

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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

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

AGENDA COMMISSIONERS MEETING TUESDAY, NOVEMBER 10, 2009 AT 1:30 P.M.

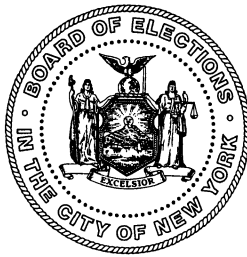
1. Minutes
 - a) 09/22/09
 - b) 10/13/09
 - c) 10/13/09 *Finance Committee*
 - d) 10/20/09
 - e) 10/20/09 *Finance Committee*
2. Marcus Cederqvist
 - a) HAVA Update
 - b) Preliminary Report on 2009 General Election
 - c) 42 Broadway, 11th Floor
3. John Ward
 - a) Vacancy Report
 - b) Comparative Expenditures
4. Executive Session
 - a) Litigation

For Your Information

- New York City Campaign Finance Board
- For Immediate Release: November 6, 2009 – Schumer Announces Election Assistance Commission Has Agreed to Translate Voter Registration Forms into Asian Languages Before Start of 2010 Primaries
- HAVA Weekly Status Report, Week Ending November 6, 2009
- New York Supreme Court – County of Bronx, Alan S. Chusid against Board of Elections in the City of New York – Index No. 252108/09
- Mandatory Overtime – Certification of General Election
- Friday, November 27, 2009
- Statement of Cost – Board of Elections – September 2009
- HAVA Weekly Status Report, Week Ending October 29, 2009
- Letter to Mr. Todd Valentine and Mr. Robert Brehm, Co-Executive Directors – NYS Board of Elections
- Matter of Walsh v Katz (2009 NY Slip Op 07774)
- Designation of Authority to Represent Board of Elections
- 2009 Clinton County Military Ballot Decision

News Items of Interest

- *The Chief-Leader*: Elections Board Tells Poll Workers to Bank on City Pay Pledge
- *Watertown Daily Times*: Electronic Voting
- *Watertown Daily Times*: Ballots still uncounted in 4 St. Lawrence Districts
- *Watertown Daily Times*: Glitches reported with voting machines
- *Watertown Daily Times*: Voters express mixed reviews of electronic voting machines
- *Watertown Daily Times*: Electioneering at polling sites cause hassle
- *The Post-Journal*: Mixed Reviews For New Voting Machines
- *The New York Post*: Runoff-election translators at a loss for words
- *City Hall News*: During Primary, Kevin Kim's Aggressive Tactics Irked Poll Coordinators
- *The New York Times*: Who's Who on Tuesday's Mayoral Ballot
- *City Hall News*: For Bloomberg's Lawyers, "Leveling The Playing Field" On Spending Was Not "Compelling"
- *The New York Post*: Pol stonewalls suit on WFP campaign
- *The Chief-Leader*: City: We'll Cover the Costs – Union Backs Election Bd. Claim it's Short on Funds
- *City Hall News*: Judge refuses to dismiss suit, setting next hearing for Nov. 16
- *The New York Times*: Trust, Antitrust and Your Vote
- *Army Times*: Congress moves to ease overseas voting



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: November 03, 2009
TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

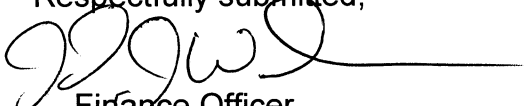
FY10	P.S. Projection through 10/30/09 Payroll:	\$ 6,389,000
FY10	P.S. Actual through 10/30/09 Payroll:	<u>\$10,644,321</u>
	Difference	(\$ 4,255,321)

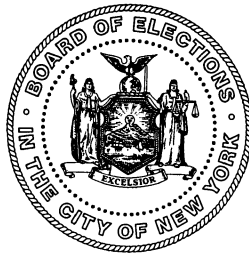
Overtime pays two weeks ending 10/16/09

OVERTIME USAGE

General Office	182,645
Brooklyn	175,634
Queens	117,539
Bronx	67,806
New York	133,254
Staten Island	<u>21,078</u>
Total	\$697,956

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

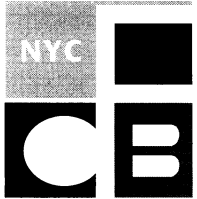
DATE: November 10, 2009
TO: Commissioners

FROM: John Ward
Finance Officer.

RE: Vacancies

					Inc.	New.
1	Assistant General Counsel					\$75,000
2	Valerie Marshall	Adm. Asst.	N.Y.	Dem.	\$39,440	\$37,562
3	Robert Helenius	VMT	Bklyn	Rep.	\$27,818	\$26,493
4	Lisa Sattie	Adm. Asst.	S.I.	Dem.	\$39,440	\$37,562
5	Angela Petit	Clerk.	Bklyn	Rep.	\$27,111	\$25,820

F.Y.I.



New York City Campaign Finance Board

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

Joseph P. Parkes, S. J. Chairman
Art Chang
Richard J. Davis
Katheryn C. Patterson
Mark S. Piazza
Members

Amy M. Loprest
Executive Director

Shauna Tarshis Denkensohn
Deputy Executive Director

Sue Ellen Dodell
General Counsel

November 5, 2009

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

Dear Mr. Cederqvist,

The New York City Charter requires the Board to evaluate the success of the Campaign Finance Act after each citywide election cycle. To achieve this mandate, the Board holds a series of public hearings, and will review written and oral testimony from these hearings, along with other data and information from the 2009 elections, as it considers the need for changes in its regulations and administration as well as recommendations for changes in local and state law.

Because of your continued interest in its work, the Board is interested in receiving your observations on how the Campaign Finance Program worked during this past election season. We also are interested in your comments on the Voter Guide and Debate Program. In particular, the Board is eager to hear your views on any of the issues on the attached list.

The New York City Campaign Finance Board has scheduled two days of public hearings to receive comments about the impact of its work on the 2009 citywide elections. The hearings will take place Tuesday, December 1, from 9:00 A.M. - 5:00 P.M. and Wednesday, December 2, from 9:00 A.M. to 1:00 P.M. at 40 Rector Street, 6th Floor, in Hearing Room E.

If you have any questions, or to schedule a time to testify, please be in contact with the Press Unit at (212) 306-5262. Thank you for your continued interest in the work of the CFB. I hope to see you on December 1 or 2.

Sincerely,

[Handwritten signature]

Amy M. Loprest

NYC CAMPAIGN FINANCE BOARD
Post-Election Hearings, December 1-2, 2009
Issues for Consideration

ADMINISTERING THE CAMPAIGN FINANCE PROGRAM

Limits on contributions and expenditures

- Are the contribution limits set at the appropriate levels?
- Are the spending limits set at the appropriate levels?
- What was the impact of removing most exemptions to the spending limits?
- What was the impact of prohibiting contributions from limited liability companies (LLCs) and partnerships?
- Should the prohibition be extended to all organizational contributions (i.e. unions and political action committees)?

Public matching funds

- What was the impact of increasing the matching rate to \$6-to-\$1 for contributions up to \$175?
- Is the two-part threshold to qualify for public matching funds too high or too low? Should it be changed?
- Are the caps on public matching funds set at the appropriate levels?
- The law was changed before the 2009 elections to require candidates who face low-spending opponents to provide the Board with proof of their need for additional public funds. Do you believe this change was effective in preventing outlays of public funds to so-called *sure winners*?
- Public funds payments to candidates who face low-spending opponents are capped at 25 percent of the maximum. Should the cap be lifted if and when the low-spending opponent receives a payment of public funds?
- Is there a better way to place limits on the amount of public funds that are paid to candidates who face only nominal opposition?

“Doing Business” contributions

- What were the impacts of the new limits on “doing business” contributions? Did the limits help to reduce the appearance of so-called “pay-to-play” corruption? Did the limits make a difference in candidates’ fundraising?
- Are the limits set at the appropriate level?
- Are the categories of business dealings the correct ones? Should the restrictions be expanded to cover new categories of people not covered by the law (i.e. “placement agents”), or does the law already cover too many people?

Independent expenditures

- Do the unique issues associated with third-party spending that arose during the 2009 elections require new legislation or regulation?
- Should the Campaign Finance Act require disclosure of independent expenditures made on behalf of candidates?
- CFB Rule 1-08(f) contains factors for determining whether an expenditure is independent. Are there additional, clearer factors that would provide better guidance in identifying so-called “coordinated expenditures?”

High-spending non-participants

- The law provides extra matching funds and increased spending caps for participating candidates who face high-spending non-participants. Are these bonus provisions sufficiently generous to help participating candidates compete?
- Would you suggest further changes to the Act to help participating candidates better compete with high-spending non-participants? Beyond granting additional public funds to participating candidates, are there ways to help make the playing field more level?

Communicating with campaigns

- During campaign season, communication between campaigns and the CFB is very important. For the 2009 election, the CFB tried to emphasize more communication via electronic means, through email, C-ACCESS, and other methods. Did this emphasis make any impact on the efficient flow of information between the CFB and campaigns?
- Was the guidance provided by the CFB to campaigns during election season clear, understandable, and consistent?
- In your view, what can be done to ease and improve the process of disclosing financial information to the CFB?

PROVIDING PUBLIC DISCLOSURE OF CAMPAIGN FINANCES

- The CFB makes much of the information it shares with the public and with candidates available on its Website. Can you think of any other information that should be available there?
- Do the CFB's searchable database of campaign finance information and other online resources provide an appropriate level of disclosure to the public? Do you have any suggestions to improve it?

ENFORCING THE CAMPAIGN FINANCE ACT

- During the period before the election, the CFB has a responsibility to ensure the law is applied consistently to all campaigns. In your opinion, did the CFB do a good job of enforcing the law and investigating potential violations during the pre-election period?
- The Board aims to provide the public with a transparent view of campaigns' activities, but also to protect the rights of candidates to respond privately to allegations of potential violations. Do you have any comments about the appropriate balance between these sometimes competing values?

Use of government resources

- The New York City Charter gives the CFB the responsibility to regulate mass mailings by elected officials in order to prevent the use of government resources for electioneering messages close to an election. What practicable standards should the Board use to distinguish between government-related messages and campaign-related messages?

EDUCATING VOTERS THROUGH THE VOTER GUIDE AND DEBATE PROGRAM

- Do you think the Voter Guide is an effective aid for voters? Do you have any recommendations to improve it?
- Do you believe the thresholds and criteria for participation in the debates were appropriate?
- Do you believe the debate formats provided a balanced discussion of important issues?
- Was the Debate Program outreach sufficient to ensure a broad range of voters were able to access the debates?
- Do you have any ideas to improve the citywide Debate Program for the next elections?

FOR IMMEDIATE RELEASE: November 6, 2009

SCHUMER ANNOUNCES ELECTION ASSISTANCE COMMISSION HAS AGREED TO TRANSLATE VOTER REGISTRATION FORMS INTO ASIAN LANGUAGES BEFORE START OF 2010 PRIMARIES

Comm
F47

In 2002, Help America Vote Act Changed Content in Voter Registration Forms Making Previously Translated Forms Useless

Asian Communities Across New York City Were At Risk Of Being Unable to Register to Vote

Schumer: Asian Communities in New York City and Across The Country Will Now be Provided the Same Access to Democracy As Everyone Else

Today, U.S. Senator Charles E. Schumer, Chairman of the Senate Committee on Rules and Administration, announced that the Election Assistance Commission (EAC) has agreed to finalize and release the translation of the Federal Mail-In Voter Registration Form into the Asian languages, as required by the Voting Rights Act, before the start of the 2010 primaries. With only months until the start of the 2010 federal primaries, Asian communities covered by the law will be afforded the same access to registering to vote as Spanish-speaking voters already have. Schumer fought to ensure that the federal form is available to all eligible voters in a readily understandable format. Schumer has been working with the EAC throughout the summer, and sent a letter in early October, calling on the EAC to complete the form in time for the 2010 primary elections.

“The Asian community is an integral part of New York City and must be afforded the same full access to democracy as everyone else,” Schumer said. “The fact that the EAC will now translate these important voter registration forms into various Asian languages means those unable to read English will be able to participate in our nation’s greatest tradition - voting. I am thrilled that the EAC heard my calls so the Asian community in New York, and across the nation, is justly represented.”

This will not be a new translation. The Federal Election Commission routinely translated the federal voter registration form into the required Spanish and Asian languages in the mid-1990’s. However, the Help America Vote Act in 2002 changed some content in the national voter registration form,

making prior translations of the form obsolete. The EAC released its Spanish-language translation of the form in January of 2006, and the Asian-language translations are long overdue.

Last year, the Senate Committee on Rules and Administration staff received a complaint from Asian-American advocacy organizations because the Asian-language form would not be ready for the 2008 election. The EAC's response, almost a year ago, indicated that the agency would work to research and translate the form. It is important for the EAC to work with the representatives of the affected communities, and there has been ample opportunity and time to do so since the creation of the EAC almost six years ago.

###

Selina Williams

From: Marcus Cederqvist
Sent: Friday, November 06, 2009 1:38 PM
To: *Commissioners
Cc: *ExecutiveManagement; *Managers; *Chief & Deputy Chief Clerks (all); *ExecSupportGroup; Gartner - Steve Monahan; Michael Kinara (external address)
Subject: FW: 11-6-09 Status Report
Attachments: 11-6-09 Status Report.pdf

For your information and review, attached is the regular weekly SBOE report to DOJ and the court. (After a quick glance, one notable part is the "Testing, Certification, and Selection..." section where it states that the status is "slightly behind" for one of the vendors.)

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

From: ROBBYANN MITOLA [mailto:RMITOLA@elections.state.ny.us]
Sent: Friday, November 06, 2009 1:27 PM
To: Ellen Graziano; John Graziano Sr.; Kathy Carey; Matthew Clyne; Elaine Herdman; Kathleen Hollis; John Colligan; Mary Pines; John Perticone; George Gonzalez; Marcus Cederqvist; WEBMAIL_PerkinsP; Kevin Burleson; Karen Byrne; Kristie Virga; Sue Fries; Cheryl Heary; Katie Lacey; Tom Prystal; Karen Davis; Brian Abram; Norman Green; Meaghan Knee; Dolores Newman; Keith Osborne; Linda Forrest; Mary O'Dell; Marilyn O'Mara; Carol Franklin; Harriet Jenkins; Susan Castine; Randa Filion; Judith Layhee; Lois McShane; Janice Burdick; Paula Schermerhorn; Robin Alger; William Campbell; Daniel French; David Gamache; Frances Knapp; Patricia Hohmann; Patti Doyle; Sindy Brazee; Kelly Cox; Kathy Fleury; Ruth Besio; Veronica King; Linda Coons; Linda Madison; Dawn Cassidy; Karen Gannon; Richard Siebert; Sharon White; Babette Hall; Jerry Eaton; Trina Kampnich; Sean Hennessey; Laura Schoonover; Matthew Griffo; Nancy Leven; Susan Guenther; Laura Costello; Lynne Jones; Jamie Duchessi; Lyn May; Phil Lyford; Terrance Smith; Elaine Mallaber; Joan Luther; Mary Salotti; Michael Northrup; Courtney Canfield Greene; David Green; Louise Vandemark; Susan Bahren; Ann Marie Kelly; Kathleen Pietanza; Joan Silvestri; Ruth Vezzetti; Sara Davies-Griffin; Clifford Hay; Richard Shultes; Carolyn Elkins; Joseph Fazzary; Jean Kosty; Barbara McCann; Joan Mooney; Kathryn Peterson; Ruth Same; Deborah Pahler; Jennie Morrill; Sweet Gilbert; Kelly Penziul; Penny Ruest; Veronica Olin; Ann Prusinski; Faith Kaplan; Pam Murran; Rodney Gaebel; Cinda Lou Goodrich; Arrah Richards; Sandra Saddlemire; Bernadette Toombs; Judy Horvers; Jay Mahler; Kathleen Carey-Mihm; Thomas Turco; Tom Apple; Mary Beth Casey; William Montfort; Constance Service; Donna English; Jeffrey Curtis; Leslie Allen; Melinda Suprenant; Jack Bailey; Joyce Krebbeks; Kelley Borrelli; Richard Clark; Christie McCabe; Michelle Crannage; Robert Howe; Thomas Brown; Brent Bogardus; Carol Engelmann; Marie Metzler; Thomas Burke; ANNA SVIZZERO; JOSEPH BURNS; JOHN CONKLIN; KIMBERLY GALVIN; PAUL COLLINS; ROBERT BREHM; ROBERT WARREN; TARRY BREADS; TODD VALENTINE; Ralph Mohr; Cheryl Mulholland; Dennis Ryan; wardcomm@erie.gov; David Mace; Anna Mae Balmas; Deborah O'Rourke; James Schlick; William Parslow; Hilary Hillman; Kathy Harter; Virginia Martin; Judith Peck; Marty Smith; Shelly Pazzanese; Eugene Faughnan; Ann Nortz; Elaine McLearn; Colleen Anderson Behrndt; Douglas French; Peter Quinn; Thomas Ferrarese; Carol Demauro Busketta; Eleanor Scigliabaglio; John DeGrace; James Magin; William Biamonte; Lora Allen; Mary Ann Casamento; Carolann Cardone; Cathy Dumka; Kathleen Perez; Pamela Mandryck; Edward Ryan; Helen Kiggins; Eileen Aina; Clara Martin; Janice Grabowski; Donald Wart; William Scriber; Cindy Jarvis; Lori Lehenbauer; Henry Nicols; Sheila Ross; Andrea Basli; Anthony Scannapieco, Jr.; Nancy Quis; Robert Bennett; Bonnie Becker; Edward McDonough; Larry Bugbee; Mary Sweeney; Lewis Sanders; Carol Turney; Diane Wade; Kathleen Anderson; William Fruci; Amy Hild; Art Brassard; Brian Quail; Christopher Rhodes; Julie Rolfe; Thomas Nichols; Anita Katz; Cathy Richter Geier; Jeanne O'Rourke; Wayne Rogers; Elizabeth Cree; Patricia Fanders; Stephen DeWitt; Thomas Paolangeli; Kim Galvin; Carolee Sunderland; Jeannie Palazola; Reginald LaFayette; Donald Kline; Amy Daines; Helen Scarpechi; Robert Brechko; Susan Griffin
Subject: 11-6-09 Status Report

11/9/2009

Attached is the weekly HAVA Compliance Update for the week ending November 6, 2009.

