidate, political committee or
3 agent preserves, together with the other accounts which such
4 candidate, committee or agent is required to preserve pursuant to
5 the provisions of this article, a copy of the document which was
6 submitted to secure payment of the funds so contributed. All such
7 checks, drafts or other instruments shall be deposited in the
8 account of the candidate or committee in the designated depository.
9 No candidate or political committee shall expend an amount in
10 excess of one hundred dollars except by check drawn on the
11 depository and signed by the candidate or person authorized to sign
12 checks by him or in the case of a political committee, the
13 treasurer or a person authorized to sign checks by him.

14 3. Every candidate who receives or expends any money or other
15 valuable thing or incurs any liability to pay money or its
16 equivalent shall keep and retain detailed, bound accounts as
17 provided in subdivision a of this section.

18 § 2: Amends §14-118 of the Election Law. Subdivision 3 becomes
19 3(a) and is amended to replace the "a" before "of this section."
20 With "1" A new paragraph 3 b to read:

21 b. Every candidate required to file sworn statements pursuant to
22 section 14-104(1) of this article, other than a candidate who has
23 filed a statement in lieu thereof at or before the first filing

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

1 period as set forth in that section, shall file, in the office(s)
2 in which he or she is required to file his or her statement under
3 section 14-110 of this article, on a form prescribed by the State
4 Board for such purposes, a statement providing the name and address
5 of the depository at which they maintain the account(s) from which
6 they conduct their own campaign financial activity.

7 §3: This act shall take effect 90 days after it shall have become
8 law. Further, that effective immediately, the addition, amendment
9 and/or repeal of any rule(s) or regulation(s) by the state board of
10 elections necessary for its implementation on its effective date
11 are authorized to be made on or before such effective date.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL # A.

SENATE BILL # S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE: An act to amend the election law in relation to publication of certified copies of election results

SUMMARY OF PROVISIONS:

This bill amends section 9-212(2) of the election law to eliminate the requirement that certified copies of election results be published in certain legal ads.

JUSTIFICATION:

With the on-site and immediate coverage of elections by the news media the results of an election are immediately known by the public. The current requirement to subsequently publish the certified results are antiquated, redundant and costly.

LEGISLATIVE HISTORY:

None, new bill for 2009

FISCAL IMPLICATIONS:

None to the State. Could result in a significant cost savings to the counties.

EFFECTIVE DATE:

This act shall take effect immediately.

New York State Board of Elections Legislative Proposal SBE 09-10

AN ACT amend the election law in relation to publication of certified copies of election results.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1. Section 9-212 of the election law is amended by adding
2 to read as follows:

3 § 9-212. Determinations by county canvassing boards.

4 1. The canvassing board shall determine each person elected by the
5 greatest number of votes to each county office, and each person
6 elected by the greatest number of votes to each city, town or
7 village office of a city, town or village of which it is the board
8 of canvassers. The canvassing board shall also determine whether
9 any ballot proposal submitted only to the voters of the county, or
10 only to the voters of a city, town or village which it is the board
11 of canvassers, as the case may be, has by the greater number of
12 votes been adopted or rejected.

13 2. All such determinations shall be in writing and signed by the
14 members of the canvassing board or a majority of them and filed and
15 recorded in the office of the board of elections. [Except in the
16 city of New York and in the counties of Nassau, Orange and
17 Westchester, the board of elections shall cause a copy of such
18 determinations, and of the statements filed in its office upon
19 which such determinations were based, to be published once in each
20 of the newspapers designated to publish election notices and the
21 official canvass. The statement of canvass to be published,

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New York State Board of Elections Legislative Proposal SBE 09-10

1 however, shall not give the vote by election districts but shall
2 contain only the total vote for a person, or the total vote for and
3 the total vote against a ballot proposal, cast within the county,
4 or within the portion thereof, if any, in which an office is filled
5 or ballot proposal is decided by the voters if the canvass of the
6 vote thereon devolves upon the county board of canvassers. Such
7 totals shall be expressed in arabic numerals.]

8 3. The board of elections shall prepare and forthwith transmit to
9 each person determined by the canvassing board to have been elected
10 a certified statement, naming the office to which such canvassing
11 board has declared him elected.

12 § 2. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is
old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL # A.

SENATE BILL # S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE: An act to amend the election law in relation to military voting.

SUMMARY OF PROVISIONS:

This bill would made permanent the current provisions of law that set forth the deadlines for receipt and delivery of military ballots.

JUSTIFICATION:

Our military personnel deserve the longest amount of time practicable to have their ballots returned and counted in all elections. Issues raised in last year's presidential election showed us the geographical obstacles many face in getting their ballots returned to their county boards of elections in the United States. In addition, these time frames for return and receipt of those ballots needs to remain constant so that our military personnel and the county boards of elections have consistency in procedures and processing of same.

LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS:

None to the state.

EFFECTIVE DATE:

This act shall take effect immediately.

New York State Board of Elections Legislative Proposal SBE 09-11

AN ACT amend the election law in relation to military voting.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1. Subdivision 1 of section 10-114 of the election law is
2 amended by adding to read as follows:

3 § 1. The sunset provisions contained in the first paragraph 1 of
4 section 10-114 of the laws of 2005, ch. 237 §4, shall be repealed
5 and the provisions contained in that section shall be made
6 permanent.

7 § 2. The provisions contained in the second paragraph 1 of section
8 10-114 shall be repealed.

9 § 3. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT**ASSEMBLY BILL #: A.****SENATE BILL #: S.****ASSEMBLY SPONSOR(S):****SENATE SPONSOR(S):****TITLE:** An act to amend the election law with regard to the form of paper ballots.**SUMMARY OF PROVISIONS:**

The bill would amend Section 7-106 of the Election Law to add a new subdivision 11 that relates to the form of a ballot. This would require that ballots have a box, oval or other marking area that the voter may intentionally fill in to alert the voting system that any and all undervotes on the ballot had been done so intentionally. This, in turn, would allow the system to cast the ballot without returning an "undervote error message" to the voter.

JUSTIFICATION:

This new section is proposed to further ensure the confidentiality of any ballot cast by a voter who specifically chooses not to vote for as many candidates, offices, or questions as their respective ballot may allow. When marking the ballot in a manner provided for in this new section, no error message will be provided to the voter, thus not attracting attention to the fact that the voter has not made all selections for all offices or questions.

The elimination of the error message when such ballots are cast will also aid in the elimination of unnecessary time spent at the scanner by voters who have opted to cast fewer votes than the ballot permits.

LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE:

Immediately.

New York State Board of Elections Legislative Proposal SBE 09-12

AN ACT amend the election law in the form of paper ballots.

The People of the State of New York, represented in the Senate and Assembly do enact as follows:

- 1 Section 1. Section 7-106 of the election law shall be amended to
2 read as follows. A new subdivision (11) shall be added to state
3 that: Ballots shall provide for a box, oval or other marking area,
4 which when filled in by a voter, will be recognized by the voting
5 system as a directive from the voter indicating that any races on
6 the ballot that have been undervoted have been so undervoted
7 deliberately, and as such, the voting system shall not produce an
8 undervote error notice to the voter.
9 § 2. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.

MEMORANDUM IN SUPPORT

ASSEMBLY BILL #: A.

SENATE BILL #: S.

ASSEMBLY SPONSOR(S):

SENATE SPONSOR(S):

TITLE: An act relating to the delivery of paper ballots to the voter.

SUMMARY OF PROVISIONS:

This amendment would repeal Election Law section 8-310 and would amend section 8-312 to allow the State Board to promulgate and modify regulations regarding the casting and delivering of paper ballots to the voter.

JUSTIFICATION:

It is necessary to repeal 8-310, as the processes found therein are outdated, and do not serve the needs of elections administrators and Election Day workers. The election process has moved to an all-paper system and needs to better address security, ballot accountability and chain-of-custody concerns.

Amending Section 8-312 with a new subsection 6 enables the State Board to promulgate and modify regulations as necessary, as a new voting technology is deployed throughout the State. The regulations will ensure common practices across the state, will speak to new needs for ballot accountability, security and chain-of-custody, and permit consistent training and voter outreach messages

LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE: This act shall take effect 90 days after it shall become law. Further, effective immediately, the addition, amendment and/or repeal of any rule(s) or regulation(s) by the State Board of Elections necessary for its implementation on its effective date are authorized to be made on or before such effective date.

New York State Board of Elections Legislative Proposal SBE 09-13

AN ACT amend the election law in relation to paper ballots.

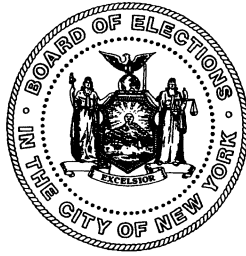
The People of the State of New York, represented in the Senate and Assembly do enact as follows:

1 Section 1. The provisions contained in section 8-310 of the
2 election law shall be repealed.

3 § 2. Section 8-312 of the election law shall be amended to be
4 titled Voting; paper ballots, marking and casting, delivery to
5 voter. A new subdivision (6) shall be added to state that: Paper
6 ballots being used shall be delivered to the voter in a manner
7 consistent with Rules and Regulations promulgated by the State
8 Board of Elections.

9 § 3. This act shall take effect immediately.

EXPLANATION: Matter underscored is new; matter bracketed [] is old law to be omitted.



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
J.P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
COMMISSIONERS

BOARD OF ELECTIONS

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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

STEVEN H. RICHMAN
GENERAL COUNSEL
Tel: (212) 498-5338
Fax: (212) 497-5342
E-Mail:
srichman@boe.nyc.ny.us

VIA EXPRESS MAIL

March 16, 2009

EV506418553US

Christopher Coates, Esq.
Chief, Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Coates:

The Office of the General Counsel for the Board of Elections in the City of New York received your letter dated March 4, 2009 on March 12, 2009. I have reviewed our files and cannot find a copy of the January 24, 2007 letter which was enclosed therewith (copies attached).

I have reviewed our records and confirm that Special Elections to fill vacancies in the New York City Council were conducted on February 20, 2007 in the 40th District (Brooklyn) and the 51st District (Staten Island), another Special Election in the 40th Council District (Brooklyn) was held on April 24, 2007 and a Special Election for Member of the New York State Assembly in the 65th Assembly District in Manhattan on June 5, 2007.

The Board of Elections in the City of New York does not have the legal authority to call said Special Elections. The Board is a ministerial agency,

charged by law with conducting elections within the City of New York as mandated by the United States and New York State Constitutions, applicable federal and state election laws and the New York City Charter.

The Special Elections referred to in your letter were called by the designated Chief Executive, pursuant to the applicable provisions of New York State Law or the New York City Charter. The Board understands that those provisions were either enacted prior to the effective date Section 5 of the Voting Rights Act or have received pre-clearance under Section 5, upon enactment.

Any questions regarding the calling of the aforementioned Special Elections should be directed to the appropriate executive authority, the Mayor of the City of New York with respect to vacancies in the New York City Council and the Governor of the State of New York for vacancies in the New York State Legislature or their legal counsels. The contact information for those officials follows:

Hon. Michael R. Bloomberg
Mayor
City of New York
City Hall
New York, NY 10007

Michael Cardozo, Esq.
Corporation Counsel
New York City Law Department
100 Church Street
New York, NY 10007

Hon. David A. Patterson
Governor
State of New York
Executive Chamber
Albany, NY 12224

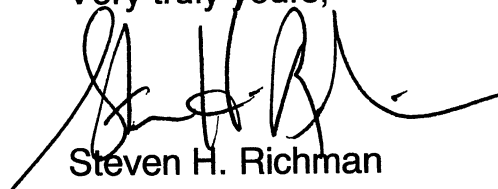
Andrew M. Cuomo, Esq.
Attorney General
State of New York
State Capitol
Albany, NY 12224

The Board of Elections in the City of New York conducted such elections under the existing provisions of the New York State Election Law and the New York City Charter. Our own internal process with respect to Independent Nominating Petitions was conducted under the Independent Nominating Petition Rules for 2006 (which was granted pre-clearance by the Attorney General of the United States on March 2, 2006 – BOE in NYC Submission No. 2006-CW-01).

Those Rules were re-adopted by the Commissioners of Elections in the City of New York, without any change for 2007 on November 28, 2006. In addition, no poll site changes made for any of the 2007 Special Elections referred to in your letter. Therefore, it is the belief of this Board that its actions were in full compliance with the Voting Rights Act of 1965, as amended (42 USC 1973c).

I trust that this information is of some assistance to you. As always, if you have any questions or require additional information, please contact me directly.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Richman', with a long horizontal flourish extending to the right.

Steven H. Richman
General Counsel

Attachments

Copy: The Commissioners of Elections in the City of New York
Marcus Cederqvist, Executive Director
George Gonzalez, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven Denkberg, Esq., Counsel to the Commissioners
Charles Webb, III, Esq., Counsel to the Commissioners
John Owens, Esq., Director, Campaign Finance Enforcement



U.S. Department of Justice

Civil Rights Division

CC:MSR:ER:maf
DJ 166-012-3
2007-0266

Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

March 4, 2009

Steven H. Richman, Esq.
General Counsel
Board of Elections
32 Broadway
New York, New York 10004-1609

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 MAR 12 PM 3:03

Dear Mr. Richman:

This refers to our January 24, 2007, letter (copy enclosed) which requested submission under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of the procedures for conducting the February 20, 2007, special vacancy election for the City of New York in Kings County, New York.

Our records indicate that we have not received your response. We note that unless the City of New York receives a declaratory judgment from the United States District Court for the District of Columbia or the Attorney General interposes no objection to the specified change, it is not legally enforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.10).

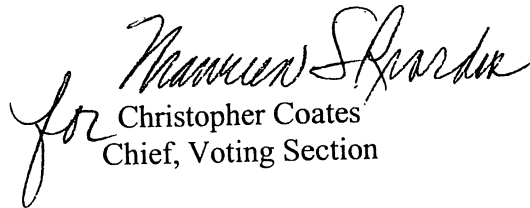
In addition, we understand that the city conducted special vacancy elections on April 24, 2007, and June 5, 2007, in Kings and New York Counties.

According to our records, these changes affecting voting have not been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. If our information is correct, it is necessary that these changes either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that they do not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable without Section 5 preclearance. *Clark v. Roemer*, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.10).

Should you elect to make a submission to the Attorney General for administrative review rather than seek a declaratory judgment from the United States District Court for the District of Columbia, please follow the procedures set forth in Subparts B and C of the procedural guidelines (28 C.F.R. Part 51), available at www.usdoj.gov/crt/voting/sec_5/guidelines.htm.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the city plans to take concerning this matter. If you have any questions, you should call Mr. Edris Rodriguez (202-305-0099) of our staff. Refer to File No. 2007-0266 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,


for Christopher Coates
Chief, Voting Section

Enclosure



U.S. Department of Justice
Civil Rights Division

JKT:YR:ER:par
DJ 166-012-3
2007-0266

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

January 24, 2007

Steven H. Richman, Esq.
General Counsel
City of New York
Executive Office, 32 Broadway
New York, New York 10004-1609

Dear Mr. Richman:

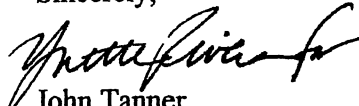
We understand that the City of New York will conduct a special vacancy election on February 20, 2007.

According to our records, this change affecting voting, as well as any changes in procedures for conducting the special election, if any, have not been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. If our information is correct, it is necessary that these changes either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that they do not have the purpose or effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable without Section 5 preclearance. *Clark v. Roemer*, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.10).

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To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of New York plans to take concerning this matter. If you have any questions, you should call Mr. Edris Rodriguez (202-305-0099) of our staff.

Sincerely,


John Tanner
Chief, Voting Section

Com mtg
Rj

Steven H. Richman

From: Wayne Hawley [hawley@coib.nyc.gov]
Sent: Friday, March 13, 2009 4:26 PM
To: Wayne Hawley
Subject: Conflicts of Interest Board Advisory Opinion No. 2009-1

The Conflicts of Interest Board today releases its Advisory Opinion No. 2009-1 on the use of City-owned vehicles by elected officials. Attached are the Opinion and its summary.

Wayne G. Hawley
Deputy Executive Director and General Counsel
New York City Conflicts of Interest Board
2 Lafayette Street, Room 1010
New York, NY 10007
(212) 442-1415
(212) 442-1407 (fax)
hawley@coib.nyc.gov

This message is intended only for the use of the Addressee and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please permanently delete all copies of the message and its attachments and notify us immediately at 212-442-1400. Thank you.

OPINION SUMMARY

OPINION NO: 2009-1

DATE: 3/12/09

CHARTER SECTION(S) INTERPRETED: 2601(5), 2604(b)(2), 2604(b)(3)

SUBJECT(S): Use of City-Owned Vehicles

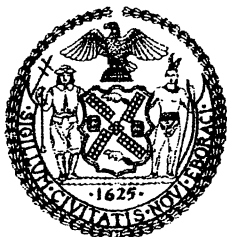
SUMMARY: Elected Officials for whom the NYPD has determined that security in the form of an official vehicle and security personnel is required may make any lawful use of the official vehicle and security personnel for personal purposes, including pursuit of outside business or political activities, without any reimbursement to the City, provided that such use is not otherwise a conflict of interest and further provided that the Elected Official is in the vehicle during all such use.

Elected Officials for whom security protection has not been mandated by the NYPD, but whose duties require them to be constantly available to respond to the needs of constituents and to public emergencies, may make any lawful use of their allotted City vehicles and/or drivers within the five boroughs, including pursuit of outside business or political activities, without reimbursement to the City, provided that the use is not otherwise a conflict of interest and further provided that the Elected Official is in the vehicle during all such use. Outside the five boroughs within a range permitting timely return to the City, such Elected Officials may use the vehicle and/or driver for any lawful personal purpose, including pursuit of outside business or political activities, with reimbursement to the City. If, however, the Elected Official

can clearly demonstrate that the particular use outside the City's limits was for official business, reimbursement to the City is not required.

The Board wishes to emphasize that this Opinion applies only to Elected Officials who are allotted City cars. The Opinion does not apply to appointed officials nor does it apply to Elected Officials who are not allotted City cars. Moreover, the Board cannot anticipate all possible scenarios involving non-City use of City cars and drivers – either by Elected Officials or by appointed public servants who are not subject to this Opinion. Any public servant, elected or appointed, who has a question regarding a particular vehicle use should request advice from the Board. What the Board has sought to do in this Opinion is to promulgate certain bright line rules for certain Elected Officials. To the extent that a particular situation does not fit clearly within those guidelines, public servants are urged to contact the Board for guidance.

The Board does not opine on whether the use of City vehicles permitted in the Opinion will result in imputation of income for tax purposes or will have implications for relevant election or campaign finance laws. It is incumbent on Elected Officials to ascertain and comply with any such applicable laws.



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010

New York, New York 10007

(212) 442-1400

Fax: (212) 442-1407 TDD: (212) 442-1443

Steven B. Rosenfeld
Chair/Board Member

Monica Blum
Board Member

Kevin B. Frawley
Board Member

Angela Mariana Freyre
Board Member

Andrew Irving
Board Member

Mark Davies
Executive Director

Wayne G. Hawley
*Deputy Executive Director
& General Counsel*

Julia Davis
*Special Counsel &
Director of Financial
Disclosure*

Carolyn Lisa Miller
Director of Enforcement

Alex Kipp
*Director of Training &
Education*

Ute O'Malley
*Director of
Administration*

Derick Yu
*Director of Information
Technology*

Use of City-owned Vehicles

Charter Sections: 2601(5), 2604(b)(2), 2604(b)(3)

Advisory Opinion No. 2009-1

The Conflicts of Interest Board (the "Board") has received a request, made on behalf of certain elected officials, for guidance concerning the appropriate use of City-owned cars and City personnel as drivers that are allotted to such officials for use in connection with their official duties. The advice is requested in light of the provisions of Chapter 68 of the City Charter and the Board Rules promulgated pursuant thereto, which specifically prohibit the use of official position for personal gain and the use of City resources for non-City purposes. Given those provisions and rules, under what circumstances may such cars and drivers be used for other than official business purposes?

In this opinion, we limit our guidance to those *elected* officials who currently have use of City-owned cars and, where applicable, City employees as drivers. As of the date of this opinion, those fifteen officials are the Mayor, the City Council Speaker and Minority Leader, the Public Advocate,

Visit our home page at <http://nyc.gov/ethics>

the Comptroller, the Borough Presidents, and the District Attorneys (hereinafter “Elected Officials”).

The Board has sought in this opinion to develop principles consistent with Chapter 68 that could be uniformly and easily applied and thus has divided these Elected Officials into two categories for purposes of this opinion:

1) Elected Officials for whom the New York City Police Department (“NYPD”) has determined that requirements of personal security dictate, at a minimum, that provision of a City-owned car and security personnel is necessary; and 2) all other Elected Officials who currently have use of a City-owned car and, in some cases, a City employee as a driver.

Background

The furnishing of cars to Elected Officials to facilitate government business, including for purposes of safety and administrative efficiency, is derived from long-standing tradition and practice, rather than any one specific provision of law. Some Elected Officials use vehicles provided by the NYPD; others use vehicles paid for out of the budget of their offices or the City’s Department of Citywide Administrative Services. Those officials for whom the NYPD has determined that the provision of security is required are driven by and/or accompanied by NYPD personnel. Elected Officials who have drivers, but for whom the NYPD has not provided security, hire drivers specifically for that job, and their salaries are paid for out of the budget of the Elected Official’s office.¹

¹ Out of a concern for the safety of those Elected Officials who are not provided with security, we have not identified which officials use vehicles provided by the NYPD.

In order to help identify the issues raised by these Elected Officials' use of official vehicles for purposes not directly related to their official duties, the Board consulted with representatives of the Elected Officials and canvassed state, federal, and local authorities to ascertain potential uses that might raise issues under Chapter 68 and to identify any rules, court cases, administrative rulings, and policies that could shed light on these issues. In addition, the Board communicated with representatives from the New York State Governor's Office, the Pennsylvania Ethics Commission, the Philadelphia Ethics Board, the Chicago Ethics Board, the Los Angeles City Ethics Commission, the San Francisco Ethics Board, and the Massachusetts Ethics Commission.

Relevant Law

Charter Section 2604(b)(2) prohibits public servants from engaging in any "business, transaction or private employment, or hav[ing] any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." In Board Rules Section 1-13, the Board has specified certain conduct that constitutes a violation of Section 2604(b)(2). That rule prohibits public servants from, among other things, performing personal and private activities on City time and using City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

Charter Section 2604(b)(3) prohibits public servants from using or attempting to use their City positions to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct or indirect, for themselves or for any person or firm with whom or with which they are associated. Charter Section 2601(5) defines a person or firm "associated"

with a public servant to include “a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.”

Relevant City Policies

Separate and apart from the Charter and Board Rules Section 1-13, the City has adopted a City Vehicle Driver Handbook, most recently updated effective February 2009, that specifies:

Drivers are not allowed to use City Government vehicles for personal activities, except for required rest periods, meals, and brief stops incidental to the conduct of official City business. Such stops do not entitle drivers to use the vehicle for shopping, recreation, or to transport others....For those elected officials for whom the New York City Police Department has determined that personal security is necessary, it is recognized that they will be required to conduct certain personal activities while using a City Government vehicle. Such activity shall be consistent with the determinations of the New York City Conflicts of Interest Board.

See City of New York, City Vehicle Driver Handbook, rev. February 2009, at 4. No official pronouncements as to the scope of such permissible “incidental” use exist, other than as contained in the handbook itself, nor are there any formal opinions of the Law Department on the issue of the appropriate use of official vehicles.

The City has also adopted an “Acceptable Use Policy” (“AUP”) relating to the use of City telephones, computers, fax machines, photocopiers, and other similar equipment – but *not* cars and drivers. This policy permits, in relevant part:

limited personal use of the City’s office and technology resources if the use is not prohibited pursuant to this or another applicable

agency policy,² does not otherwise interfere with or otherwise impede the City's operations or employee productivity, and involves no more than a minimal additional expense to the City.

AUP, Article I.

