

**John Conklin:** Okay we're live now.

**Todd Valentine:** Okay we're live on the webcast now so

**Bob Brehm:** We also have New York Network here doing a normal webcast of the meeting in addition to the Commissioner's on the web camera.

**Douglas Kellner:** We don't see you. I'm not sure how to do it. Do you guys have a camera on you?

**Bob Brehm:** On us yes.

**Douglas Kellner:** Alright now we have everyone.

**Evelyn Aquila:** Okay we've got it.

**Bob Brehm:** Okay to be clear for an attendance point of view on the web camera we have Commissioner Peterson correct?

**Gregory Peterson:** Yep

**Bob Brehm:** Commissioner Kellner and Aquila? And Commissioner Walsh is on the phone

**Jim Walsh:** Can everyone hear me?

**Douglas Kellner:** Yes

**Jim Walsh:** I'm not feeling well. I had (unclear) I think for the holidays and I think I'm the last one that's gotten whatever this is. I have been feeling very sore ribs from coughing for about 3 days so I'm probably better off for everyone else for me not being there anyway to be spreading all over the place.

**Evelyn Aquila:** Thank you.

**Jim Walsh:** So I'll do my best.

**Douglas Kellner:** So sorry to hear that and we hope you feel better.

I guess our agenda is to approve the canvass. We have Tom Connolly with us who has the originals that we signed.

**Bob Brehm:** Go ahead Doug I'm sorry

**Douglas Kellner:** I had two issues that I wanted to comment on. First is that one of the things that is noted from the first canvass that we had approved last month a couple of animalist entries that caught public attention and generated comments on the blogs nationally which are corrected in this canvass but it did prompt an investigation by our staff into the procedures that the counties are using to report on their canvass and it appears that the counties are not submitting canvasses that strictly conform to the statues and there is not clear uniformity. Bob had pulled out pages that were distributed in 2000 which also conformed to an analysis of the statute that I did last week that's worth just reviewing again. That election law sections 9110 and 9114 required inspectors report blank and void on the election district canvass for each election district. And within the category of void the same statutes have three basic categories that are void; one is ballots with extraneous marks and that's in section 9112 subdivision 1 subparagraphs a, b c and d. And the second category is write-ins in the wrong place, that's 9112 1 e and then there's a third category of unauthorized presidential write-ins and that's defined in section 9-206 of election law. In New York in particular because they're actually voting for presidential electors, in order to write-in for a candidate for president or vice president, the candidates have to have filed their list of electors in advance so that it's known who the actual presidential electors are going to be if somebody writes in that canvass name. And the statute says that if you write-in somebody who's not on that list of president candidates that would not file an elector list for their write-ins, those are counted as void and I understand that the canvass that we've now prepared lists the write-ins only for those who actually did file lists of electors for the write-in canvass and everything else is listed as scattered. So effectively the scattered are void in addition to the list of voids for the other regions under the statute.

And then our law also provides that over votes are counted as blank and it's not so clear that all the counties have followed that procedure. That some of the counties may have been counting over votes as void rather than blank.

There are three counties with outlying numbers of blank votes, Greene which had 2.28%, Orange 2.00% and Ulster 1.90%. And I'm skeptical that in a presidential election 1 out of every 50 voters doesn't cast a vote. So we've asked the staff to investigate further with those counties to confirm that those numbers are real. And Orange County has already said yes that number is real that there was hotly contested village election in one community and that accounts for a substantial number. I would hope that the staff actually follows up on that because again I am skeptical that that's the cause.

And also the number of 2.28 is high and in Ulster and maybe the answer is that in Ulster and Greene that those are blank because of the litigation over the 46 Senate District that Greene and Ulster have not yet actually canvassed their presidential votes where there were contested ballots in the senate. So hopefully that's the answer for Greene and Ulster and that we'll be able to revise that in our February meeting.

Also I have a list of counties that have high percentages of void ballots: Tioga County reported 2.16% of all their ballots were void. And again that seems to be an extraordinarily high number that requires further investigation. Hamilton and Monroe, Jefferson, Herkimer and Madison all had numbers ranging between 1/3 of a percent and 2/3 of a percent which are also very much higher than all the other counties.

And then on the other side with the void ballot are roughly half the counties including all of the city of New York reported no void ballots at all, so that also is a question of whether in fact they're recording properly.

So I just ask that as we approve this canvass because we have to get this paperwork done and see that our candidates are elected, that we still have the staff follow up to make sure that the counties are acting properly.

I appreciate your attention Commissioner Peterson and Commissioner Walsh and I saw one other thing I just want to go through (laughing).

That is on the 46<sup>th</sup> Senate District that a number of people had suggested that we should not be certifying the results of the 46<sup>th</sup> Senate District because of their pending litigation on that. Nevertheless, there is a court order determining the final results for the 46<sup>th</sup> Senate District and there's no standing of that court order and the counties involved have certified their numbers to the State Board of Elections and mind you, we perform a solely ministerial function, and therefore regardless of the merits of the pending litigation, we're required to perform our ministerial duty adding up the results that we've received from the individual counties and providing totals for the secretary of State, and to the members of the legislature.

But I do want to comment on the merits of the litigation. I do feel quite strongly that there are substantial errors that could be addressed in the appellate process. In particular one that's troubling and that we fare some responsibility for, several of the, four of the five counties involved have not been using the correct affidavit ballot envelop that the State Board of Elections has prescribed. And we should absolutely insist that the counties follow the law and use the correct form. And the fact that 216 voters did not have their affidavit ballots counted initially by the court because the counties were using the wrong form is extremely troubling and it's our responsibility to make sure that the counties are supplied with the right forms.

I'm also very troubled by the court's disallowance of the 54 ballots for election inspectors because the counties on a bipartisan basis allowed the inspectors to cast their votes before the earliest date provided for in the statute. And I'm not sure why the court departed from the court of appeals decision of Pangio vs. Sunderland mirror in that kind of board error those ballots should be counted. But it is my hope the appellate court will address that.

So with that being said, notwithstanding, my disagreement with the court decision of the 46<sup>th</sup> Senate District I do believe we have a ministerial duty to certify the returns and so I am prepared to go ahead and certify them today. Thank you for bearing with me for getting that out.

**Todd Valentine:** Do we, do you want

**Douglas Kellner:** And with that being said I'll make a motion that we certify the result as presented to us.

**Jim Walsh:** I'll second the motion

**Doug Kellner:** Please say aye

**Todd Valentine:** We just need a vote

**Bob Brehm:** I don't think we can all aye at once because of the way the web so we'll just have to call the roll

**Douglas Kellner:** Commissioner Peterson?

**Gregory Peterson:** Aye

**Douglas Kellner:** Commissioner Walsh?

**Jim Walsh:** Aye

**Evelyn Aquila:** Can I change my vote to aye?

**Douglas Kellner:** Alright so the motion carries. Is there any other business before the board of canvassers?

**Bob Brehm:** None that I know of. That was four yes votes so they're approved and just for the paperwork so that people understand Tom is with you for the signatures and will proceed to Nassau County for Commissioner Peterson and then work its way back here for Commissioner Walsh assuming the highways are clear.

**Jim Walsh:** Yes

**Bob Brehm:** Okay. Thank you

**Gregory Peterson:** I hope he has a good MP3 player. It's a long trip.

**Douglas Kellner:** Okay is there a motion to adjourn?

**Jim Walsh:** So ruled.

**Douglas Kellner:** Fine, thank you all.