Have a wonderful weekend!

RobbyAnn



State of New York
STATE BOARD OF ELECTIONS

James A. Walsh
Chair
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
Robert A. Brehm
Executive Director
Kimberly A. Galvin
Special Counsel
Paul M. Collins
Deputy Counsel

November 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 November 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 10/30/09-11/5/09

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

PLAN A

Overall Compliance Status Summary

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

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- OSC approval has been issued and both NYSTEC contracts have been extended for three years.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule for one vendor, slightly behind for other vendor

- Overall progress of testing :
 - All testing for both vendors will be completed by November 8, 2009. The week-end is needed for completion of testing for the second vendor, this is two (2) days beyond the time line but SysTest advises the delay will not affect other dates in the time line.
 - Test result review is beginning and the reporting format is being finalized.
 - SBOE and NYSTEC employees participated in visits to various poll sites on Election day.
 - Daily calls continue between NYSTEC, SBOE and the vendors.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: on schedule

- o Acceptance testing on the balance of Dominion machines continues.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

SBOE awaits a response to the letter to NYCBOE addressing compliance issues which was electronically sent by the Co-Executive Directors of SBOE on October 14th. If no response is received the staff will ask the Board for further direction at the next Board meeting on November 10, 2009.

Com mb
Ry1

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Alan S. Chusid
-against-

Index No. 252108/09
Hon. Robert G. Seewald

Justice.

Board of Elections City of New York

The following papers numbered 1 to ___ Read on this motion.
Noticed on ___ and duly submitted as No. ___ on the Motion Calendar of

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Answered		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Findings - Exhibit		
Subpoena(s) - Referee's Report - Minutes		
Filed Papers	PAID <input type="checkbox"/>	NO FEE <input type="checkbox"/>
Memoranda of Law		

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

RECEIVED
BRONX COUNTY CLERK'S OFFICE
NOV 2 2009

Upon the foregoing papers this

In a decision dated October 7, 2009, the Court denied petitioner's application to validate his candidacy for the office of Mayor of the City of New York. Petitioner has moved to reargue the Court's decision by order to show cause.

The Court grants reargument and adheres to its prior decision. In reaching this prior decision, the Court did not overlook or misapprehend the relevant facts or misapply any controlling principle of law. Foley v. Roche, 68 AD2d 558, 567 (1st Dept. 1979). Petitioner's nominating petition was properly declared invalid as it lacked the 7500 valid signatures necessary for ballot placement pursuant to Election Law §6-142(2)(b). Petitioner was not entitled to the appointment of counsel under the RICO statute.

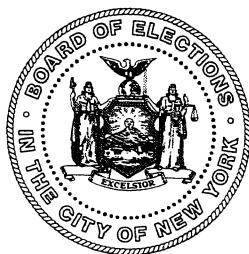
This constitutes the decision and order of the Court.

Dated: 11/2/09
2009 NOV 5 PM 3:11

Hon. [Signature]
J.S.C.

Motion is Respectfully Referred to:
Justice:
Dated:

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK



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
FAX (212) 487-5349
www.vote.nyc.ny.us


MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

MEMORANDUM

To: Chief and Deputy Chief Clerks
Executive Office Managers

From: George González, Deputy Executive Director 

Re: Mandatory Overtime – Certification of General Election

Date: November 3, 2009

cc: Commissioners of Elections
Marcus Cederqvist, Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Ward, Finance Officer
Dorothy Delayo, Director of Personnel
Nicholas Zimmitti, President, CWA Local 1183

The next three weeks presents us with a great opportunity to show the City of New York that this Board of Elections, working together, can meet the challenge presented by the conduct of a citywide General Election. As we have done in the past, each of us will share the burdens of making democracy work! It is in that spirit that I must provide the following guidance.

In anticipation of the November 24th, 2009 date for certification of the General Election by the Commissioners of Elections, the following mandatory overtime schedule is being implemented effective Thursday, November 5, 2009 until Sunday, November 22, 2009. The scheduled hours of operation for both the Borough Offices and Voting Machine Facilities will be from 8:00 A.M. to 9:00

BOARD OF ELECTIONS

P.M. Monday through Friday and from 9:00 A.M. to 5:00 P.M. on Saturdays and from 10:00 A.M. to 5:00 P.M. on Sundays.

We may be required to modify the above schedule based on unanticipated developments. We will try to provide as much advance notice of such changes as possible.

The following is a list of tasks that must be completed in order to meet the November 24, 2009 date:

1. ***Organization of Election Materials (Returns of Canvass, Emergency and Affidavit Ballots, Poll Books, etc.)*** – the Borough Managers will assign as many teams as necessary to ensure that the Election Materials being returned to the Borough Offices by the NYPD after the close of polls are placed in ED/AD order. This task includes keeping a log of any missing items that are not returned by the Police.
2. ***Number of Affidavit and Emergency Ballots*** – No later than 12:00 Noon. on Wednesday morning, November 4, 2009, the Borough Managers will submit to Executive Management, the breakdown by Assembly District of the total number of Affidavit and Emergency Ballots.
3. ***Opening the Backs of the Voting Machines*** – the voting machines will be returned to your respective Voting Machine Facilities beginning on Wednesday, November 4, 2009 and all machines should be at returned no later than Friday, November 6, 2009. The Borough Managers will instruct the VMF Supervisors that the Voting Machine Facility must remain open until your entire Borough's machines are returned. Bi-partisan teams of BOE staff shall open the back storage portion of the voting machines to retrieve any incorrectly placed poll books, emergency and affidavit ballots and any other materials needed to conduct the paper ballot canvass and that the front doors of each voting machine and the backboard must remain sealed to protect the integrity of the voting machines until the public recanvass on Tuesday, November 10, 2009.
4. ***Validation of All Paper Ballots*** – the process of validating absentee, special and affidavit ballots begins on Wednesday, November 4, 2009. The process of validation will continue until completed.

BOARD OF ELECTIONS

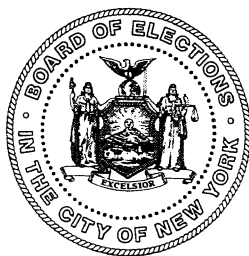
5. ***Canvass of Emergency, Absentee, Special and Affidavit Ballots*** – the canvass of all paper ballots begins on Thursday, November 12, 2009 and will continue until completed. Note: The last day to receive military ballots is Monday, November 16, 2009 (13 days after the date of the election).
6. ***Recanvass of Voting Machines*** – the recanvass of the voting machines begins on Tuesday, November 10, 2009 and will continue until completed.
7. ***Data Entry of the Machine Recanvass in CPESS*** – the Borough Managers will assign staff to promptly and accurately enter the machine recanvass numbers as soon as an entire Assembly District is completed. This procedure is to be followed until all of the Boroughs voting machines are recanvassed.
8. ***Opening and Scanning of all Paper Ballots*** – Borough Managers will assign sufficient staff to the opening and validation of all paper ballots. All these activities will be conducted in accordance with the Board's Canvass Procedures. Please note that watchers appointed by candidates may be present.

In accordance with the Canvass Procedures, when five (5) Election District's paper ballots received by the Board are validated, opened and batched, they are to be sent for scanning (do not wait until all paper ballots are opened to begin scanning).
9. ***Voter History*** – after the completion of the recanvass of the votes cast in the General Election the Borough Managers will assign sufficient staff to record voter history for the November 3, 2009 General Election. This task has to be completed by the close of business on Friday, December 4, 2009.

The Board's MIS Department will provide sufficient coverage during all hours of operation at any BOE facility. The Director of MIS will be issuing a schedule of staff coverage which will be distributed to all Managers (Executive and Borough Offices).

Please share this information with all of your staff members.

If you have any questions or require additional information, please feel free to contact me.



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
FAX (212) 487-5349
www.vote.nyc.ny.us

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

MEMORANDUM

To: Everyone

From: George González, Deputy Executive Director

Re: Friday, November 27, 2009

Date: November 3, 2009

cc: Commissioners
Marcus Cederqvist, Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Ward, Finance Officer
Dorothy Delayo, Director of Personnel
Nicholas Zimmitti, President, CWA Local 1183

Please note that the Commissioners of Elections, at their meeting held on Tuesday, October 27, 2009, unanimously approved the closing of all Board of Elections Offices and Facilities on Friday, November 27, 2009 in lieu of Election Day.

With the challenges we faced during the 2009 election calendar and having to conduct three citywide events, this will be a well-deserved break. Enjoy the Holiday and the break because in 2010 we will be faced with a different set of challenges.

Commnty
FY1

Steven H. Richman

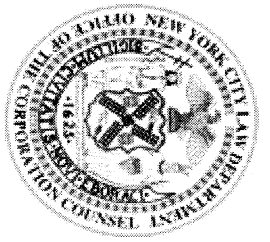
From: Majerus, Kenneth [kmajerus@law.nyc.gov]
Sent: Monday, November 02, 2009 11:31 AM
To: Marcus Cederqvist; Steven H. Richman
Subject: STATEMENT OF COST - BOARD OF ELECTIONS - September 2009

Your agency's statement for September 2009 is attached to this email. Cases have been arranged by division to assist you in identifying the matters. We have included all or part of both the plaintiff and defendant names, also to help identify the matters. A running total of each division's hours is located after the last matter for each division.

As before, if you see a case you believe is erroneously attributed to your agency, please let me know.

Thank you.

Ken Majerus
Chief of Operations
City of New York Law Department
100 Church Street
New York, NY 10007
(212) 788-0373
(212) 788-0386 - fax
kmajerus@law.nyc.gov



Date: 10/23/2009

Summary Charges to BOARD OF ELECTIONS

for Sept. 1, 2009 - Sept 30, 2009

Number of Matters	16		
Total Attorney Hours	125	Attorney Hours YTD	262.5
Total Attorney Charges	\$19,611.62	Attorney Charges YTD	\$40,237.03
Total Disbursement	\$0.00	Disbursement YTD	\$0.00
Total Workers' Compensation Administrative Cost	\$400.00	for 20 claims WC Admin Cost YTD	\$1,228.00
Tort - Labor Attribution Summary	\$0.00	Tort Labor Costs YTD	\$0.00
Grand Total	\$20,011.62	Grand Total YTD	\$41,465.03

Total Workers' Compensation Actual Expenditure	\$13,512.00	Workers' Comp Actual Expenditure YTD *	\$85,629.00
--	-------------	--	-------------

YTD = July 1, 2009 to Present

* = WC Actual Expenditure July 1, 2009 to Present

Friday, October 23, 2009

Matters Detail BOARD OF ELECTIONS

for Sept. 1, 2009 - Sept. 30, 2009

<u>Caption</u>	<u>Matter Number</u>	<u>Date</u>	<u>Staff</u>	<u>Hour Rate</u>	<u>Description</u>	<u>Amount</u>
Affirmative Litigation						
CITY OF NEW YORK VS GREEK ORTHODOX CHURCH	2009034019	9/10/2009	COSTA, RICHARD	1.50	\$166.12 Case Review	\$249.18
				Total Hours:	1.50	
<i>Case Attorney Total YTD:</i>						\$249.18
<i>Disbursement YTD:</i>						\$0.00
<i>Matter Total YTD:</i>						\$249.18
				Total Hours:	1.50	
<i>Division Attorney Total YTD:</i>						\$534.96
<i>Disbursement YTD:</i>						\$0.00
<i>Matter Total YTD:</i>						\$534.96
Appeals						
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/4/2009	SONNENSHEIN, LARRY	4.00	\$158.66 Case Review	\$634.65
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/4/2009	SONNENSHEIN, LARRY	4.00	\$158.66 Supervision/Management	\$634.65
				Total Hours:	8.00	
<i>Case Attorney Total YTD:</i>						\$1,269.31
<i>Disbursement YTD:</i>						\$0.00
<i>Matter Total YTD:</i>						\$1,269.31

Total Hours: 8.00

Division Attorney Total YTD: \$3,482.05
 Disbursement YTD: \$0.00
 Matter Total YTD: \$3,482.05

Division Attorney Total: \$1,269.31
 Disbursement Total: \$0.00
 Matter Total: \$1,269.31

Caption	Matter Number	Date	Staff	Hour Rate	Description	Amount
Contracts and Real Estate	04CR900036	9/10/2009	COHEN, ANDREA	0.50	\$155.25 Counseling/Opinion/Memo	\$77.62
	CONT & RE ADM TIME-BD OF EL					

Total Hours: 0.50

Case Attorney Total YTD: \$1,572.07
 Disbursement YTD: \$0.00
 Matter Total YTD: \$1,572.07

Case Attorney Total: \$77.62
 Disbursement Total: \$0.00
 Matter Total: \$77.62

Total Hours: 0.50

Division Attorney Total YTD: \$1,572.07
 Disbursement YTD: \$0.00
 Matter Total YTD: \$1,572.07

Division Attorney Total: \$77.62
 Disbursement Total: \$0.00
 Matter Total: \$77.62

Caption	Matter Number	Date	Staff	Hour Rate	Description	Amount
General Litigation	2009035196	9/22/2009	KITZINGER, STEPHEN	0.50	\$159.98 Communication with Adversary	\$79.99
	BOYLAND, TRACY VS. HERBERT, ANTHONY L., ET AL.					
	2009035196	9/22/2009	KITZINGER, STEPHEN	0.50	\$159.98 Communication with Client	\$79.99
	BOYLAND, TRACY VS. HERBERT, ANTHONY L., ET AL.					
	2009035196	9/22/2009	KITZINGER, STEPHEN	0.50	\$159.98 Stipulation	\$79.99
BOYLAND, TRACY VS. HERBERT, ANTHONY L., ET AL.						
2009035196	9/23/2009	KITZINGER, STEPHEN	1.00	\$159.98 Communication with Adversary	\$159.98	
BOYLAND, TRACY VS. HERBERT, ANTHONY L., ET AL.						

Appendix A

BOYLAND, TRACY VS. HERBERT, ANTHONY L., ET AL.	2009035196	9/23/2009	KITZINGER, STEPHEN	1.00	\$159.98	Stipulation	\$159.98
BOYLAND, TRACY VS. HERBERT, ANTHONY L., ET AL.	2009035196	9/30/2009	KITZINGER, STEPHEN	3.50	\$159.98	Court Appearance	\$559.92

Total Hours: 7.00

Case Attorney Total YTD:	\$1,119.84	Case Attorney Total:	\$1,119.84
Disbursement YTD:	\$0.00	Disbursement Total:	\$0.00
Matter Total YTD:	\$1,119.84	Matter Total:	\$1,119.84

CASTELLANOS, FRANCESCA M., ET AL. VS RODRIGUEZ, YDANIS A., ET AL.	2009035075	9/18/2009	KITZINGER, STEPHEN	0.50	\$159.98	Communication with Client	\$79.99
CASTELLANOS, FRANCESCA M., ET AL. VS RODRIGUEZ, YDANIS A., ET AL.	2009035075	9/18/2009	KITZINGER, STEPHEN	1.00	\$159.98	Review of Documents	\$159.98
CASTELLANOS, FRANCESCA M., ET AL. VS RODRIGUEZ, YDANIS A., ET AL.	2009035075	9/21/2009	KITZINGER, STEPHEN	0.50	\$159.98	Court Appearance	\$79.99
CASTELLANOS, FRANCESCA M., ET AL. VS RODRIGUEZ, YDANIS A., ET AL.	2009035075	9/21/2009	KITZINGER, STEPHEN	0.50	\$159.98	Telephone Conversation	\$79.99
CASTELLANOS, FRANCESCA M., ET AL. VS RODRIGUEZ, YDANIS A., ET AL.	2009035075	9/23/2009	KITZINGER, STEPHEN	1.00	\$159.98	Review of Documents	\$159.98
CASTELLANOS, FRANCESCA M., ET AL. VS RODRIGUEZ, YDANIS A., ET AL.	2009035075	9/25/2009	KITZINGER, STEPHEN	9.50	\$159.98	Court Appearance	\$1,519.78

Total Hours: 13.00

Case Attorney Total YTD:	\$2,079.70	Case Attorney Total:	\$2,079.70
Disbursement YTD:	\$0.00	Disbursement Total:	\$0.00
Matter Total YTD:	\$2,079.70	Matter Total:	\$2,079.70

CHUSID, ALAN S. VS ELECTIONS, BOARD OF NYC	2009034626	9/15/2009	KITZINGER, STEPHEN	0.50	\$159.98	Review of Documents	\$79.99
CHUSID, ALAN S. VS ELECTIONS, BOARD OF NYC	2009034626	9/22/2009	KITZINGER, STEPHEN	0.50	\$159.98	Communication with Client	\$79.99
CHUSID, ALAN S. VS ELECTIONS, BOARD OF NYC	2009034626	9/22/2009	KITZINGER, STEPHEN	0.50	\$159.98	Review of Documents	\$79.99

