

Approved March 15, 2021

**Minutes of the New York State Board of Elections
January 28, 2021**

The meeting of the New York State Board of Elections held remotely by WebEx was called to order at approximately 12:00 pm. The meeting was chaired by Commissioner Peter Kosinski. Commissioners present were Douglas Kellner, Andrew Spano, and Anthony Casale. Staff members present were Robert Brehm, Todd Valentine, Brian Quail, Kim Galvin, Nicholas Cartagena, William McCann, Tom Connolly, Brendan Lovullo, John Conklin, Cheryl Couser, and Bill Cross.

This meeting is a continuation of the Board Meeting of January 14, 2021. It is to consider the certification of certain voting machine systems.

DISCUSSION: Election Operations staff prepared two resolutions for the Commissioners to consider; one resolution dealing with Dominion Voting Systems, and the other dealing with Election Systems and Software.

Regarding Resolution 21-03, Tom Connolly, Director of Election Operations, stated that the resolution relates to modifications requested by Dominion Voting Systems for the ImageCast Precinct scanner software and ImageCast Evolution (ICE) machines. There were small updates to the firmware for the ImageCast Precinct to improve ballot image processing. As for the ImageCast Evolution, the requested modification is an update to the firmware used by the printer component. The resolution references an additional step in the audit procedure for counties that use ICE machines, where there is an additional check on the counters. Additionally, the resolution restates the formula counties should use when determining the number of voters that may be assigned to a machine.

· VOTE on Resolution 21-03. Motion to approve certification of Dominion Voting Systems' modification. The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).

DISCUSSION: Regarding Resolution 21-04, Tom Connolly stated that this resolution is related to Election Systems and Software, LLC's (ES&S's) submission of a voting system which contains new hardware and software components in addition to modifications to hardware and software from the previously certified ES&S voting system. After review and public comments, staff is recommending certification for certain items, including the new version of the Electionware software, and the three hardware based updates, including: the DS200 precinct-based scanner, the DS850 central count scanner, and the DS450 central count scanner). Further, staff is recommending to not certify the Express Vote XL component due to the issues regarding ballot and electronic display of the voter's selections as well as the ability of the system to print in alternative languages for the voter. In addition, even though the DS200 which is a precinct-based scanner is hardware that's being approved because it passed the certification test, it should

not be currently used as a precinct-based scanner as there is no ballot marking device that is currently certified to work in tandem with DS200.

· VOTE on Resolution 21-04 Motion to approve certification of certain components of ES&S EVS Voting System. The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).

DISCUSSION: Rank-choice voting.

Commissioner Kosinski wanted to reiterate his thoughts from the December 3rd meeting, he is happy to see the principle that voting machines in use in New York State must be certified by the State Board, but that ranked-choice voting is in direct conflict with State Election law. He cited the McDonald case that stated that state law shall prevail when a local law is either in direct conflict or inconsistent with state law. He wants to be helpful to the New York City Board, but he has serious objections about the legality of ranked choice voting. Yes, there are Home Rule powers, but they are limited and emanate from the state. Commissioner Kosinski also said that the board will try to be helpful to New York City as part of what the State Board does is to help local boards. Commissioner Kellner indicated that he is pleased that the State Board is moving forward to process the procedure for handling runoffs that New York City proposed. Further, Commissioner Kellner stated that he respects Commissioner Kosinski and Casale's comments and concerns. However, Commissioner Kellner disagrees with their conclusion, stating that Article 11 of the State Constitution gives strong home rule powers to municipalities in this state, and no court has declared the Charter amendment adopted in New York City more than a year ago to be invalid and the board has an obligation to defer to the courts on this issue.

DISCUSSION: Statement in support of County Boards and their bipartisan operation.

John Conklin drafted a statement requested by the Commissioners at a previous meeting that was read and put on record in support of our County Boards of Elections.

· Motion to adjourn the Board of Elections Commissioners' meeting. The motion was approved unanimously (Commissioners Casale, Kellner, Kosinski and Spano voting in the affirmative; 4 Yes and 0 No).

Next meeting scheduled for February 10, 2021.

The meeting was adjourned at approximately 12:22 am.