Even if the use involves more than "minimal" expense, the AUP also permits personal use in certain circumstances with reimbursement by the employee, provided that such use is also permitted by the agency. See AUP at 4. For example, many agencies permit managerial employees to make long distance calls from office phones, provided that reimbursement is made to the City for the actual cost of the calls.

New York State Authorities

As a general matter, the New York State Constitution prohibits counties, cities, towns, villages, and school districts from giving or loaning any money or property to or in aid of any individual or private corporation, association, or undertaking. See N.Y. CONST. ART. VIII, Section 1. This provision has long been construed as generally prohibiting a municipality from permitting an individual employee to use a municipal automobile for private purposes, since personal use would constitute a gift in violation of Article VIII. See, e.g., Fox v. Employers' Liability Assur. Corp., Ltd., of London, England, 243 A.D. 325, 276 N.Y.S. 917 (4th Dep't), aff'd, 267 N.Y.2d 609 (1935). However, not every private or personal use of an official vehicle is prohibited. See, e.g., Opns St. Comp., 1980 No. 79-850, 1980 WL 7955 (N.Y. St. Cptr.). Where the official is given full-time use of a city-owned vehicle as part of his or her

² Examples of prohibited use include using any of these City resources for outside business purposes, sending harassing emails, accessing or downloading sexually explicit material, or engaging in political activities.

compensation in exchange for services rendered, generally, there is no gift, and thus no violation of the Constitution. See id., at 1, (citing City of Rochester v. AFSCME, Local 1635, 54 A.D.2d 257, 388 N.Y.S.2d 489 (4th Dep't 1976)). Similarly, where the official is subject to being called to perform official duties in emergency situations that occur after his or her regular business hours, the public official may be permitted, in the public interest, to have a municipal vehicle on a full-time basis to insure his or her ready availability in such situations (see General City Law Sections 20(5), (13), (23)). Reasonable personal use of the municipal vehicle under those circumstances would be a private benefit that is incidental to a legitimate public purpose and thus not a violation of the constitutional section. Id. at 2 (citing New York Tel. Co. v. Secord Bros. Inc., 62 Misc. 2d 866, 309 N.Y.S.2d 814 (Sup. Ct. Erie Co.), aff'd, 35 A.D.2d 779 (4th Dep't 1970)); see also Opns. St. Comp, 1987 No. 87-25, 1987 WL 61247 (N.Y. St. Cptr.).

Although Article VIII does not apply to the state government, a similar prohibition against gifts of "the money ... and credit" of the state for private purposes is found in the State Constitution at Article VII, Section 8. Consistent with this provision, then Governor Eliot Spitzer, in Paragraph 4 of Executive Order 1 of 2007, entitled "Prohibition Against the Use of State Property," declared that:

State vehicles shall be used for official business or incidental use associated with business away from an employee's official work station. Individuals who are authorized by their agency or public authority to use a vehicle for personal purposes shall keep records of such use, and the value of such use shall be calculated and reported as personal income to such individuals for tax purposes.

Pursuant to the State's Budget Policy and Reporting Manual, the individuals referenced in Executive Order 1 as being authorized to use a state vehicle for personal purposes are: "[s]tate

officials of cabinet rank and heads of agencies.” Those officials are afforded “unrestricted use of their assigned vehicles,”³ but are required to keep records concerning their personal use of the vehicles, including commuting. The value of that use is imputed to the state official as a taxable fringe benefit for income tax purposes.⁴

Other Jurisdictions

Federal officials are, in general, prohibited from using official vehicles for any personal purposes; even commuting is prohibited, subject to very limited exceptions.⁵ The list of individuals for whom use of an official vehicle for commuting is authorized is specific and very narrow and includes the President and Vice President, the Justices of the Supreme Court, and other high ranking members of the Executive Branch. See 31 U.S.C. Sections 1344(b) and (c).

Most states and local governments whose authorities the Board reviewed specifically prohibit any use of official vehicles other than for official purposes.⁶ However, representatives from those state and municipal ethics boards or commissions that the Board consulted reported that their agencies had not addressed this issue in depth.

³ See State Budget Policy and Reporting Manual, rev. Sept. 23, 2003, at ¶ 3.

⁴ Office of the State Comptroller, Memorandum re: Reporting on the Taxable Value of Personal Use of State Provided Vehicles and Chauffeurs for 2007 (July 2, 2007).

⁵ 31 U.S.C. § 1344, entitled “Passenger carrier use” provides, in pertinent part:

Funds available to a Federal agency. . . . may be expended by the Federal agency for . . . any passenger carrier, only to the extent that such carrier is used to provide transportation for official purposes. . . . [T]ransporting any individual other than the individuals listed in subsections (b) and (c) of this subsection between such individual’s residence and such individual’s place of employment is not transportation for an official purpose.

⁶ See, e.g., Use of State Automobiles, Management Directive, Commonwealth of Pennsylvania, Governor’s Office, Section 39.95; Los Angeles Municipal Code Section 63.106(a); Office of the Mayor, Tulsa, Oklahoma, Executive Order No. 2003-01: Take Home Vehicle Policy and Procedures, Section 3.A.

In Los Angeles, despite the general prohibition against use of official vehicles for personal purposes, the L.A. Municipal Code (“LAMC”) contains an exception permitting elected officials, including the Mayor, City Attorney, Controller, and Members of the City Council, to use municipal cars for both official and personal purposes within Los Angeles County (see LAMC Section 63.106(d)); all other Los Angeles County employees are subject to a restriction that prohibits any use other than for official business (see LAMC Section 63.106(a)).⁷ The rationale supporting such use by elected officials is that those officials are effectively on call at all times, so that unrestricted local use of their city vehicles would enable them to respond most effectively to emergencies and otherwise discharge their “24/7” responsibilities.⁸

Discussion

With this background, we turn to the issues presented by the request the Board has received from New York City Elected Officials. As noted above, the groups of vehicle users covered by this opinion may be divided into two categories:

Category 1 – Elected Officials Under Law Enforcement Protection

The first category is comprised of Elected Officials for whom the NYPD has determined that the provision of some form of personal security, including but not limited to a City-issued car and NYPD personnel, is necessary. In order for an Elected Official to qualify for inclusion in this category, the NYPD must have made a determination that a need for security exists and as to

⁷ See Memorandum from L.M. Pelham, Interim Director, Los Angeles City Ethics Commission, to Heads of All City Departments (Dec. 1, 2000).

⁸ See Memorandum of Los Angeles City Attorney Burt Pines to Councilman Bob Renka (July 6, 1978) (hereafter, the “Pines Letter”), at 3.

the level of security needed. Such a determination by the NYPD that security is warranted will conclusively place a public official within this category.

In assessing the appropriate uses that an individual within this category may make of the assigned official vehicle and personnel, the Board starts with the recognition that the official's need for protection and security remains the same whether the official ventures forth to perform a personal rather than an official task or to attend a private social function rather than a public event. For that reason, officials within this category are strongly advised by the NYPD to use the security personnel assigned to them, in the manner prescribed by the NYPD, whenever they move about, whether for public or private purposes. Accordingly, there can be no effective restriction on these officials' "personal" use of City cars and drivers.

For the same reason, such Elected Officials may also use City vehicles, drivers, and security personnel when they attend political events, such as campaign fundraisers, and personal non-City business events, provided that the official's participation in such activities does not otherwise result in a conflict of interest. The Elected Official may even use the car and driver to travel outside the City, if consistent with security determinations by the NYPD. That conclusion also reflects sound public policy, because it will encourage public officials to follow and adhere to security recommendations, and not ignore them in order to avoid violating the ethics law.

Persons, such as spouses or guests who might appropriately accompany the Elected Official to official events, will also be permitted to ride as passengers. Similarly, if the Elected Official is travelling out of town, for example to a weekend home, a guest or guests may accompany the official in the car, if the presence of such person or persons would not interfere

with the prescribed security arrangements. However, the conclusion stated above relates *only* to the Elected Official's *own* use of a City car and driver for transportation purposes. Absent an independent security need as determined by the NYPD, a public official within this category may *not* send a City car with security personnel or a City driver on personal errands for the official or utilize the car and/or driver to transport members of the official's family to and from their own daily pursuits; taking the official's children to school or the dentist, or dropping the official's spouse off at a destination, is not permitted, unless the Elected Official is in the car at the time or unless, as noted, the NYPD has determined that the official's family member has an independent security need.

The Board considered whether these Category 1 Elected Officials must nevertheless reimburse the City for use not deemed "official" and concluded that such reimbursement is not required. Since officials in this category are subject to security determinations by the NYPD requiring them to use City vehicles to the maximum extent possible for all local transportation, official or otherwise, it would be unfair to require them to pay for any use deemed unofficial. Moreover, given these officials' constant use of the required vehicles, an effort to determine what use must be reimbursed would require an almost limitless parsing and costing to determine how much of that use is "official," or incidental to official business, and how much is in no way related to official business. Any such attempt, particularly if applied to officials who, as recognized in Los Angeles, are on call essentially every hour of the day and night, seems both an impossible and an unfair accounting burden on all involved. Thus, the Board concludes that for Category 1 Elected Officials, for whom the NYPD has determined that the provision of security

is necessary, any use of a City-issued car and security personnel *by that public servant*, whether for official or for personal purposes or for any combination of the two, is consistent with Chapter 68, and no reimbursement to the City for such use is required.

The Board does not opine on whether use of a City car and driver for personal purposes will result in the imputation of income for tax purposes or whether use to attend political events may have implications under the relevant election or campaign finance laws. It is incumbent upon the Elected Official to comply with any such applicable laws. Of course, even absent relevant legal obligations, Elected Officials are free to reimburse the City for non-City use of their City vehicles for example, to reimburse with campaign funds for political use.

Category 2 – Other “Elected Officials”

The second category is comprised of all remaining Elected Officials, as that term was previously defined herein – *i.e.*, those for whom the NYPD has not made a determination that the provision of security is required. Nevertheless, the duties of these Elected Officials do regularly require them to appear in their official capacities at functions and events, to respond to emergencies, or to otherwise attend to the needs of their constituents, outside of normal business hours.⁹

Category 2 Elected Officials must often take care of personal appointments, errands, and meetings in between official duties during the day; moreover, official appearances and other

⁹ Elected Officials described within Category 1 who opt not to utilize the depth of security prescribed by the NYPD will be considered to fall within this second category since their duties and responsibilities require them to respond to emergencies. Similarly, Category 1 Elected Officials who are not provided with security 7 days a week will be expected to follow the rules for the Category 2 Officials at times when they are using an official car and/or driver but are not accompanied by a NYPD security detail.

obligations frequently occur outside of normal business hours, in the evenings and on weekends, and before or after personal engagements. Requiring these public officials to switch from official vehicles to personal vehicles or to public transportation in order to attend personal functions, and then back to City vehicles to pursue official duties, would defy common sense and might impede their ability to respond expeditiously to the needs of their constituents.

Thus, as in the case of Category 1 Officials, it is the view of the Board that it will not violate Chapter 68 for these Category 2 Elected Officials to use their City cars for personal as well as official purposes, recognizing that their full and varied schedules makes changing from official to personal vehicles impracticable and inefficient. This permissible use, however, must be consistent with its rationale-- namely, to promote the ready presence of these officials at the myriad meetings, functions, events, or emergencies that occupy their official lives. Thus, the City car may be used by the Category 2 Elected Official only within the five boroughs or within a sufficiently close geographic range thereof to permit timely return to the City in cases of emergencies.

There remains the question of reimbursement by Category 2 Elected Officials for any permitted use for a non-City purpose. Here, as in the case of the Category 1 Officials, the Board considered this question and was ultimately persuaded that, as in Los Angeles, a bright line rule permitting unreimbursed use within the five boroughs is not only consistent with the rationale for permitting these officials to have City cars, but is also, in light of their particularly mixed schedules of personal and official travel, by far the most practicable. In fact, a rule requiring these officials to keep track daily of the breadth and duration of non-City use ultimately would

devolve into a complex of such minute detail as to be incomprehensible or unworkable, or both. Thus, for these Category 2 Officials, lawful use within the five boroughs will require no reimbursement to the City, including use for non-City business and political activities.

Conversely, any use of City vehicles by Category 2 Officials outside the five boroughs will be presumptively considered personal and will thus require reimbursement to the City.¹⁰ Nevertheless, upon a showing that a particular trip outside the City is clearly and exclusively for an official purpose, no such reimbursement will be necessary. As noted above concerning Category 1 Elected Officials, the Board's determination is based only on the requirements of Chapter 68, and cannot and should not be read as reflecting in any way upon possible requirements of the tax laws (which might impute income for unreimbursed personal use) or of campaign finance laws (which might require reimbursement for use deemed to be in support of a political campaign).

This approach, as noted, is consistent with the statutory scheme in Los Angeles, where the rationale underlying the decision to permit certain designated elected officials unrestricted use of their official cars within Los Angeles County is the recognition that those elected officials are effectively "on call" at all times.¹¹ It is also consistent with the New York State practice,

¹⁰ It is the opinion of the Board that, when reimbursement is required, an appropriate reimbursement rate would be the rate prescribed by the Comptroller's Office to reimburse City employees for the use of their personal vehicles for official business, currently 28 cents per mile. It seems only fair that public servants should not have to pay more for personal use of a City car than they would receive in reimbursement from the City for using their own cars on City business. If any applicable City, state, or federal law prescribes a different rate, the reimbursement made must comply with such rate.

¹¹ See Memorandum of the Los Angeles City Attorney cited in n. 8, *supra*, at 2: "Although elected City officials might not be actively engaged in City business at all times, they are at least theoretically 'on call' at all times. Therefore, the City automobiles assigned to them are equipped with communications equipment permitting them to be reached and permitting them to reach others in connection with the exercise of their official duties. In order to

which allows senior officials in the executive branch unrestricted use of State-owned vehicles.

See discussion, supra, at pp. 5-7.¹²

As with Category 1 Officials, it would be inappropriate for Category 2 Elected Officials to permit any other person to ride in or use the car, unless the official is himself or herself making a permissible use of the car.¹³ So, again, when use of the official vehicle and/or driver is permitted for an Elected Official in this second category, the official's spouse or partner may travel in the City car with the Elected Official to an evening personal social function, or to an evening official event, if the Elected Official is also in the car; but use of the car for either of those purposes without the public official being present in the car would not be permissible. Similarly, the Elected Official may use his City car to drive his children to a school within the City limits or may ride in the City car with his children to their school. However, the official car may not be sent to pick up the spouse or partner prior to picking up the public official, nor may

ensure their accessibility, and to enable them to more efficiently perform their official duties, they are permitted to drive their City-assigned automobiles within Los Angeles County while engaging in both official and personal business.”

¹² Interestingly, the City's prior policy, in effect from 1990-1997, permitted unrestricted documented personal use of City-owned vehicles and drivers by the Mayor, Deputy Mayors, and agency heads. Other employees in “critical law enforcement, public safety, or other positions who must be available for contact at all times” could also be authorized to make unrestricted use with written approval from the Mayor, First Deputy Mayor, or Agency Head. The value of such use was imputed to those officials as income. See City of New York, Procedures for the Assignment and Use of City Vehicles, Mayor's Office of Operations (May 1990) at 3.

¹³ Such limitation is also consistent with the Los Angeles approach. The Pines Letter at 2 further notes: “ the following would not be considered personal uses permitted under the . . . rule: use by the elected official's staff, family members or associates; use on extended absences from official duties, including vacation, when beyond the range of the installed emergency communications equipment in the vehicle.”

the children travel to or from school in the City car when not accompanied by the Elected Official.¹⁴

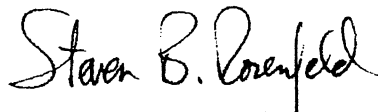
Conclusion

As set forth above, the Board has determined that (1) Elected Officials for whom the NYPD has determined that security in the form of a car and security personnel is required may make any lawful use of the official vehicle and personnel prescribed by the NYPD for personal purposes that are not otherwise a conflict of interest, including pursuit of outside business and political activities, without any reimbursement to the City, provided the Elected Official is in the vehicle for all such use; and (2) Elected Officials for whom protection has not been mandated by the NYPD, but whose duties require them to be constantly available to respond to the needs of constituents and to public emergencies, may use their allotted City vehicles and/or drivers for any lawful personal purpose within the five boroughs, so long as the use does not separately constitute a conflict of interest, including pursuit of outside business or political activity, and so

¹⁴ The Board recognizes that there is a distinction between its treatment of the use of official vehicles and its treatment of the use of other City resources. The Board has consistently interpreted Sections 2604(b)(2) and (3) of Chapter 68 to prohibit *any* use of City office supplies or equipment and technology resources for the pursuit of outside business interests (see, e.g., COIB v. Schlein, COIB Case No. 2006-350 (2008) (former Chair of the City Civil Service Commission fined \$15,000 for use of City personnel, computer, telephone, photocopy machine, and facsimile machine for private law practice)) or for political activities (see, e.g., COIB v. Cantwell, COIB Case No. 2005-690 (2007) (former Vice President of the School Construction Authority fined \$1,500 for, among other things, using a City photocopier and printer to print materials for his political campaign)). Likewise, under the City's AUP, the use of such City technology resources as office computers, telephones, copiers, fax machines, and the like is not permitted for the pursuit of outside business interests or for political purposes *even with reimbursement*. See AUP at 2-3. Nevertheless, Category 2 Elected Officials may use City cars and drivers within the City limits, even for outside business or political purposes, without reimbursement, because the rationale underlying the Board's conclusion regarding personal use of City cars - to ensure the prompt availability of the public official - simply does not apply to any business or political use of City resources listed above such as computers, phones, and fax machines.

long as the Elected Official is in the vehicle, without reimbursement to the City, and may use the vehicle outside the five boroughs within a range permitting timely return to the City, with reimbursement to the City, unless they can clearly demonstrate that any particular use outside the City's limits was for official business, in which case reimbursement to the City is not required. The Board wishes to emphasize that this Opinion applies only to Elected Officials who are allotted City cars. Moreover, the Board cannot anticipate all possible scenarios involving non-City use of City cars and drivers – either by Elected Officials or by appointed public servants who are not subject to this Opinion. Any public servant, elected or appointed, who has a question regarding a particular vehicle use should request advice from the Board. What the Board has sought to do in this Opinion is to promulgate certain bright line rules for certain Elected Officials. To the extent that a particular situation does not fit clearly within those guidelines, public servants are urged to contact the Board for guidance.

The Board does not opine on whether the use of City vehicles permitted herein will result in imputation of income for tax purposes or will have implications for relevant election or campaign finance laws. It is incumbent on Elected Officials to ascertain and comply with any such applicable laws.



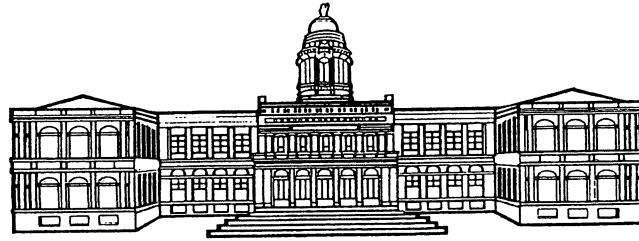
Steven B. Rosenfeld
Chair

Monica Blum
Kevin B. Frawley
Angela Mariana Freyre
Andrew Irving

Dated: March 12, 2009

2006-498.ao/fam/jmb

New York City Council



Commt
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BUDGET REPORT

Finance Division

March 2009

***Analysis of the Mayor's
Fiscal 2010 Preliminary Budget
and
Fiscal 2009 Preliminary Management Report
for the
Board of Elections***

Thursday, March 12, 2009

Hon. Christine C. Quinn
Speaker

Hon. David I. Weprin, Chair
Committee on Finance

Hon. Helen Sears, Chair
Committee on Governmental
Operations

Preston Niblack, Director

Jeffrey Rodus, First Deputy Director

Andy Grossman, Deputy Director

PREFACE

On March 12, 2009, at 10:45 am., the Committee on Governmental Operations, chaired by the Hon. Helen Sears, will hold a hearing on the Mayor's Fiscal 2010 Preliminary Budget and Fiscal 2009 Preliminary Mayor's Management Report for the Board of Elections.

Section 236 of the New York City Charter requires the Mayor to submit by January 16th a preliminary budget for the upcoming fiscal year.^a In addition, under section 12 of the City Charter, the Mayor must make public and submit to the Council by January 30th the Preliminary Mayor's Management Report (PMMR) for the current fiscal year.^b Among other things, the PMMR must contain "proposed program performance goals and measures for the next fiscal year reflecting budgetary decisions made as of the date of submission of the preliminary budget."^c The Charter also requires the Council to hold hearings on the preliminary budget and to submit recommendations to the Mayor by March 25th.^d This year, the Council will hold joint hearings on the Fiscal 2010 Preliminary Budget and the Fiscal 2009 Preliminary Mayor's Management Report.

Beginning with the Fiscal Year 2008 Adopted Budget, the Council and the Mayor's Office of Management and Budget agreed to an additional budget presentation, referred to by OMB as the budget function analysis, and by the Council as the program budget. Two agencies were initially presented in the program budget form. Beginning with the January 2008 Financial Plan (Fiscal 2009 Preliminary Budget), a total of 16 agencies are now in program budget form. The Board of Elections is not a program budget agency.

This report was prepared by Andy Grossman, Deputy Director.

^a The Charter prescribes specific actions that are required as part of the annual budget submission process during a fiscal year. The Charter allows for changes, via local law, in the dates in the submission of the PMMR, as well as an extension for subsequent steps in the budget process. This year, Local Law 03 of 2009 changed the date for the submission of the Preliminary Budget to January 30th, and the date for the Council's Response to the Preliminary Budget to April 8th.

^b Local Law 03 of 2009 changed the date of submission of the PMMR to February 13, 2009.

^c New York City Charter, §12(b)(2).

^d *See id.* at §247.

Board of Elections (003)

The Board of Elections (The Board or BOE) conducts, as specified by State Law, all elections within the City of New York. The Board has a central office and five borough offices. The Board receives and examines candidates' petitions, registers voters either by mail or on specified registration days, and keeps current the City's voter registration lists. The Board holds and keeps minutes of all of the Commissioners' meetings on the Board of Elections.

PROGRAM TO ELIMINATE THE GAP

Since the Fiscal 2009 Budget was adopted in June, the Office of Management and Budget has twice asked agency heads to submit Program to Eliminate the Gap (PEG) proposals. In the first round, in September, OMB sought PEG submissions equal to five percent of agency City tax-levy budgets for Fiscal 2010, with a further seven percent sought in December.

PEGs reduce the City's budget gap either by reducing an agency's City tax-levy Expense Budget spending, or by increasing City revenues. The chart below indicates the proposed PEG amounts for the BOE based on the Fiscal 2010 forecast at the time the Fiscal 2009 Budget was adopted (June 2008).

November and January Plan PEGs for Fiscal 2010 <i>(in 000s)</i>	
Fiscal 2010 Forecast at Fiscal 2009 Adoption (June 2008)	\$77,142
Expense PEGs	(\$5,400)
Revenue PEGs	(\$0)
Total Fiscal 2010 PEGs	(\$5,400)
PEGs as a Percent of the Fiscal 2010 Forecast	7.00%

PRELIMINARY BUDGET HIGHLIGHTS

Agency Highlights

- **Help America Vote Act of 2002 (HAVA).** The Help America Vote Act (HAVA) calls for the modernization and improved administration of elections. HAVA has many components, such as creating a statewide computerized, interactive voter registration list, providing accessible voting machines at each poll site and offering financial incentives to states that modernize their voting systems.

All HAVA-participating states were required to comply with the law by the November 2004 general election. However, since New York received a one-time compliance waiver from the Federal government, the deadline for full HAVA compliance was extended until the September 2006 primary election.

In February of 2006, the Department of Justice (DOJ) sued New York State for its failure to comply with HAVA. On June 2, 2006, as part of the settlement of the HAVA lawsuit, the United States District Court for the Northern District of New York (Court) issued a Remedial Order (order)

accepting the New York State Board of Elections (State Board) plan for partial HAVA compliance for the 2006 election cycle, and setting forth future deadlines for full HAVA compliance.

