

NYSBOE Board Meeting, Sept. 16, 2010

1	Table of Contents	
2	Opening of Regular Meeting.....	1
3	Approval of Minutes.....	2
4	New Business: (Part 1 -- Out of Order)	
5	a. Petition Rulings.....	3
6	Unit Updates	
7	a. Executive.....	5
8	b. Legal.....	6
9	c. Election Operations.....	12
10	d. Public Information.....	20
11	e. Campaign Finance.....	21
12	f. Information Technology.....	24
13	New Business: (Part 2)	
14	a. Resolution on Additional Funding for Temporary Contract Staff.....	24
15	b. Resolution on Allocation of 2010 EAID – VOTE Grant for CQCAPD.....	24
16	c. Discussion of Ballot Usability.....	27
17	Enforcement Determinations.....	31
18	Executive Session.....	32
19	End.....	32

21 **Board of Commissioners Regular Meeting**

22

23 **CO-CHAIR KELLNER:** I ask the other commissioners to introduce themselves.

24 **COMMISSIONER WALSH:** Jim Walsh.

25 **COMMISSIONER PETERSON:** Gregory Peterson.

26 **COMMISSIONER AQUILLA:** Evelyn Aquila.

27 **CO-CHAIR KELLNER:** And now would the staff introduce themselves please?

28 **STAFF MEMBER BREHM:** Bob Brehm.

29 **STAFF MEMBER HOGAN:** Liz Hogan.

30 **STAFF MEMBER McCANN:** Bill McCann.

31 **STAFF MEMBER CONKLIN:** John Conklin.

32 **STAFF MEMBER CAMPION:** Pat Campion.

33 **STAFF MEMBER SVIZZERO:** Anna Svizzero.

34 **STAFF MEMBER BURNS:** Joe Burns.

NYSBOE Board Meeting, Sept. 16, 2010

- 1 **STAFF MEMBER COLLINS:** Paul Collins.
- 2 **STAFF MEMBER GALVIN:** Kim Galvin.
- 3 **EXECUTIVE DIRECTOR VALENTINE:** Todd Valentine.
- 4 **STAFF MEMBER WARREN:** Bob Warren, Election Operations.
- 5 **CO-CHAIR KELLNER:** And our guest is?
- 6 **GREG JONES:** Greg Jones, - - quality - - persons with disability.
- 7 **SAM SLOAN:** My name is Sam Sloan; somebody has circulated a petition for me for the
8 government. And this is my girlfriend who speaks almost no English.
- 9 **CO-CHAIR KELLNER:** Say your name.
- 10 **NEW SPEAKER:** - -
- 11 **NEW SPEAKER:** Welcome.
- 12 **MICHAEL GRAVIS:** Michael Gravis, - - Assembly Campaign Committee.
- 13 **TOM VOLKER:** Tom Volker, Democratic State Vice Chair.
- 14 **NEW SPEAKER:** Tom - -
- 15 **BOB BERNSTEIN:** Bob Bernstein - -
- 16 **NEW SPEAKER:** [PH] Milsak Burn - -
- 17 **Approval of Minutes**
- 18 **CO-CHAIR KELLNER:** Welcome to our guests.
- 19 The first order of business is approval of the Minutes of August 5th.
- 20 So, any comments?
- 21 All right it's so moved.
- 22 Those in favor say aye.
- 23 **PARTICIPANTS:** Aye.

NYSBOE Board Meeting, Sept. 16, 2010

1 **CO-CHAIR KELLNER:** Opposed?

2 Minutes are adopted.

3 **New Business (Part 1 – Out of Order)**

4 The next order of business is to deal with our Petition rulings.

5 Kim Galvin and Paul Collins.

6 **STAFF MEMBER GALVIN:** I believe you have in your packet a chart setting forth the
7 individual staff recommendations regarding the petition objections or any prima facie review
8 that we had done for any of the petitions that were lacking acceptances in this round of the
9 independent nominating petitions.

10 I believe that the term itself is somewhat self-explanatory.

11 If anybody has any questions, otherwise I would simply ask that the commissioners adopt the
12 recommendations of the staff and the determinations that will be sent out.

13 **NEW SPEAKER:** Thank you.

14 I think that's pretty clear.

15 **NEW SPEAKER:** So moved.

16 **CO-CHAIR KELLNER:** Is there anybody who wants to be heard on the staff recommendations?