Total Hours: 1.50

Case Attorney Total YTD: \$239.97 **Case Attorney Total:** \$239.97
Disbursement YTD: \$0.00 **Disbursement Total:** \$0.00
Matter Total YTD: \$239.97 **Matter Total:** \$239.97

COENEN, KEVIN VS ELECTIONS, BOARD OF, NYC	2009034476	9/17/2009	KITZINGER, STEPHEN	3.00	\$159.98	Brief/Motion	\$479.93
COENEN, KEVIN VS ELECTIONS, BOARD OF, NYC	2009034476	9/18/2009	KITZINGER, STEPHEN	0.50	\$159.98	Communication with Adversary	\$79.99
COENEN, KEVIN VS ELECTIONS, BOARD OF, NYC	2009034476	9/18/2009	KITZINGER, STEPHEN	0.50	\$159.98	Communication with Client	\$79.99
COENEN, KEVIN VS ELECTIONS, BOARD OF, NYC	2009034476	9/18/2009	KITZINGER, STEPHEN	4.00	\$159.98	Court Appearance	\$639.91
COENEN, KEVIN VS ELECTIONS, BOARD OF, NYC	2009034476	9/18/2009	KITZINGER, STEPHEN	0.50	\$159.98	Review of Documents	\$79.99

Total Hours: 8.50

Case Attorney Total YTD: \$1,359.80 **Case Attorney Total:** \$1,359.80
Disbursement YTD: \$0.00 **Disbursement Total:** \$0.00
Matter Total YTD: \$1,359.80 **Matter Total:** \$1,359.80

EJAZ, SALIM VS ELECTIONS, BOARD OF, NYC, ET AL.	2009032933	9/3/2009	KITZINGER, STEPHEN	2.50	\$159.98	Brief/Motion	\$399.94
EJAZ, SALIM VS ELECTIONS, BOARD OF, NYC, ET AL.	2009032933	9/3/2009	KITZINGER, STEPHEN	1.00	\$159.98	Review of Documents	\$159.98
EJAZ, SALIM VS ELECTIONS, BOARD OF, NYC, ET AL.	2009032933	9/4/2009	KITZINGER, STEPHEN	2.50	\$159.98	Court Appearance	\$399.94

Total Hours: 6.00

Case Attorney Total YTD: \$959.86 **Case Attorney Total:** \$959.86
Disbursement YTD: \$0.00 **Disbursement Total:** \$0.00
Matter Total YTD: \$959.86 **Matter Total:** \$959.86

Appendix A

GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/11/2009	KITZINGER, STEPHEN	1.00	\$159.98	Intra Office Conf/Communicatn	\$159.98
GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/9/2009	KITZINGER, STEPHEN	1.00	\$159.98	Communication with Client	\$159.98
GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/9/2009	KITZINGER, STEPHEN	1.00	\$159.98	Communication With Others	\$159.98
GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/10/2009	KITZINGER, STEPHEN	2.00	\$159.98	Communication with Client	\$319.95
GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/14/2009	KITZINGER, STEPHEN	1.50	\$159.98	Communication with Client	\$239.97
GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/15/2009	KITZINGER, STEPHEN	1.00	\$159.98	Communication with Client	\$159.98
GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/16/2009	KITZINGER, STEPHEN	0.50	\$159.98	Telephone Conversation	\$79.99
GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/21/2009	KITZINGER, STEPHEN	1.00	\$159.98	Telephone Conversation	\$159.98
GEN LIT ADM TIME - ELECTIONS, BOARD OF VS	04GL900014	9/29/2009	KITZINGER, STEPHEN	0.50	\$159.98	Intra Office Conf/Communicatn	\$79.99

Total Hours: 9.50

<i>Case Attorney Total YTD:</i>	\$3,119.55	<i>Case Attorney Total:</i>	\$1,519.78
<i>Disbursement YTD:</i>	\$0.00	<i>Disbursement Total:</i>	\$0.00
<i>Matter Total YTD:</i>	\$3,119.55	<i>Matter Total:</i>	\$1,519.78

IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	9/15/2009	KITZINGER, STEPHEN	2.50	\$159.98	Brief/Motion	\$399.94
IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	9/15/2009	KITZINGER, STEPHEN	1.50	\$159.98	Review of Documents	\$239.97
IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	9/16/2009	KITZINGER, STEPHEN	1.00	\$159.98	Brief/Motion	\$159.98
IGHILE, OSARETIN VS ELECTIONS, BOARD OF, NYC	2009034486	9/17/2009	KITZINGER, STEPHEN	4.00	\$159.98	Court Appearance	\$639.91

Total Hours: 9.00

Case Attorney Total YTD: \$1,439.79 *Case Attorney Total:* \$1,439.79
Disbursement YTD: \$0.00 *Disbursement Total:* \$0.00
Matter Total YTD: \$1,439.79 *Matter Total:* \$1,439.79

IWACHIW, WALTER VS ELECTIONS, BOARD OF, 2009033726 9/10/2009 KITZINGER, STEPHEN 0.50 \$159.98 Communication with Client \$79.99
 NYC
 IWACHIW, WALTER VS ELECTIONS, BOARD OF, 2009033726 9/11/2009 KITZINGER, STEPHEN 3.00 \$159.98 Court Appearance \$479.93
 NYC

Total Hours: 3.50

Case Attorney Total YTD: \$559.92 *Case Attorney Total:* \$559.92
Disbursement YTD: \$0.00 *Disbursement Total:* \$0.00
Matter Total YTD: \$559.92 *Matter Total:* \$559.92

KING, ANDY VS SEABROOK, LARRY, ET 2009035074 9/18/2009 KITZINGER, STEPHEN 1.00 \$159.98 Review of Documents \$159.98
 AL.
 KING, ANDY VS SEABROOK, LARRY, ET 2009035074 9/21/2009 KITZINGER, STEPHEN 0.50 \$159.98 Court Appearance \$79.99
 AL.
 KING, ANDY VS SEABROOK, LARRY, ET 2009035074 9/21/2009 KITZINGER, STEPHEN 0.50 \$159.98 Telephone Conversation \$79.99
 AL.

Total Hours: 2.00

Case Attorney Total YTD: \$319.95 *Case Attorney Total:* \$319.95
Disbursement YTD: \$0.00 *Disbursement Total:* \$0.00
Matter Total YTD: \$319.95 *Matter Total:* \$319.95

KING, ERLENE J. VS ELECTIONS, BOARD OF, 2009031894 9/11/2009 KITZINGER, STEPHEN 3.00 \$159.98 Court Appearance \$479.93
 NYC
 KING, ERLENE J. VS ELECTIONS, BOARD OF, 2009031894 9/2/2009 KITZINGER, STEPHEN 1.00 \$159.98 Intra Office Conf/Communicain \$159.98
 NYC
 KING, ERLENE J. VS ELECTIONS, BOARD OF, 2009031894 9/3/2009 KITZINGER, STEPHEN 1.00 \$159.98 Communication with Client \$159.98
 NYC

Appendix A

KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/3/2009	KITZINGER, STEPHEN	1.00	\$159.98	Intra Office Conf/Communicatn	\$159.98
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/4/2009	KITZINGER, STEPHEN	1.00	\$159.98	Intra Office Conf/Communicatn	\$159.98
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/9/2009	KITZINGER, STEPHEN	0.50	\$159.98	Brief/Motion	\$79.99
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/9/2009	KITZINGER, STEPHEN	1.00	\$159.98	Intra Office Conf/Communicatn	\$159.98
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/10/2009	KITZINGER, STEPHEN	0.50	\$159.98	Administrative Tasks	\$79.99
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/10/2009	KITZINGER, STEPHEN	3.00	\$159.98	Court Appearance	\$479.93
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/11/2009	KITZINGER, STEPHEN	0.50	\$159.98	Communication With Others	\$79.99
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/3/2009	WELLS, ELIZABETH	9.00	\$128.16	Brief/Motion	\$1,153.41
KING, ERLENE J. VS ELECTIONS, BOARD OF, NYC	2009031894	9/4/2009	WELLS, ELIZABETH	3.00	\$128.16	Brief/Motion	\$384.47

Total Hours: 24.50

Case Attorney Total YTD:	\$6,758.41	Case Attorney Total:	\$3,537.59
Disbursement YTD:	\$0.00	Disbursement Total:	\$0.00
Matter Total YTD:	\$6,758.41	Matter Total:	\$3,537.59

LAXTON, MARQUEZ VS MITCHELL, YVONNE, ET AL.	2009032932	9/1/2009	KITZINGER, STEPHEN	0.50	\$159.98	Intra Office Conf/Communicatn	\$79.99
LAXTON, MARQUEZ VS MITCHELL, YVONNE, ET AL.	2009032932	9/1/2009	KITZINGER, STEPHEN	1.00	\$159.98	Review of Documents	\$159.98
LAXTON, MARQUEZ VS MITCHELL, YVONNE, ET AL.	2009032932	9/8/2009	KITZINGER, STEPHEN	10.00	\$159.98	Court Appearance	\$1,599.77
LAXTON, MARQUEZ VS MITCHELL, YVONNE, ET AL.	2009032932	9/11/2009	KITZINGER, STEPHEN	1.00	\$159.98	Communication with Adversary	\$159.98
LAXTON, MARQUEZ VS MITCHELL, YVONNE, ET AL.	2009032932	9/11/2009	KITZINGER, STEPHEN	0.50	\$159.98	Communication with Client	\$79.99
LAXTON, MARQUEZ VS MITCHELL, YVONNE, ET AL.	2009032932	9/11/2009	KITZINGER, STEPHEN	0.50	\$159.98	Review of Documents	\$79.99

Appendix A

Total Hours: 13.50

Case Attorney Total YTD: \$3,223.50 Case Attorney Total: \$2,159.69
 Disbursement YTD: \$0.00 Disbursement Total: \$0.00
 Matter Total YTD: \$3,223.50 Matter Total: \$2,159.69

LEROUY, MIREILLE P. VS ELECTIONS, BOARD OF, NYC 2009030302 9/9/2009 KITZINGER, STEPHEN 0.50 \$159.98 Communication with Client \$79.99
 LEROY, MIREILLE P. VS ELECTIONS, BOARD OF, NYC 2009030302 9/9/2009 KITZINGER, STEPHEN 1.00 \$159.98 Intra Office Conf/Communicatn \$159.98
 LEROY, MIREILLE P. VS ELECTIONS, BOARD OF, NYC 2009030302 9/14/2009 KITZINGER, STEPHEN 1.00 \$159.98 Communication with Client \$159.98
 LEROY, MIREILLE P. VS ELECTIONS, BOARD OF, NYC 2009030302 9/14/2009 KITZINGER, STEPHEN 1.00 \$159.98 Intra Office Conf/Communicatn \$159.98

Total Hours: 3.50

Case Attorney Total YTD: \$3,039.56 Case Attorney Total: \$559.92
 Disbursement YTD: \$0.00 Disbursement Total: \$0.00
 Matter Total YTD: \$3,039.56 Matter Total: \$559.92

TAYLOR, BARBARA N. VS ELECTIONS, BOARD OF, NYC, ET AL. 2009031363 9/2/2009 KITZINGER, STEPHEN 0.50 \$159.98 Intra Office Conf/Communicatn \$79.99
 TAYLOR, BARBARA N. VS ELECTIONS, BOARD OF, NYC, ET AL. 2009031363 9/2/2009 KITZINGER, STEPHEN 0.50 \$159.98 Review of Documents \$79.99

Total Hours: 1.00

Case Attorney Total YTD: \$159.98 Case Attorney Total: \$159.98
 Disbursement YTD: \$0.00 Disbursement Total: \$0.00
 Matter Total YTD: \$159.98 Matter Total: \$159.98

WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET 2009032712 9/1/2009 KITZINGER, STEPHEN 2.00 \$159.98 Brief/Motion \$319.95
 WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET 2009032712 9/2/2009 KITZINGER, STEPHEN 1.00 \$159.98 Brief/Motion \$159.98

Appendix A

WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	9/2/2009	KITZINGER, STEPHEN	0.50	\$159.98	Communication with Client	\$79.99
WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	9/3/2009	KITZINGER, STEPHEN	3.00	\$159.98	Court Appearance	\$479.93
WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	9/4/2009	KITZINGER, STEPHEN	2.00	\$159.98	Brief/Motion	\$319.95
WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	9/4/2009	KITZINGER, STEPHEN	0.50	\$159.98	Communication with Client	\$79.99
WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	9/4/2009	KITZINGER, STEPHEN	1.00	\$159.98	Review of Documents	\$159.98
WILLIAMS-BEY, BROTHER, T., ET AL. VS COMMISSIONER OF ELECTION, ET	2009032712	9/16/2009	KITZINGER, STEPHEN	2.50	\$159.98	Court Appearance	\$399.94

Total Hours: 12.50

Case Attorney Total YTD:	\$2,079.70	Case Attorney Total:	\$1,999.71
Disbursement YTD:	\$0.00	Disbursement Total:	\$0.00
Matter Total YTD:	\$2,079.70	Matter Total:	\$1,999.71

Division Attorney Total YTD:	\$34,588.99	Division Attorney Total:	\$18,015.51
Disbursement YTD:	\$0.00	Disbursement Total:	\$0.00
Matter Total YTD:	\$34,588.99	Matter Total:	\$18,015.51

Total Hours: 115.00

Agency Attorney Total YTD:	\$40,237.03	Agency Total Attorney Dollars:	\$19,611.62
Disbursement YTD:	\$0.00	Total Disbursement:	\$0.00
Matter Total YTD:	\$40,237.03	Grand Matter Total:	\$19,611.62



State of New York
STATE BOARD OF ELECTIONS

James A. Walsh
Chair
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
Robert A. Brehm
Executive Director
Kimberly A. Galvin
Special Counsel
Paul M. Collins
Deputy Counsel

October 30, 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 October 29, 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 10/23/09-10/29/09

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

PLAN A

Overall Compliance Status Summary

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

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- The out of state contractual issue involving Dominion has been resolved.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule

- Overall progress of testing :
 - It is projected that the Run for Record Testing will be completed by November 6, 2009, in accordance with the revised time line.
 - Multiple conference calls between SBOE, Vendors and NYSTEC are continuing.
 - SBOE is working with SysTest and NYSTEC on the format that will be used for the testing reports.

Delivery and Implementation of Voting Systems & Devices

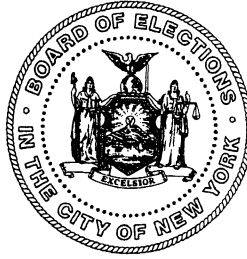
Status of tasks in this category: on schedule

- Acceptance testing continues on the balance of the Dominion machines ordered by the counties.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

SBOE awaits a response to the letter to NYCBOE addressing compliance issues which was electronically sent by the Co-Executive Directors of SBOE on October 14th.



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

MARCUS CEDERQVIST
EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

BOARD OF ELECTIONS

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

October 29, 2009

Mr. Todd Valentine
Co-Executive Director
New York State Board of Elections
40 Steuben Street
Albany, NY 12207-2108

Mr. Robert Brehm
Co-Executive Director
New York State Board of Elections
40 Steuben Street
Albany, NY 12207-2108

Dear Mr. Valentine and Mr. Brehm:

At the direction of the Commissioners of Elections in the City of New York, I am writing to communicate a security-related discovery by staff at our office concerning the two new voting systems on which the State Board of Elections is currently conducting certification testing.

As you know, the Board of Elections in the City of New York has been performing generic tasks throughout the year to plan and prepare for the deployment of an entirely new voting system next year following State Board of Election certification. During a staff exercise last week to test various poll site flows for these new systems, the staff inadvertently discovered that both the Dominion and ES&S scanners that we currently have at our office accepted and counted ballots that the staff photocopied from original test ballots and then used to mark votes.

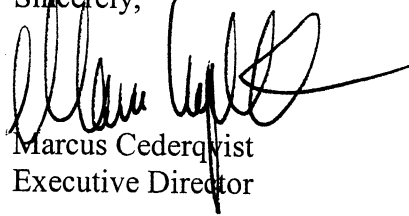
Specifically, for each system the staff made four photocopies of the respective ballots and successfully voted and cast them in both scanners. The potential ability to use photocopies of ballots and have votes on those copies raises obvious and serious ballot security concerns regarding the integrity of the potential new voting system that the city's 4.6 million registered voters will use in future elections.

The Commissioners asked that I relay this troubling account to you and inquire how the certification testing will ensure that the systems will not accept and count ballots that are reproduced from originals. Please let me know how the State Board will address this important security concern as quickly as possible so I can communicate this information to our Commissioners, staff, and interested members of the community.

Please do not hesitate to contact me at (212) 487-5412 if you have any questions concerning this matter.

With best wishes.

Sincerely,



Marcus Cederqvist
Executive Director

cc: Commissioners of Election in the City of New York ✓
George González, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven Ferguson, Director, Management Information Systems
Steven H. Richman, General Counsel
Lucille Grimaldi, Director, Electronic Voting Systems
John P. O'Grady, Chief Voting Machine Technician

Comments
KyZ

Steven H. Richman

From: Kitzinger, Stephen [skitzing@law.nyc.gov]
Sent: Thursday, October 29, 2009 2:58 PM
To: Steven H. Richman
Subject: FW: Matter of Walsh v Katz (2009 NY Slip Op 07774).htm

Don't know if you saw this.