Specifically, the Court required the State Board to present a plan to the Court by September 28, 2007, for placing one fully accessible voting system in every poll site statewide. Since the State Board of Commissioners was unable to develop a plan that a majority of the Commissioners would approve, the State Board submitted two plans to the Court. Subsequently, on November 5, 2007, DOJ moved for an order requiring the State to take immediate and specific steps to become compliant with the order and HAVA. More importantly, DOJ effectively moved for the appointment of a receiver to achieve HAVA compliance if the Court decided that the State was unable to comply with the requirements of the Order and HAVA on its own. Finally, on January 16, 2008, the Court issued a Supplemental Remedial Order (Supplemental Order), which among other things required the State Board to deploy a Ballot Marking Device (BMD) in every polling place throughout the State and replace all lever voting machines by the fall 2009 primary and general elections.

The Council urges the State to ensure that the State Board is taking all necessary steps to fully implement HAVA according to the terms outlined by the Court in the Supplemental Order. In particular, the State Board must comply with all Court ordered implementation deadlines to ensure that local Boards of Election are able to take the necessary steps to implement permanent voting systems for 2009 and beyond. The State must also ensure that all state and local Board of Elections staff, including poll workers, will be sufficiently prepared to educate and assist voters as the State replaces its lever machines with new, sophisticated voting technology. More specifically, the State must ensure that local Boards of Elections have State-certified voting machines from which to choose so that the new machines may be properly deployed in 2009.

Although the City Board of Elections has conducted voting machine demonstrations and will hold a public hearing to allow comment from the public, at present the prospect of meeting the court-ordered implementation of new voting machines by the September 2009 election is dubious. As of this writing in early March, the State Board of Elections has still not certified any machines, making it impossible for any local board to select, procure and test them. Similarly delayed is the required training for voting machine technicians and poll workers, as well as necessary public education efforts. The Board's executive staff is highly concerned that due to circumstances clearly beyond its control, the agency will be out of compliance with the mandates of the Department of Justice, the federal courts, or both. According to the City Board, these entities are aware of these compliance issues (but oddly silent on them) since the State Board of Elections is mandated to submit weekly status reports to them.

City Council Legislative Agenda Items

- **Full-Face Ballot Requirements.** The New York City Council urges the State Legislature to amend State Election Law Section 7-104, to better enable counties to comply with HAVA. Particularly problematic is the State's current requirement that an entire ballot must appear on one page, also known as a full-face ballot.

Modern, user-friendly voting systems are simply not consistent with the full-face ballot requirement. Further, many of the voting system vendors currently under consideration by the State Board of Elections are not manufacturing voting systems with the full-face ballot specifications. Therefore,

unless the election law is amended, there is a strong possibility that the equipment procured in New York State will be more expensive and less rigorously tested than voting systems used by other jurisdictions throughout the country.

Keeping the full-face ballot requirement may also hamper efforts to provide the level of access for persons with disabilities that HAVA requires. Specifically, since requirements dictate the ballot be displayed on one screen, it is probable that the font used will be so small that visually impaired voters may have difficulty casting their votes independently and in a meaningful manner. Finally, the full-face ballot requirement may present problems with the number of alternative languages that the ballot must be translated into, an especially troublesome factor in New York City where the City Board of Elections is legally required to translate the ballot in at least four languages.

- **Electronic Voter Registration.** The New York City Council calls on the State Legislature to amend State Election Law Section 5-210, to permit electronic voter registration. Currently, in order for a voter's registration to become effective, a potential voter must complete a voter registration form and either mail it to a local Board of Elections or return it to a local Board office in person. In New York City, for example, many local agencies, such as the Department of Motor Vehicles, are permitted to distribute voter registration forms, although the voter remains responsible for mailing in or returning the form to the local Board. The Council urges the State to consider permitting voter registration via the Internet.
- **Election Day Registration.** The New York City Council calls upon the State Legislature to enact legislation to allow voter registration at any time up to, and including, Election Day. Currently, State law requires potential voters to register at least twenty-five days before an election to be eligible to participate in that election. This requirement often has the effect of preventing otherwise qualified individuals from casting a ballot. Election Day Registration would increase citizen participation in the electoral process, a longstanding goal of the Council.
- **Early Voting and No-Excuse Absentee Voting.** The New York City Council calls upon the State Legislature to enact legislation allowing early voting and no-excuse absentee balloting. Early voting is the process by which voters can cast their vote prior to Election Day. Early voting can take place remotely, such as by mail, or in person, usually in designated early voting polling stations. The availability and time periods for early voting vary based on jurisdiction and type of election. Similarly, no-excuse absentee balloting allows any registered voter to vote absentee in advance of Election Day without having to state a reason for their need or desire to vote via an absentee ballot. Voters in jurisdictions utilizing no-excuse absentee balloting enjoy many of the benefits of more traditional early voting at a reduced cost and with less of a pre-election day administrative burden. Generally speaking, the goal of early voting and no-excuse absentee balloting is to increase democratic participation and relieve congestion at polling stations on Election Day, while also allowing those scheduled to be away from their state or district for work, family-related business, or other reasons to cast a ballot.

Other Issues

- **Pay Equity.** For several years, the BOE has been advocating for an increase in the salaries of its employees. Several years ago, the Board conducted a study showing that when compared to the

salaries of the surrounding county Boards and those of the City's Campaign Finance Board, New York City BOE employees' salaries were among the lowest overall. The Board has sought a baseline addition of \$7 million to properly fund its salary costs. According to the Board, this is particularly vital given the substantial increase in required job expertise and training associated with election modernization and the Help America Vote Act.

- **Capital Budget Funding.** The federal government appropriated HAVA funds to states to modernize their voting systems. That act made available \$220 million to the State of New York; New York City is expecting to get approximately \$92 million of the total funding. Of this amount, the City has already accessed approximately \$23 million for the purchase of ballot marketing devices, leaving approximately \$69 million. Sensing that this sum may be insufficient, the Mayor's Office of Management and Budget (OMB) has budgeted an additional \$50 million in City tax-levy funds for the purchase of new voting machines. HAVA requires at least one machine per election district (ED); when an ED's population is more than 800, the ED must have more than one machine. The City has 6,111 election districts, many of which require additional machines. The City Council will be monitoring the sufficiency of Capital funds that will be required to purchase new voting machine systems.

The City's Capital Budget also includes an additional sum of \$47.2 million for other purposes, including the outfitting of office and warehouse space.

Expense Budget Overview

Fiscal 2009

The Mayor's Fiscal 2009 Preliminary and Executive Plans included a combined \$6.5 million across-the-board PS and OTPS budget reduction, but did roll over \$8.12 million in HAVA funds from Fiscal Year 2008. While there were significant concerns on the part of the Board of Elections regarding the cuts, especially in light of the Board's requests for new needs funding that went unmet, the 2008 elections, including the high-volume November Presidential Election, were conducted without major incident. The Board reports that such a performance was only made possible through round-the-clock efforts, much of which was performed on overtime. The agency now reports a structural deficit in Fiscal 2009 of approximately \$7 million, approximately the same amount as the PEGs imposed on the agency (\$6.5 million). The largest portion of this deficit stems from Personal Services over-spending. The Board has indicated that OMB's own data show that PS spending through February 20, 2009 (\$18,721,800) is more than \$5 million above the budget projection of \$13,635,500.

Also impacting the Board's current-year budget are its unfunded requirements to run several special elections, including those for vacant City Council positions and the recently-vacated Bronx Borough President position. The Board estimates that the Council special elections cost just over \$1 million, while the upcoming borough president election is likely to cost just under \$3 million.

Fiscal 2010

The January Plan includes another substantial PEG for the BOE that would lower the agency's operating budget by more than \$5 million per year beginning in Fiscal 2010. As Fiscal 2010 will include citywide elections (that may include one or more run-off elections) and the possible introduction of new voting

machine systems, it remains to be seen whether the agency's proposed Expense Budget of \$71.8 million will be sufficient.

AGENCY FUNDING OVERVIEW

Agency Funding Sources	Fiscal 2009 Adopted Budget	Fiscal 2009 Modified as of 1/30/2009	Fiscal 2010 Preliminary Budget
City	\$89,165,803	\$89,165,803	\$71,848,736
Other Categorical	\$0	\$0	\$0
Capital IFA	\$0	\$0	\$0
State	\$0	\$0	\$0
Community Development	\$0	\$0	\$0
Federal-Other	\$0	\$208,000	\$0
Intra-City	\$0	\$0	\$0
Total	\$89,165,803	\$89,373,803	\$71,848,736

HEADCOUNT OVERVIEW

Headcount (Uniform and Civilian)	Fiscal 2009 Adopted Budget	Fiscal 2009 Modified as of 1/30/2009	Fiscal 2010 Preliminary Budget
City	319	319	319
Non-City	0	0	0
Total	319	319	319

UNITS OF APPROPRIATION

The operating budget of an agency is structured into several levels, each of which provides varying levels of detail on an agency's spending plans. The City Charter requires that U/A's represent the amount appropriated for Personal Services (i.e., salaries, overtime, etc.) or Other Than Personal Services (i.e., supplies, contracts, etc.) for a particular program, purpose, activity or institution. The table below presents the Board of Elections budget, comparing the Fiscal 2009 Adopted Budget to the Fiscal 2010 Preliminary Budget. The Fiscal 2009 Modified Budget reflects this year's budget at the time this financial plan was released.

U/A#	U/A Name	Fiscal 2009 Adopted Budget	Fiscal 2009 Modified as of 1/30/2009	Fiscal 2010 Preliminary Budget	Percent Change from Adoption
001	Personal Services	\$19,800,036	\$19,800,036	\$17,543,014	-11.40%
002	Other Than Personal Services	\$69,365,767	\$69,573,767	\$54,305,722	-21.71%
	Total	\$89,165,803	\$89,373,803	\$71,848,736	-19.42%

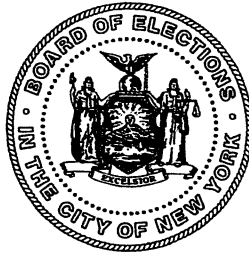
FUNDING ANALYSIS

Personal Services

- **Across-the-Board PS Reduction.** The January Plan contains a single \$5.4-million PEG for the Board, split between PS and OTPS units of appropriation. The value of the PS portion is approximately \$2.4 million in Fiscal 2010 and \$2.5 million in Fiscal 2011 and the outyears.
- **Fringe Offset Reduction.** In order to give the agency PEG credit, the PEG action described above includes fringe benefit savings that should be properly accounted for not in BOE's budget, but in the City's Miscellaneous Budget. To reflect the neutral impact on BOE's budget that would result from these fringe benefit savings, an offsetting sum totaling \$106,626 in Fiscal 2010 increasing to \$273,540 in Fiscal 2013 is being added back to the BOE's budget as an adjustment.

Other Than Personal Services

- **Across-the-Board OTPS Reduction.** The January Plan contains a single \$5.4 PEG for the Board, split between PS and OTPS units of appropriation. The value of the OTPS portion is approximately \$3 million in Fiscal 2010 and \$2.9 million in Fiscal 2011 and the outyears.
- **Poll Site Access Improvement.** The November Plan included one-time funding of \$208,000 in Fiscal 2009 for poll site access improvement.



FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

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JUAN CARLOS "J.C." POLANCO
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JUDITH D. STUPP
MARYANN YENNELLA
COMMISSIONERS

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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

Testimony of Marcus Cederqvist, Executive Director, Board of Elections in the City of New York before the New York City Council Committee on Governmental Operations – Fiscal Year 2010 Preliminary Budget March 12, 2009

Ms. Chairman and members of the Council's Committee on Governmental Operations, I want to thank you for giving me the opportunity to appear before you once again this morning on behalf of the Board of Elections in the City of New York and for your continuing support of this agency. As you know, my name is Marcus Cederqvist and I am the Executive Director of the Board and am joined here today by George González, Deputy Executive Director; Pamela Perkins, Administrative Manager; Steven H. Richman, General Counsel; and John Ward, Finance Officer.

Overview

The year that has passed since we came before you concerning the current fiscal year's budget has been one of the most challenging in the agency's history. The Board conducted four election events in 2008 that collectively saw more than four million New Yorkers cast a vote. In addition, the Board processed two hundred percent more voter registration forms in 2008 than it did in 2007. Already in calendar year 2009, the Board has conducted three Special Elections for City Council vacancies and is preparing for a

borough-wide Special Election for the vacant Borough Presidency in the Bronx. As you probably know, none of these four elections are funded.

It was more than just record voter turnout and registration activity that made the past year unique. The recent elections also saw the first implementation of a Ballot Marking Device at poll sites throughout New York City and New York State. We have had the opportunity to speak before this committee numerous times to outline the challenges that the new system imposed but the underlying truth is that the Board was required to perform double the number of tasks, notwithstanding the demands of an extraordinarily busy year, because it literally had to set up the elections twice, once on for the regular lever machines and once for the electronic Ballot Marking Devices. These tasks were conducted by the same Board of Elections staff as in previous years.

While this would have been a challenge under any circumstances, this was made considerably worse due to the lack of adequate funding for the Board's operations and obligations. At a time when everyone clearly anticipated historic activity and voter participation and when the Board's obligations were increased significantly by a Federal Court Order, its budget was reduced by more than \$7.6 million for Fiscal Year 2009. The Mayor's Preliminary Budget for Fiscal Year 2010 contains a further \$18.2 million budget reduction in OTPS operating funds and a \$2.3 million reduction in PS. These reductions of \$28.1 million are incomprehensible. Without adequate funding and support to conduct elections, the foundation of democracy in our city is compromised. The Mayor's proposed reduction in funding for next year alone is equivalent to the cost of conducting one entire citywide election.

Unlike many other agencies, virtually all of the Board's duties, responsibilities, and activities are prescribed by Federal, State, and local law. The Board does not have the discretion to delay or cancel an election based on municipal budget shortfalls. The facts are clear – all Boards of Elections throughout the state are under a Federal Court Order to replace their voting system for this year's Primary Elections. We are mandated to process candidate petitions and voter registrations. This year alone, we will process petitions for all municipal offices, including citywide offices and City Council. The budget reductions proposed by the Mayor make it impossible for the Board to conduct the Primary and General Elections for this year, not to mention the likely citywide run-off elections.

Current Fiscal Year (FY'09)

Before we discuss the Mayor's Preliminary Budget for Fiscal Year 2010 and the deleterious impact that it, if adopted, would have on the voting rights of New Yorkers, we would like to quickly update you on our situation in the current fiscal year. As you know and as we have discussed during previous hearings before this committee, the Board was severely underfunded to carry out its mandated tasks during this fiscal year. At a time when the Board was concurrently conducting a record Presidential Election on the lever voting machines, deploying the additional Ballot Marking Devices at each poll site, and evaluating a new replacement voting system, the City reduced the resources to meet these challenges. The staff worked tirelessly not only to handle record volumes in all aspects of the election but also to meet the Federal Court Order that mandated a BMD at every poll site throughout New York City, thereby requiring the staff to literally set up the election twice on two different systems. As a result of the enormous work that the Board performed to meet its obligations and the initial underfunding of the PS appropriation of approximately \$5 million, we project a deficit in PS of \$6.8 million.

As already mentioned, we have also conducted three Special Elections for vacant City Council seats since the beginning of 2009 and are scheduled to conduct a borough-wide election for Borough President in April and potentially a Special Election for State Assembly soon thereafter. These unfunded events are adding to this year's deficit, which we project could reach as much as \$13.9 million for Fiscal Year 2009. We sent a letter to the Director of the Mayor's Office of Management and Budget on January 7, 2009 advising him of the agency's situation and we have not received a response.

Mayor's Preliminary Budget for Fiscal Year 2010

Looking forward to the coming year, I would now like to address the budgetary needs of the Board of Elections in the City of New York for the Fiscal Year ending June 30, 2010, as well as update you on the implementation of HAVA in both the City and State of New York.

Ballot Marking Devices

As you know, Boards of Elections throughout New York State, including in the City of New York, deployed a HAVA-compliant Ballot Marking Device,

or BMD, in every poll site for both the Primary and General Elections. These BMDs are essential in complying with one of the Help America Vote Act's (HAVA) most important missions – to allow all voters, regardless of their ability or disability, to vote independently and privately at the same time and place as their neighbors. The Board requested additional resources from the City to staff these new devices with dedicated poll workers to assist voters who wished to use them. Although the implementation of these new devices technically complied with the Federal Court Order, these resources were not realized and the City did not serve an important segment of the voting population by providing these dedicated poll workers. This remains a moral imperative. We appeal to the members of this committee for their support of this need.

New Voting Systems

New York State's process for certifying new voting systems to permanently replace the lever voting machines continues to be beset by problems and delays. Under the Remedial Order of Judge Gary Sharpe of the United States District Court of the Northern District for New York, the State Board of Elections was to have certified the new voting systems that could be used to conduct elections in New York State in November 2008. Local Boards of Elections, in turn, were to select which system they wanted to use of these certified systems and place their orders in December 2008 for use in the September 2009 Primary Elections. Nearly four months later, the State Board has not yet certified any systems for use due to delays caused by the decertification by the federal Election Assistance Commission of the lab that was conducting certification testing. Only last Friday, March 6th, the testing lab was recertified and certification testing of the new systems will resume.

Although there has been much speculation whether these delays will allow the new systems to be available by this year's Primary Election, the fact is that Judge Sharpe's Order remains in place. As such, the Board of Elections in the City of New York has been performing the work necessary to prepare us to comply with the Judge's Order and applicable State Law, including evaluating the respective systems, conducting public demonstrations in each borough throughout the city, conducting a hearing where members of the public were able to communicate directly with the Commissioners of Elections their sentiments concerning the systems, and planning for changes necessitated by a new system. The Board's

commitment to informing and including the voters in the selection process for a new voting system continues unabated. The Commissioners have directed that this selection process be conducted in a fully open and transparent fashion and the recent public demonstrations and hearings are examples of this.

Election Day and Poll Workers

The implementation of an entirely new voting system will obviously have a tremendous impact on the administration of elections in New York City. Poll workers will need extensive training to properly assist voters on Election Day and the voters themselves will need to be educated so that they understand the changes in voting well in advance of being confronted with an entirely new way of voting.

In performing the comprehensive review of the Board's poll worker operations and having had the opportunity to compare it to other jurisdictions nationwide, the Board has also identified numerous recommendations to enhance the agency's ability to recruit and train the large number of qualified poll workers that are needed. One of the key recommendations is to raise the pay for attending training classes from \$25 to a more realistic \$100. The current low compensation for attending the training sessions is reflected by poor attendance. With a longer, expanded training class and a need for much greater trainee participation, this increase is merited and greatly needed. Increasing the stipend for training will cost \$2,325,000 for the existing 31,000 poll workers during the 2009 election cycle.

Another area that the BOE identified concerns the performance award paid to certain poll workers. Currently, the award is paid as an incentive for poll workers to attend training, pass the test, and ensure that they work the two regular election events. The BOE believes that this award is a helpful tool to ensure a good return for the BOE's training investment but the current amount of \$35 is very low. We believe that raising the award to \$100 would be a better incentive for poll workers to complete all the criteria associated with the payment. The cost for increasing the award for all poll workers would be \$2,015,000 in the 2009 election cycle if all of them meet the specified performance criteria.

A similar area that merits review to ensure better participation is the post-election debriefing of poll site coordinators. Coordinators are not eligible

for the award described above but receive a mere \$25 for attending a debriefing session with the borough staff to discuss the recent election and any problems. These sessions are vitally important for the BOE staff to address problems and plan for subsequent elections. We believe that elevating the compensation to \$100 (\$50 for the Primary Election and \$50 for the General Election) will result in a greater rate of participation among the coordinators. The cost for increasing the pay for all coordinators is \$134,550 for the 2009 election cycle.

The final area concerns remuneration paid to privately owned poll sites on each Election Day. The BOE's borough staff reports that the BOE has been losing many long-time privately owned poll sites over the last few years and finds it increasingly difficult to secure new ones. Although the majority of the more than 1,350 poll sites used on Election Day are public facilities and therefore do not create a direct cost, there are 554 privately owned sites serving approximately 1,600 Election Districts (EDs) that the BOE must rent in areas where no public facilities are available. The current remuneration of \$70 per ED has remained unchanged for decades and has become severely compromised as an incentive due to the adverse effects of inflation over that time.

Several property owners who have leased space to the BOE on Election Days past have stated that the current amount is insufficient to cover the costs of heating or cooling the space for the election. The BOE believes that increasing the compensation paid to privately owned sites to \$165 per ED would help the BOE retain private poll sites at this critical time when our space needs have increased due to the addition of at least one BMD at every poll site. The additional cost is \$152,000 per election event citywide.

Poll workers are obviously an essential part of the voting experience. The Board continues to ask the City, albeit with limited success, for support to ensure that it has the resources to adequately train the poll workers. Educating the public about voting and accommodating their expectations, however, is also a critical element of successful elections and a necessary component of a new voting system implementation.

Unlike some of the changes that have occurred in voting and election administration over the years, which have been evolutionary in nature, the introduction of a new voting system for the whole city will, in fact, be revolutionary – not only for the Board's more than 350 permanent staff and

more than 30,000 Election Day poll workers, but also for the 4.6 million registered voters in New York City.

HAVA-Related Funding

The Mayor and the Council demonstrated that they collectively recognized this need by appropriating funds for HAVA implementation in previous budgets. The Board has been careful not to spend these funds until the new voting systems are certified and they previously were rolled-over from one year to the next as the State Board has experienced delays with certification – a clear collective recognition of the importance of the public education program and other aspects that these funds were dedicated to addressing. However, now when the city and state are on the verge of implementing a new voting system for all voters, these vital funds have been eliminated entirely in the Mayor’s Preliminary Budget for Fiscal Year 2010. The Board needs for all unexpended funds appropriated for these uses last year in both the Expense and Capital Budgets be re-appropriated for Fiscal Year 2010.

The most pressing concern for the Board is our ability to successfully manage our responsibility to conduct fair and honest elections while making the most dramatic transition in the history of elections administration in the City of New York. If the Board was to conduct elections in the manner that it has refined over the years, there would be no need for outside support or assistance. Clearly, that is not the case and the Board has benefited from the assistance of outside support to ensure that these dramatic implementations are done seamlessly.

When we came before you last year, we noted that we were not completely sanguine that OMB fully understands the need for the Board to have the necessary funding to comply with both the Federal and State mandates under HAVA and the State’s implementing legislation. Given the severity of the proposed budget reductions, we at this point do not believe that they understand any of the aspects of the Board’s legal obligations to conduct fair and honest elections under the law. As mentioned previously, these cuts represent the elimination of an entire citywide election.

In December 2005, the Board, upon the recommendation of the Mayor’s Task Force on Election Modernization, retained Gartner Consulting to provide Project Monitoring, Quality Assurance, Project Management, and Mentoring Services. Gartner Consulting has several active engagements

at various City agencies for change management projects and they have been a tremendous assistance to the Board as we have embarked on these extraordinary transitions. Gartner has been a major contributor to our ability to rapidly respond to the State Board's proposed Voting Systems Standards and the series of Federal Court Orders. In the Mayor's Preliminary Budget for Fiscal Year 2010, funding for Gartner's services has been eliminated. The Board wants and needs Gartner to continue to work with us on the full range of HAVA implementation tasks.

Another outside vendor that has been contracted to help with a specific HAVA-related task is Burson-Marsteller. As we reported last year, they are a professional communications firm that had been contracted to assist us in the design, development, and implementation of a comprehensive voter education and outreach program for the new voting system. Burson-Marsteller's high-level plan was reviewed and approved by the Commissioners last year but funding the actual execution of the public information initiative was eliminated in the Mayor's Preliminary Budget for Fiscal Year 2010. The long-planned direct mailings to voters describing the new voting system and the production of a new poll worker training video are similarly casualties of these proposed budget cuts.