17 **SAM SLOAN:** My name is [PH] Sam Sloan.

18 I just want to know what the recommendation was about - -

19 **CO-CHAIR KELLNER:** Kim?

20 **STAFF MEMBER KIM:** The staff recommendation regarding your petition is that it was invalid
21 by reason of an insufficient number of signatures filed.

22 **SAM SLOAN:** I just want to explain something if you don't mind for just one second. There
23 was a split; I'm with the Libertarian Party.

NYSBOE Board Meeting, Sept. 16, 2010

- 1 I've been a member of the party since 1974.
- 2 There was a split in the party this year.
- 3 There was the Queens Libertarian Party circulated a petition with my name as candidate for
4 Governor, mostly Manhattan Libertarian Party submitted petitions for another person as
5 candidate for Governor.
- 6 The petitions were basically identical in all respects except for the name on the top.
- 7 **KIM GALVIN:** That's pretty significant.
- 8 **SAM SLOAN:** Yes, that's true.
- 9 I never actually saw any of the petitions frankly.
- 10 I didn't circulate them myself.
- 11 I don't know, you know, if they were mixed up together, if they were all submitted at one time,
12 you know, I just don't know, but what I find disturbing is, is the fact that the other person is not
13 a member of our party, he's never paid dues, he's never come to our meetings, he's just
14 completely an Internet scammer who does this all the time, who just tries to get his name on
15 the ballot so he can get hits on his web site.
- 16 He's not really a legitimate candidate at all and the whole party is in turmoil over this thing
17 because we've never done that.
- 18 We've always had members of our party as our candidates.
- 19 We've never had like basically a Republican or Democrat or another major party candidate as
20 our candidate.
- 21 We just wanted our own Libertarian people on there and this is the first time this precedent
22 has changed.

NYSBOE Board Meeting, Sept. 16, 2010

1 So, you know, it's very disturbing to our party because we felt that this year was finally the
2 year that we would actually have a chance to make a dent because of the turmoil in the, you
3 know, top level here.

4 Thank you.

5 **CO-CHAIR KELLNER:** Mr. Sloan, we appreciate you coming all the way to Albany to attend the
6 meeting so that's why we heard you, but there's really nothing we can do.

7 We're just a ministerial agency and we review the petitions to apply the provisions of the
8 election law and therefore our rulings are based on just applying the statute as it's written.

9 All right so there's a motion to approve the report.

10 Those in favor of the motion say aye.

11 **PARTICIPANTS:** Aye.

12 **CO-CHAIR KELLNER:** Opposed?

13 All right so the report is approved.

14 Next order of business are the reports.

15 **Unit Updates: Co-Executive Directors**

16 We'll start with the report of the Co-Executive Directors.

17 **CO-EXECUTIVE DIRECTOR ZALEN:** The major time of the entire agency since the last meeting
18 has been of course the independent nominations.

19 There were a number of them, substantial state wide and to review the documents that came
20 with them as well as the numerous challenges to those petitions in order to get the staff
21 reports ready for this meeting.

22 That being said, you know, preparing the calls for the county, etc. took a substantial amount of
23 time for everyone at the agency.

NYSBOE Board Meeting, Sept. 16, 2010

1 So it became the primary, the independent petitions and the work and report case is ongoing
2 related to, they seem to come in bushel baskets every day as opposed to one or two every now
3 and then.

4 So everybody's been doing a great job on behalf of the whole agency to make sure that we have
5 the work done so that we could have quality hearings and timely hearings so that we could
6 present this report to you today.

7 So I'm sure Todd would agree, I think everybody pitched in and did a great job.

8 **CO-EXECUTIVE DIRECTOR VALENTINE:** Yeah, I mean one side of it is the voters and we also
9 continue to, as I will get a report at some point in the future, we just don't have it yet on how
10 the new implementation of our military and overseas voter act system, which doesn't really
11 have a nice name other than - -.

12 At this point I don't think we have a report on how many people have utilized the system.

13 It's available, it's up and running, the training was done, you know, but that's, it's still, this is
14 round one, was, you know, the issues with this primary election and now we have to go on to,
15 you know, getting ready for the general election.

16 So that will keep us busy for the next few weeks.

17 **EVELYN AQUILA:** Many men in the military do want to vote.

18 I know that from my nephew and he's in Pearl Harbor.

19 And he's very happy he gets his ballots.

20 **CO-EXECUTIVE DIRECTOR VALENTINE:** We're here to help.