From: Shorr, Scott
Sent: Thursday, October 29, 2009 2:37 PM
To: Kitzinger, Stephen
Subject: Matter of Walsh v Katz (2009 NY Slip Op 07774).htm

New election decision, FYI.

-Scott

Matter of Walsh v Katz
2009 NY Slip Op 07774
Decided on October 29, 2009
Appellate Division, Second Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on October 29, 2009

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT
STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2009-09126
(Index No. 29736/09)

[*1]In the Matter of Arthur J. Walsh, et al., petitioners/ counterclaim defendants-

appellants-respondents,

v

Anita S. Katz, et al., respondents, Daniel C. Ross, respondent/counterclaim plaintiff third-party plaintiff- respondent-appellant; State of New York, third-party defendant-appellant, et al., third-party defendant.

DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, in effect, to invalidate a petition designating Daniel C. Ross as a candidate in a primary election that was held on September 15, 2009, for the nomination of the Democratic Party as its candidate for the public office of Town Justice, Fishers Island, Town of Southold, and, if necessary, to prohibit the name of Daniel C. Ross from being placed on the ballot in a general election to be held on November 3, 2009, as the candidate of the Democratic Party for that public office, in which Daniel C. Ross, in effect, cross-petitioned, among other things, to validate the designating petition, and in which that branch of the cross petition which was to annul L 1860, ch 113, § 2, as amended by L 1898, ch 373, § 2, as further amended by L 1977, ch 276, § 2, was converted into a counterclaim and a third-party cause of action for a judgment declaring that such law is unconstitutional, Arthur J. Walsh and Nina J. Schmid appeal from stated portions of a final order of the Supreme Court, Suffolk County (Spinner, J.), dated September 14, 2009, which, inter alia, denied the petition, dismissed the proceeding, and granted that branch of the cross petition which was to validate the designating petition, Daniel C. Ross cross-appeals from stated portions of the same final order which, among other things, established January 30, 2010, as the date by which he must become a resident of Fishers Island to qualify for the public office of Town Justice, Fishers Island, Town of Southold, should he be elected to that public office, and the State of New York separately appeals from stated portions of the same final order, which, inter alia, joined it as a third-party defendant.

ORDERED that the final order is modified, on the law, (1) by deleting from the first [*2]decretal paragraph thereof the words "without prejudice to renew their request of [sic]

the issue of Respondent Ross' residency, should Respondent Ross fail to prevail on the remainder of this action carried forth as a Declaratory Judgment action," (2) by deleting from the fourth decretal paragraph thereof any reference to the State of New York, and (3) by deleting the provision thereof establishing January 30, 2010, as the date by which Daniel C. Ross must become a resident of Fishers Island to qualify for the public office of Town Justice, Fishers Island, Town of Southold, should he be elected to that public office, and substituting therefor a provision establishing January 1, 2010, as the appropriate date; as so modified, the final order is affirmed insofar as appealed from and cross-appealed from, without costs or disbursements, and the matter is remitted to the Supreme Court, Suffolk County, for the severance of the third-party cause of action and counterclaim for a declaratory judgment, and the entry of a judgment declaring that Daniel C. Ross did not establish that the challenged law is unconstitutional.

Pursuant to L 1860, ch 113, § 2, as amended by L 1898, ch 373, § 2, as further amended by L 1977, ch 276, § 2, the Legislature provided for a fifth Town Justice for the Town of Southold, in the County of Suffolk. The holder of that seat (hereinafter the Fishers Island seat) also was to serve as a member of the Town Board of the Town of Southold (hereinafter the Town Board), and was required to reside on Fishers Island.

Daniel C. Ross sought to have his name placed on the ballot for the nomination of the Democratic Party as its candidate for the Fishers Island seat and, thus, filed a designating petition with the Suffolk County Board of Elections (hereinafter the Board of Elections), despite the fact that he is not a resident of Fishers Island. Arthur J. Walsh and Nina J. Schmid (hereinafter together the petitioners), two residents of Fishers Island, filed objections to Ross's designating petition on the ground that Ross did not meet the residency requirement. The Commissioners of the Board of Elections denied the objections and thereby upheld the designating petition.

The petitioners commenced this proceeding seeking, inter alia, to prohibit Ross's name from being placed on the ballot for the general election to be held on November 3, 2009, based on his failure to meet the residency requirement. In response, Ross counterclaimed and, in effect, cross-petitioned to validate the designating petition, challenging, among other things, the constitutionality of the residency requirement.

In a final order dated September 14, 2009, the Supreme Court determined that the person elected to the Fishers Island seat is required to meet the residency requirement within 30 days after the commencement of the term of office, here, in effect, by January 30, 2010, rather than at the time the designating petition was filed. The court, therefore, denied the petition and dismissed the proceeding, albeit without prejudice to the petitioners' right to renew, and converted one of Ross's counterclaims and one branch of his cross petition into a counterclaim and third-party cause of action for a judgment declaring that the law containing the residency requirements is unconstitutional. The petitioners appeal, Ross cross-appeals, and the State of New York separately appeals from stated portions of the final order.

The petitioners and Ross ask that we address the constitutionality of the statute and, under the circumstances, we agree that it is appropriate for us to do so. "While it may be possible to dispose of this particular appeal without deciding this question of constitutionality, nevertheless it is fairly presented to us, and public interests require that it should be determined" (*People ex rel. Unger v Kennedy*, 207 NY 533, 540-541; *see Skelos v Paterson*, NY3d , 2009 NY [*3]Slip Op 06585, *3 [2009]).

The statute must be upheld against an equal protection challenge if the residency requirement is rationally related to a legitimate state interest (*see Matter of Rosenstock v Scaringe*, 40 NY2d 563, 564; *Galbraith v New York Conservative Party*, 155 AD2d 183, 185; *Matter of Roth v Cuevas*, 158 Misc 2d 238, 252-253, *affd* 197 AD2d 369; *see also Golden v Clark*, 76 NY2d 618). Here, given the location of Fishers Island and its distance from the rest of the Town of Southold, the requirement that the holder of the Fishers Island seat be a resident of Fishers Island ensures that the Town Board will have at least one member who has first-hand knowledge of the unique circumstances and problems faced by Fishers Island residents, and facilitates the full participation of those residents in Town governance (*see Dusch v Davis*, 387 US 112, 116). Significantly, although the holder of the Fishers Island seat must be a resident of Fishers Island, all six members of the Town Board, including the Town Supervisor, are elected at large by the entire town electorate, and none is elected solely by the residents of Fishers Island (*see Dallas County v Reese*, 421 US 477, 480, citing *Fortson v Dorsey*, 379 US 433, 438; *cf. Board of Estimate of City of New York v Morris*, 489 US 688, 690). Accordingly, upon the specific challenge before us, Ross's contention that the residency requirement is unconstitutional is without merit.

The Supreme Court erred in finding that the candidate for this particular office would not be required to meet the constitutional and statutory requirements of the office until 30 days after the commencement of the term of office, here, January 30, 2010. The Election Law provides that "[a] person shall not be designated or nominated for a public office or party position . . . who, if elected will not at the time of commencement of the term of such office or position, meet the constitutional or statutory qualifications thereof or, with respect to judicial office, who will not meet such qualifications within thirty days of the commencement of the term of such office" (Election Law § 6-122[3]). In light of the unique dual role of the public office sought by Ross, requiring the office holder to serve not only as a Town Justice, but as a member of the Town Board, the earlier date provided for by Election Law § 6-122(3) applies.

We note that, when the constitutionality of a statute is challenged in an action or proceeding to which the State is not a party, the Attorney General may, upon notification of the challenge, choose to intervene in support of its constitutionality if he or she be so inclined (*see* CPLR 1012[b][1], [3]; Executive Law § 71). There is no authority, however, for the Supreme Court to compel the Attorney General to intervene, or to join the State as a party in such case.

The petitioners' remaining contentions are without merit.

Inasmuch as this proceeding was converted, in part, into a declaratory judgment action, the matter must be remitted for the severance of the third-party cause of action and counterclaim for a declaratory judgment, and the entry of a judgment declaring that Daniel C. Ross did not establish that L 1860, ch 113, § 2, as amended by L 1898, ch 373, § 2, as further amended by L 1977, ch 276, § 2, is unconstitutional (*see Lanza v Wagner*, 11 NY2d 317, 334, *appeal dismissed* 371 US 74, *cert denied* 371 US 901).
FISHER, J.P., ANGIOLILLO, ENG and LOTT, JJ., concur. [*4]

ENTER:

James Edward Pelzer

Clerk of the Court



Commb
F12

MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

(212) 788-0800
FAX (212) 227-5641
mcardozo@law.nyc.gov

October 29, 2009

Steven H. Richman, Esq.
Board of Elections in the City of New York
32 Broadway
New York, New York 10004

Re: Designation of Authority to Represent Board of Elections

Dear Mr. Richman:

Pursuant to Chapter 17 of the New York City Charter, I hereby designate the four employees of the Board of Elections (the "Board") named below to appear on behalf of the Board in litigation involving the office of the Mayor of the City of New York in the 2009 General Election. The designated employees are Steven H. Richman, Esq., John Owens, Jr., Esq., Charles S. Webb, III, Esq., and Steven B. Denkberg, Esq. These employees will note their appearances as "Special Assistant Corporation Counsel of the City of New York." This designation applies to appearing in any state or federal forum, at the trial and/or appellate level, and includes drafting legal papers related to such litigation.

It is understood that these employees will appear on behalf of the Board in the normal course of their duties, and they may not submit any request for compensation to this Office or to the City of New York. Finally, this Office reserves the right to retain or assume control at any stage of such litigation.

Sincerely,

Michael A. Cardozo

MAC/ay 2009 NOV -2 AM 10:42

RECEIVED
GENERAL COUNSEL
BD. OF ELECTIONS
IN THE CITY OF NEW YORK

Com mtg
FY1

Steven H. Richman

From: Steven H. Richman
Sent: Tuesday, October 27, 2009 4:02 PM
To: *Commissioners; *ExecutiveManagement; *Legal Department; *CRU Group; *Managers; *Chief & Deputy Chief Clerks (all)
Cc: 'Kitzinger, Stephen'
Subject: 2009 Clinton County Military Ballot Decision.pdf - Adobe Reader

For your information, review and files attached is a decision from the NYS Supreme Court, Clinton County regarding the dispute between the Commissioners as to the composition of the ballot and the failure to timely mail Military Ballots. It utilized an Article 78 (CPLR) proceeding to resolve a deadlock between the Commissioners of Elections.

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

I

At a term of the Supreme Court of the State of New York, held in and for the County of Clinton, at the Clinton County Government Center in the City of Plattsburgh on the 21st day of October, 2009.

P R E S E N T: HONORABLE KEVIN K. RYAN
Acting Justice, Supreme Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF CLINTON

In the Matter of the Application of
THOMAS E. WOOD, Jr.,

Petitioner,

-against-

SUSAN R. CASTINE and JUDITH C LAYHEE,
Commissioners for the Clinton County
Board of Elections

and

THE CLINTON COUNTY BOARD OF ELECTIONS
AND THE BOARD OF CANVASSERS,

Respondents.

DECISION AND ORDER
Index No. 09-1609
RJI #09-1-2009-0571

APPEARANCES: KEITH M. BRUNO, Esq., Attorney for the
Petitioner
SUSAN R. CASTINE, Respondent, pro se
RALPH M. MOHR, Esq., Attorney for Respondent
Judith C. Layhee
WILLIAM A. FAVREAU, Esq., Attorney for
Respondent Clinton County Board of Elections
and the Board of Canvassers

RYAN, A.J.:

Pending before the Court is the Order to Show Cause,
dated October 15, 2009, filed by the petitioner seeking an
order directing the respondent Clinton County Board of
Elections and the Board of Canvassers (hereinafter "the BOE")

to immediately send out ballots to military voters. In connection with this order to show cause the Court has reviewed and considered the following papers: the order to show cause, dated October 15, 2009, the petition, verified on October 14, 2009, the affidavit in response of respondent Susan R. Castine (hereinafter "Castine"), sworn to October 21, 2009, the verified answer to the petition from respondent Judith C. Layhee (hereinafter "Layhee"), as well as attached exhibits A and B, verified October 20, 2009, and the verified answer to the petition from Castine, sworn to October 21, 2009, as well as attachments A and B. In addition, the Court heard argument from the parties and testimony from Castine and Layhee, as well as Randa B. Filion, deputy Democratic Commissioner for the BOE.

Initially no one disputes that the BOE has failed to comply with the Elections Law by sending ballots to military voters by the deadline of October 2, 2009, as required by Elections Law §10-108(1). In fact, all parties have requested a quick resolution of this matter from the Court in order to send out these ballots. However, the BOE has been paralyzed due to a dispute between the commissioners regarding the filing of the Republican nominating petitions for the position of council person for the Town of Altona. The Commissioners must agree on these nominations in order for the ballots to be

printed. In order for the Court to resolve this matter, it must then address this dispute and, indeed, the argument and testimony involved this dispute almost exclusively.

Elections Law §6-158(6) states that a nominating petition must be filed with the BOE "not later than seven days after the fall primary election". That deadline this year fell on September 22, 2009. The failure to do so in the time required is a "fatal flaw" (Elections Law §6-106(2)).

The testimony revealed that the general procedure for the BOE is that when a document, such as a nominating petition, is brought to the BOE, it is time and date stamped, as required by Elections Law §6-144, and a copy with the time and date stamp is provided to the person who has presented the document. The BOE worker then places the filed document in a gray storage container maintained in the BOE offices. This box contains hanging files for each town as well as some other categories. The contents of this box are held there in order for the commissioners to check the papers, apparently to determine if they meet with the various Elections Law requirements. The commissioners agree that a copy of a nominating petition is just as acceptable for filing as the original petition.

The Town of Altona Republican Party held its caucus on June 10, 2009. Layhee testified that the following day there

was a county-wide Republican Party meeting at which she met with the head of the Town of Altona Republican Party. He gave her a copy of the nominating petition for the Party's candidates for the position of council person and asked Layhee to file same with the BOE.

Layhee testified that the following day, June 12, 2009, she brought that copy of the petition into the BOE with the intention of filing it and placed it on her desk. However, before she had the chance to date and time stamp it, she was distracted from the task by some other matter and set the petition aside. In fact, she did not just set it aside, she placed it in the gray box. That was the last time that particular copy of the petition was seen by anyone until late September.

Castine testified that she received a call from someone in the Democratic Party for the Town of Altona some weeks prior to the September 22nd deadline for filing as to the Republican Party's filing petition. Castine testified she asked the others in the BOE office and no one had seen it. It is unclear whether Layhee was asked at the same time. But Castine also testified that after the primary day in early September, she and Layhee went through the entire gray box, in order to review the documents filed in connection with the primaries, and the nominating petition was not in it.

However, that was not significant to Castine as the deadline for filing was still several weeks away. Layhee testified she had also heard discussion in the office prior to the deadline as to the Town of Altona petition and she asked her deputy commissioner, Lois McShane, about it and was told by Ms. McShane that she did not have the petition. It seems that the nominating petition would be given to Ms. McShane since it was one of her responsibilities to maintain the list of candidates. Layhee did not follow up on her conversation with her deputy at that time.

On September 23, 2009, the first day after the filing deadline, according to Castine's testimony, Layhee looked for the petition and apparently looked in the gray box and was unable to locate it. But she indicated to Castine that the chairman of the Republican Party in the Town of Altona had a copy with the date and time stamp on it. Layhee testified she spoke with him and he had the original of the petition but nothing with a date and time stamp on it.

On a date toward the end of September, anywhere from September 28 through 30th, Layhee testified she located the petition in the gray box. It was toward the back of the box, not in the Town of Altona file folder, but she was unsure of the exact location. This copy did not have a date and time stamp on it. Castine testified that when it was located,

Layhee told her she had found it in her office.

The question then for this Court to decide is whether this petition was in fact filed. First, however, the Court will address a number of affirmative defenses raised by Layhee in her response to the order to show cause. Essentially, Layhee argues that this Court cannot decide this matter because the petitioner is not a member of the military nor directly aggrieved by the failure to send out the military ballots and that necessary parties, the Republican Party's candidates for the position of council person in the Town of Altona have not been named as respondents. Putting aside the practical consideration that no one disagrees that the Board of Elections is not complying with the law and that military voters could be disenfranchised by this inaction, the Court finds the petitioner to be a person with standing to bring this proceeding. He is a registered voter in Clinton County and as such can file objections based on an alleged failure to follow the nominating procedure. Anyone who can file objections may bring an action under Elections Law §6-102 to invalidate a designation or nomination (see *Seaman v Bird*, 176 AD2d 1061 (3rd Dept. 1991)).

Moreover, every Clinton County voter is entitled to a free and fair election. The Court specifically finds that the petitioner has standing to bring this action.

Regarding the defense that the Republican Party's candidates must be named as respondents, the Court does not agree. CPLR §1001(a) defines a necessary party as a person or persons "who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by the judgment in the action". The question presented by the order to show cause is solely whether or not the Elections Law was followed in the filing of the nominating petition. The candidates cannot add anything to that consideration. In addition, the order to show cause was brought seeking an order directing the BOE to send out the military ballots. If the Court were to follow Layhee's logic as to who was a necessary party to this action, each and every member of the military serving outside Clinton County would have to be named and served.

Regarding whether Layhee complied with Elections Law §6-144, she has cited in support of her position that she did comply the case *Matter of Green v DiNapoli*, 96 NY2d 910 (2001). In that case, the candidate himself brought in a required certificate of acceptance on the last day for filing. He handed it to the "appropriate official" at the Board of Elections but it was not date and time stamped at all that day. In that case "it was undisputed that the official intended to time-stamp the certificate later that day, but

never did so, and that a separate book entry indicating timely receipt of the document was made" (*Ibid.* at 912, emphasis added). In that fact pattern, the Court of Appeals held that the "lack of endorsement due to the Board's oversight does not constitute a fatal error" (*Ibid.*).