Facilities

The Board's voting machine facilities need to be modernized and significantly upgraded in order to service and maintain new electronic voting systems. The Board acquiesced to many temporary interim measures to accommodate the BMDs last year and learned many valuable lessons concerning the importance of having adequate facilities to handle electronic systems. Although our staff has been working diligently with the Department of Citywide Administrative Services to secure the upgrades and enhancements needed, such as increased electrical capacity and environmental controls, progress has been slow and we are ill-positioned to accept new voting systems should the State Board certify soon.

Similarly, the desperate need for additional space at Board's Executive Offices, located at 32/42 Broadway, continues to be a source of great concern. The city recognized the need to accommodate staff and onsite consultants by including funding for additional space on the building's third floor in the Fiscal Year 2009 Budget. We regret to report that, nine months

into the current fiscal year, DCAS has not secured this additional workspace despite its being properly funded.

Language Assistance

As you know, the Board is required to translate its materials and provide language assistance in Spanish, Chinese (both Mandarin and Cantonese), and Korean under the Voting Rights Act of 1965. The Board last year settled a lawsuit by language assistance advocates that sought to expand language coverage in affected areas throughout the city. The Mayor's proposed Preliminary Budget calls for a loss of an additional six positions. Implementation of that cut would result in the Board's inability to meet its language assistance obligations.

In helping devise and negotiate the Language Assistance Program, Corporation Counsel's Office encouraged the Board to seek additional funding to implement and coordinate the Language Assistance Program. Among the Board's new needs is the creation of a new position to coordinate the program at an annual cost of \$71,671. In addition, the Board requires \$100,000 to conduct a media campaign to recruit and retain qualified poll site interpreters.

Candidate Records Unit

The Candidate Records Unit (CRU) is responsible for processing most of the documents received by the Board, including those relating to the petition process and all campaign financial disclosure reports. In order to accomplish its multiple missions, CRU has undertaken a comprehensive effort to move from a paper based records system to an electronic one.

Recently the task of ballot preparation was assigned to the unit. CRU, now composed of a supervisor and six staff members, needs to be augmented by the authorization of and the funding for two additional positions. The unit needs two (2) Administrative Associates (each at an annual salary of \$44,646), one who will be responsible for coordinating the printing of ballots and related materials, as well as the production of audio ballots, and the other who will have principal responsibility for the processing of financial disclosure filings.

Management Information Systems

Management Information Systems (MIS) is essential to the operations of the Board of Elections. There are three contracts that are up for renewal that receive capital funding. One of these contracts is with Sagesmith, LLC (\$1.1 million for two years) for software development and maintenance of the Candidate Processing and Election Sub-System (CPESS) and for the development of an interface with the new voting system. Another contract is with N-Tier Technology, LLC (\$1.1 million for two years) for software development and maintenance of the Board's Archival for Voter Images and Data voter registration system (AVID) and compatibility with the statewide voter database required under HAVA. The final contract renewal is with Information Methods, Inc. (\$400,000 for two years) for project management for the CPESS, AVID, and S-ELECT systems and the expected requirements for interfacing with the new voting system.

The MIS department also critically needs \$100,000 to procure new voter registration image scanners for the borough offices to handle the increased volume of voter registrations.

Voting Equipment Operations Unit

The Voting Equipment Operations Unit requires two additional Associate Staff Analysts. With the introduction of 1,798 Ballot Marking Devices this year, while also servicing our current fleet of 7,700 mechanical lever voting machines, and the with need to establish additional voting machine facilities to accommodate the new BMDs, additional support and supervision is required. Two (2) new staff members are required to supervise activities at the voting machine facilities, monitor contracted vendor performance, and insure that the necessary record keeping activities are conducted. These staff members would also review all procedures related to the voting machine facilities and insure legal compliance, including mandates by amendments to the New York State Election Law. Finally, as we anticipate selection of a new permanent voting system, they will both assist in the selection process as well as be trained to monitor and review all voting system and related support activities. The Board projects that each of these new staff members will be paid \$61,383, for a total annual cost of \$122,766.

Facilities and Security

The Board, like every agency in government, is aware of the need to address certain safety and security issues. Specifically, security at the entrances of our Executive Offices need to be enhanced. Our staff and the myriad important documents filed at these locations, such as petitions and financial disclosure forms, should be secured in a safe environment. We estimate that the costs of the required renovations and enhancements to our offices are \$450,000.

In the Fall of 2003, the Board retained the services of a licensed security firm to provide a uniformed and armed presence at our Executive Office. The Board believes the presence of uniformed, armed officers helps ensure the safety of our employees and the orderly conduct of the public. Last year, the Board requested an appropriation of \$420,000 to contract for this service at both our Executive Office and at our five Borough Offices. The Adopted Budget for FY'09 did not provide any funds, however, nor is it included in the FY'10 Preliminary Budget. We ask the Mayor and the Council to provide this modest amount to insure that all of our employees and the public can participate in our democratic process in a safe and secure environment.

Legal Services

The implementation of HAVA and increasingly frequent litigation on a whole range of legal issues that fall within the Board's jurisdiction led us to request funding for two additional in-house legal staff positions in the Office of the General Counsel last year. Currently, the Board's General Counsel is the only full-time attorney on staff and is responsible for the entire range of Board activities aside from Campaign Financial Disclosure and Reporting. During the crunch of the notorious petition process, we have retained temporary legal staff who, while helpful, lack the necessary background and skills necessary to deal with some of the complex legal issues the Board has dealt with, and will deal with in the future. From HAVA compliance to poll site accessibility to procurement issues, an agency such as the Board needs at least two additional full time attorneys to help manage its legal operations.

The Board sought to create two Assistant General Counsel positions each at a salary of \$75,000 per year for an annual cost of \$150,000. In last year's adopted budget, only one of these positions was funded. The need

for the additional position remains undiminished and my testimony today reflects the ever-expanding need for additional legal services at the Board. The Board therefore renews its request for a second Assistant General Counsel's position at \$75,000 per year.

Pay Equity

Although the dire nature of the current fiscal environment does not set the stage well for my final point, I would be remiss if I did not take this opportunity to once again remind you about the severe pay disparity between employees of the Board and those of other City agencies and other Boards of Elections in neighboring jurisdictions. Rather than expand on the matter at this time, I would be happy to provide you with further information concerning this important matter upon request.

Conclusion

The conduct of fair, honest, and open elections is a fundamental right in our democracy and the cuts made by the City to the Board's budget in Fiscal Year 2009 and the further reductions proposed in the Mayor's Preliminary Budget for Fiscal Year 2010 at a critical time has put our democracy in peril. As a result of the City's action, the Commissioners of Elections have been placed in an untenable position of either fulfilling their legal obligations despite the lack of adequate funding or deciding collectively that the City's failure to adequately fund elections vitiates their legal obligations, thereby disenfranchising voters in New York City. Protecting the rights of the voters of this city is paramount. It is an understatement, at best, when I state that we need your support and assistance if we are to succeed.

I thank you again for your time and for allowing me to come before you on behalf of the Board of Elections in the City of New York today. As always, my colleagues and I are available to answer any questions that you may have.

Board of Elections Expense Budget New Needs FY10

<u>CITY FUNDING</u>	<u>BOE NEEDS</u>	<u>PRELIMINARY BUDGET</u>
<u>On Going Operations</u>	<u>FY10</u>	<u>FY10</u>
Computer Systems Consulting	CAPITAL	CAPITAL
Information Methods Inc.	\$400,000	\$0
N-Tier	\$1,100,000	\$0
SageSmith	\$1,100,000	\$0
Safety and Security	\$450,000	\$0
Securing Front Counters	\$420,000	\$0
Uniformed Officers		
Legal Services	\$75,000	\$0
Assistant General Counsel (1)		
Candidate Records Unit	\$89,292	\$0
Administrative Associate (2)		
Management Information Systems	\$100,000	\$0
Scanners (one for each borough office)		
Voting Equipment Operations	\$122,766	\$0
Associate Staff Analyst (2)		
Language Assistance Program	\$71,671	\$0
Project Coordinator (1)	\$100,000	\$0
Media Campaign		
Pay Equity	\$9,391,527	\$0
(38% of \$24,714,545 FY08 PS actual)		
For all Board of Elections Personnel		
Executive Budget Reduction	\$0	(\$8,924,352)
Elimination of HAVA Funding	\$0	(\$15,170,000)
P.S. Reduction	\$0	(\$2,257,022)
Total City Funding (Expense)	\$10,820,256	(\$26,351,374)

Board of Elections Expense Budget New Needs FY10

HAVA RELATED

	BOE NEEDS FY10	PRELIMINARY BUDGET FY10
Gartner Consulting		
Assist in implementing HAVA	CAPITAL 2010 \$7,666,464	CAPITAL 2010 \$1000
Holding Codes		
	\$15,470,000	\$300,000
Educating the Voters		
Public information/outreach contract with Burson Marsteller	\$6,127,897	\$0 *
New Voting System mailing postage	\$1,400,000	\$0 *
New Voting System mailing printing	\$500,000	\$0 *
Training Staff & PWs		
Poll Worker Video Production Distribution	\$100,000 \$100,000	\$0 \$0 *
Modernization and Expansion of BOE Facilities		
Five Borough Modernization	CAPITAL	CAPITAL
Development of Computer Systems		
Interface BOE & New Machine	CAPITAL	CAPITAL
2009 Add. Pollworker/Poll site Exp		
	\$4,626,550	\$0
Pollworker Training Comp. Increase	\$2,325,000	\$0
Pollworker Performance Award Increase	\$2,015,000	\$0
Coordinator Debrief Comp. Increase	\$134,550	\$0
Private Pollsite Comp. Increase	\$152,000	\$0
	(per event city-wide)	

* BOE Anticipates using funds in
Holdings Codes for these Items

FY09 OTPS PROJECTION
3-12-09

OTPS ALLOCATION		\$69,365,767
OTPS ALLOCATION Minus HAVA Funding		\$53,895,767
Minus Rent Money and Intra-City		<u>\$17,231,848</u>
Adj. Total		\$36,663,919
Day to Day Spending		<u>\$5,000,000</u>
Adj. Total		\$31,663,919
Event Codes (Actual+Mgr Est.)		
117 Postage	\$2,500,000	
412 Rental tables and chairs	\$350,000	
417 Advertising	\$400,000	
600 Contractual	\$650,000	
615 Printing	\$12,000,000	
633 Trucks-Cabs	\$4,000,000	
414 Poll sites	\$300,000	
686 Pollworker	<u>\$15,000,000</u>	
Event code Total	\$35,200,000	<u>\$35,200,000</u>
Adj. Total		-\$3,536,081
Other Factors		
PS Deficit	\$6,800,000	
3 Specials Feb. 24th	\$1,000,000	
Doitt Deficit	\$366,000	
Bronx Special April 21st	<u>\$2,200,000</u>	
	\$10,366,000	<u>-\$10,366,000</u>
Balance		-\$13,902,081
Deficit		-\$13,902,081

Assumptions:
All Rent and Intra-City money is spent.
No other cuts.
New Machine implementation has begun.

Most numbers rounded

Budget Code	Object Code	Description	Adopted	January Plan	Difference
			FY09 Budget	FY10 Budget	FY10 - FY09
0201	100	Supplies & Materials - Gen.	\$ 500,000	\$ 500,000	\$ -
	101	Printing Supplies	\$ 260,000	\$ 260,000	\$ -
	105	Auto. Supplies & Materials	\$ -	\$ -	\$ -
	106	Motor Vehicle Fuel	\$ 24,000	\$ 24,000	\$ -
	10E	Automotive Supplies (856)	\$ 1,155	\$ 1,155	\$ -
	10F	Motor Fuel (856)	\$ 3,000	\$ 3,000	\$ -
	10X	Supplies & Materials - Gen.	\$ 82,779	\$ 82,779	\$ -
	117	Postage	\$ 2,000,000	\$ 2,000,000	\$ -
	199	Data Processing Supplies	\$ 210,000	\$ 210,000	\$ -
	300	Equipment - Gen.	\$ 150,000	\$ 150,000	\$ -
	302	Telecomm. Equip.	\$ 30,000	\$ 30,000	\$ -
	305	Motor Vehicle	\$ -	\$ -	\$ -
	314	Office Furniture	\$ 250,000	\$ 250,000	\$ -
	315	Office Equipment	\$ 50,000	\$ 50,000	\$ -
	319	Security Equipment	\$ 95,000	\$ 95,000	\$ -
	332	Purch. of Data Process. Equip.	\$ 210,000	\$ 210,000	\$ -
	337	Books - Other	\$ 15,000	\$ 15,000	\$ -
	400	Contractual Expenditures	\$ 1,000,000	\$ 1,000,000	\$ -
	402	Telephone & Other Comm.	\$ 300,000	\$ 300,000	\$ -
	403	Office Service	\$ 100,000	\$ 100,000	\$ -
	407	Maint. & Rep. Mot. Veh. Equip.	\$ 500	\$ 500	\$ -
	40B	Communication (858)	\$ 412,838	\$ 412,838	\$ -
	40G	Automotive Repairs (856)	\$ 10,020	\$ 10,020	\$ -
	40X	Contractual Services	\$ -	\$ -	\$ -
	412	Rentals - Misc. Equip.	\$ 400,000	\$ 400,000	\$ -
	413	Rentals - Data Process. Equip.	\$ -	\$ -	\$ -
	417	Advertising	\$ 400,000	\$ 400,000	\$ -
	427	Data Processing Svcs	\$ 15,000	\$ 15,000	\$ -
	42C	Heat, Light & Power (856)	\$ 452,009	\$ 452,009	\$ -
	42G	Data Processing Svcs (858)	\$ 111,748	\$ 111,748	\$ -
	451	Local Travel Expend. - Gen.	\$ 13,200	\$ 13,200	\$ -
	452	Local Travel Expend. - Special	\$ 10,600	\$ 10,600	\$ -
	453	NonLocal Travel Exp. General	\$ 7,100	\$ 7,100	\$ -
	454	NonLocal Travel Exp. Special	\$ 8,100	\$ 8,100	\$ -
	499	Other Expend. - Gen.	\$ 1,610,197	\$ 1,610,197	\$ -
	600	Contractual Services	\$ 1,500,000	\$ 1,500,000	\$ -
	602	Telecomm. Maint. - Cont.	\$ 1,000	\$ 1,000	\$ -
	608	Maint. & Repairs - Gen. - Cont.	\$ 1,132	\$ 1,132	\$ -
	612	Office Equip. Maint. - Cont.	\$ 220,000	\$ 220,000	\$ -
	613	Data Process. Maint. - Cont.	\$ 200,000	\$ 200,000	\$ -
	615	Printing Svcs - Cont.	\$ 13,007,500	\$ 13,007,500	\$ -
	619	Security Svcs - Cont.	\$ 200,000	\$ 200,000	\$ -
	624	Cleaning Svcs - Cont.	\$ 100,000	\$ 100,000	\$ -
	633	Transportation Svcs - Cont.	\$ 2,750,000	\$ 2,750,000	\$ -
	671	Train. Prog. for City Empl.	\$ 190,000	\$ 190,000	\$ -
682	Prof. Svcs - Legal - Cont.	\$ 150,000	\$ 150,000	\$ -	
684	Cont. Prof Serv	\$ -	\$ -	\$ -	
686	Prof. Svcs - Other - Cont.	\$ 100,000	\$ 100,000	\$ -	
P002	499	OMB Reduction	\$ (5,894,000)	\$ (8,924,352)	\$ (3,030,352)
0202	414	Poll sites	\$ 300,000	\$ 300,000	\$ -
	499	Other Expend. - Gen.	\$ 1,500,000	\$ 1,500,000	\$ -
	686	Poll workers	\$ 14,716,430	\$ 14,716,430	\$ -
0203 DCAS	41D	Rentals (856)	\$ 10,896,017	\$ 13,921,771	\$ 3,025,754
0204	414	Rentals Land/Bldgs/Structures	\$ 5,225,442	\$ 5,339,995	\$ 114,553
	499	HAVA Holding Code	\$ 15,470,000	\$ 300,000	\$ (15,170,000)
0205	686	Prof. Svcs - Other - Cont.	\$ -	\$ -	\$ -
0206	300	Grants	\$ -	\$ -	\$ -
TOTALS			\$ 69,365,767	\$ 54,305,722	\$ (15,060,045)

FY 2010 PRELIMINARY BUDGET HEARING



NEW YORK CITY COUNCIL COMMITTEE ON GOVERNMENTAL OPERATIONS

TESTIMONY BY COMMISSIONER MARTHA K. HIRST DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES MARCH 12, 2009

Good afternoon Chairwoman Sears and members of the Governmental Operations Committee. I am Martha Hirst, Commissioner of the Department of Citywide Administrative Services (DCAS). I am joined by a number of my DCAS colleagues to discuss DCAS's planned expenditures and revenues for FY 2009 and FY 2010, as well as highlights of the DCAS Capital Program.

OVERVIEW

As many of you know, DCAS ensures that other City agencies have the critical resources and support they need to provide the best possible services to the public. To assist City agencies, DCAS administers civil service and licensing exams, and conducts professional development and employee training programs. Our agency purchases, inspects and distributes supplies and equipment, from paper, furniture and fuel, to computers, ambulances and garbage trucks; DCAS also makes energy purchases for City agencies. In addition, DCAS provides overall facilities management including maintenance and construction services for 54 buildings, including City Hall, the Manhattan and Brooklyn Municipal Buildings, all Borough Halls, and City and State Courts. DCAS provides security operations for a number of these buildings as well. We also purchase, sell, and lease real property, and locate space for City agencies. DCAS is responsible for setting and overseeing citywide equal employment opportunity (EEO) policies and programs, and addressing citywide occupational safety and health issues (COSH). Finally, we oversee the Combined Municipal Campaign, the critical citywide Blood Drive, and we have an exciting partnership with the 100 Year Association, through which we recognize the achievements of distinguished civil servants and award college scholarships to students who are the children of civil servants.

EXPENDITURES

DCAS has planned expenditures of \$1.1 billion annually in both FY 2009 and FY 2010. The majority of our planned expenditures—\$819.2 million each year—is for citywide energy expenses. We are working closely with OMB to monitor the impacts of changing commodity costs, increases in the regulated portion of energy delivery costs, and weather changes, all of which are conditions affecting energy expenses. The DCAS expense budget provides for a planned headcount of 2,060 in FY 2009 and 2,090 in FY 2010.

DCAS's City-funded headcount increased by 142 positions in FY 2009 and 206 positions in FY 2010. The entire FY 2009 headcount increase of 142 positions is associated with the transfer of the Environmental Control Board (ECB) from the Department of Environmental Protection to the Office of Administrative Trials and Hearings (OATH). As you may be aware, OATH's budget resides within DCAS's overall expense budget, although OATH operates as an independent entity. DCAS's role with respect to OATH is only to provide administrative and budgeting support. The value of the funding transfer is \$11.7 million in FY 2009, increasing to \$19.4 million in FY 2010.

For FY 2010, DCAS will receive 80 positions and \$4.4 million to perform cleaning and maintenance at two locations, 80 Centre Street and 100 Gold Street, functions that are currently performed by a private management company. The Division of Facilities Management and Construction (DFMC) will become fully responsible for the management and operation of these two facilities. DCAS projects savings of \$400,000 in expense funds, while also improving service to the tenants at these two locations.

DCAS also received an allocation totaling \$3.5 million in FY 2009 that increases to a baseline funding of \$5.3 million in FY 2010 for collective bargaining increases. The largest of these increases is associated with DC37 employees (\$2.2 million in FY 2009 and \$3.3 million in FY 2010). DCAS also received \$1.2 million to pay for other municipal union settlements for employees in various skilled trades titles, such as carpenters, electricians, and mechanics.

PLANYC 2030

Since Mayor Bloomberg unveiled PlaNYC 2030 nearly two years ago, DCAS has led implementation of this progressive, long-term vision for the City. DCAS is spearheading several sustainability goals

outlined in PlaNYC, most notably the goals to reduce energy consumption and greenhouse gas emissions from City government facilities and operations by 30% by 2017. Executive Order 109 of 2007 and Local Law 22 of 2008 codified this goal. DCAS is allocated \$11.7 million in expense funding in FY 2009 for citywide PlaNYC projects to be used for vehicle purchases, energy audits, building retrofits, and training programs. The total allocation for these PlaNYC projects for all agencies, both capital and expense, is \$100 million.

DCAS is a key member of the Energy Conservation Steering Committee established by Executive Order 109, which is chaired by Deputy Mayor Skyler and oversees the planning and implementation of energy efficiency projects funded through PlaNYC. In FY 2009, the Steering Committee committed \$79 million in capital funds for all agencies toward this effort. Over half of that amount, \$44.8 million, has been dedicated to 73 energy efficiency capital projects in facilities for which the City pays energy costs. In order to solicit appropriate project applications, DCAS conducted a series of meetings with City agencies to assess the energy needs of facilities. DCAS also directed the project selection process including the evaluation of 250 projects based on expected energy saving, greenhouse gas emissions reductions, and payback periods. Selected projects involve 12 City agencies, 3 library systems, 1 CUNY campus, and 18 cultural institutions. DCAS's Office of Energy Conservation will manage 66 of these projects (totaling an expected \$30 million) through our Energy Cost Reduction Program (ENCORE), which provides capital funding and technical oversight for energy efficiency projects. We are currently working with the other members of the Steering Committee to evaluate recent project submissions for FY 2010 funding.

In our own buildings, DCAS is upgrading lighting in a number of public and private areas, installing more energy efficient and higher quality lamps; replacing compact fluorescent exit signs with LED exit signs; and installing timers and occupancy sensors for better lighting control. In conjunction with these projects, light loggers are being installed to track actual energy savings. Furthermore, DCAS is adding two types of energy-saving projects to our facilities maintenance programs: building-wide steam trap and valve replacements to help heating systems run more efficiently, and the installation of thermal blankets at One Centre Street that are removable pipe insulation that prevents excess heat loss, while enabling us to perform routine maintenance without destroying permanent insulation.

DCAS also plays a vital role in improving the emissions profile of the City's vehicle fleet through our procurement services and our Office of Citywide Fleet Administration. Beginning in FY 2008 and continuing through FY 2009, as a direct PlaNYC initiative, DCAS is replacing over 400 older gasoline-powered vehicles with hybrid-electric vehicles, increasing the size of what is already acknowledged as the largest hybrid fleet in the nation. This year, for the first time, hybrid vehicles are being incorporated as both marked and unmarked Radio Motor Patrol (RMP) vehicles into the emergency response forces of the Police Department, Fire Department, and the Sheriff's Office. By the end of FY 2009, DCAS will have assisted the Police Department's "green" efforts by adding 72 new hybrid vehicles to its fleet, raising its total hybrid count to 195. DCAS is also supporting the testing and use of innovative technologies, such as electric vehicles. At present, the City's fleet includes 387 all-electric vehicles. To coordinate these efforts, DCAS has established an active Fleet Managers' Committee to work with us and the Mayor's Office of Long Term Planning and Sustainability on other "green fleet" pilot programs. These include the use of hybrid collection trucks by the Department of Sanitation and the placement of hybrid SUVs into the Fire Department's supervisory fleet. The Fleet Managers' Committee is in the process of developing pilot projects for FY 2010.

Later this year, DCAS will oversee the development of a detailed municipal fleet transition and sustainability plan through 2017. This project will identify opportunities to further integrate the best and most practical advanced vehicle technologies into the City's fleet. In FY 2010, DCAS will continue to "green" the City's fleet by replacing standard gasoline-powered vehicles with hybrids, examining agencies' fleet operations and identifying ways to improve efficiency, and piloting "rightsizing" initiatives by identifying smaller, more efficient vehicles for specific tasks.

PEG PROGRAM

As with all other City agencies, DCAS provided expense and revenue initiatives to help offset the citywide projected budget deficit.

One of the PEGs included in the Financial Plan is a reduction to the Energy Budget to reflect energy savings resulting from ENCORE and PlaNYC projects. We are anticipating a savings of \$1.2 million starting in FY 2010 and increasing to baseline savings of \$2.2 million by FY 2011. These

savings will only continue to grow as we conduct more building energy audits and implement energy efficiency projects in City facilities.

Another initiative reflected in the Financial Plan is expense savings achieved through the audit of prior office space lease payments made by City agencies. The Division of Real Estate Services (DRES) performs lease audits for properties where City agencies occupy leased space. The FY 2010 Preliminary Budget includes \$1.8 million in lease audit savings in FY 2009 and another \$1 million in FY 2010. In most instances, savings are achieved by property owners issuing rent credits to tenant agencies. In some cases, property owners do issue checks to the City. DCAS's budget does not reflect lease audit savings. The savings are reflected through the reduction of lease budgets in the tenant agencies. DCAS receives PEG credit because the savings result from work performed by DCAS staff.

DCAS is streamlining our security operations to maximize the efficiency of our security team. For example, the relocation of the City Clerk from One Centre Street to 141 Worth Street will enable DCAS to redeploy several guards from the One Centre Street location. The reorganization of security operations at eight locations will yield approximately \$500,000 in savings.

DCAS, in conjunction with the New York Police Department, is eliminating the administration of Police Officer Exams at satellite locations, resulting in anticipated savings of \$200,000. The Police Department does not anticipate any impact on its ability to recruit qualified candidates as Police Officers from this change.

DCAS also continues to examine administrative expenses. We concluded that the agency can reduce certain copier and mailing expenditures with minimal impact on agency operations. The savings from this initiative is expected to be \$300,000.

In FY 2010, DCAS will realize an estimated savings of \$200,000 by reducing the number of Neighborhood Work Project (NWP) cleaning crews from five to four. NWP is the signature work experience program of the Center for Employment Opportunities, which provides job readiness and placement services to men and women parolees returning to New York City. The program serves as

an “employment lab” for participants, preparing them with essential skills needed to rejoin the workforce gained through immediate, paid, short-term employment.

REVENUES

The total DCAS revenue budget reflects \$126.2 million in revenue in FY 2009 and \$151.7 million in FY 2010, which now includes ECB/OATH revenue collections. Revenue derived from DCAS operations are \$87.7 million in FY 2009 and decrease to \$76.4 million in FY 2010. OATH’s revenue is projected to increase next year by \$36.7 million because the FY 2009 budget does not reflect the full-year value of ECB revenues due to its mid-year transfer from DEP to OATH.

DCAS generates most of its revenue through rent collections, the sale of surplus equipment and vehicles, and civil service and license exam fees. Our largest source of revenue is through our Division of Real Estate Services (DRES), with projected revenue of \$62.1 million for FY 2009 and \$58.3 million for FY 2010. Most of this revenue derives from commercial rentals of City-owned property. The largest contributor to this revenue source is the \$20 million annual rental income from a long-term ground lease with the Marriott Marquis. DRES’s projected revenue decreases by \$3.8 million from FY 2009 to FY 2010 primarily due to anticipated decreases in revenue from the Grand Hyatt (\$1.1 million) and a decrease in mortgage collections (\$1.8 million). In FY 2009, DRES is offering an Early Satisfaction Program for our mortgage account holders allowing for a projected one-year infusion of revenue accounting for the projected decrease in mortgage collections in FY 2010.

Another significant revenue source is the sale of surplus goods at public auction and by competitive sealed bids by our Division of Municipal Supply Services (DMSS). The division has implemented a number of new strategies to increase revenue at its auto auctions. These strategies include setting minimum prices, spreading the sale of similar equipment over multiple auctions to maintain demand, consolidating auctions when the number of vehicles relinquished by agencies is relatively small, and enhancing the auction information on NYC.gov to include images of the more popular equipment available. The revenue plan for the sale of surplus goods is \$11.5 million for FY 2009 and \$8.7 million in FY 2010. The FY 2009 revenue target is higher than that of FY 2010 because of the increased availability of the Department of Sanitation’s, and other agencies’ heavy-duty vehicles and Sanitation’s landfill equipment sold in FY 2009.

Additionally, DCAS receives revenue from applicant filing fees for civil service examinations. In FY 2009, DCAS anticipates collecting \$3.9 million in civil service exam revenues. Some of the remaining important exams that we will administer before the end of this fiscal year include: Clerical Aide, Principal Administrative Associate, Caseworker, Child Protective Specialist, Correction Officer, Environmental Police Officer, Lieutenant (Fire), Police Officer, School Safety Agent, Supervisor of School Security, Traffic Enforcement Agent, Construction Project Manager, Sewage Treatment Worker, Stationary Engineer and Train Operator. The FY 2010 Preliminary Budget includes an increase of \$800,000 associated with a planned increase in civil service exam fees. These fees have not been raised since 1996 despite the escalating costs of civil service exam administration over time. We are working closely with OMB to determine what the fee increase will be.

CAPITAL

I would now like to turn to the DCAS capital plan. DCAS's focus remains on maintaining and preserving buildings – paying particular attention to health and life safety issues and legal obligations – as well as projects that further energy conservation objectives. In the DCAS portion of the City's capital commitment plan, \$234 million is allocated for DCAS-managed facilities for FY 2009 and FY 2010.

DCAS is undertaking numerous building improvements in our facilities including the rehabilitation of elevators, fire safety systems, and work associated with Local Law 11 of 1998 in relation to building façades. A \$7.5 million project for elevator rehabilitation at 80 Centre Street is currently in the bid process. We will upgrade fire safety systems at 1 Centre Street and 100 Centre Street for a total cost of \$11.6 million. Significant façade rehabilitation and restoration work includes a \$7.7 million project at 253 Broadway in Manhattan, a \$2.1 million project in Brooklyn Supreme Court at 360 Adams Street, and a \$1.7 million project in Queens Criminal Court located at 125-01 Queens Boulevard.

In addition to safety upgrades, DCAS has projects planned for systems upgrades and interior renovations. One key initiative is a \$22.8 million project to build an atrium and additional elevator at Queens Borough Hall. We are also in the process of bidding contracts for the \$17.8 million electrical upgrade of 851 Grand Concourse in the Bronx and a \$22.3 million expansion of the Midtown Community Court on West 54th Street. Design is complete for two major projects – a \$7.5

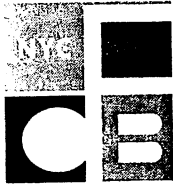
million upgrade of electrical service in the Brooklyn Central Court at 120 Schermerhorn Street, and a \$3.7 million electrical upgrade at 18 Richmond Terrace in Staten Island.

DCAS will also manage various construction projects in the City's leased spaces in FY 2009 and FY 2010. Notable projects in Queens include a \$3.4 million renovation to the DCAS Central Storehouse at 66-26 Metropolitan Avenue in Middle Village and an \$11.3 million renovation at the Bulova Corporate Center at 75-20 Astoria Boulevard, which will house the headquarters for the Department of Correction. In Brooklyn, we are in the process of negotiating space for the Office of Court Administration at 1 Pierrepont Plaza with a construction budget estimated to be \$4 million. To prepare for the purchase and citywide use of the new electronic voting machines, we are securing office space and storage facilities as part of a comprehensive program for the Board of Elections in all five boroughs. For this effort, we have allocated \$46 million.

Finally, there is \$146 million set aside for citywide capital energy conservation projects in FY 2009 and FY 2010. These funds are being allocated to the specific projects I referenced earlier in my testimony. The majority of these projects will involve lighting upgrades, occupancy sensor installations, and high efficiency motor installations for mechanical and plumbing systems.

CONCLUSION

Thank you for this opportunity to testify about the Department of Citywide Administrative Services' planned expenditures and revenues for FY 2010 and our capital commitment program. I am pleased to answer any questions you may have.



New York City Campaign Finance Board

40 Rector Street, 7th Floor, New York, NY 10006
tel. 212.306.7100 fax 212.306.7143
www.nyccfb.info info@nyccfb.info

**Testimony of Amy Loprest
Executive Director
New York City Campaign Finance Board**

**City Council Committee on Governmental Operations
March 12, 2009**

Good morning, Chairman Sears and Committee members. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board (CFB). With me are Deputy Executive Director Shauna Tarshis Denkensohn and General Counsel Sue Ellen Dodell.

FY2010 Budget

Pursuant to the New York City Charter, Section 1052(c), the Board submitted its estimated budget for fiscal year 2010 to the Mayor on March 10. The Charter requires that the Mayor include the Board's estimate in his Executive Budget. The budget request is attached to this testimony.

The Board's budget for fiscal year 2010 is consistent with previous citywide election years. The allocation for the campaign finance fund to provide matching payments to candidates is dramatically increased in a citywide election year. As in previous years, unused portions of the campaign finance fund will be returned to the City's General Fund after the elections are concluded.

The Board's request also includes funds for the citywide Voter Guide. For each regularly scheduled election, the Voter Guide is printed and mailed to all registered voters before the primary and general elections.

As a result, the Board's budget request for the coming year contains a significant increase beyond the current year's budget. Still, it is important to note that this request represents a decrease from the CFB's budget for the 2005 election year. Where we are able to contain costs, we are doing so. Outside of the matching funds and the Voter Guide, our costs will decrease over the next fiscal year. Changes required to meet the new mandates from the 2007 legislation are reflected in the budget from FY2009.

2009 Elections

The Board is busy with its preparations for the 2009 elections. As of today, there are 216 active candidates registered with the Board. We expect that more candidates will file their initial registration with the board in advance of the next disclosure filing, which is due to the Board by the close of business next Monday, March 16.

Enhanced Training: The Board's enhanced training program helps those candidates better fulfill their responsibilities under the law. The 2007 amendments to the Campaign Finance Act require attendance for all participating campaigns at CFB compliance and software training seminars. To date, the CFB's Candidate Services Unit (CSU) has certified 151 campaigns as having completed the two-part training course. CSU will continue to hold regularly scheduled training sessions for campaigns, and will increase their frequency as the election grows nearer.

Debate Program: Since the 1997 election, the Board has administered mandatory debates among participating candidates for Mayor, Public Advocate, and Comptroller. The law specifies two debates before the primary and two before the general election, with an additional debate in the case of a run-off election. We have solicited and

received applications from organizations interested in sponsoring debates during the 2009 elections. The names of these organizations are posted on our website, www.nycctfb.info, and the process of interviewing and selecting sponsors is underway.

Doing Business: As amended by Local Law 34 of 2007, the Campaign Finance Act places low limits on contributions from those doing business with city government, giving New York City the most comprehensive limits on “pay-to-play” of any jurisdiction in the country.

Since we last testified before this Committee, the Board has certified Phases 2 and 3 of the Doing Business Database, meeting the deadlines established by the law. Each phase was implemented, as the law required, within 30 days after the Board’s certification.

To date, we have performed “doing business” reviews for three council elections and two disclosure statements for the 2009 citywide elections. For each, we have met the deadlines set by the law to notify campaigns if contributions have exceeded the doing business limits.

Other recent innovations: Several new initiatives are improving the efficiency of the Board’s operations and increasing the flow of information between the Board and campaigns for City office. Earlier this year, the Board introduced a web-based gateway called C-Access, which offers campaigns an instant and secure link to an array of useful information and services online. Between now and the fall, we are planning to introduce several new features that should make C-Access an even more valuable resource for campaigns.

In advance of the fall elections, we have also implemented an Electronic Content Management (ECM) system to streamline our operations by improving communications between units and reducing the agency’s reliance on paper files.

Searchable Campaign Finance Database: All financial information reported by campaigns to the CFB is made public through our online database, providing a high level of transparency to New York City's electoral process. Within the coming months, we expect to introduce an update to our searchable database. The update will offer new search capabilities and an improved, user-friendly interface.

Conclusion

As always, the CFB looks forward to continuing to work with the Council to make the Program more effective and efficient. Thank you for your time, and we look forward to answering any questions you may have.

**NEW YORK CITY CAMPAIGN FINANCE BOARD OPERATING BUDGET
FISCAL YEAR 2010**

	FISCAL 2009 ADOPTED	CHANGES FROM 2009 ADOPTED	FISCAL 2010 CFB BUDGET
PERSONAL SERVICES (PS)	\$6,430,217	-\$144,694	\$6,285,523
OTHER THAN PERSONAL SERVICES (OTPS)			
OTPS	\$3,397,000	-\$501,500	\$2,895,500
VOTER GUIDE	\$425,000	\$7,144,000	\$7,569,000
NYC CAMPAIGN FINANCE FUND	\$1,500,000	\$49,300,000	\$50,800,000
SUB TOTAL OTPS	\$5,322,000	\$55,942,500	\$61,264,500
TOTAL	\$11,752,217	\$55,797,806	\$67,550,023

HEADCOUNT	FY2009		FY2010		CHANGE FROM	
	Full Time	Seasonal	Full Time	Seasonal	Full Time	Seasonal
	89	7	83	5	-6	-2



THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
141 WORTH STREET
NEW YORK, N.Y. 10013

March 11, 2009

Honorable Frederic M. Umane
President
Board of Elections
32 Broadway, 7th Floor
New York, New York 10004

Dear President Umane:

Pursuant to the provisions of the Election Law Section 4-106, notice is hereby given that at a general election to be held on November 3, 2009, the following offices may be lawfully voted for:

In the City of New York, all five Counties (City-wide)

- 1) Office of the Mayor of the City of New York;
- 2) Office of the Comptroller of the City of New York; and
- 3) Office of the Public Advocate of the City of New York.

In the County of New York, Borough of Manhattan

- 1) All offices of City Council;
- 2) Office of Borough President;
- 3) Office of District Attorney;
- 4) One vacancy for Justice of the Supreme Court, in place of:

Justice John E. H. Stackhouse, who will reach the constitutional age limit by December 31, 2009;

- 5) Five vacancies for Judge of the Civil Court, New York County, in place of:

Hon. Cynthia Kern, 3rd District, whose term will expire on December 31, 2009;

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IN THE COUNTY OF NEW YORK
2009 MAR 12 PM 2:27

Justice Marilyn Shafer, 3rd District, who will reach the constitutional age limit by December 31, 2009;
Hon. Walter Tolub, 9th District, whose term will expire on December 31, 2009;
Hon. Analisa Torres, 6th District, whose term will expire on December 31, 2009;
and
Hon. Judith Gische, 9th District, who was elected to the New York State Supreme Court in November 2008.

In the County and Borough of the Bronx

- 1) All offices of City Council;
- 2) Office of Borough President;
- 3) Three vacancies for Justice of the Supreme Court, in place of:

Justice Robert A. Sackett, who will reach the constitutional age limit by December 31, 2009; and
Hon. Lucindo Suarez, whose term will expire on December 31, 2009; and
Hon. Kenneth Thompson, whose term will expire on December 31, 2009;

- 4) Two vacancies for Judge of the Civil Court, Bronx County, in place of:

Hon. Francis Alessandro, Countywide, who will reach the constitutional age limit by December 31, 2009; and
Hon. Stanley Green, Countywide, whose term will expire on December 31, 2009.

In the County of Kings, Borough of Brooklyn

- 1) All offices of City Council;
- 2) Office of Borough President;
- 3) Office of District Attorney for County of Kings, Borough of Brooklyn;
- 4) Three vacancies for Judge in the Civil Court, Kings County, in place of:

Hon. Rachel Adams, 5th District, whose term will expire on December 31, 2009;
Hon. Lila Gold, Countywide, who will reach the constitutional age limit by December 31, 2009; and
Hon. Richard Velasquez, 3rd District, who was elected to the New York State Supreme Court in November 2008.

In the County of Richmond, Borough of Staten Island:

- 1) All offices of City Council;
- 2) Office of Borough President;

3) One vacancy for Justice of the Supreme Court, in place of:

Justice Phillip Minardo, whose term will expire on December 31, 2009; and

4) One vacancy for Judge in the Civil Court, Richmond County in place of:

Hon. Judith McMahon, 1st District, who was elected to the New York State Supreme Court in November 2008.

In the County and Borough of Queens

1) All offices of City Council;

2) Office of Borough President;

3) Three vacancies for Justice of the Supreme Court, in place of:

Justice Orin R. Kitzes, who will reach the constitutional age limit by December 31, 2009;

Justice Phyllis O. Flug, who will reach the constitutional age limit by December 31, 2009; and

Justice Daniel Lewis, whose term will expire on December 31, 2009;

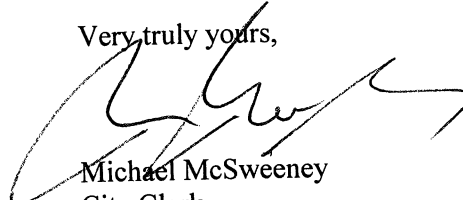
4) Two vacancies for Judge in the Civil Court, Queens County in place of:

Hon. Lee Mayersohn, Countywide, who was elected to the New York State Supreme Court in November 2008; and

Hon. Bernice Siegal, Countywide, who was elected to the New York State Supreme Court in November 2008.

Please acknowledge receipt of this notice on the enclosed copy and return the same to me.

Very truly yours,



Michael McSweeney
City Clerk
Clerk of the Council

cc: Marcus Cederqvist

MM: ps

THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
141 WORTH STREET
NEW YORK, N.Y. 10013

Honorable Frederic M. Umane
President
Board of Elections
32 Broadway, 7th Floor
New York, New York 10004

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THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
141 WORTH STREET
NEW YORK, N. Y. 10013

Marcus Cederqvist
Executive Director
Board of Elections
32 Broadway, 7th Floor
New York, New York 10004

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Steven H. Richman

From: Douglas A. Kellner [dkellner@elections.state.ny.us]
Sent: Wednesday, March 11, 2009 5:08 PM
To: Stanley Zalen; Todd Valentine; Marcia Baranowski; Diane Becker; Robert Bennett; Kelley Borrelli; Robert Brechko; Debra Bruno; Larry Bugbee; Janice Burdick; Courtney Canfield Greene; Kathy Carey; Mary Beth Casey; Geeta Cheddie-Musall; Matthew Clyne; Linda Coons; Laura Costello; Keith Crimmins; Frank DeBenedictus; Carol Demauro Busketta; Sandra Dennison; Patricia DiSpirito; Patti Doyle; Cathy Dumka; Donna English; Eugene Faughnan; Thomas Ferrarese; Sheila Fleischauer; Linda Forrest; Stuart Fraser; Douglas French; William Fruci; James Gallman; Karen Gannon; David Gamache; Janice Grabowski; Ellen Graziano; David Green; WEBMAIL_PerkinsP; Patricia Haley; Clifford Hay; Anne Hendrix; Elaine Herdman; Judy Horvers; Cindy Jarvis; Lynne Jones; Anita Katz; Donna Kelley; Scott Kiedrowski; Veronica King; Donald Kline; Charlotte Koniuto; Reginald LaFayette; Judith Layhee; Nancy Leven; Catherine Lorow; David Mace; Elaine Mallaber; Clara Martin; Barbara McCann; Elaine McLearn; Marie Metzler; William Montfort; Jennie Morrill; Michael Nabozny; Brian Abram; Ann Nortz; Mary O'Dell; Deborah O'Rourke; Keith Osborne; Jeannie Palazola; John Parete; Judith Peck; Pamela Perkins; Kristy Pickett; Kathleen Pietanza; Tom Prystal; Peter Quinn; Ellouise Raffo; Arrah Richards; Cathy Richter Geier; Cathleen Rogers; James Rossetti; Penny Ruest; Sandra Saddle mire; Mary Salotti; Toni Scalise; Helen Scarpechi; Laura Schoonover; William Scriber; John Sejan; Constance Service; Joan Silvestri; Wendy Simpson; Marty Smith; Terrance Smith; Nancy Smith; Edward Ryan; Sharlene Thompson; Thomas Turco; Carol Turney; Kristie Virga; Diane Wade; Donald Wart; Sharon White; Lewis Wilson; Marie Woodward; Pamela A. Welker; Jeff Wice; Helen Zelazny; William Wood; Jeanne Williams; Pamela Welker; John Vona; Ruth Vezzetti; Bernadette Toombs; Alonzo Thompson; Carolee Sunderland; Gerald Smith; Wendy Simpson; Richard Siebert; Patricia Selwood; Dennis Sedor; Eleanor Sciglibaglio; James Schlick; Anthony Scannapieco, Jr.; Lewis Sanders; Dennis Ryan; Sheila Ross; Wayne Rogers; Dexter Risedorph; Steven H. Richman; Nancy Quis; Brian Quail; Mary Pines; Dennis Piedimonte; John Perticone; Angela Pedone Longo; William Parslow; Thomas Paolangeli; Deborah Pahler; Jeanne O'Rourke; Marilyn O'Mara; M. Suzanne O'Dea; Michael Northrup; Henry Nicols; Pam Murrin; Joan Mooney; Ralph Mohr; Lois McShane; Edward McDonough; Lyn May; Cathy Marich; Linda Madison; Joan Luther; Steven Levy; Gina Legari; Steven Laundree; Joyce Krebbeks; David Kogelman; Helen Kiggins; John Kennedy; Faith Kaplan; Harriet Jenkins; Robert Howe; Timothy Hill; Sean Hennessey; Cheryl Heary; Krystal Hastings; Susan Guenther; Norman Green; John Graziano Sr.; Joan Grainer; Cinda Lou Goodrich; Rodney Gaebel; Sue Fries; Daniel French; Carol Franklin; Kathy Fleury; James Fitzpatrick; Joseph Fazzary; Linda Falkouski; Carolyn Elkins; Cheryl Dumas; David Cohen; John DeGrace; Jeffrey Curtis; Elizabeth Cree; Marilyn Cornell; John Colligan; Richard Clark; Dawn Cassidy; Mary Ann Casamento; Carolann Cardone; Thomas Burke; Neil Buhrmaster; William Buccheri; Art Brassard; William Biamonte; Andrea Basli; Anna Mae Balmas; Susan Bahren; Kelly Austin; Rosanna Kostamoulas Rahmouni; George Gonzalez; Timothy Gay; Gregory Soumas (External Address); Ric Van Donsel; Frances Knapp; Dennis Ward; Robin St. Andrews; Frank Streng; Wanda Warren Berry; Ann Marie Kelly; Ruth Same; Stephen DeWitt; Frederic M. Umame (external address); Jose Miguel Araujo (Commissioner); Julie Dent (Commissioner); Juan Carlos "J.C." Polanco (Commissioner); Naomi Silie (Commissioner); J.P. Sipp; Judith D. Stupp (Commissioner); Jack Bailey

Cc: Anna Svizzero; Joseph burns; Kimberly Galvin; Paul Collins; Robert Brehm; Stanley Zalen; Todd Valentine

Subject: HAVA Replacement fund deadline extended to November 1, 2010

Earlier today President Obama signed into law the Omnibus Appropriations Act of 2009. (HR 1105).

Section 625 of the law amended the Help America Vote § 102(a)(3)(B) to extend the deadline for using federal funds to replace lever voting systems to the first federal election held after November 1, 2010.

This means that the State Board of Elections should now be in a position to release to the counties

their shares of the \$50 million of Title I HAVA funds appropriated specifically for the replacement of lever voting systems. (This will require formal action on the part of the state commissioners.)

Although this is very welcome news, the law does not change the substantive provisions of HAVA section 301, 42 USC § 15481, which continues to have an effective date of January 1, 2006, and which some argue forms part of the basis for Judge Sharpe's order that New York replace the lever machines for the September 2009 primary. I would hope, however, that Congress's recognition of the obstacles to certification of voting systems to replace the lever machines would have a significant influence on the US Department of Justice and Judge Sharpe to modify the court's order.

We owe special thanks to Congressman José Serrano, Chairman of the House Appropriations Subcommittee on Financial Services and General Government, for shepherding this extension through the legislative process, and to Governor Paterson's Washington Office, and, of course, we thank all of the members of our Congressional delegation for their support.