Layhee argues that the *Green* case is on all fours with the present case. However, there are two crucial differences between *Green* and this case such that *Green* cannot dictate the result here. First, in *Green*, it was undisputed that the BOE official received the document in a timely manner and simply forgot to date and time stamp it. That is it patently not the case here. Second, in *Green* there was a simultaneous book entry regarding the date and time of the receipt of the document. There is no such back-up in this case. Given the significantly different facts of this case, the Court cannot find *Green* to be controlling.

Instead, the Court is left with the plain language of Elections Law §6-144 and the undisputed fact that this procedure was not followed in this case. What is more, Elections Law §1-106(2) states that failure to file within the prescribed time is a "fatal flaw" (see *Matter of Carr v New York State Bd. of Elections*, 40 NY2d 556 (1976)). This Court does not have any leeway in this matter. This is regrettable but the law is clear on this question.

Due to the failure to file the Republican Party's nominating petition for the position of council person for the Town of Altona, the ballots must be made up without those names on it.

Finally, the Court will address Layhee's proposed order to show cause which was presented to the Court approximately two hours before the return date of this order to show cause. In it, Layhee seeks an order directing Castine to show cause why an order should not be issued directing her to certify the form and content of the ballot with the names of the Republican candidates for the Town of Altona town council. Layhee's argument in support of this request is that certain Democratic caucuses for various towns in Clinton County did not comply with the notice provisions of the Elections Law. The Court declines to sign this order to show cause for two reasons: first, if indeed the Democratic Party for various towns failed to comply with certain notice provisions, that failure does not excuse the failure to file a nominating petition. One misdeed cannot wash away another. Second, and more importantly, the notice of the caucuses were all filed with the BOE. These notices were accepted without any objection by both commissioners and are beyond dispute now.


The order to show cause is GRANTED. The Board of Elections is hereby:

ORDERED, to immediately mail ballots to military voters,
and it is further

ORDERED, that the Commissioners of the Clinton County
Board of Elections are to immediately certify the ballot in
accordance with the New York State Elections Law without the
Republican Party's nominations for the position of council
person for the Town Council for the Town of Altona.

IT IS ALL SO ORDERED.

E N T E R:



KEVIN K. RYAN
Acting Justice, Supreme Court

Dated: Plattsburgh, New York
October 22, 2009

Order to Show Cause - Thomas Wood (3)

At a special Term of the Supreme Court
of the State of New York, held in and for
the County of Clinton, at Supreme Court
Chambers, at , New
York on the ___ day of October, 2009.

PRESENT: Honorable

Supreme Court Justice

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF CLINTON

In the Matter of

Index No.:

The Application of Thomas E. Wood, Jr., RJI No.:

Petitioner,

~ against ~

Susan Castine and Judith C. Layhee,

Commissioners for the Clinton County Board of Elections, and

The Clinton County Board of Elections and

The Board of Canvassers.

Respondents.

ORDER TO SHOW CAUSE

FOR AN ORDER PURSUANT TO ELECTION LAW SECTION 10-108, AND
RELATED SECTIONS OF ELECTION LAW OF THE STATE OF NEW YORK,
ORDERING THE CLINTON COUNTY BOARD OF ELECTIONS TO FORTHWITH
MAIL BALLOTS FOR MILITARY VOTERS.

Upon reading and filing the annexed Petition of Thomas E. Wood, Jr., duly
verified the 9th day of October, 2009, and upon all of the proceedings heretofore

Page 1

Order to Show Cause - Thomas Wood (3)

had herein,
and sufficient reason appearing therefore, it is hereby

ORDERED, that Susan Castine and Judith C. Layhee, Commissioners constituting

□
the Clinton County Board of Elections, and the Clinton County Board Election and Board of Canvassers, Show Cause at a Special Term of this Court, to be held in and for the County of Clinton, at in the City of , State of New York, on the day of October, 2009, at o'clock in the noon of that day, or as soon thereafter as counsel may be heard, why an order should not be made and entered herein:

1. Directing the Respondent, Clinton County Board of Elections and the Board of Canvassers, to immediately forthwith mail ballots to military voters; and
2. For such other and further relief as the Court may deem just and proper; and it is further

ORDERED, that the Respondents, Susan Castine, Judith C. Layhee, and the Clinton County Board of Elections and Board of Canvassers, are hereby ordered and directed to produce upon the hearing of this Order to Show Cause, and at all adjournments thereof, all documents relating to the ballots for the upcoming general election in Clinton County, State of New York; and it is further

ORDERED, that service of a copy of this Order to Show Cause and accompanying Petition upon the Respondent Susan Castine, Respondent Judith C. Layhee, and the Clinton County Board of Elections and Board of Canvassers, may be made by leaving the same with the secretary of the Board of Elections at the Office of the Clinton County Board of Elections, on or before the day of October, 2009, and same shall be deemed good and sufficient service.

□
SIGNED this day of October, 2009, at , New York.

Honorable

□

**SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF CLINTON**

In the Matter of

The Application of Thomas E. Wood, Jr.

Index No.: _____

RJI No.: _____

Petitioner,

~ against ~

**Susan Castine and Judith C. Layhee,
Commissioners for the Clinton County Board of Elections, and
The Clinton County Board of Elections and
The Board of Canvassers.**

Respondents.

**PETITION FOR PROCEEDING TO DIRECT AND
ORDER THE CLINTON COUNTY BOARD OF
ELECTIONS TO MAIL OR OTHERWISE
DISTRIBUTE BALLOTS FOR MILITARY VOTERS**

Petitioner, Thomas E. Wood, Jr., respectfully alleges:

1. Petitioner, Thomas E. Wood, Jr., resides at 6035 Route 22, Plattsburgh, County of Clinton, State of New York. Petitioner, Thomas E. Wood, Jr., is a registered voter in the County of Clinton, State of New York.
2. That the Respondent, Susan Castine is the Clinton County Board of Elections Democrat Commissioner. That the Respondent, Judith C. Layhee, is the Clinton County Board of Elections Republican Commissioner. That the Respondent, Clinton County Board of Elections and Board of Canvassers, is an agency created under the

New York State Election Law to be responsible for the administration and management of all elections and voting procedures in the County of Clinton, and has a responsibility among other matters, to certify and distribute ballots for military voters; and to comply with the Election Law for the State of New York.

3. That upon information and belief, New York State Election Law, Section 10-108, Subdivision 1, recites in part:

“Ballots for military voters shall be mailed or otherwise distributed by the Board of Elections 32 days before a primary or general election; etc.”
4. That the general election is scheduled to be held in the State of New York on November 3, 2009. Accordingly, 32 days prior thereto, was October 2, 2009. The Clinton County Board of Elections should have mailed ballots for military voters, or otherwise distributed the ballots for military voters, no later than October 2, 2009.
5. To date, no ballots for military voters have been mailed or otherwise distributed by the Clinton County Board of Elections, and the Clinton County Board of Elections is accordingly failing to fulfill its duties to the registered voters for the County of Clinton.
6. That the action of the Commissioners for the Clinton County Board of Elections, and the Clinton County Board of Elections, are unjust and improper, and potentially disenfranchising voters of their constitutional right to vote.

7. That Petitioner seeks court intervention, in order to protect the constitutional rights of registered voters in the County of Clinton, and the right of military voters to receive ballots in a timely manner, as required by the Election Law for the State of New York.
8. That upon information and belief, it is Petitioner's understanding that the failure of the Clinton County Board of Elections to mail ballots for military voters or otherwise distribute same, is due to a dispute between the two Commissioners for the Clinton County Board of Elections, as to certain names being placed on the ballot.
9. It is Petitioner's understanding, that Respondent, Judith C. Layhee, the Republican Commissioner for the Clinton County Board of Elections, seeks that two names be placed on the ballot for the Town of Altona Town Councilman position. That Respondent, Susan Castine, opposes said action, due to the failure of the Town of Altona Republican Chairman failing to timely file his caucus nomination.
10. That pursuant to Election Law Section 6-158, Subdivision 6, a certificate of a party nomination shall be filed no later than seven (7) days after the fall primary election. That the fall primary election in the State of New York was held on September 15, 2009. That pursuant to the Election Law, the filing nominations for the Town of Altona Republican Committee had to be filed on or before September 22, 2009.

11. That the said Town of Altona Republican filing nomination was never filed and accordingly, the names from said Town of Altona filing nominations should not be placed on the ballot for failure to file the statutory requirements of the Election Law. The Republican Commissioner has refused to comply with Election Law 6-158, Subdivision 6. There is no exception provided in the Election Law, for the late filing of nominations. Moreover, it has been held in New York State that:

“The failure to file timely the required petitions for certificates designating or nominating a person as a candidate is a fatal defect, and the court’s are without discretionary party to excuse such defect” (See, Bristol v. Chiavarori [Fourth Department 1976] 54 A.D. 2d 72, 392 N.Y.S. 2d 342).

12. The dispute between the two Commissioners from the Board of Elections, is seriously effecting and jeopardizing the rights of all voters in the County of Clinton, to exercise their constitutional right to vote. Without a ballot, nobody can vote.
13. Petitioner seeks from the Court, in addition to the relief previously requested, an Order directing the Commissioners for the Clinton County Board of Elections to certify the ballots, print same, and distribute same according to the Election Law.
14. This petition is being filed under Article 78 of the Civil Practice Laws and Rules, as the question raised in this proceeding is whether a body

or officer failed to perform their duty and enjoined upon it by law.

15. That the Clinton County Board of Election Commissioners, and Clinton County Board of Elections, is failing to perform its duty to certify ballots, and mail or otherwise distribute ballots for the military voters pursuant to 10-108 of the Election Law of the State of New York.
16. In addition, Petitioner herein requests of the Court, that the Court make a determination as to the names being placed on the ballot, and order the Commissioners for the Clinton County Board of Elections to certify same after said decision is made, and to comply with the rules and regulations of the Election Law.
17. Equity dictates that Petitioner has the right to be heard in Court on behalf of the registered voters for the County of Clinton, State of New York.

WHEREFORE, Petitioner, Thomas E. Wood, Jr., prays for the relief requested in the Order to Show Cause, ordering the Clinton County Board of Elections to mail or otherwise distribute ballots for military voters; and ordering the Clinton County Board of Elections to certify the ballot; and granting Petitioner such other and further relief as the Court may deem just and proper.

Thomas E. Wood, Jr.

Sworn to before me this
____ day of October, 2009.

Notary Public

**SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF CLINTON**

In the Matter of

Index No.:

The Application of Thomas E. Wood, Jr. RJI No.:

Petitioner,

~ against ~

**Susan Castine and Judith C. Layhee,
Commissioners for the Clinton County Board of Elections, and
The Clinton County Board of Elections and
The Board of Canvassers.**

Respondents.

**RESPONSE OF SUSAN CASTINE TO PETITION FOR
PROCEEDING TO DIRECT AND ORDER THE
CLINTON COUNTY BOARD OF ELECTIONS TO
MAIL OR OTHERWISE DISTRIBUTE BALLOTS FOR
MILITARY VOTERS**

Respondent, Susan Castine, respectfully responds as follows:

County of Clinton, State of New York. Respondent, Susan Castine, I am the Democratic Commissioner of the Clinton County Board of Elections. That the Respondent, Clinton County Board of Elections and Board of Canvassers, is an agency created under New York State Election Law to be responsible for the administration and management of all elections and voting procedures in the County of Clinton, and has a responsibility among other matters, to certify and distribute ballots for military voters; and to comply with the Election Law for the State of New York.

3. That upon information and belief, New York State Election Law, Section 10-108, Subdivision 1, recites in part:

“Ballots for military voters shall be mailed or otherwise distributed by the Board of Elections 32 days before a primary or general election; etc.”

4. That the general election is scheduled to be held in the State of New York on November 3, 2009. Accordingly, 32 days prior thereto, was October 2, 2009. The Clinton County should have mailed ballots for military voters, or otherwise distributed the ballots for military voters, no later than October 2, 2009.

5. To date, no ballots for military voters have been mailed or otherwise distributed by the Clinton County Board of Elections, and the Clinton County Board of Elections is accordingly failing to fulfill its duties to the registered voters for the County of Clinton.

6. That the failure to do so is a direct result of the Republican Election Commissioner, Judith C. Layhee’s failure to certify the Clinton County Ballot. The failure to certify the Clinton County ballot is solely due to one town’s failure to file their nominations made at their town caucus by the statutory deadline of 5:00 pm on September 22, 2009. NYS Election Law Section 6-158(6).

This has caused the Commissioners of the Board of Elections, and the Clinton County Board of Elections, to unjustly, improperly, and potentially disenfranchising voters of their constitutional right to vote.

7. Respondent, Susan Castine, agrees with the Petitioner in seeking court intervention, in order to protect the rights of military voters to receive ballots in a timely manner, as required by the Election Law for the State of New York. The Petitioner's understanding is correct and the failure of the Clinton County Board of Election to mail ballots for military voters or otherwise distribute same is due to this dispute between the two Commissioners for the Clinton County Board Elections, as to certain names being placed on the ballot.

8. The Petitioner understands that Respondent, Judith C. Layhee, the Republican Commissioner for the Clinton County Board of Election, is seeking to have the two names of the nominees placed on the ballot for the positions of Town Councilman, and thereby break the law in doing so. That Respondent, Susan Castine, opposes said action, due to the failure of the Town's Republican Chairman failure to timely file his caucus nomination is correct. That pursuant to Election Law Section 6-158, Subdivision 6, a certificate of a party nomination shall be filed no later than seven (7) days after the fall primary election. The fall primary election in the State of New York was held on September 15, 2009. Pursuant to the Election Law, the filing nominations for the Town Republican Committee caucus had to be filed on or before 5:00 PM on September 22, 2009, with the Clinton County Board of Elections. It failed to do so.

9. The Town's Republican caucus nomination was never filed timely, nor has been filed as of this date; accordingly, the names from said Town's caucus nominations should not be placed on the ballot for failure to file same by the statutory requirement of the NYS Election Law. Respondent, Judith C. Layhee, has searched for the caucus nomination, beginning on September 23, 2009, and continued to announce to the Board of Election staff, that the Town Chairperson and the town secretary had a filed stamped copy and would be bring it down to prove that it had been filed. This never occurred. The Republican Commissioner has refused, and continues to refuse, to comply with NYS Election Law Section 6-158 Subdivision. There is *no exception*

provided in the NYS Election Law, for the late filing of nominations stemming from a caucus.

Moreover, it has been held in New York State that:

“The failure to file timely the required petitions for certificates designating or nominating a person as a candidate is a fatal defect, and the court’s are without discretionary party to excuse such defect” (See Bristol v. Chiavarori [Fourth Department 1976] 54 A.D.2d 72,392 N.Y.S.2d 342). Emphasis Added. See Sanhlerv v. Callahan, (3 Dept. 1983) 92 A.D.2d 976, 460 N.Y.S.2d 643. “... failure to timely file a certificate of nomination is a “fatal defect”.

“A certificate of party nomination was not allowed to be filed nunc pro tunc. In re Darling (1 Dept. 1907) 121 A.D. 656 106 N.Y.S. 430, affirmed 189 N.Y. 570, 82 N.E. 438, See, also, Matter of McDonald 1898, 25 Misc. 80, 54 N.Y.S. 690.

“...filing certificates of nomination had expired, the provisions as to time being mandatory”. In Halpin (1 Dept.) 1905) 108 A.D. 271, 95 N.Y.S. 611.

The dispute is seriously effecting and jeopardizing the rights of all voters in the county of Clinton, to exercise their constitutional right to vote. Without a ballot, nobody can vote.

10. Respondent, Commissioner Susan Castine, agrees with the Petitioner in seeking from the Court, in addition to the relief previously requested, an Order directing the Republican Commissioner for the Clinton County Board of Elections to agree to certify the ballots, print same, and distribute same according to the NYS Election Law without the names of the two (2) nominees from the Republican Party from the Town and certify the ballot as of October 2, 2009

11. This petition is being filed under Article 78 of the Civil Practice Laws and Rules, as the question raised in this proceeding is whether a body or officer failed to perform its duty and enjoined upon it by law.

12. That the Clinton County Board of Election Commissioners, and Clinton County Board o

Elections is failing to perform its duty to certify ballots, and mail or otherwise distribute ballots for military voters pursuant to NYS Election Law Section 10-108.

13. In addition, Respondent, Susan Castine agrees with the Petitioner's request of the Court, that the Court make a determination as to the names being placed on the ballot, and order the Commissioners for the Clinton County Board of Elections to certify same after said decision is made, and to comply with the and regulations of the Election Law.

WHEREFORE, Respondent, Commissioner Susan Castine, prays for the relief requested in the Order to Show Cause, ordering the Clinton County Board of Elections to mail or otherwise distribute ballots for military voters; and ordering the Clinton County Board of Elections to the certify the ballot as of October 2, 2009; and granting any and all other and further relief as the Court may deem just a proper.

DATED THIS _____ day of October, 2009

SUSAN CASTINE
Election Commissioner
Clinton County

Sworn to before me this
_____ day of October, 2009

County
RyL

Elections Board Tells Poll Workers to Bank On City Pay Pledge

By ARI PAUL

The city's Board of Elections does not anticipate logistical problems at the polls this year or a situation in which poll workers will not be paid, it said last week.

Board officials had told a State Senate panel in mid-October that the city had not provided it with enough money to pay the temporary workers in the general election Nov. 3, the day this newspaper hit the stands.

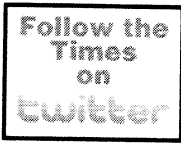
Say Funds Will Arrive

Agency representatives had said that the BOE exhausted all of its available funds to pay for the \$13.5-million run-off, but spokesmen for the Mayor said that funding would be made available after the election.

"All workers should show up to work expecting that the city will honor its commitment," board spokeswoman Valerie Vasquez said.

Communications Workers of America Local 1183 President Nicholas Zimmitti, who represents the year-round workers at the board, claimed that the Bloomberg administration ignored warnings during budget negotiations that a run-off in the primary election was imminent and that the board needed more initial funding to pay the 30,000 poll workers.

ADVERTISEMENT



Electronic voting

Smooth process in Jefferson County

THURSDAY, NOVEMBER 5, 2009

ARTICLE OPTIONS



The Jefferson County Board of Elections should be congratulated for the successful debut of its new electronic voting machines.

Throughout the county, poll workers were well trained in helping voters cast their ballots in the new system.

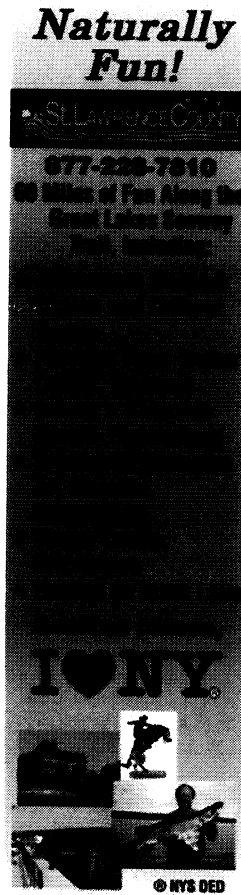
Actually, the process for individual voters was not too difficult. Voters used pens to mark their choices on paper ballots which were then fed into a machine that scanned and recorded the votes.

Pretty smooth. And the voting results in Jefferson County were efficiently tabulated, recorded and posted.

The switch to electronic machines is in compliance with the 2002 Help America Vote Act, meant to make voting accessible for the disabled and avoid the kinds of problems that developed during the 2000 presidential race.

The process worked well in Jefferson County. Congratulations to Republican Elections Commissioner Jerry O. Eaton and his Democratic counterpart Sean M. Hennessey for a job well done.

[SHOW COMMENTS \(2\)](#)



*Can Mt
Pg 1*

You may use this copy for your personal, non-commercial use only. Redistribution or repurposing without express written permission of the Watertown Daily Times is strictly prohibited. Copyright. Watertown Daily Times, Inc., Watertown, NY. All rights reserved.

ADVERTISEMENT



Ballots still uncounted in 4 St. Lawrence districts

By **MARTHA ELLEN**
TIMES STAFF WRITER
THURSDAY, NOVEMBER 5, 2009

ARTICLE OPTIONS

AAA  

 SHARE   

CANTON — St. Lawrence County election officials can't determine what went wrong Tuesday with voting machines in eight districts until a court impoundment order is lifted.

Election results won't be available until then from those districts or from one of two districts in the town of Fowler, where results were inadvertently combined.

Problems with machines were reported early from Rossie, Edwards and Clare.

"The machines were frozen," Democratic Election Commissioner Jennie H. Morrill said. "Ballots were put in emergency lock boxes."

Inspectors didn't report problems in Colton, Lawrence, and two districts in Massena until inspectors tried closing the polls with an electronic key and the machines froze rather than print results.

"It's nothing the inspectors did wrong," Ms. Morrill said. "I can't open the machines so I don't know what happened."

The county switched from lever machines to electronic versions to comply with the 2002 Help America Vote Act. Voters mark a paper ballot which is fed into a scanner.

Fulton County, which is partly in the 23rd Congressional District, also reported problems with machines in 11 districts. Inspectors there switched to paper ballots. Lewis County reported issues with three machines.


A total of 24 voting districts did not report results, including some in Oswego, Madison and Oneida counties.


Election inspectors in St. Lawrence County were fully trained on the equipment, Ms. Morrill said.


"Obviously, this year, the training was different because it was new," Ms. Morrill said. "The inspectors


WATERTOWN DAILY TIMES.COM


READ OUR BLOGS; ADD YOUR COMMENTS

 **ALL POLITICS IS LOCAL**
By JUDE SEYMOUR
Bill and Bill
Tuesday, August 25, 2009

 **OUTSIDE LOOKING IN**
By Perry White
The Angry Men
Thursday, October 28, 2009

 **ROUGH DRAFT**
By DAN CASSAVAUGH
Now You See Them, Now You Don't, Now You See Them
Friday, August 28, 2009
See Also: [Mick's Sander Colton](#)

 **ALL THAT JAS**
By JEFFREY A. SAVITSKIE
Time To Break The Curse Of 29 Maple St.
Friday, August 28, 2009

 **A FILM FAN'S NOTES**
By DAN CASSAVAUGH
Name That Movie Answer And Tuesday's Old Romance
Monday, August 24, 2009

Comments
Pg 2

You may use this copy for your personal, non-commercial use only. Redistribution or repurposing without express written permission of the Watertown Daily Times is strictly prohibited. Copyright. Watertown Daily Times, Inc., Watertown, NY. All rights reserved.

did a fabulous job."

[SHOW COMMENTS \(1\)](#)

ADVERTISE HERE!



Glitches reported with voting machines

By JIMMY LAWTON
JOHNSON NEWSPAPERS
WEDNESDAY, NOVEMBER 4, 2009

ARTICLE OPTIONS
A A A
SHARE

WADDINGTON — St. Lawrence County's Board of Elections found itself facing problems with its Web site Tuesday night, and with voting machines during the day in Waddington and elsewhere.

No winner has been named in the race for Waddington Town Supervisor due to malfunctioning voting machines.

As of shortly after midnight, Republican candidate Mark Scott was leading Democratic incumbent William R. Dalton for Waddington town supervisor 212-151, according to unofficial results posted on the St. Lawrence County Web site. These results included only one precinct and did not include the emergency ballots filled out during the hours that voting machines were disabled.

Town Clerk Carol Burns said the machines broke down before 9 a.m. and remained inoperable into the afternoon. She said at least 100 emergency ballots were filled out before the machines were back on.

Officials said the elections equipment has been impounded across the congressional district and that official results will be unavailable for an undetermined period of time.

Julie L. Rolfe, deputy Democratic commissioner of the St. Lawrence County Board of Elections, said the county elections officials will not have access to the equipment until the results are tallied.

"Because of the impoundment, no one from our office can touch our election supplies until the impoundment has been lifted. They are being locked in a secure facility," she said.

Mr. Dalton said he was annoyed by the situation.

"It's a pain. They said we might have to wait a week for the results," he said.

Similar problems occurred in the towns of Louisville, Rossie and Claire.

Earlier in the day, Eileen M. Boots, site

Over already?

...I was just getting comfortable!

Experience the new

3T

MAGNETOM Verio

MRI

- now available at

(315) 769-4228

*Can my
get*

You may use this copy for your personal, non-commercial use only. Redistribution or repurposing without express written permission of the Watertown Daily Times is strictly prohibited. Copyright. Watertown Daily Times, Inc., Watertown, NY. All rights reserved.

coordinator at the Massena Community Center, said poll workers there encountered some difficulties making sure voters were given the proper ballot for their district. Districts 8, 9 and 10 have been consolidated into one registration location this year, which created some confusion in passing out ballots, Ms. Boots said.

"I wish we had a smoother way of signing them in," she said. "We have three districts coming to one table now, so we've been ironing out some of the glitches as we've gone along. People have been very nice and very patient."

Results for the town of Waddington as well as the others will be posted on the county Board of Elections Web site as soon as they are available.

[SHOW COMMENTS \(0\)](#)

ADVERTISEMENT



Voters express mixed reviews of electronic voting machines

By **ROBERT BRAUCHLE**
TIMES STAFF WRITER
WEDNESDAY, NOVEMBER 4, 2009

ARTICLE OPTIONS



From disdain to delight, north country voters expressed a variety of opinions about the new electronic voting machines used for the first time this year in Jefferson, Lewis and St. Lawrence counties.

"As a student, I'm used to filling in the bubbles on tests, so it wasn't anything too hard," said Diana Montgomery after voting Tuesday afternoon at Watertown City Hall.

Voters blackened boxes on paper ballots to designate their choices and fed the ballots into a machine to be scanned.

After voting at City Hall, Bradford C. Riendeau said using the machines was easy, but the old machines were just as simple.

"I understand the push for technology, but I didn't think there was a problem with the old lever machines," he said. "Overall, I think it's a good process."

Some voters who were interviewed said they were uncomfortable with the lack of privacy offered by the pop-up barriers used to conceal ballots. They also were concerned that the boxes marked to vote for candidates were too small.

While voters offered mixed reviews of the electronic machines, county elections commissioners said they had few problems with the devices.

"With new technology, there will always be some minor issues," said Sean M. Hennessey, Jefferson County Democratic elections commissioner.

Emergency ballots needed to be used in Lewis and St. Lawrence counties because of problems with machinery.

Elaine McLear, Lewis County Democratic elections commissioner, said technicians were on hand to help with malfunctioning machines. A pair of Lewis County polling stations used emergency ballots.

*Can not
Ry*

WATERTOWN DAILY TIMES.COM
READ OUR BLOGS; ADD YOUR COMMENTS

ALL POLITICS IS LOCAL
 By JUDE SEYMOUR
 Bill and Bill
 Tuesday, August 25, 2009

OUTSIDE LOOKING IN
 By Perry White
 The Angry Men
 Thursday, October 28, 2009

ROUGH DRAFT
 By BOB SORMAN
 Now You See Them, Now You Don't, Now You See Them
 Photo, August 29, 2009
 See Also: [Bob's Reader Column](#)

ALL THAT JAS
 By JEFFREY A. SAVITSKIE
 Time To Break The Curse Of 29 Maple St.
 Friday, August 28, 2009

A FILM FAN'S NOTES
 By DAN CASSAVALGH
 Name That Movie Answer And Tuesday's Dvd Releases
 Monday, August 24, 2009

You may use this copy for your personal, non-commercial use only. Redistribution or repurposing without express written permission of the Watertown Daily Times is strictly prohibited. Copyright. Watertown Daily Times, Inc., Watertown, NY. All rights reserved.

"Things are going fine," she said. "There were a few things getting the machines fired up, but nothing major so far."

[SHOW COMMENTS \(1\)](#)



Electioneering at polling sites causes hassle

By **ROBERT BRAUCHLE**
TIMES STAFF WRITER
WEDNESDAY, NOVEMBER 4, 2009

ARTICLE OPTIONS
AAA
 SHARE

While north country voters had few problems with the new electronic voting machines, elections officials reported widespread problems with campaign volunteers electioneering outside of polling sites.

Elections workers in the St. Lawrence County municipalities of Fowler and Parishville called police because people were electioneering within the 100-foot boundary set by state Board of Elections regulations.

Joy Yearout, spokeswoman for the Susan B. Anthony List, said it was one of her volunteers who encountered the police in Fowler. Her anti-abortion group had 200 volunteers at more than 52 polling locations across the district passing out pamphlets urging voters to pick Conservative Party candidate Douglas L. Hoffman in the 23rd Congressional District race.

"The police came and said he was fine," she said.

Ms. Yearout blamed overzealous poll workers "using the only tool they have, and that's intimidation."

Both Jefferson County elections commissioners traveled to polling sites in Watertown to urge campaign volunteers to keep their distance from polling sites. The pair set up signs marking the electioneering boundary.

"We've received some complaints, but everything is under control," said Sean M. Hennessey, Jefferson County Democratic elections commissioner.

About 11 a.m., Mr. Hennessey and Republican Elections Commissioner Jerry O. Eaton were at the Emma Flower Taylor Fire Station on South Massey Street, ushering a campaign volunteer closer to the street.

"People are very passionate about this election, but we'd like them to respect the voters," Mr.

WATERTOWN DAILY TIMES.COM

READ OUR BLOGS; ADD YOUR COMMENTS

ALL POLITICS IS LOCAL
By JUDÉ SEYMOUR
Bill and Bill
Tuesday, August 25, 2009

OUTSIDE LOOKING IN
By Perry White
The Angry Men
Thursday, October 28, 2009

ROUGH DRAFT
By BOB SOROMAN
Now You See Them, Now You Don't, Now You See Them
Friday, August 28, 2009
See Also: Bob's Sander Column

ALL THAT JAS
By JEFFREY A. SAWITSKIE
Time To Break The Curse Of 29 Maple St
Friday, August 28, 2009

A FILM FAN'S NOTES
By DAN CASSAVAUGH
Name That Movie Answer And Today's Dvd Releases
Monday, August 24, 2009

*Can M
Ry*

You may use this copy for your personal, non-commercial use only. Redistribution or repurposing without express written permission of the Watertown Daily Times is strictly prohibited. Copyright. Watertown Daily Times, Inc., Watertown, NY. All rights reserved.

Hennessey said.

In Watertown, volunteers handed out fliers for the Hoffman campaign outside at least three polling stations.

In Lewis County, elections officials removed signs advertising Mr. Hoffman because they were placed too close to a polling station.

"I just feel like the candidate should have their workers under control," said Elaine McLear, Lewis County Democratic elections commissioner. "There are ways to handle things, and we had to do what we thought was proper."

Times staff writer Jude Seymour contributed to this report.

[SHOW COMMENTS \(2\)](#)

The Post-Journal

Covering The Way You Live

Page One

> Page One

Print this Page

[←--back to story](#)

Mixed Reviews For New Voting Machines

By Rich Place, rplace@post-journal.com

POSTED: November 4, 2009

For years, voters in Chautauqua County needed to pull a few levers to choose which candidates they wanted in office.

This Election Day, however, the procedure to cast a ballot underwent a big change, as Chautauqua County joined 15 other counties in New York state by using the new optical scan paper ballot machine.

This year, the voting process looked similar to a high school multiple-choice test as voters used a pen or felt-tipped marker to shade in a box that corresponded to the candidate whom they wish to vote for before placing it in a machine that scanned the card and checked it for errors.

As Election Day progressed, some voters voiced concerns over the lack of privacy when voting. Instead of having a curtain draw behind a voter like the lever machines, this new method had voters filling out ballots at a booth protected by a barrier on three sides.

One local voter, a school teacher named Sue, said the new system does present a potential concern for voter privacy.

"As you walk up to the privacy booth to look for an open spot, you can see who people are voting for, if you wanted to," she said. "When I was filling out my ballot, I noticed there was someone behind me and it crossed my mind."

"There is a variety of reasons why (voters) don't feel comfortable, but I think it is a big switch from behind a curtain to behind a booth," said Brian Abram, Republican election commissioner. "I think some of that is just a big change in how you are handled."

Abram added the issue concerning privacy is not only in Chautauqua County, but has been brought up across the state. Democratic Election Commissioner Norman Green agreed that privacy is a concern and needs to be addressed.

"Statewide this is an issue that everyone is talking about - how to ensure the privacy of the voters," he said. "It is something we are working on and we are going to fix with future training."

For some voters, including an 87-year-old Jamestown resident named Josephine, privacy has never been a concern during the voting process.

"I vote for whoever I want and I don't care who sees it," she said. "I wasn't concerned that anyone was looking over my shoulder and I wouldn't much care if they tried to."

While privacy at the polls did raise eyebrows at times, other voters missed the old way of casting their ballot because they found the new machines more complicated and unfamiliar.

"I like the old way better," said Tina Huckabone after she cast her ballot. "I think you'll have more problems with having to fill in squares instead of using levers."

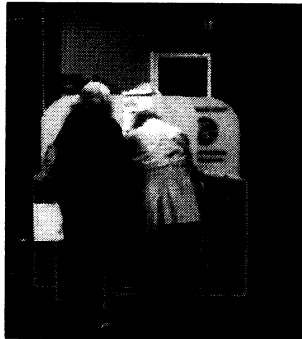
She added that privacy wasn't a concern for her.

Patrick Post of Jamestown said he didn't have a problem at all with the new voting system.

"The only problem I had was that I forgot my glasses," he said laughing. When asked about privacy, he responded by saying, "I was fine."

Abram said there was "some human error and some technical errors" with the new machines, but that the

Article Photos



A Jamestown woman receives assistance from her daughter while filling out the optical scan ballot at Hillcrest Baptist Church on Tuesday.
P-J photo by Robert Rizzuto

Fact Box

"When I was filling out my ballot, I noticed there was someone behind me and it crossed my mind."

Sue, local school teacher

County NY

problems were corrected quickly and without long-term effects. Green said the results were coming in slower than planned because some election inspectors didn't return the data disk necessary to process the election results.

Because the new machines can handle much more than the 1,000-vote maximum the old machines topped out at, polling sites were consolidated and many voters found themselves voting at new locations. This can lead to longer wait times, although it presumably costs less and takes fewer people to operate a polling station. Neither Abram or Green said any problems were directly reported to them concerning longer lines.

"I did visit a couple polling sites myself and everybody seemed to say that it was going quite well," said Abram. "In the old system you did stand in line and wait for your turn to go behind the curtain. There were slight delays but the weren't delays that were anywhere near the level they were used to from the past."

Statistics show that voters were not deterred from voting by the new machines however, as early estimates show roughly 35 percent of the population came out to vote Tuesday according to Green.