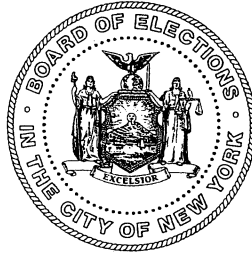
Douglas A. Kellner
Co-Chair
New York State Board of Elections

Tel. (212) 889-2121
Fax (212) 684-6224

FREDERIC M. UMANE
PRESIDENT

JULIE DENT
SECRETARY

JOSE MIGUEL ARAUJO
JUAN CARLOS "J.C." POLANCO
JAMES J. SAMPEL
NANCY MOTTOLA-SCHACHER
NAOMI C. SILIE
GREGORY C. SOUMAS
JUDITH D. STUPP
MARYANN YENNELLA
COMMISSIONERS



BOARD OF ELECTIONS

IN
THE CITY OF NEW YORK
ONE EDGEWATER PLAZA
STATEN ISLAND, NY 10305
(718) 876-0079
www.vote.nyc.ny.us

Com mb
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MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

SHEILA DEL GIORNO
CHIEF CLERK

ANTHONY ANDRIULLI
DEPUTY CHIEF CLERK

March 5, 2009

PUBLIC NOTICE

**NEW YORK STATE SUPREME COURT HEARING
IN TABACCO V. BOARD OF ELECTIONS (INDEX#
080063/09) SCHEDULED FOR FRIDAY, MARCH 6,
2009 AT 10:30AM HAS BEEN RESCHEDULED BY
ORDER OF THE COURT TO
WEDNESDAY, MARCH 11, 2009 AT 10:30AM
BEFORE JUSTICE ANTHONY GIACOBBE
HOMEPORT COURTHOUSE
355 FRONT STREET
STATEN ISLAND, NEW YORK**



THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
141 WORTH STREET
NEW YORK, N.Y. 10013

March 4, 2009

Honorable Frederic M. Umane
President
Board of Elections
32 Broadway, 7th Floor
New York, New York 10004

Re: Certificate of Vacancy
Borough Presidency of the Bronx

Dear President Umane:

Please be advised that pursuant to Section 4-106 of the New York State Election Law, I hereby file the attached Certificate of Vacancy for the Borough Presidency of the Bronx.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael McSweeney".

Michael McSweeney
City Clerk
Clerk of the Council

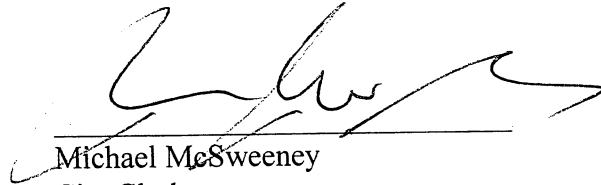
2009 MAR -5 AM 11:17

RECEIVED
GO. BOARD OF ELECTIONS
141 WORTH STREET
NEW YORK

CERTIFICATE OF VACANCY

A vacancy in the position of Borough Presidency of the Bronx currently exists, having resulted from the resignation of Adolfo Carrión, Jr., effective on March 1, 2009.

Dated: March 4, 2009



Michael McSweeney
City Clerk
Clerk of the Council

RECEIVED
GO. BOARD OF ELECTIONS
MAYOR'S OFFICE
NEW YORK
2009 MAR -5 AM 11:17



U.S. Department of Justice

Civil Rights Division

Community
F.Y.I.

CC:MSR:ER:maf
DJ 166-012-3
2007-0266

Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

March 4, 2009

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK
2009 MAR 12 PM 3:03

Steven H. Richman, Esq.
General Counsel
Board of Elections
32 Broadway
New York, New York 10004-1609

Dear Mr. Richman:

This refers to our January 24, 2007, letter (copy enclosed) which requested submission under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of the procedures for conducting the February 20, 2007, special vacancy election for the City of New York in Kings County, New York.

Our records indicate that we have not received your response. We note that unless the City of New York receives a declaratory judgment from the United States District Court for the District of Columbia or the Attorney General interposes no objection to the specified change, it is not legally enforceable. *Clark v. Roemer*, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.10).

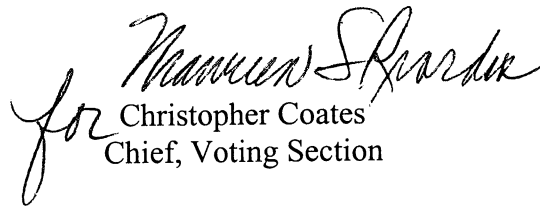
In addition, we understand that the city conducted special vacancy elections on April 24, 2007, and June 5, 2007, in Kings and New York Counties.

According to our records, these changes affecting voting have not been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. If our information is correct, it is necessary that these changes either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that they do not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable without Section 5 preclearance. *Clark v. Roemer*, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.10).

Should you elect to make a submission to the Attorney General for administrative review rather than seek a declaratory judgment from the United States District Court for the District of Columbia, please follow the procedures set forth in Subparts B and C of the procedural guidelines (28 C.F.R. Part 51), available at www.usdoj.gov/crt/voting/sec_5/guidelines.htm.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the city plans to take concerning this matter. If you have any questions, you should call Mr. Edris Rodriguez (202-305-0099) of our staff. Refer to File No. 2007-0266 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

for Christopher Coates
Chief, Voting Section

Enclosure



U.S. Department of Justice
Civil Rights Division

JKT:YR:ER:par
DJ 166-012-3
2007-0266

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

January 24, 2007

Steven H. Richman, Esq.
General Counsel
City of New York
Executive Office, 32 Broadway
New York, New York 10004-1609

Dear Mr. Richman:

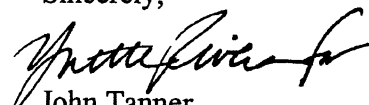
We understand that the City of New York will conduct a special vacancy election on February 20, 2007.

According to our records, this change affecting voting, as well as any changes in procedures for conducting the special election, if any, have not been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. If our information is correct, it is necessary that these changes either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that they do not have the purpose or effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable without Section 5 preclearance. *Clark v. Roemer*, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.10).

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To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of New York plans to take concerning this matter. If you have any questions, you should call Mr. Edris Rodriguez (202-305-0099) of our staff.

Sincerely,


John Tanner
Chief, Voting Section

George Gonzalez

From: NYS Election Operations [election_ops@elections.state.ny.us]
Sent: Tuesday, March 03, 2009 4:40 PM
Cc: ANNA SVIZZERO; ELIZABETH HOGAN; JOSEPH BURNS; JOHN CONKLIN; KIMBERLY GALVIN; PAUL COLLINS; ROBERT BREHM; STAN ZALEN; TODD VALENTINE; WILLIAM MCCANN; Douglas A. Kellner (external address)
Subject: 2009 March Certification



2009 MARCH RTIFICATION_1.pdf
2009 SUPREME COURT VACANCIES L

TO: All County Board of Elections

FROM: State Board of Elections

Attached please find the March Certification of Offices to be voted for at the November 3, 2009 General Election, along with a listing of Supreme Court Vacancies and "Where to File Petitions" Chart.

COMM
FYI
GG

NEW YORK STATE BOARD OF ELECTIONS

March 3, 2009

**CERTIFICATION OF OFFICES TO BE FILLED AT THE
NOVEMBER 3, 2009 GENERAL ELECTION**

TO ALL COUNTY BOARD OF ELECTIONS

It is hereby certified, under Section 4-106 of the New York State Election Law, that, at the General Election to be held in this State on November 3, 2009, the following offices may be lawfully voted for:

→ *Justice(s) of the Supreme Court
(see attached chart for your county)*

The term of office for all incumbents of the above named offices will expire at midnight on December 31, 2009.

STATE BOARD OF ELECTIONS

March 3, 2009

**New York State Board of Elections
Supreme Court Justice Vacancies – 2009**

March 3, 2009

1 st District	John E. H. Stackhouse	Age
2 nd District	None	
3 rd District	Anthony T. Kane	Term
4 th District	Thomas E. Mercure	Term
5 th District	Robert Hurlbutt James C. Tormey	Age Term
6 th District	None	
7 th District	David D. Egan Kenneth R. Fisher	Age Term
8 th District	Christopher J. Burns John F. O'Donnell	Term Term
9 th District	Orazio R. Bellantoni Francis Nicolai Jonathan Lippman	Term Age Appointed Chief Judge
10 th District	H. Patrick Leis John Bivonia Elizabeth Emerson Stephen Bucaria Dana Winslow Thomas Phelan	Term Age Term Term Age Term
11 th District	Orin R. Kitzes Phyllis O. Flug Daniel Lewis	Age Age Term
12 th District	Robert A. Sackett Lucindo Suarez Kenneth Thompson	Age Term Term
13 th District	Phillip Minardo	Term

(25 Vacancies)

**2009
WHERE TO FILE PETITIONS CHART**

Republican State Committee:	All Districts file at the County Boards
-----------------------------	---

JUDICIAL DISTRICT CONVENTION DELEGATE AND/OR ALTERNATE DELEGATE
--

First Judicial District	New York County
Second Judicial District	Kings County
Eleventh Judicial District	Queens County
Twelfth Judicial District	Bronx County
Thirteenth Judicial District	Richmond County

All petitions and nominations for these judicial district delegates and alternate delegates are filed at the New York City Board of Elections

NOTE: The following chart for Judicial Delegates and Alternate Delegates applies ONLY to Democratic, Independence, Conservative and Working Families Party candidates.

Republican Party candidates for this office file their petitions in the county which contains their portion of the assembly district.

Third Judicial District:	Albany, Columbia, Greene, Rensselaer, Schoharie Sullivan and Ulster
--------------------------	--

98 th AD	Sullivan County Board of Elections
100 th AD	Ulster County Board of Elections
101 st AD	Ulster County Board of Elections
103 rd AD	Columbia County Board of Elections
104 th AD	Albany County Board of Elections
106th AD	State Board of Elections
107 th AD	Ulster County Board of Elections
108th AD	State Board of Elections
109 th AD	Albany County Board of Elections
112 th AD	Rensselaer County Board of Elections
127th AD	State Board of Elections

Fourth Judicial District: Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, St. Lawrence, Saratoga, Schenectady, Warren & Washington

105th AD	State Board of Elections
106 th AD	Saratoga County Board of Elections
109 th AD	Saratoga County Board of Elections
110th AD	State Board of Elections
112th AD	State Board of Elections
113th AD	State Board of Elections
114th AD	State Board of Elections
117 th AD	Fulton County Board of Elections
118 th AD	St. Lawrence County Board of Elections
122 th AD	St. Lawrence County Board of Elections

Fifth Judicial District: Herkimer, Jefferson, Lewis, Oneida, Onondaga, & Oswego

111 th AD	Oneida County Board of Elections
115th AD	State Board of Elections
116 th AD	Oneida County Board of Elections
117 th AD	Herkimer County Board of Elections
118 th AD	Jefferson County Board of Elections
119 th AD	Onondaga County Board of Elections
120 th AD	Onondaga County Board of Elections
121 st AD	Onondaga County Board of Elections
122nd AD	State Board of Elections
124th AD	State Board of Elections
128 th AD	Oswego County Board of Elections
129 th AD	Onondaga County Board of Elections

Sixth Judicial District: Broome, Chemung, Chenango, Cortland, Delaware, Madison, Otsego, Schuyler, Tioga & Tompkins

107th AD	State Board of Elections
111th AD	State Board of Elections
117 th AD	Otsego County Board of Elections
123rd AD	State Board of Elections
125th AD	State Board of Elections
126 th AD	Broome County Board of Elections
127th AD	State Board of Elections
129 th AD	Cortland County Board of Elections
137th AD	State Board of Elections

Seventh Judicial District:	Cayuga, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne & Yates
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123 rd AD	Cayuga County Board of Elections
128th AD	State Board of Elections
129th AD	State Board of Elections
130th AD	State Board of Elections
131 st thru 135 th AD	Monroe County Board of Elections
136th AD	State Board of Elections
139 th AD	Monroe County Board of Elections
147 th AD	Livingston County Board of Elections

Eighth Judicial District:	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans & Wyoming
---------------------------	--

138 th AD	Niagara County Board of Elections
139th AD	State Board of Elections
140th AD	State Board of Elections
141 st AD	Erie County Board of Elections
142nd AD	State Board of Elections
143 rd thru 146 th AD	Erie County Board of Elections
147th AD	State Board of Elections
148th AD	State Board of Elections
149th AD	State Board of Elections
150 th AD	Chautauqua County Board of Elections

Ninth Judicial District:	Dutchess, Orange, Putnam, Rockland & Westchester
--------------------------	--

87 th thru 89 th AD	Westchester County Board of Elections
90th AD	State Board of Elections
91 st thru 93 rd AD	Westchester County Board of Elections
94 th & 95 th AD	Rockland County Board of Elections
96th AD	State Board of Elections
97th AD	State Board of Elections
98 th AD	Orange County Board of Elections
99th AD	State Board of Elections
100th AD	State Board of Elections
101 st thru 103 rd AD	Dutchess County Board of Elections

Tenth Judicial District:	Nassau & Suffolk
--------------------------	------------------

1 st thru 9 th AD	Suffolk County Board of Elections
10th AD	State Board of Elections
11 th AD	Suffolk County Board of Elections
12 th thru 21 st AD	Nassau County Board of Elections

STATE OF NEW YORK
STATE BOARD OF ELECTIONS

MARCH CERTIFICATION

PARTY EMBLEMS AND BALLOT ORDER

DEMOCRATIC PARTY COLOR: GREEN



REPUBLICAN PARTY COLOR: CHERRY



INDEPENDENCE PARTY COLOR: CANARY



CONSERVATIVE PARTY COLOR: GRANITE



WORKING FAMILIES PARTY COLOR: TAN



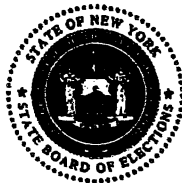
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Supreme Court Justice Vacancies – 2009**

March 3, 2009

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6 th District	None	
7 th District	David D. Egan Kenneth R. Fisher	Age Term
8 th District	Christopher J. Burns John F. O'Donnell	Term Term
9 th District	Orazio R. Bellantoni Francis Nicolai Jonathan Lippman	Term Age Appointed Chief Judge
10 th District	H. Patrick Leis John Bivonia Elizabeth Emerson Stephen Bucaria Dana Winslow Thomas Phelan	Term Age Term Term Age Term
11 th District	Orin R. Kitze Phyllis O. Flug Daniel Lewis	Age Age Term
12 th District	Robert A. Sackett Lucindo Suarez Kenneth Thompson	Age Term Term
13 th District	Phillip Minardo	Term

(25 Vacancies)

F.Y. I.



STATE BOARD OF ELECTIONS

James A. Walsh
Co-Chair

Douglas A. Kellner
Co-Chair

Gregory P. Peterson
Commissioner

40 STEUBEN STREET
ALBANY, N.Y. 12207-2108

Evelyn J. Aquila
Commissioner

Todd D. Valentine
Co-Executive Director

Phone: 518/474-6336 Fax: 518/474-1008
URL: <http://www.elections.state.ny.us>

Stanley L. Zalen
Co-Executive Director

February 26, 2009

Dear County Boards,

As you may know both vendors have requested a price increase supported by various rationales and negotiating sessions were held this past week to discuss the requests together with other contract issues.

While no determination will be made until the Board Meeting of March 6th, a preview of staff thinking on this issue is in order, to assist you in making plans. It is likely that any price increases would be phased in with a brief period of time for counties to place requisitions with OGS for new machines at the current price. That window would probably be very short and it is for that reason that we alert you now. In order for this scenario to play itself out, there would have to be OSC approval of any contract change but a phased in price increase is not something that should be rejected out of hand, especially when counties have the opportunity to provide OGS with requisitions at the current price levels for a period of time

As you know, OGS will not issue purchase orders at this time as the systems are uncertified. However, nothing stops you from providing OGS with a requisition for such units as you may need, and do so at the current price levels. An order now, or before the window closes, would preserve that price for you.

Obviously the vendors will seek to have as short a window of current pricing as possible and it is for that reason that we alert you presently as to a potential price increase and the opportunity to make such purchases at the current price. It may be that the Comptroller will approve the issuance of purchase orders by OGS prior to the actual certification of the systems if appropriate financial safeguards are adopted in the revised contract. However, the key to this is the ability of the vendors to get an actual commitment for the number of units they will have to produce in the limited time left before the September Primary. Your requisitions are of value to the vendors and it is for that reason they appear amenable to the concept of a short hold-harmless window on the current pricing.

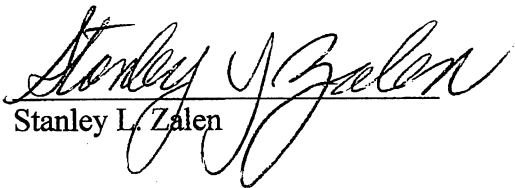
An appropriate way to calculate a county's eligibility for current pricing would be to use the date the county requisition was received by OGS. This concept is appealing as it would allow the manufacture of sufficient units for the September Primary in a timely fashion while still maintaining our stringent testing standards.

Appropriate financial safeguards will have to be provided to ensure against the purchase of systems which fail certification testing and our staff is working on such a plan. We remain committed to the goal of not using uncertified systems in an election. However, from the vendors' perspective, an early ordering period is essential to timely production and the offer of a period of current pricing would seem to accommodate their needs.

The Comptroller and the State Board will propose appropriate contract adjustments to allow for the pre-certification ordering to be sought by the vendors but nothing will be final before March 6th in this regard. However, we recognize that you are entitled to as early a "heads up" as possible and it is for this reason we communicate at this time.

We are planning to have another one of the conference calls with the ECA before our next Board meeting to address questions you may have on this. Working with the ECA leadership, once we've set the date and time we'll send out a separate e-mail.

Sincerely,


Stanley L. Zalen


Todd D. Valentine

SLZ/TDV/dsm

Mike's facing Justice day

MAYOR BLOOMBERG has wriggled free of every force that tried to block his bid for a third term, but he still hasn't heard from one body he can't sweet talk, bulldoze or buy off.

The Department of Justice's section for voting rights must decide by Tuesday whether the October term limits extension will hurt minority voters.

If it does, every two-term incumbent in the November elections would be suddenly ineligible — sending Bloomberg and a boatload of other politicians on a retirement cruise.

The city Law Department filed 1,789 pages with Justice to make sure that doesn't happen, saying that "term limits by definition affect all candidates and their con-

stituencies in precisely the same manner" without any racial overtones.

Norman Siegel and Randy Mastro — lawyers on the other side of the issue — sent their own sheaf of paper to Justice pointing out what should be glaringly obvious to anyone who looks at the City Council: Without term limits, incumbents stay in their seats.

"Since 1993, no minority candidate has ever unseated a white incumbent for any municipal office in New York City," Mastro said. "It's a textbook case of a civil rights violation."

Federal OK on race issue is last hurdle for term limits

are black, and Nydia Velazquez, who is Hispanic — have written Justice to say the law is discriminatory.

The funny thing is nobody quite knows whether their political pressure will help or hurt.

Career lawyers in Justice's voting rights section mutinied when they felt pressured by the Bush administration to slant their decisions his way.

They now report to a Democratic President and an attorney general who believe Justice should still oversee changes that affect the Voting Rights Act.

Bloomberg, meanwhile, never showed President Obama much

electoral love on the campaign trail — and he acknowledged last week that he hasn't spoken to the President since before the inauguration.

But Justice lawyers may also feel newly empowered to ignore political pressure from all sides, whether from a mayor with plenty of Washington tentacles or from Congress members who see minority voting rights being in peril.

"There's always political pressure, but historically, the Justice Department has fought that," said Joseph Rich, who headed Justice's voting rights section from 1999 to 2005. "It should make no difference. They should be looking at whether this third term hurts black voters."

alsberg@nydailynews.com



ADAM LISBERG
CITY HALL
CONFIDENTIAL

Granted, white challengers also have a hard time ousting white incumbents, which is why we have term limits in the first place. And Mastro has already lost a separate lawsuit to block the term limits law.

He may be on to something, though. Three of New York's representatives in Congress — Ed Towns and Gregory Meeks, who

WASHINGTON

Maryland Official for Civil Rights Post

President Obama will nominate Thomas E. Perez, head of the Maryland state labor agency, to be the federal government's chief enforcer of civil rights laws, the administration said. Mr. Perez, a federal prosecutor and Justice Department official under President Bill Clinton, was nominated to be assistant attorney general for civil rights, a position subject to Senate confirmation. The Justice Department division enforces the Voting Rights Act of 1965 and the Civil Rights Act of 1964. (BLOOMBERG NEWS)

THE NEW YORK TIMES **NATIONAL** SATURDAY, MARCH 14, 2009

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Budget cuts endangering city elections, board says

BY FRANK LOMBARDI
DAILY NEWS CITY HALL BUREAU

THE CITY'S Board of Elections has long been one of Mayor Bloomberg's favorite punching bags, but yesterday the punching bag struck back.

The mayor "has put our democracy in peril" by imposing deep budget cuts on the board, said Marcus Cederqvist, the board's executive director, testifying at City Council budget hearing.

Cederqvist said past cuts have caused a deficit of as much as \$13.9 million in the current fiscal year, which ends June 30.

And proposed cuts by the mayor for the new budget would slash another \$28.1 million, he said.

The cuts come during the two most demanding election periods — last year's presidential elections and this year's mu-

nicipal elections — when all city offices will be on the ballot.

The budget cuts also come as the board is preparing to switch to new electronic voting machines for this year's elections — although Cederqvist acknowledged that developments on the state and federal court levels could postpone that switch for another year.

The mayor's proposed cuts for the new budget would not leave enough money to run all the elections expected this year, including possible runoff elections, Cederqvist said.

Board attorney Steve Richman said "voting rights will be severely compromised," and warned the board might have to sue the city to obtain enough funding to do its job.

"It's out of our hands," Cederqvist said about whether new machines will be required this year.

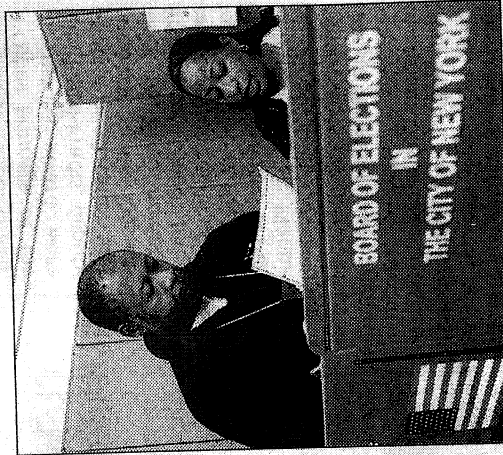
The state is under a federal court mandate to make the switch this year, but the State Board of Elections has encountered yet more delays in certifying the types of machines that can be used.

Cederqvist said the city will need a minimum of six months after certification to acquire new machines, train workers and educate voters before the equipment can be used in an election.

In the past, Bloomberg has denounced the politically appointed board as a "terribly run organization."

Faced with budget gaps, the mayor has imposed hefty cuts on all city agencies. Several Council members sided with the board in its fight with the mayor.

Leroy Comrie (D-Queens) said the mayor and his administration "like to take cheap shots at this agency every chance they get." flombardi@nydailynews.com



Board of Elections technician James Parks (l.) at work. Photo by James Monroe Adams IV

The New York Times

JULY 17

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March 12, 2009

Voting Rights Elude Some Florida Ex-Felons, Study Says

By **GARY FINEOUT**

TALLAHASSEE, Fla.— Florida's procedures for restoring voting rights to convicted felons are so cumbersome, bureaucratic and confusing that some ex-convicts are being denied their rights, according to a report by the [American Civil Liberties Union](#) of Florida.

Most election officials throughout the state are unsure about who can win back their voting rights, the report found.

Florida is among a handful of states that do not permit automatic restoration of rights once someone has been released from prison. In 2007, Gov. [Charlie Crist](#) pushed through new procedures to speed up the process for most felons seeking voting rights. The new process does not apply to murderers and sex offenders.

More than 138,000 people had their rights restored between April 2007 and March 2009, but the A.C.L.U. said it was concerned that thousands of additional voters might not know what to do because of widespread confusion over the new eligibility rules.

The group got conflicting answers when it surveyed the offices of all 67 election supervisors in the state. Employees in six county elections offices, for example, told callers, wrongly, that someone convicted of a misdemeanor was ineligible to vote. The survey also showed that nearly half incorrectly asserted that felons needed to produce paperwork showing they had their rights restored in order to register.

"It's very hard for anyone to know what's going on," said Muslima Lewis, a senior lawyer for the A.C.L.U. of Florida, who wrote the report. "The rules are convoluted and hard to understand."