"That has become the normal," he said. "It will hover somewhere around 40 percent, and so that is comparable to recent past executive elections."

The voting machines were purchased by the Chautauqua County Board of Elections last year to comply with the federal Help Americans Vote Act. Election officials announced in May that the new machines would be in place for Election Day, and people have had a chance to see the machines at various events throughout the summer. The League of Women Voters and the Board of Elections had introduced the new machines at the County Fair, the Fredonia Farm Festival, the Dunkirk Public Library, the Immanuel Lutheran Church and various senior centers.

Reporters Robert Rizzuto and Nick Dean contributed to this report.

[Subscribe to Post-Journal](#)

Share:

 Facebook	 MySpace	 Digg	 Stumble	 Buzz up!	 Mixx	 Fark	 delicio.us	 LiveSpaces
--	---	--	---	--	--	--	--	--



Com mh
FYI



Updated: Mon., Nov. 2, 2009, 9:35 AM

Runoff-election translators at a loss for words

By JENNIFER FERMINO

Last Updated: 9:35 AM, November 2, 2009

Posted: 3:07 AM, November 2, 2009

Poll workers weren't the only ones with nothing to do at September's feeble Democratic runoff election.

The New York City Board of Elections hired more than a thousand Chinese and Korean interpreters at \$200 a pop to work the polls – but nearly a quarter of them reported seeing fewer than five people the entire day, according to records obtained by The Post.

More than a third helped just one person or none at all on the day of the runoff, in which just 8 percent of the city's registered Democrats turned out to choose a candidate for city comptroller and public advocate, according to the board's records.

"The Board of Elections should know which population speaks Chinese," groused one translator assigned to work at a polling site in TriBeCa.

"On the Election Day, I only helped two Chinese."

The Korean and Chinese translators were assigned to work at 366 polling sites in Brooklyn, Queens and Manhattan.

The location and number of interpreters was set under a ratio included in a 2008 settlement between the Board of Elections and the Asian American Legal Defense and Education Fund, which alleged widespread discrimination in a lawsuit.

NEW YORK POST is a registered trademark of NYP Holdings, Inc.
NYPOST.COM, NYPOSTONLINE.COM, and NEWYORKPOST.COM are trademarks of NYP Holdings, Inc.
Copyright 2009 NYP Holdings, Inc. All rights reserved. Privacy | Terms of Use



Comments
FYI

Click to Print

During Primary, Kevin Kim's Aggressive Tactics Irked Poll Coordinators

Monday, November 2, 2009

By Chris Bragg

During the Sept. 15 primary, Kevin Kim's campaign used a muscular Get Out The Vote Operation for a surprising victory to replace Tony Avella in the City Council.

Their strategy revolved around pulling out Asian-American voters in Flushing by gathering data at poll sites about who had and had not voted. This strategy—plus an army of young volunteers—is believed to have made the difference for Kim in a crowded field.

But his campaign's aggressive tactics also rubbed many primary poll site coordinators the wrong way, according to reports filed with the Board of Elections by the coordinators immediately following the primary.

--Joanne Trikas, who ran the polling site at PS 79, wrote of the Kim poll watchers that, "Many of our inspectors and myself at times felt they could be electioneering to voters. These people were 'constantly' inquiring with the inspectors who told me that they were very aggressive in gathering information."

-- Elyse Bulla, the coordinator at PS 130, wrote that the Kim poll watchers, "Did not want to follow orders or procedures... They are telling me what to do... I kept telling them not to get involved."

-- Maria Farren, the coordinator at St. Andrew Avellino School, wrote that, "Hyng Jung Shim—another Kim poll watcher, made our inspectors very uncomfortable. As soon as an Asian voter arrived at the table, she was right there inching her way in and taking notes."

--Elaine Klein, the coordinator at PS 169, wrote that a Kim poll watcher named Jae W. Lee was "nasty, belligerent insulting."

--Kevin Smyth, the coordinator at PS 193, wrote that Kim's poll watchers were "not just checking signatures but taking names addresses & following voters out for more info (only Asian)."

According to the Board of Elections poll worker's manual, "it is a felony punishable by fine, imprisonment or both for a poll worker to... electioneer at the polls." The manual also state that poll watchers must, "follow the directions of the Coordinator or Board of Elections personnel," and that poll workers cannot, "threaten or intimidate voters."

Tomorrow, Kim will face off in the general election against Republican Dan Halloran. Halloran's campaign spokesman, Steven Stites, expressed concern that Kim might use "out of bounds" tactics at polls tomorrow.

But Kim said that while his campaign's tactics may be aggressive, they also fall within the bounds of the law.

Kim noted that no Korean-American voters reported have being intimidated into casting a vote for him, even as exit shows showed 98 percent of these voters cast their ballots for Kim.

One reason Kim poll workers were wrongly thought to be electioneering, Kim said, was that they were speaking to voters in Korean or Mandarin, so poll coordinators could not understand what was being said.

Kim admitted that the campaign was very aggressive: poll watchers were constantly asking voters for their addresses after they voted. They also incessantly asked poll site coordinators which voters' names had been crossed out of polls books.

But those tactics, at least, do not appears to violate the letter of the law.

"If laws were being violated, the Board of Elections would have taken action," Kim said. "A lot of the poll workers had simply never seen such an aggressive get out the vote effort."

Cow My
KYL

THE NEW YORK TIMES, SUNDAY, NOVEMBER 1, 2009

MB

DECONSTRUCTED | VOTING BOOTH

Who's Who on Tuesday's Mayoral Ballot

ELECTION officials compare them to a 1963 Studebaker ("it's a very good car, but it's very old") and on Tuesday 7,000 squat voting booths, many manufactured almost 50 years ago by the Shoup Voting Machine Company of Canton, Ohio, will be stationed across the city.

In addition to the ballot in each voting machine and sample ballots displayed at polling sites, the city's Board of Elections prints — for each of the city's 6,000 election districts — about 800 emergency ballots, 200 absentee ballots and 500 ballots that the disabled can

mark with special devices. The printing is done by private companies and costs about \$10 million.

Ballots are printed in three languages besides English — Spanish, Chinese and Korean — depending on the demography of individual election districts.

City election officials say they cannot remember major glitches on the ballots, like a spelling error, that required a recall. In 2008, one upstate district was said to have sent out absentee ballots listing "Barack Osama." State legislation from the late 19th century

requires each party to be listed on the ballot with a symbol as well as a name to make it easier for illiterate voters. Republicans use an eagle and Democrats a star, rather than the more familiar elephant and donkey, which began as political cartoons. The Libertarians use an arm of the Statue of Liberty, while the Conservatives took her torch.

The parties are listed in the order of the number of votes they received in the last election of a governor; those that got fewer than 50,000 votes (Libertarian, Socialism and Liberalism, Socialist Workers, Green and Rent

is Too Damn High) land in the order their petitions were filed with the Board of Elections. The Jobs & Education Party, which Mayor Michael R. Bloomberg created, is listed under his name on the Independence line because the city does not want candidates to monopolize the ballot by inventing new parties.

Voters can also write in any name, including their own. In 2005, at least one vote was recorded for nearly 150 individuals, among them Dafy Duck, God, Jesus Christ and Howard Stern.

MICHAEL BARBARO and SAM ROBERTS


DEMOCRATIC For a brief, dramatic moment, Mr. Bloomberg considered seeking the party's nomination, an unheard-of gamble for a non-Democrat. But the party's five county chairmen stuck with William C. Thompson Jr., now the comptroller.


REPUBLICAN The party's chairman threatened to back the mayor's rival as payback for his switch from Republican to independent two years ago. But a \$250,000 donation from the mayor helped assuage their anger.

INDEPENDENCE It took a visit from the mayor, an agreement to help settle a nasty political dispute, a vow to take a second look at nonpartisan elections and a \$250,000 contribution from Mr. Bloomberg to secure this ballot line.

CONSERVATIVE The party's five county leaders did not endorse Mr. Bloomberg because of his moderate stands on bread-and-butter conservative issues. They instead recruited their own candidate, Stephen A. Christopher, the pastor at a Baptist church in Brooklyn, who faced no competitor within the party.


LIBERTARIAN Its candidate, Joseph L. Dobrian, 53, is a freelance writer and editor and also designs retro suits. The party favors "less government, lower taxes, more freedom" — including the freedom to smoke in bars. In 2005, the Libertarian candidate received 2,888 votes.


A  **Democratic**
 William C. Thompson Jr.
 11




B  **Republican**
 Michael R. Bloomberg
 12





C  **Independence**
 Michael R. Bloomberg
 13


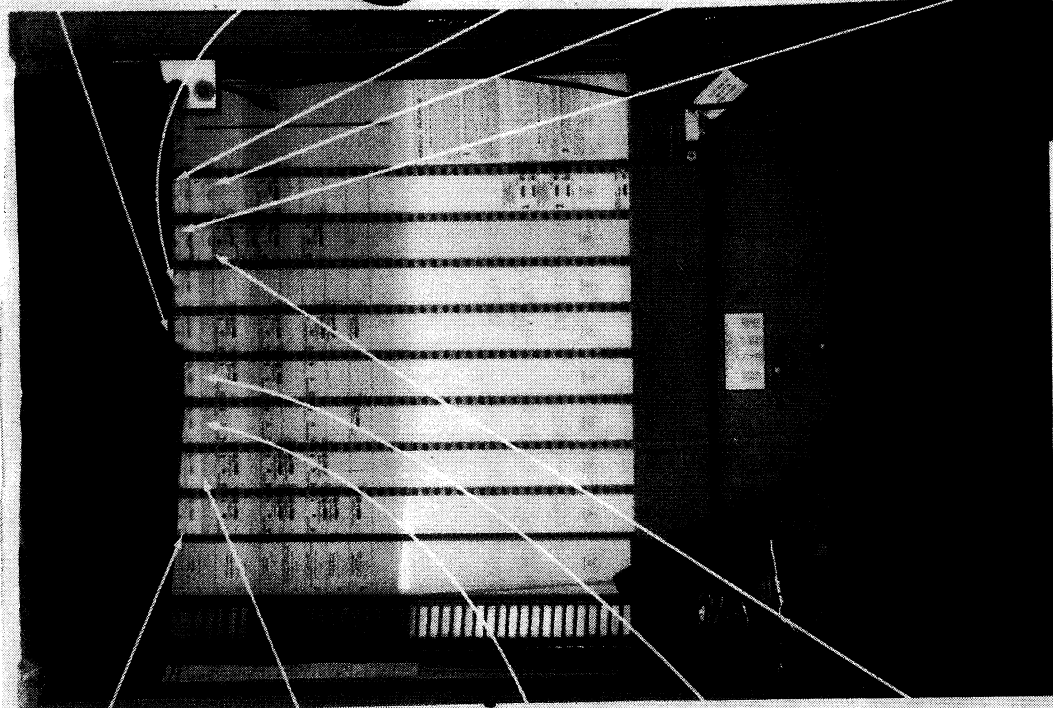



Jobs & Education


D  **Conservative**
 Stephen Christopher
 10





J  **Libertarian**
 Joseph Dobrian
 14






E  **Working Families**
 William C. Thompson Jr.
 11





F  **Socialism & Lib**
 Francisca Villar
 12





H  **Green**
 Billy Talen
 11



I  **Rent Is Too High**
 Jimmy McMillan
 11



G  **Socialist Worker**
 Daniel Fein
 15



WORKING FAMILIES The union-financed party backed Mr. Thompson by a razor-thin margin, despite intense lobbying from the Bloomberg campaign. Members bitterly opposed the mayor's flip-flop on term limits, which cost him the ballot line.

SOCIALISM AND LIBERALISM This new party did not field citywide candidates four years ago. Francisca Villar, a 26-year-old college student, won the nomination. She said she hopes to represent "the homeless, the gay and lesbian youth, the city worker that can't support his family, the single mother that has two jobs."

GREEN State party leaders asked the Rev. Billy Talen, the self-proclaimed pastor of the Church of Life After Shopping, to run for mayor. Unopposed, he was overwhelmingly endorsed by the party's New York City members.

RENT IS TOO (DAMN) HIGH The founder of the blunty named party, Jimmy McMillan, is its perennial nominee for mayor. Four years ago, the city's Board of Elections allowed the full name of the organization to appear on the ballot. This time, it has expurgated the word "damn," much to Mr. McMillan's dismay.

SOCIALIST WORKERS Daniel Fein, a 64-year-old garment worker from Harlem, is the nominee. The party platform calls for, among other things, "guaranteed unemployment compensation at union scale for all workers until they find a job."

THE NEW YORK TIMES; PHOTOGRAPH OF VOTING MACHINE BY NICOLE BENGIVEI



Com mtg
F.Y.I.

Click to Print

Sunday, November 1, 2009

For Bloomberg's Lawyers, "Leveling The Playing Field" On Spending Was Not "Compelling"

By Edward-Isaac Dovere

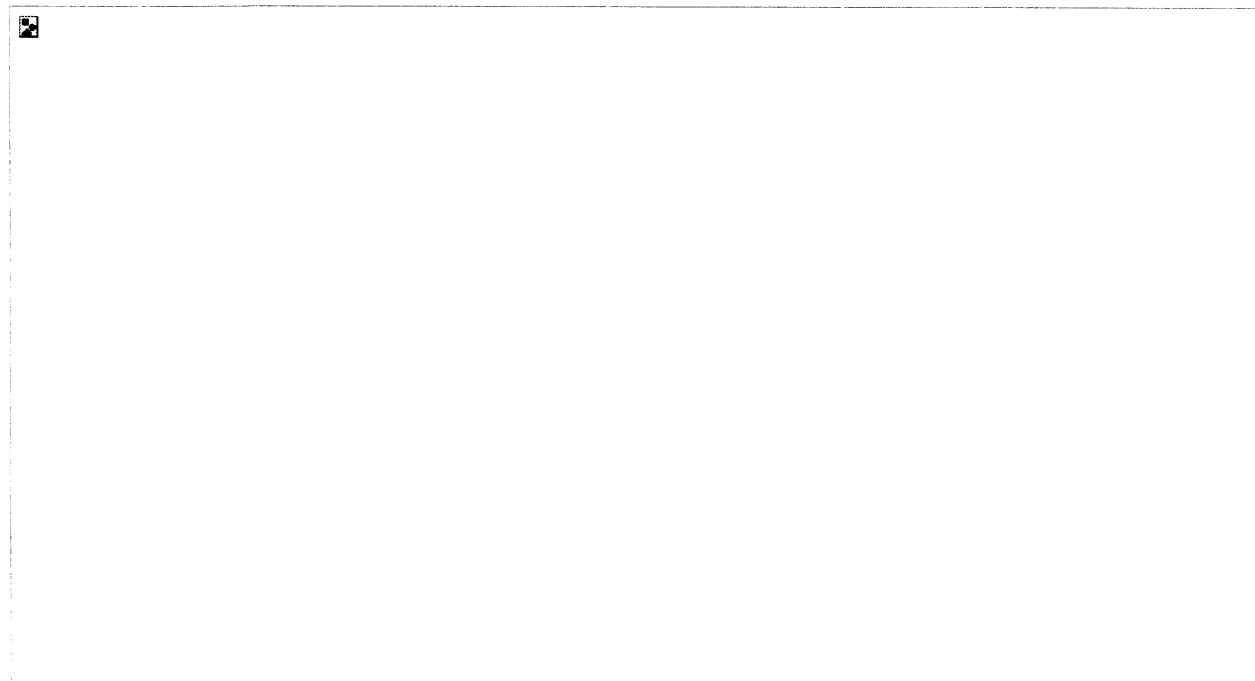
Michael Bloomberg has given several explanations over the years for why he has put what will be almost a quarter billion dollars of his own money combined in his three races for mayor: that he needs to make up for not spending a lifetime making political connections, that he needs to get his message out when facing a media that does not report all the stories he thinks they should be reporting, that the city's overwhelming Democratic registration forces him to use a bigger megaphone.

In short, he paints the spending as a matter of fairness, with the millions used to level the playing field for a non-career politician running as a Republican in an inherently biased town.

But leveling the playing field was dismissed as a concern for the lawyer hired by Bloomberg to respond to a complaint lodged against him at the Campaign Finance Board by Democratic nominee Bill Thompson which set out to force the mayor to report his personal political contributions as campaign expenditures.

"Leveling the playing field and reducing 'the natural advantage that wealthy individuals possess in campaigns' have been explicitly rejected as legitimate or compelling government objectives," wrote Lawrence Noble and Kenneth Gross, citing case law, in the paperwork submitted to the Campaign Finance Board, a copy of which was obtained by *City Hall* from someone who had received it.

Bloomberg CFB Brief



Noble, a former commissioner of the Federal Elections Commission who is now with the Washington office of powerhouse firm Skadden Arps, was the lead lawyer for Bloomberg on this issue.

Throughout the 14-page response to the Thompson complaint, Bloomberg's lawyers cited the protections the mayor has through federal law, which considers money equivalent to speech. And since Bloomberg is not participating in the public matching funds program, they argue, he should not be subject to any restrictions in his spending from the Campaign Finance Board.

"If the Board were to impose the same rules on the non-participating candidates, the Campaign Finance Act would impermissibly infringe on the constitutional rights of those candidates," they wrote.

The lawyers pointed out that much of the spending that would now be reported for this election cycle was donated before Bloomberg succeeded

in overturning the term limits extension which allowed him to seek re-election this year, and as a final point, note that there is no way to definitively attribute motives to a campaign contribution, even those which went to the Republican and Independence parties in advance of the mayor receiving Wilson-Pakula permissions to run on their ballot lines in Tuesday's elections.

As of the most recently available disclosures, the Independence Party received \$1.6 million from Bloomberg in five contributions made between May 2008 and 2009. In addition, county Republican Party organizations have received a total of \$200,000 in April and September 2009, though there is speculation that more will be paid to them soon.

Still, the lawyers write, "the Board cannot assume that those contributions were made for the purpose of assisting his own election as Mayor Bloomberg was a non-participating candidate," adding that while many may believe there was a link between the money and the Wilson-Pakulas, "opinions, perceptions and assumptions regarding what has happened may differ among people with even the best of intentions."

When asked about the arguments advanced by Bloomberg's lawyers, Thompson campaign spokesman Mike Murphy said this showed that fairness was never a concern for the mayor.

"It is completely absurd for the Bloomberg campaign, that is on pace to spend up to \$200 million in their own version of pay-to-endorse politics, to say that they are concerned about 'leveling the playing field,'" Murphy said. "Mike and his billion dollar machine haven't leveled the playing field—they have completely shattered it."

He also blasted the lawyers for claiming that there was no connection between the money paid to the Independence and Republican parties and the mayor's appearing on their ballot lines.

"This is another outrageous claim by the Bloomberg campaign, and just proves Mike will say and do anything to hold onto power," Murphy said. "Everyone knows that Mike has used his money to buy ballot lines, endorsements and support. Anyone that believes otherwise probably believed Mike when he said overturning term limits would be a disgrace."

Bloomberg communications director Howard Wolfson declined to answer specific questions about the lawyers' document, saying he would "let the language in the brief speak for itself," adding, "of course, we will continue to, as we always have, to comply with the campaign finance disclosure rules."

Those rules did not change for this election cycle, even though the Campaign Finance Board essentially approved Thompson's complaint in late October and for the most part set aside the objections made by Bloomberg's lawyers. Going forward, any personal contributions toward a candidate or campaign committee in New York City or State would count as campaign expenditures.

"Contributions to party committees or political clubs can clearly serve a political purpose whether they're made from campaign funds or candidates' personal funds," said Board spokesman Eric Friedman, summarizing the decision.

But while the Board agreed with Thompson on principle, it said the decision came too late in the election cycle for it to be fairly enforced for candidates running this year.

"The Board recommended that it would be unwise and unfair to change the rules of disclosure with an election less than two weeks away," Friedman explained.

Even had the Board put the new ruling in place for this election cycle, it is unclear what impact the new policy would have had on Bloomberg: his spending has already far exceeded the \$18 million trigger for the tier two bonus that Thompson's campaign has received in matching funds, so the extra \$4 million in private contributions would not have produced any extra bump. Nor would the new rules have forced Bloomberg to disclose the contribution from his accountant which went to Newark Mayor Cory Booker, since that was an out-of-state donation, or the \$1 million he gave to the Rev. Calvin Butts' Abyssinian Development Corporation, since that is considered a charitable donation, despite whatever political significance people have read into it.

But the new rules would have forced all of Bloomberg's spending to be visible in one place, as opposed to having them dispersed among the different city, state and federal campaign finance disclosure databases.

County
FYI

Pol stonewalls suit on WFP campaign

By EDMUND DeMARCHE and MAGGIE HABERMAN

A City Council hopeful won't cough up documents related to whether the Working Families Party is scamming the campaign finance system — because the case could involve “criminal liability,” according to documents released yesterday.

The bombshell development was revealed at a court hearing where lawyers for the WFP and the campaign of Staten Island candidate Debi Rose tried to get a suit against them tossed.

Former Giuliani administration Deputy Mayor Randy Mastro, the lawyer opposing the Rose campaign, called it an “extraordinary development.”

But last night, Rose tried reversing course, backing off her campaign's argument against revealing the records based on the Fifth Amendment, which protects against self-incrimination.

“If my attorney objected to the motion on the grounds of the Fifth Amendment, as some reports indicate, that is not my position and I will instruct him to withdraw that objection,” Rose said.



She still opposes the release, however.

In yesterday's hearing, the judge didn't rule on a request to dismiss the suit by a group of voters claiming they were disenfranchised by the way the WFP's political arm, Data and Field Services, operates.

The first-of-its-kind suit, which Mastro says he's doing free of charge, comes as the WFP has been briskly increasing its influence in city races.

Rose's move to block the release of the campaign documents on Fifth Amendment grounds was revealed in an affidavit filed by the plaintiffs.

The WFP and Rose had tried Thursday to buck a discovery request saying they had to produce documents and campaign finance records.

A lawyer for the campaign said Rose's treasurer, David Thomas, wouldn't produce them because they “may impli-

[Providing documents] may implicate criminal liability and [the campaign] would therefore have Fifth Amendment rights protecting [it] from having to make any such compelled disclosure

— lawyer for Working Families Party-backed Council candidate Debi Rose.

But that's not my client ... I heard it, and I noted it.”

Outside court, Data and Field Services spokesman Bryan Collinsworth said the Fifth Amendment issue wasn't raised by his client.

But he slammed the suit, which includes an affidavit by Rudy Giuliani's current political adviser, Jake Menges.

Collinsworth called it a “frivolous lawsuit brought by Giuliani and Republican hacks. They're going on a fishing expedition to stop the historic election of the first African-American on Staten Island.”

Collinsworth noted that Judge Anthony Giacobbe told Mastro that his side needed to offer some specifics for what it's looking for.

Mastro's side has to offer its beefed-up records request next week, and Rose and DFS have a week to respond.

The next hearing date is Nov. 16.

Mastro filed the suit last Monday, alleging that the WFP has been systematically scheming the campaign finance system, which has strict spending caps.

maggie.haberman@nypost.com

Politics of Discontent

To the Editor:

On Sept. 25 I left the Republican Party. I did so because I was given ample reasons to do so. I didn't want to be in a party that condones treason, in the fashion committed by "Scooter" Libby, or any way.

I didn't want to be in a party that promotes paranoia as Vice President Cheney did on the public. Nor did I want to be in a party whose leader was impervious to the dangers of global warming, or who started a war of aggression in Iraq, or who condoned torture of prisoners of war, and who really didn't believe in government, like George Bush does.

Then there is Rudolph Giuliani, who we New Yorkers got to know up close and personal. His failings go from the appointments of Kerik and Harding to sending workers into that hellhole we call "Ground Zero" without adequate protection against the poisoned air. Giuliani has the unmitigated gall to insert himself back into public life, as if he is a returning hero. I hope his political ambition ends with a ceremony in a Catholic Church requiring the use of a bell, a book and a candle: Excommunication.

I worked at the Board of Elections for 33 years as a political appointment, so what I'm doing may be considered betrayal, but I don't think that. I worked with people who dedicate their lives to providing democracy to our city. Like all groups of people there are good and bad in the group, but the vast number are decent hard-working citizens of our city, who are very underpaid.

They are underpaid because the Mayor has no say in who gets these jobs. The Mayor, and most Mayors I had to deal with, think that if they keep the pay low, the board will fail; what he doesn't recognize is there is a spirit in people who are given little support and impossible tasks. The present Mayor is playing "budget chicken" with the board by not paying for the run-off primary this fall, so the board doesn't have the money to pay the Inspectors and vendors for this November's election. I have no doubt the money will be delivered in time to pay these bills, but it's the principle of paying late to make the work harder.

Finally I apologize to the members of our union, CWA Local 1183, who I failed by never being able to get a decent wage for. We were denied the right to strike, by law, but I never figured a way to get the city or the Commissioners of Election to pay fair wages.

C. RICHARD WAGNER

Editor's note: Mr. Wagner is the former president of Local 1183 of the Communications Workers of America.

Comms Fy1
THE CHIEF-LEADER, FRIDAY, OCTOBER 30, 2009

City: We'll Cover the Costs

Union Backs Election Bd. Claim It's Short on Funds

By ARI PAUL

The union president representing city Board of Elections workers last week claimed the Bloomberg administration's failure to properly fund the board after warnings that a run-off primary election was likely led to the agency's announcement that it lacked the funds to pay poll workers for the Nov. 3 election.

Communications Workers of America Local 1183 President Nicholas Zimmitti said that during the last round of budget negotiations, the union told the City Council that with so many candidates running in the Democratic primary there was a high likelihood of a run-off—which occurred for both City Comptroller and Public Advocate—and that the city needed to financially prepare for the vote.

'Fell on Deaf Ears'

"It seems to have fallen on deaf ears," Mr. Zimmitti said in a phone interview Oct. 23. "The powers that be, they didn't fund for it, and last year we actually had a problem where the Board of Elections went again over budget because we had an unprecedented presidential election, and the city did not want to make us whole at the end."

He said it was surprising that Mayor Bloomberg had not pushed for more funding for the board, "especially that he's up for re-election, he would want us as well-funded as possible."

Mayoral spokesman Marc Lavorgna told the Daily News, "The dollars are in place for the Board of Elections to fully fund the general election." He said the city traditionally covers the additional costs retroactively.

Local 1183 represents the year-round staff at the board, but not the 30,000 poll workers who will work for several days next week and were warned that they may not be paid. Board officials testified at a State Assembly hearing Oct. 22 in lower Manhattan that the agency exhausted all of its available funds to pay for the \$13.5-million run-off, and urged the city to provide additional funding to pay the poll workers.

"They're more like independent contractors, but at the same time I don't



NICHOLAS ZIMMITTI: Knew runoff would stretch budget.

want to see anyone going without pay," Mr. Zimmitti said. "It's ludicrous."

He said that the situation was a Catch-22, in which either outcome would force the city into doing some legally questionable.

'Have to Do It, But How?'

"There are certain things that have to be done, there are two laws that seem to go against each other and therefore if you do one thing you're breaking one law and if you do another thing you're breaking another law," he said. "The Board of Elections has to put on an election even though we're not funded. So we're basically breaking the law by basically going over budget, but it costs x amount of money to pay all the workers and truck all the machines out and on and on and on."

The union leader added that it was not yet certain that the poll workers would have to go without pay this year.

"Is it a possibility? Is it really going to happen?" he asked. "I just can't answer that. The Office of Management and Budget just has to put in writing that they will make us whole and that they will fund us and everybody will be paid. It's quite simply that, and as soon as we know when we have the money, we will be able to pay everybody."



Community
Page 1

[Click to Print](#)

Friday, October 30, 2009

At DFS Lawsuit Hearing, Revelation That Rose Lawyer Said Providing Records Could Self-Incriminate Judge refuses to dismiss suit, setting next hearing for Nov. 16

By Edward-Isaac Doveve

Lawyers for Council candidate Debi Rose resisted a motion to provide campaign finance records in a pre-hearing Thursday with the appellate division about the lawsuit against Rose and Data & Field Services (DFS) on the grounds that doing so would violate their Fifth Amendment rights against self-incrimination.

At issue in the lawsuit, which was brought in Richmond County Supreme Court by former deputy mayor Randy Mastro working pro bono on behalf of five supposedly disenfranchised voters in Rose's Council district, is whether she received below market services from DFS during her primary campaign. Rose, the suit contends, received massive in-kind contributions from DFS as a benefit of being supported by the Working Families Party.

The Campaign Finance Board declared DFS an arm of the Party in early September, following a series of City Hall articles examining the company and its connections.

The claim from Rose's campaign was made in appellate court in Brooklyn on Thursday. Lawrence Mandelker, a lawyer representing DFS, said even he had been surprised to hear it.

As was suggested in court, advancing the Fifth Amendment argument could be taken as a sign that the Rose campaign has reason to believe some laws may have been violated in its filings with the Campaign Finance Board (CFB).

Lawyers for Rose and DFS at first asked Judge Anthony Giacobbe to dismiss the suit, with Mandelker saying that all proceedings should be held off until after the last filing arrives at the CFB from Rose, which he said would be 20 days after Election Day on Tuesday. (In fact, the last filing is due Jan. 15.) He repeatedly made the case that the court should leave any investigation to authorities already charged with policing the city's campaign finance system.

"This whole thing is going to be duked out—assuming there is anything to duke out—in front of the Campaign Finance Board," Mandelker said. "What is it they're going to get from this court that they're not going to get from an administrative body tasked to do this?"

Representatives from the city Board of Elections and Campaign Finance Board were on hand to observe the proceedings. The CFB performs its own audits of all campaigns over the 14 months following each election.

Judge Giacobbe did not dismiss the suit. He asked those bringing the suit to post \$2,500 to cover court costs by Monday and to present their discovery demands—requests for records and other documentation—on Wednesday, Nov. 4, to be answered by DFS and the Rose campaign by Nov. 11. The next court date to review all these and present additional motions has been preliminarily scheduled for Nov. 16.

Giacobbe also dismissed a request from the lawyers for DFS and Rose to respond in tandem to the requests for documents, based on the argument that this could result in both being asked to provide duplicate documents. Mastro had argued that since one of the main issues in the suit is whether accurate records were kept, there was an imperative to seeing what each produced.

As the proceedings ended, Mastro—who used the word "extraordinary" several times in and out of the courtroom to describe the surprise Fifth Amendment reference from the Rose campaign—thanked Giacobbe for letting the suit go forward.

"It's a very important case, your honor," Mastro said.

Giacobbe was nonplussed.

"Every case in here is very important," he responded.

Com Mfg
FyI

Trust, Antitrust and Your Vote

The nation's largest voting machine manufacturer, Election Systems & Software, announced last month that it was buying the United States voting machine division of Diebold, its main competitor. The sale could mean that nearly 70 percent of the nation's voting precincts would be served by a single corporation. That raises serious antitrust questions and serious concerns about the vulnerability of future elections.

The new company would have enormous reach. Without meaningful competition, localities would have fewer choices when they bought voting machines. If something were to go wrong — an inadvertent failure in hardware or software or intentional tampering by a bad actor — it could have a disastrous effect on the entire nation's vote.

After the deal was announced, voting-rights groups expressed concern. Senator Charles Schumer wrote to Attorney General Eric Holder Jr. calling for antitrust regulators to scrutinize the purchase. The Senate Rules and Administration Committee, of which Mr. Schumer is chairman, is conducting a review of the proposed sale and intends to forward it to the Justice Department.

Hart InterCivic, whose voting machines are in use in about 9 percent of the nation's precincts, has filed a lawsuit in federal court in Delaware challenging the sale, arguing that the deal could harm the company's ability to retain customers and attract new ones. The court has scheduled a hearing for December to consider the company's request for an injunction that could block the sale. The interests of voters should be part of this lawsuit.

The Justice Department and state attorneys general should consider formally joining the suit, so they can argue that the combination of Election Systems & Software and Diebold would make the voting experience worse and reduce the reliability of election results. The Justice Department's antitrust division could also make its own attempt to block the sale. The enormous market share that the newly combined company would control should by itself set off anticompetitive alarms.

Since the 2000 presidential election, the public has rightfully been skeptical about how elections are run. We fear that if any one voting machine maker is allowed to dominate the market, there will be even greater reasons to worry about the nation's flawed voting system.

ArmyTimes

Congress moves to ease overseas voting

By Rick Maze - Staff writer
Posted : Tuesday Oct 27, 2009 11:03:57 EDT

Congress has approved some new absentee voter rules that by the 2010 general elections should make it easier for deployed service members to receive and return ballots in time to have them counted.

The Military and Overseas Voter Empowerment Act, or MOVE Act, folded into the larger 2010 defense authorization bill, makes five changes to remove barriers to voting. Congress gave final approval to the bill on Thursday, but the measure has not yet been sent to the White House. The key changes:

Starting with the November 2010 elections:

- States are required to have at least one method of electronic delivery of voter registration and ballot applications. This could be by fax or e-mail.
- Absentee ballots that are blank, without candidate names, must be available electronically and by mail. Blank ballots are helpful in instances when late runoffs or other election issues delay printing of final ballots with candidates' names.
- Absent service members and overseas voters who request a ballot must have 45 days from when it is sent to when it must be returned, so they have enough time to vote for any federal office.
- State rules on notarization of absentee ballots, or restrictions on the type of paper or envelope that must be used, could not be used by a state as reason to refuse to accept and process a ballot.

Starting Jan. 1, 2011:

- The federal write-in ballot, already used by states for general elections, will be accepted for special, primary and runoff elections for federal offices, and a list of all candidates must be available to voters, by e-mail, fax or at an election Web site.

The MOVE Act is a result of bipartisan efforts to change election laws amid discouraging reports after the 2008 elections.

"This bill will remove the barriers that too often conspire to disenfranchise our military men and women," said Sen. Charles Schumer, D-N.Y., the Senate Rules Committee chairman who helped push the legislation through Congress. "It is the least we can do for our troops to make sure their votes get counted when they are serving overseas."

A report earlier this year by the Congressional Research Service, based on data drawn from the seven states with the largest numbers of military voters, found that more than 28 percent of ballots sent to deployed service members went uncounted because of various problems — lost mail, missed deadlines, and some service members seeming to give up on trying to vote when their ballots arrived just days before the election.

Sen. John Cornyn, R-Texas, who has been trying for years to get more military votes counted, said he is glad Congress finally has addressed what he called a "national disgrace."

"It is incomprehensible and unacceptable that many still face substantial roadblocks to participating in our national elections," Cornyn said. "The voting problems are only getting worse."

The bill, he said, addresses some of the biggest problems. "Under current election laws, many troops must jump through several bureaucratic hoops: Mail a request for an absentee ballot, wait for elections officials to mail the blank ballot, then mail the completed ballot back in time to be counted. This legislation requires elections officials to create electronic blank ballots — and post them online," he said.

Com mty
Fry