Taiwan Daniels, 28, who lives in Broward County, lost his rights after he was convicted on a cocaine charge when he was 16. He spent a year trying to get his rights restored before he succeeded in October, and called the process more "discouraging than encouraging."

The A.C.L.U. is calling on Florida to automatically restore voting rights to hundreds of thousands of former prisoners in the state. The report also recommends waiving a requirement that a convicted felon first pay off court-ordered restitution.

Mr. Crist said Wednesday that "more can be done" to improve the process. But he said Florida was "on the right path."

"I think we have done more in the past two years to restore the rights of former felons than we have done in

the rest of the history of Florida," Mr. Crist said.

Florida's effort to keep felons from voting has been a flashpoint in recent years. Thousands were purged from the state's voting rolls before the 2000 presidential election, even though there were questions about the accuracy of the list of ineligible voters.

The state scrapped plans for another purge in 2004 after newspapers pointed out flaws with the list, including that the list had virtually no Hispanics on it.

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OpEdNews

Original Content at <http://www.opednews.com/articles/Obama-s-Omnibus-Appropriat-by-Rady-Ananda-090311-910.html>

March 11, 2009

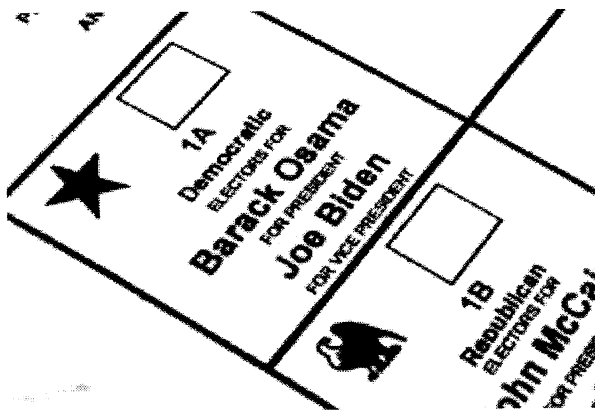
Obama's Omnibus Appropriations Act May Save Lever Voting System

By Rady Ananda

Analysis from Co-Chair of the New York State Board of Elections on the effect of HR 1105 as pertains to election technology is reproduced in full below. Douglas Kellner suggests that the Act, which extends the deadline for states to use federal funds to modernize voting systems, can also be read to extend New York's timeline as ordered by Judge Sharpe in the Dept of Justice lawsuit against New York.

By the tone of the release, New York fully intends to exchange its reliable lever voting system with expensive, fragile, and non-securable computerized voting systems. All those in favor of a publicly observable voting system that counts all ballots mechanically will be forced to ramp their efforts to save the lever. But they have a little more breathing room, now. The September 2009 deadline may extend to November 2010.

This NY ballot from last November shows one of the myriad ways to defraud a paper system - subliminally in this example:



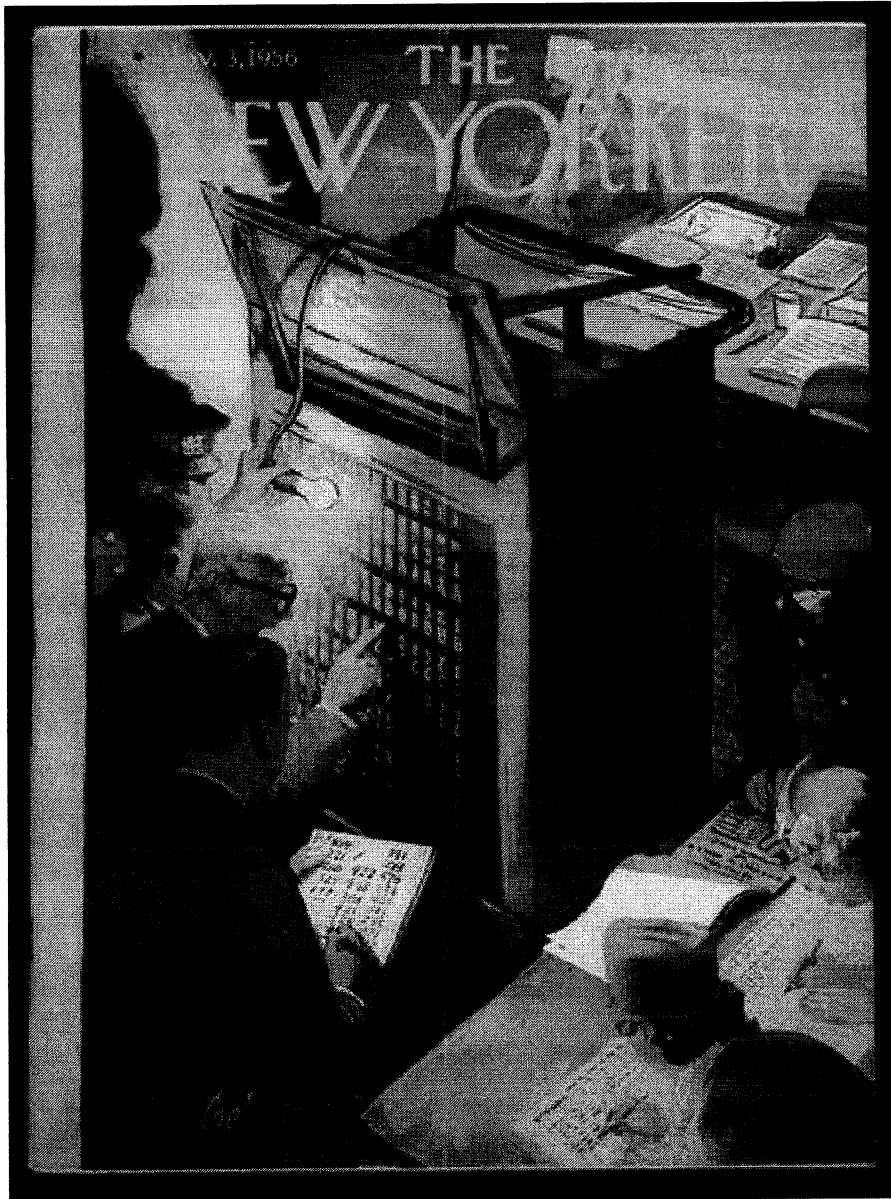
Rensselaer Co. NY absentee ballot (Michael P Farrell, TimesUnion.com)

Another issue with paper is ballot box stuffing - notorious throughout paper ballot history. Lyndon B. Johnson's 1948 Senate race in Texas is the most notable. (See *Ballot Box 13* by Mary Kahl.) We exclusively uncovered a ballot-stuffing slot built right into the \$12,000 Sequoia/Dominion Ballot Marking Device. (See 2-

minute video.)

The machines - built for New York and untried anywhere else in the world - also have internet access ports despite NY law banning internet access capability. This BMD optical scanner can easily be hybridized into a touch screen voting system, as well, which Florida activists questioned when the machine was initially marketed in Florida.

For an historical overview of the century-old paper vs. lever battle, see Machining the Vote by technology-and-society professor, Brian Pfaffenberger.



1956 New Yorker cover (Arthur Getz), collecting vote totals from a lever machine

Statement from Douglas Kellner, Co-Chair

NY SBOE:

Earlier today President Obama signed into law the Omnibus Appropriations Act of 2009. (HR 1105).

Section 625 of the law amended the Help America Vote § 102(a) (3)(B) to extend the deadline for using federal funds to replace lever voting systems to the first federal election held after November 1, 2010.

This means that the State Board of Elections should now be in a position to release to the counties their shares of the \$50 million of Title I HAVA funds appropriated specifically for the replacement of lever voting systems. (This will require formal action on the part of the state commissioners.)

Although this is very welcome news, the law does not change the substantive provisions of HAVA section 301, 42 USC § 15481, which continues to have an effective date of January 1, 2006, and which some argue forms part of the basis for Judge Sharpe's order that New York replace the lever machines for the September 2009 primary.

I would hope, however, that Congress's recognition of the obstacles to certification of voting systems to replace the lever machines would have a significant influence on the US Department of Justice and Judge Sharpe to modify the court's order. (emphasis added)

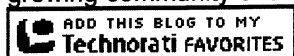
We owe special thanks to Congressman José Serrano, Chairman of the House Appropriations Subcommittee on Financial Services and General Government, for shepherding this extension through the legislative process, and to Governor Paterson's Washington Office, and, of course, we thank all of the members of our Congressional delegation for their support.

Douglas A. Kellner
Co-Chair
New York State Board of Elections

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To take action, see [Save Our Levers](#).

Author's Bio: OpEdNews Senior Editor. In 2004, Rady Ananda joined the growing community of citizen journalists.



Initially focused on elections, she investigated the 2004 Ohio election, organizing, training and leading several forays into counties to photograph the 2004 ballots. She officially served at three recounts, including the 2004 recount. She also organized and led the team that audited Franklin County Ohio's 2006 election, proving the number of voter signatures did not match official results. Her work appears in three books.

Her blogs also address religious, gender, sexual and racial equality, as well as environmental issues; and are sprinkled with book and film reviews on various topics. She spent most of her working life as a researcher or investigator for private lawyers, and five years as an editor.

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"In a time of universal deceit, telling the truth is a revolutionary act." Tell the truth anyway.

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March 11, 2009

Hurdles to Voting Persisted in 2008

By **IAN URBINA**

WASHINGTON — Four million to five million voters did not cast a ballot in the 2008 presidential election because they encountered registration problems or failed to receive absentee ballots, which is roughly the same number of voters who encountered such problems in the 2000 election, according to an academic study to be presented to the Senate Rules Committee on Wednesday.

An additional two million to four million registered voters — or 1 percent to 2 percent of the eligible electorate — were “discouraged” from voting due to administrative hassles, like long lines and voter identification requirements, the study found.

The study, which draws from a survey of about 33,000 eligible voters, was conducted in October and November 2008 by the Cooperative Congressional Election Survey, a consortium of more than 150 university researchers, led by the Massachusetts Institute of Technology, who specialize in voting issues.

The study found that the most common registration problems involved clerical errors, like entering voter information incorrectly in statewide databases, or voters who changed their address but failed to inform election officials. At least 4 percent of eligible voters surveyed said they requested absentee ballots but failed to receive them.

“It’s clear that the high turnout on Nov. 4 of last year simply masked persistent problems that still need to be fixed,” said Senator Charles E. Schumer, Democrat of New York and the Rules Committee chairman. “Had the election been close, these problems would have received a lot more attention because they could have made the difference in which candidate won.”

Mr. Schumer added that the number of people prevented from voting in 2008 exceeded the popular-vote margin in the previous two presidential elections.

In the last eight years there have been tremendous improvements in the voting process, the study said. In 2000, residual votes — which refers to the difference between total votes cast and total votes for a given office, and a commonly used measure of voting technology problems — averaged 2 percent. In 2008, after phasing out punch-card ballots and lever machines, residual votes averaged less than 1 percent, which means that roughly 1.5 million voters were allowed to have votes counted.

Little has been done, however, to remove barriers to registration and absentee voting.

“Registration issues were for 2008 what machine problems were for the 2000 election,” said Stephen Ansolabehere, a political science professor at Harvard and the study’s lead author.

State and local election officials have had a difficult time keeping voter registration lists current as voters move, change names or become inactive. Updating voter profiles in these lists is estimated to cost about a third of local election offices' budgets, the report said. Verifying the authenticity of voter registrations by checking the information with other databases is also a burden and has led to people being removed incorrectly.

The study also found that as the popularity of absentee voting had increased, so too had the challenges voters faced in getting those ballots, most often because the requested ballot arrived too late, or the information on the ballot request did not correspond to information in the voter rolls.

In a separate report also being released Wednesday, Jonah Goldman, director of the National Campaign for Fair Elections of the Lawyers' Committee for Civil Rights Under Law, said that his organization's "election protection" hot line handled more than 240,000 calls from voters during the 2008 election cycle. More than one-third of all the problem calls stemmed from voter registration issues, by far the largest single source of difficulty, Mr. Goldman said.

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The New York Times

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March 11, 2009

EDITORIAL

Narrowing the Voting Rights Act

The Supreme Court narrowed the scope of the Voting Rights Act this week when it ruled that it does not require states to create so-called crossover districts. The regrettable 5-to-4 ruling overturns two of the act's central goals: protecting minority voting rights and moving the nation toward a more colorblind future.

In crossover districts, minorities are not a majority, but they have enough voting power that they stand a good chance of electing a candidate of their choosing.

When North Carolina redrew its district lines in 2003, it created a district with a roughly 39 percent black voting-age population. In doing so, the line-drawers divided a county into two districts, something the state constitution prohibited. But the state argued that the Voting Rights Act required it to create the district, in which minorities would be a large part of the electorate though not a majority.

The county sued, arguing that the Voting Rights Act does not require the creation of districts in which minorities are less than 50 percent of the voting-age population. Justice Anthony Kennedy, who wrote the opinion that controlled the outcome, stated that the act is concerned only with creating districts in which minorities are a majority.

Justice David Souter, in dissent, had the better argument. He noted that in practice crossover districts that are about 39 percent black have a reasonable chance of electing minorities, which makes the districts an effective method of increasing minority representation.

He also pointed out that if the act does not require the creation of crossover districts, it will encourage states instead to pack minorities into majority-minority districts. Discouraging the sort of districts in which blacks must join together with whites will polarize voting along racial lines.

As Justice Ruth Bader Ginsburg noted in dissent, the decision "returns the ball to Congress' court." Congress should amend the Voting Rights Act to make clear that it also wants to create districts in which minorities are less than a majority but exert significant influence.

The ruling is a curtain raiser for a more important Voting Rights Act case. Later this year, the court is expected to decide whether another part of the act, Section 5, is constitutional. Section 5, which requires states to "preclear" new voting rules that could hurt minorities, is a critically important law. We hope that Justice Kennedy's respectful tone toward the act and its goals indicates that Section 5 will be upheld by a strong majority.

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The New York Times

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MARCH 10, 2009, 7:15 AM

A Love Affair With Lever Voting Machines

By JENNIFER 8. LEE

Michael Appleton for The New York Times Three counties have passed resolutions in support of keeping the lever voting machines in New York State, despite federal and state legislation that require upgrades.

Updated , 2:55 p.m. | As skepticism grows over computerized voting systems nationwide, a growing push is emerging in New York State to keep the once-disdained lever voting machines around. The proponents argue that given the financial crisis, now is not the time to be spending millions of dollars on upgrading decades-old machines that are actually more reliable than the new systems out there.

Alejandra Laviada
for The New York Times

Lever voting machines may look obsolete, but they are actually very reliable, their proponents say. They prefer the clunky old relics, thank you (despite the occasional jam).

In the last several weeks, four counties — Dutchess, Ulster and Columbia, Schuyler — and the Association of Towns have passed resolutions urging the New York State government to enact laws allowing the lever machines to stay. In addition, the city's Board of Elections held a hearing last week to hear lever supporters make their case for keeping the machines in New York.

"We're where lever machines were born, and if I have my way, it's not where they are going to die," said Andrea Novick, founder of the Election Transparency Coalition, who has been litigating on this issue.

The push comes now in large part because accessible machines for impaired voters were installed at each poll site for the 2008 election. Lever proponents argue that these new machines bring New York into compliance with the federal voting reform legislation, passed after the 2000 recount debacle, which is called the Help America Vote Act of 2002. The machines, despite their aged technology and flaws, are more transparent and reliable than the so-called black box systems, their proponents argue. (Others have a different opinion.) Lever machines work by incrementing counters in the back each time a voter pulls the lever. At the end of the day, the machines are opened in public and the counts are tallied, though some people criticize this as being opaque and lacking a paper trail).

New York has long been a laggard in complying with voting reform, to the point that the Department of Justice took legal action against the state in 2006 because it was further behind "than any other state in the country."

Now, given all the problems that have emerged in other states, local election officials are publicly relieved that they have not wasted tens of millions of dollars in installing systems that just had to be uninstalled. However, New York's Election Reform and Modernization Act of 2005 (which is more strict than the federal legislation) would seem to ban lever

voting machines because they do not create a paper audit trail (as opposed to the entire voting site having an audit trail).

But New York has taken a somewhat passive-aggressive stance on upgrading the machines. By delaying, they keep the lever machines around. For example, it is too late to install anything new for the 2009 elections. “The transition to a new voting system at this point in the voting cycle jeopardizes the election itself,” said Gregory Somas, a commissioner of the Board of Elections in New York City.

Proponents of the lever machines — and there are many — say they should not be underestimated. Despite being described as obsolete, the century-old technology may be equal and perhaps superior to today’s best voting systems, argues Bryan Pfaffenberger, a professor at the University of Virginia, who is currently writing a book on the history of lever machines. “I really think its an astonishing achievement,” he said. They have 28,000 moving parts and can be adapted to the myriad sorts of American elections (including, for example, picking multiple candidates for a school board). “They were designed so they could operate under punishing conditions and operate reliably,” he said, “and that they could be serviced by technicians of modest background.”

Of course, since they are so old, they often break down, and it is difficult to find new parts.

The lever machines were invented in 1888 in Britain and were used in New York City by 1892. They became widely adopted across the entire city by 1926 because they were seen as more resistant to tampering — a tremendous problem during 19th-century elections. The current outcry for a paper trail is a marked shift from when paper was seen vulnerable to human-perpetrated fraud. “There were so many meltdowns in the elections in the 1890s,” Professor Pfaffenberger said. “We started the 20th century with people preferring a machine that didn’t have a paper trail.”

“So many people are calling today for the paper ballot,” he said. “As a historian, when I hear that, I sort of cringe. It was because we were having so many problems with paper ballots that we moved to the lever in the first place. Although lever machines do not produce an independent audit trail, this is — as software engineers say — a feature, not a bug.”

Others also criticize the fixation on paper records. “Everyone is really hung up on the audit trail,” Ms. Novick said. “Counting paper after an election has never been allowed in New York State. For over 200 years, you cast it, you count it, you complete it on election night. That is a good system. That makes sense.”

New York, which was the cradle of the lever machine, has had a long relationship, even “love affair” with the voting apparatus, Professor Pfaffenberger said: “It’s quite long and deep.”

However, that affection did not run as deep in the rest of the country. By 1960, about 60 percent of the voters in the United States cast their ballots on the machines. (Problems in the 1960 presidential election in Chicago were largely limited to places that used paper ballots and not lever machines, Professor Pfaffenberger noted.)

But then punch cards systems came along at a fraction of the price — \$100 versus \$2,000 or \$3,000 — and pushed out lever machines. The leading manufacturer, Automatic

Voting Corporation, went bankrupt in 1983. But the vulnerabilities of punch cards were revealed in Florida during the 2000 election with butterfly ballots and hanging chads. "That was really a disaster," Professor Pfaffenberger said.

The beauty of the lever machines, despite their jams, is that the voters' choices are largely unambiguous. People cannot overvote (a problem with optical scan machines), and the machines do not vote-flip (a problem with touch screens).

"The lever won out and won out for a reason, because it is really transparent and deters theft," Ms. Novick said.

Professor Pfaffenberger echoed, "During the great reign of the lever, it really performed as advertised."

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March 10, 2009

Justices, 5-4, Set Limit on Sweep of Voting Law

By **ADAM LIPTAK**

WASHINGTON — Only election districts in which minorities make up at least half of the voting-age population are entitled to the protections of a part of the Voting Rights Act that seeks to ensure and preserve minority voting power, the Supreme Court ruled on Monday.

Officials in North Carolina had argued that the act required them to help maintain black influence at the voting booth by creating a district that included about 39 percent of the black voting-age population. The theory was that the law protected black voters who joined with white "crossover voters" to elect a candidate of the black voters' choice. The court rejected that argument by a 5-to-4 vote.

Congress did not specify what percentage of minority voters in a district would call for the protections of Section 2 of the Voting Rights Act of 1965 when it later prohibited what courts have termed "vote dilution." And the Supreme Court until now had avoided picking a number.

The district at issue in the case, which the North Carolina General Assembly created in 2003, was the consequence of an effort to preserve minority voting power notwithstanding changing demographics and legal concerns about the district's shape. North Carolina officials settled on combining parts of two counties to create a relatively compact district that they said maintained "an adequate representation of black voters," which was, in their view, 39 percent.

In rejecting the district, the Supreme Court effectively reduced the number of voting districts in which the Voting Rights Act will mandate that minorities play a dominant role. The bright-line 50 percent rule also makes litigation over the legality of particular districts less likely.

"The decision turns 50 percent into a magic number," said Richard L. Hasen, who teaches election law at Loyola Law School in Los Angeles.

Richard H. Pildes, a law professor at New York University whose work the justices cited many times in the decision Monday, said that current events, including the fact that both major political parties are led by African-Americans, had complicated the legal landscape, creating "tremendous pressure on a statute that was primarily structured for an earlier era in which blacks were completely excluded from office."

The decision resolved a question the court had left open in earlier decisions, and it touched off a sharp debate among the justices about how best to protect minority voting rights without cementing racially polarized voting.

In dissent, Justice David H. Souter — writing for himself and Justices Stephen G. Breyer, Ruth Bader

Ginsburg and John Paul Stevens — said the upshot of the decision would be more racial polarization. It will require states “to pack black voters” into districts in which minorities make up the majority, Justice Souter said, “contracting the number of districts where racial minorities are having success in transcending racial divisions.”

Nonetheless, some legal experts said the impact of the decision might be relatively minor. “How many districts will not be drawn as a result of this decision?” asked Nathaniel Persily, a law professor at Columbia. “The answer is very few.”

Whatever its practical impact, the decision contained important hints about how the justices will approach the term’s more significant Voting Rights Act case: one that concerns Section 5 of the act, which requires jurisdictions with a history of racial discrimination to obtain the federal government’s permission before changing voting procedures.

Justice Anthony M. Kennedy, who wrote the controlling opinion on Monday and will almost certainly be in the majority in the next case, signaled that he was alert to the legacy of racial discrimination and in favor of only incremental steps in cutting back on the sweep of voting rights protections.

“Racial discrimination and racially polarized voting are not ancient history,” Justice Kennedy said. But the goal of the Voting Rights Act, he continued, was to “hasten the waning of racism in American politics” rather than to “entrench racial differences.”

In all, said Heather Gerken, a law professor at Yale, Justice Kennedy’s statements “bode well for the constitutionality of the Voting Rights Act” in the case to be argued in April, *Northwest Austin Municipal Utility District v. Holder*, No. 08-322.

The district at issue in Monday’s decision, *Bartlett v. Strickland*, No. 07-689, violated the North Carolina Constitution, which forbids dividing counties when drawing legislative districts. County officials sued, and state officials defended the boundaries by saying the district was required by the Voting Rights Act. The State Supreme Court ruled that only districts in which minorities made up 50 percent of voters were covered by the provision in Section 2 of the act, which protects minority voting power.

Before the 2000 census, the predecessor to the disputed district had a black voting-age population of about 56 percent. After the census, the population fell below 50 percent, and concerns were raised about the shape of the old district.

State officials decided to violate the State Constitution in order to comply with their understanding of the Voting Rights Act, which they contended would be satisfied with a relatively compact district that included parts of two counties and a black voting-age population of 39 percent.

The act itself does not answer the question of what percentage of potential minority voters is required. It requires courts to look at “the totality of the circumstances” to decide whether some groups “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”

But the Supreme Court suggested in 1986 that there may be a 50 percent threshold, and on Monday it made

that suggestion into what Justice Kennedy called “an objective, numerical test” that “draws clean lines for courts and legislatures alike.

“Nothing in Section 2 grants special protection to a minority group’s right to form political coalitions,” said Justice Kennedy, who was joined by Chief Justice [John G. Roberts Jr.](#) and Justice [Samuel A. Alito Jr.](#) “There is a difference between a racial minority group’s ‘own choice’ and the choice made by a coalition.”

Justice Souter presented data to support his point that the 50 percent line was arbitrary and counterproductive. In 2004, he wrote, seven of nine [North Carolina State](#) House districts in which blacks made up the majority of the voting age population had elected black representatives. But so did 11 of 12 additional districts in which the voting age population was at least 39 percent black.

Justice [Clarence Thomas](#), joined by Justice [Antonin Scalia](#), voted with the majority but did not adopt Justice Kennedy’s reasoning.

Justice Thomas said Section 2 of the Voting Rights Act did not protect even districts in which minority voters represented a clear majority. So-called vote-dilution claims, he wrote, quoting his own earlier opinion, have produced “a disastrous misadventure in judicial policy making.”

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Furor over bogus ballots

By BRENDAN SCOTT

Post Correspondent

ALBANY — Staten Island and The Bronx were among six counties slammed by state Comptroller Thomas DiNapoli (right) yesterday for accepting bogus absentee ballots — including some from voters not registered in the county.

The comptroller said a random audit of absentee ballots cast in 2005 and 2006 elections found that

local election boards routinely counted questionable ballots while the state failed to catch the problems.

Of some 350 ballots reviewed across seven counties — Albany, Dutchess, Rensselaer, Richmond, Seneca, Westchester and Bronx — DiNapoli found 27, or 8 percent, didn't pass muster.

Election officials in Richmond County, or Staten Island, counted at least three absentee ballots cast by voters who were not registered

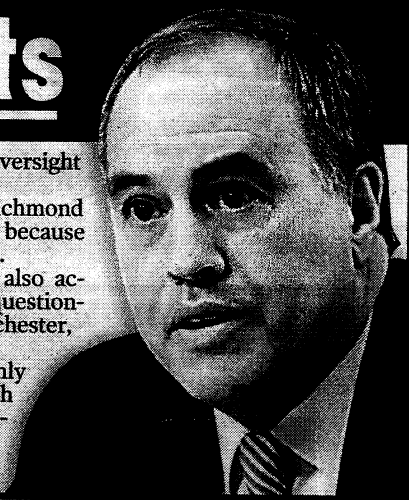
in the county, the worst oversight caught by DiNapoli.

Another five in Richmond should have been tossed because of incomplete applications.

Bronx election officials also accepted six ballots with questionable paperwork. In Westchester, one was accepted.

Dutchess was the only county surveyed in which auditors found no problems.

brendan.scott@nypost.com



New York Post, Saturday, March 7, 2009

TIMES UNION ■ Albany, New York

Sunday, March 8, 2009 ***

Audit reveals absentee ballot lapses

Comptroller discovers improperly filled out applications, oddities, in Albany, Rensselaer counties

By RICK KARLIN

Capitol bureau

ALBANY — Incomplete absentee ballot applications were accepted and used in Rensselaer and Albany counties, and in at least one instance a ballot was never delivered in a county nursing home, according to an audit by state Comptroller Tom DiNapoli.

The audit, released Friday, focused largely on what DiNapoli termed a lack of adequate oversight by the state Board of Elections, but it also detailed numerous glitches in during the 2006 elections.

"Every voter should get a fair shot to cast their vote. At the same time the state board must protect the integrity of the process," DiNapoli concluded.

State Board of Elections officials accepted the findings, according to the report, but local

officials in Albany and Rensselaer questioned whether auditors were nitpicking the way complicated absentee forms are filled out.

"Some of it, we thought, was nickel-and-dime stuff," said Albany County Democratic Election Commissioner Matt Clyne. Many of the findings, he said, centered on omissions such as departure and return dates that are supposed to be entered on absentee applications.

Republican Commissioner John Graziano recalled one instance years ago in which commissioners even concluded that former Congressman Michael McNulty had filled out an incomplete application since it noted that he couldn't be home since he had to be casting votes in Washington. That application also lacked the departure and return date. (Since ballots don't contain voter names, it's impossible to say whose it was, but the presumption was it was McNulty's).

"I think the feeling in most counties is if they are going to err, they are going to err

on the side of letting the person vote," added Clyne.

"There are many required fields a person has to fill out" on absentee ballot applications, said Rensselaer County Democratic Election Commissioner Edward McDonough. "Something as simple as that could be what they are referring to."

DiNapoli's audit, which looked at seven counties, uncovered some odd occurrences — such as the nine absentee ballots that went to an unnamed nursing home in Albany County. Eight went to people who lived there, but a ninth was for a doctor who never got it. Regulations say election workers are supposed to take pains to make sure people get their ballots and that they are used.

"When absentee voting procedures are not followed, the integrity of the process has increased risk," concluded the report.

Graziano and Clyne both noted that they have streamlined their absentee ballot systems since 2006.

Pick a Ballot, Any Ballot: Votes Counted in S.I. Race

By C.J. HUGHES

The recount on Staten Island will not determine who lives in the White House, and it lacks a celebrity like the former comedian Al Franken, who is locked into a seemingly endless Senate race with Norm Coleman in Minnesota.

Still, that does not mean the people who are trying to figure who won a February election for the 49th City Council District, on the northern shore of the island, take their task any less seriously.

Dozens of election officials, campaign workers and lawyers sifted through more than 10,000 ballots Wednesday to Saturday in a fourth-floor conference room in Clifton. Both doors to the room have two deadbolts, and only keys from a Democratic official and a Republican official can open them.

When the unofficial results were completed last month, Ken Mitchell, a Democrat, defeated

**How do you match up
262 voters with 263
votes? Subtraction.**

four other candidates in the Feb. 24 contest to succeed Michael E. McMahon, a Democrat who won a Congressional race in November.

The Council election was non-partisan and the candidates, three Democrats and two independents, ran without party affiliations on the ballot.

But there was no resting on laurels on Friday, when the recount was about half-completed, among members of Mr. Mitchell's camp, who, with their laptops in front of them, kept close tabs on the tallies.

Near them was an even larger contingent that represented Debi Rose, another Democrat, who had trailed Mr. Mitchell in the unofficial results. Sitting in folding metal chairs, the Rose supporters leaned forward to try to see each ballot as the election officials held them up.

"Rose. Rose. Rose. Baker. Rose," said Anthony Andriulli, a counter at one table, as he read off the votes from a Port Richmond district. (The Rev. Tony Baker was another candidate.) Taken together, the names announced by Mr. Andriulli, who wore a red plastic sleeve on his left index finger to get a tighter grip on pages, seemed to suggest a cryptic mantra.

Though a hushed, by-the-books exactitude permeated the room, the procedure occasionally bordered on the silly, though it never seemed to stray from the vagaries of state election laws.

At the room's other table, for instance, the counters realized that although 262 people had signed in at a polling place in the Westerleigh neighborhood, it had somehow generated 263 ballots.

The solution, according to Article 9, Section 108? Resolve the situation as one might in poker, when a misdeal leaves a player with too many cards: Remove a random ballot to make the numbers match.

And so, after turning her head

away so as not to look at the ballots, Nicole Traficenti, an election worker, plunged her arm deep into a plastic bin, rummaged around and removed one of them.

Steven H. Richman, a lawyer for the City Board of Elections, then sealed the extra ballot in a manila envelope and tucked it away.

"We need to preserve them in case of court challenges, in case voters claim we deprived them of their vote," Mr. Richman said, as he paced through the fluorescent-lighted room.

When another question arose about what to do with a ballot that bore a scribbled name of a candidate next to its typed-out version, Mr. Richman said to disqualify it.

When the unofficial count was completed last month, Mr. Mitchell, who was Mr. McMahon's chief of staff, led Ms. Rose, an administrator at the College of Staten Island, by just 91 votes. But the closeness of the race did not prompt the recount. State law dictates that the result of every election can be confirmed only after removing panels on voting machines and inspecting the counters inside.

But machines were not allowed in the Staten Island election because of a court order handed down on Feb. 23 — the day before the election — to allow a fifth candidate, John Tabacco, to appear the ballot.

By that late date it was impossible to add Mr. Tabacco's name on the voting machines, so paper had to be substituted.

That day, a Rochester printing plant churned out 40,000 paper ballots and trucked them to Staten Island before polls opened at dawn on Feb. 24, Mr. Richman said.

Because a paper ballot takes about four times as long to manually inspect as ones in a machine do, the recount has been unusually lengthy, he added.

When the recount ended on Saturday afternoon, Mr. Mitchell had widened his lead, receiving 4,499 votes to 4,157 for Ms. Rose, out of 11,177 cast, according to Kevin Hunt, a spokesman for Mr. Mitchell. The Board of Elections will not certify a victor until at least March 17.

Some workers and officials said they had been eager to wrap up the process by Saturday to meet a different civic duty — attending Staten Island's St. Patrick's Day Parade on Sunday.

Community
FYI

THE NEW YORK TIMES NEW YORK SUNDAY, MARCH 8, 2009

Community
F42

Mitchell and Rose neck and neck as vote count nears end

Absentee and affidavit
ballots to be tallied today;
Board of Elections to
report results Wednesday

By **TOM WROBLESKI**
ADVANCE POLITICAL EDITOR

With only absentee and affidavit ballots remaining to be counted today in the North Shore City Council special election, the campaigns for Kenneth Mitchell and Debi Rose yesterday agreed that Mitchell was in the lead, but diverged on the margin of votes between the two.

According to Mitchell's campaign, Mitchell had 4,253 votes to Ms. Rose's 4,030 after Board of Elections (BOE) officials completed counting around 10,692 paper ballots cast in the Feb. 24 race.

That amounted to a spread of 223 votes between the two.

"That bears out the numbers we had on election night," said Mitchell. "We're confident going into [today]."

But Ms. Rose's campaign put the numbers at 4,247 for Mitchell and 4,042 for Ms. Rose, a gap of 205 votes.

The campaigns — whose members have kept a running total of the vote throughout the multi-day ballot recount — could not explain the discrepancy between the two figures.

The BOE will not issue preliminary tallies in the race until Wednesday, when it will report the results to state Supreme Court Justice Anthony Giacobbe.

Officials today will count around 393 absentee and about 70 affidavit ballots cast in the race.

"We are looking forward to the absentee and affidavit ballots being counted," Ms. Rose said. "We'll do what-

ever we have to after that."

Mitchell said he believed that the absentee ballots will follow political rule-of-thumb and mirror the overall results in his favor.

"With a 200-vote lead, we're confident of victory [today]," he said.

But Ms. Rose's camp said that they would do better than expected among absentee voters.

Ms. Rose's team leveled charges of voter disenfranchisement yesterday when 12 ballots cast at PS 44 in Mariners Harbor were removed from consideration.

As has happened throughout the recount, the votes were taken out because the number of ballots in an election district was greater than the number of signatures in the voter book at the poll site.

Those at the recount said it appeared that voters placed their ballots in the wrong election-district box at the poll site.

Ms. Rose said the error showed that poll workers were not properly trained to deal with the all-paper election.

"Voters shouldn't be penalized because there wasn't a clear understanding of what the process was," she said.

But shortly after the votes were removed, Mitchell attorney Christopher Nalley said that if the final margin were so close that the votes would change the outcome, he'd agree to join Ms. Rose's lawyer in asking a judge to restore the ballots.

Around 51 votes have been removed due to overvotes or other reasons, according to unofficial tallies.

Tom Wroblewski may be reached at wroblewski@siadvance.com. Read his [polit.bureau blog](http://www.si-polit.bureau.blog) at <http://www.si-polit.bureau.blog> or <http://www.si-polit.bureau.blog>.

Community
R41

Mitchell opens 228-vote edge in recount

Still to be vetted are about 40% of paper ballots cast in N. Shore Council race

By TOM WRABLESKI
ADVANCE POLITICAL EDITOR

They're more than half-way home in the North Shore City Council recount.

After a 12-hour session yesterday at Staten Island Board of Elections (BOE) headquarters in Clifton, Kenneth Mitchell had 2,645 votes to Debi Rose's 2,417, according to unofficial results released by the campaigns.

Mitchell passed Ms. Rose in total votes as the recount moved into election districts where he did well on election night.

After two days of recounting, officials have tabulated around 6,229 of the estimated 10,624 paper ballots cast in the Feb. 24 special election.

Absentee and affidavit ballots have yet to be tallied. BOE officials said they expected to work into Saturday in order to complete the recount.

Early yesterday, 10 votes from the Cassidy Coles Senior Center, New Brighton, were invalidated by the BOE because voters there were given ballots that did not include the name of John Tabacco.

"I had no chance to receive any of those votes," said Tabacco, who was restored to the ballot the day before the election. "That's sloppy."

Ms. Rose lost five votes and Mitchell two. The Rev.

Dr. Tony Baker, Paul Saryian and Donald Pagano lost one each.

Leticia Remauro, the former Island GOP chair who is working for Ms. Rose, blamed poll workers for the miscue and said that the ballots may be revisited in court.

"Depending on how tight this race turns out, that's the type of stuff you can overturn an election on," she said.

Another six ballots were randomly tossed from the results yesterday in election districts where the number of ballots was greater than the number of signatures in voter books at the poll sites.

At least 23 votes have been invalidated or randomly tossed out during the recount.

"If the voter's intent was clear, I think it's a travesty," said Ms. Rose.

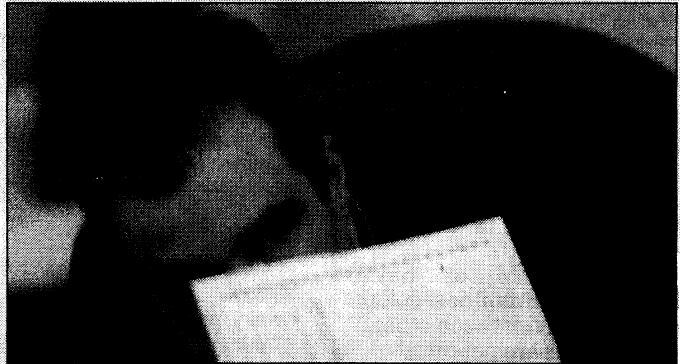
The Mitchell camp said that the numbers so far were in line with those seen on election night, when Mitchell claimed victory.

His margin over Ms. Rose was 91 votes before the recount began.

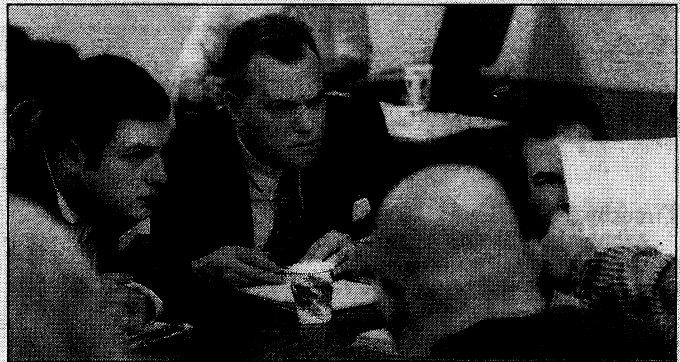
The recount will resume today at 10 a.m.

Under the terms of an order to show cause filed by candidates last week, the BOE is set to report the election results to state Supreme Court Justice Anthony Giacobbe next Wednesday.

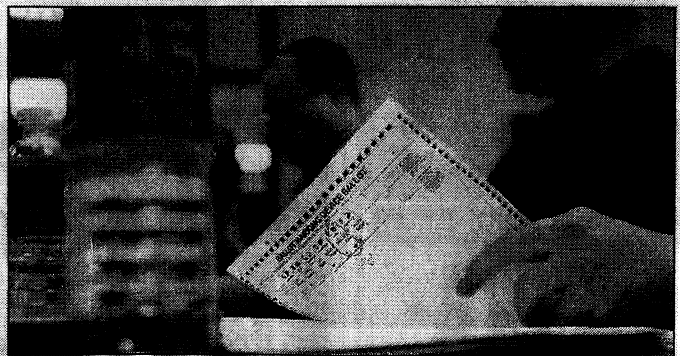
Tom Wroblewski may be reached at wroblewski@stadvance.com. Read his [polit.bureau blog](http://www.silive.com/newslogs/politics/) at <http://www.silive.com/newslogs/politics/>.



John Lavelle Jr. takes a close look at a contested ballot.

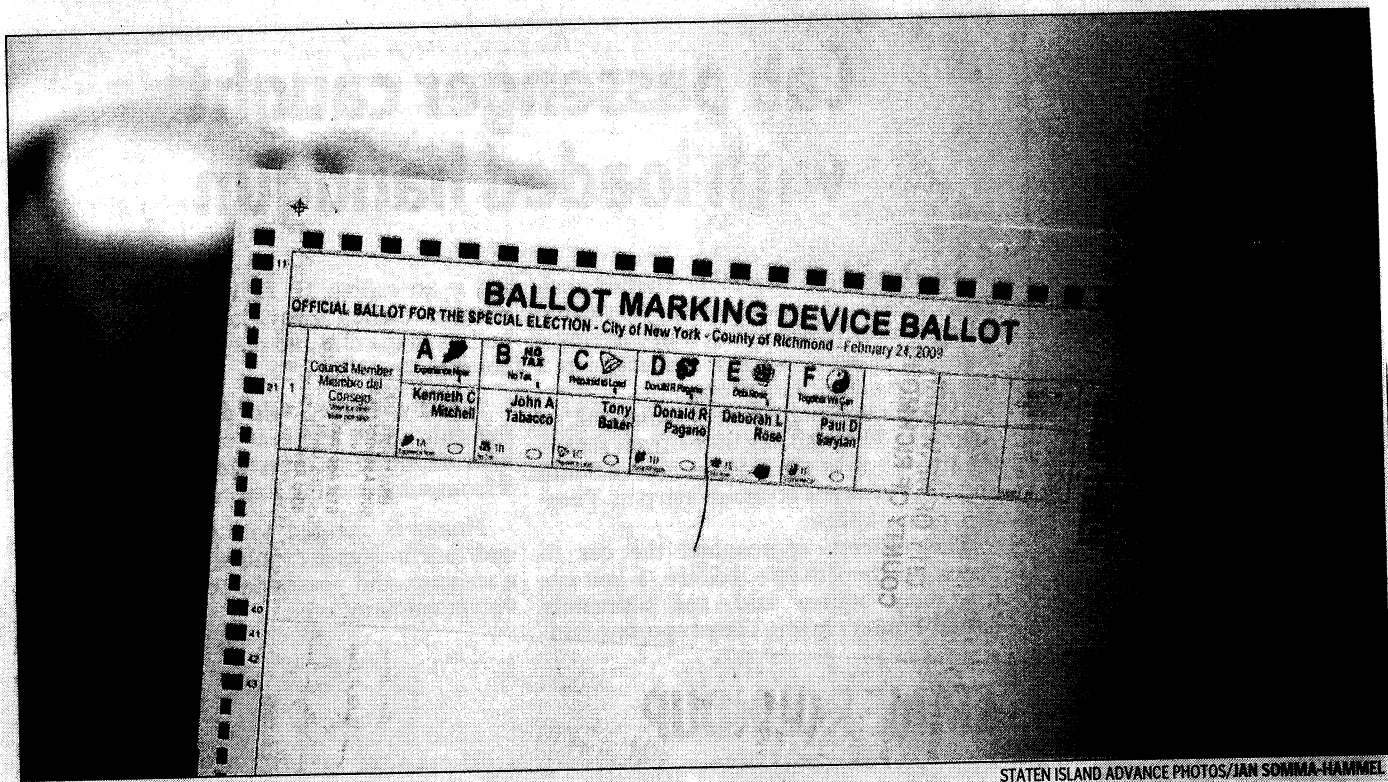


Frank Morano, Dan Bright and Lavelle Jr. focus on a disputed ballot.



Board of Elections workers consider a contested ballot due to the writing of the name.

LOCAL NEWS



STATEN ISLAND ADVANCE PHOTOS/IAN SOMMA-HAMMEL

Workers at the Board of Elections examine one of the ballots in the hotly contested race for the North Shore City Council seat. They were concerned about the stray line under Debi Rose's name.

FRIDAY, MARCH 6, 2009 STATEN ISLAND ADVANCE

Com mtg
Fy 1

Staten Island Advance

THURSDAY, MARCH 5, 2009

Paper ballot recount is painstaking process

BOE says winner in race for North Shore Council seat won't be known before March 17

By **TOM WRABLESKI**
ADVANCE POLITICAL EDITOR

The Board of Elections will likely work through the weekend in order to complete the recount in the tight North Shore City Council race.

During a nine-hour session at Staten Island BOE headquarters in Clifton yesterday, officials recounted about 2,100 of the more than 10,000 paper ballots cast in the Feb. 24 special election.

Yet to be counted are the

close to 500 absentee and affidavit ballots cast by voters.

Kenneth Mitchell emerged from election night with a lead over Debi Rose of about 91 votes.

According to unofficial totals released by the campaigns last night, Ms. Rose had 1,050 votes to Mitchell's 628 so far. Partial totals for the other four candidates in the race, who finished far behind in the election-night voting, also were tabulated.

The BOE did not release official preliminary numbers. The recount resumes today at 10 a.m.

The Rose and Mitchell camps said Ms. Rose's lead

SEE RACE, PAGE A 10



STATEN ISLAND ADVANCE/MICHAEL McWEENEY

Members of the Board of Elections recount the paper ballots from last week's special election for the hotly contested North Shore City Council seat.

LOCAL NEWS

RACE FROM PAGE A 1

Painstaking recount of paper ballots proceeds

was attributable to the fact that many districts favorable to her were counted yesterday because they are numerically first on the BOE's poll site list.

"It's too early to get a sense of where it's going," said Ms. Rose, who attended part of the recount yesterday, as did candidates John Tabacco, the Rev. Dr. Tony Baker and Donald Pagano. Mitchell and Paul Saryian did not attend.

"I had a good team down there," Mitchell said later. "I can count on them to represent my interests and the interests of those who voted for me."

Ms. Rose and Mitchell were represented by attorneys and supporters who watched as BOE officials painstakingly counted each individual ballot after removing them from sealed envelopes. Other candidates also had representatives witnessing the proceedings.



STATEN ISLAND ADVANCE/MICHAEL McWEENEY

Christopher Nalley, attorney for candidate Kenneth Mitchell, objects to a torn ballot.

It was the first Island election of this size in memory to be conducted entirely on paper, and that led to a glitch in a small number of election districts where the number of paper ballots was greater than the number of signatures of those who signed the voter books at the polls.

Following state election law procedures, BOE officials randomly removed a total of seven ballots from the pool in those election districts in order to make the numbers match.

There were no major disputes over ballots yesterday,

although candidates could launch court action once the recount is completed.

"The process is transparent and is proceeding smoothly," said Ms. Rose. "The Board of Elections seems prepared. I'm pleased with it. It went as fast as it could go. They knew what they were doing."

Officials plan to work until 9 p.m. today and tomorrow in order to get the recount done, but said they may have to work over the weekend as well.

City BOE general counsel Steven Richman, who helped oversee the recount, said March 17 was the earliest that the board could certify a winner in the race. That date could be pushed into the future if court action arises from the recount.

Tom Wroblewski may be reached at wroblewski@siadvance.com. Read his polit. bureau blog at <http://www.silive.com/newslogs/politics/>.



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Recount in Staten Island race could last through weekend

by **Staten Island Advance**
Wednesday March 04, 2009, 11:05 PM



Staten Island Advance/Michael McWeeney

The Board of Elections recounts paper ballots from last week's special election for the North Shore City Council seat.

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--- Contributed by Tom Wroblewski

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Posted by **betternyou** on 03/05/09 at 2:02AM

This is not a re-count, and I am not the first person to point this out. This is THE OFFICIAL count, the numbers the media used to jump and declare a winner were unofficial (as they should be because they were wrong). This is THE count period

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Posted by **tonyboy59** on 03/05/09 at 8:04AM

Best of luck to both Mitchell and Rose. Mitchell is the better candidate and I hope he gets it. Did anyone see McMahon sitting behind Obama during the State of Assembly? It was very exciting. Let's hope for a better day @ BOE.

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March 3, 2009 --

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A special election will be held in April to replace former Bronx Borough President Adolfo Carrion Jr., who has taken a job in the Obama administration, Mayor Bloomberg said yesterday.

Mayor Bloomberg said Monday that the election will be held on April 21. It will fill the vacancy created by the resignation of Adolfo Carrion, Jr.

The candidate who wins the Tuesday, April 21, election will serve the remainder of Carrion's term, through Dec. 31, the mayor said.

Carrion, who began his job as director of the White House Office of Urban Affairs yesterday, had served two terms as borough president.

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