21 **CO-CHAIR KELLNER:** All right, thank you.

22 **Legal Unit**

23 We'll move to the report on legal from Kim Galvin.

NYSBOE Board Meeting, Sept. 16, 2010

1 **STAFF MEMBER GALVIN:** Thank you Commissioner. As Bob and Todd both said there's many,
2 many petition cases.
3 I think we have in excess of 65 or 68 or something like that.
4 Many of them are still ongoing.
5 I think most will be resolved by our board's action today.
6 Many have been adjourned just preserving the rights.
7 In addition to those many petition cases plus I anticipate there will be a slew as a result of
8 what we do here today, but in addition to those petition cases, Paul has been handling some,
9 you know, significant legislation for the board in Nassau County that perhaps he would like to
10 give you an update on after I'm done.
11 And then other than that we've just been doing the ordinary business of the unit and assisting
12 the other units best we can with regard to phone calls or inquiries and are doing our best to
13 keep the Department of Justice apprised of the developments with regard to the use of the
14 machines in this past primary election.
15 And I don't know if Paul wants to tell them what happened in Nassau most recently.
16 **STAFF MEMBER COLLINS:** Yeah very briefly the circuit affirmed Judge Sharp's injunction and
17 so it was obligated to roll out the new machines, which they did and that's a good sign.
18 They still are proceeding with or at least as of yesterday we're still proceeding with their state
19 court action to have ERMA, the state legislative implementation of HAVA in New York declared
20 unconstitutional and that will play out as it plays out.
21 And there are motions before that court to dismiss that case and also motions to change venue.
22 But probably I think the judge said about four different motions pending at this time.

NYSBOE Board Meeting, Sept. 16, 2010

1 Also in that case there are issues of production of documents, but probably we might wish to
2 discuss in executive session because there's some language on orders, etc.

3 In addition to those litigations, we have two [PH] Brennan Center litigations, one of which Joel
4 Graber from the Attorney General's Office is representing us in and the other one was just filed
5 within the past couple of days and it would be my request to the board that they authorize that
6 the Attorney General represent the agency in that as well because that is strictly a
7 determination of whether a state statute is unconstitutional or constitutional.

8 **EVELYN AQUILA:** Well I think the - - Nassau, the type of place of pride that how hard the
9 working man to get things done and do it right.

10 I really want to do things there Bob.

11 You were with us and the three of us were there.

12 **STAFF MEMBER BREHM:** I thought John Ferry from our election operations unit was in that
13 area on Election Day also.

14 My own observation was, you know, they worked very hard to put together a strong effort.

15 The poll sites that we visited, the people are very comfortable with opening the polls and
16 understanding the paperwork.

17 They had a very nice set up.

18 It was early in the day and there weren't many voters that had gone through that site at that
19 time, but the staff was very comfortable.

20 They had no problems opening.

21 While we were there, there weren't any voters that came into that site so I couldn't ask
22 anybody.

23 The board had a very good operation.

NYSBOE Board Meeting, Sept. 16, 2010

1 We went to the control room where they were taking calls.

2 They seemed to be very comfortable with the logging of the calls that they had were routine

3 type of issues and they were gearing up as one of the counties that actually took the results at

4 the end of the night using the new portable memory devices, which we think is a more

5 accurate way of recording the numbers as opposed to the old way of taking the tape,

6 transcribing the numbers and then transcribing them again into some other system.

7 It was kind of ripe for human errors that could happen along the way.

8 And John Ferry, that was the issue I asked John this morning how did that go because we were

9 a little nervous, you know, what happens at the end of the night.

10 We're relying on this to work and they said it would really work very well.

11 They had a well organized; the materials came in to their secure area.

12 They logged it.

13 They put them into a spot.

14 They brought them into the room and it really worked quickly and I think it's a good message.

15 We asked, you know; let us know how that works because I think it's a good message at the

16 close of poll that we really didn't have a lot of experience in the pilot program.

17 Only one county in the pilot used it last year.

18 To really get reliable numbers quickly so I think not only did they roll this stuff out, but they

19 really did a great job at the end of the night to change the way that they've always recorded the

20 results.

21 They came in a little bit later than they were used to getting them, but they came in in a way

22 that was much more reliable than they ever had before.

23 So we haven't heard back from the board itself, but I thought it was a very good.

NYSBOE Board Meeting, Sept. 16, 2010

1 They did a great job.

2 **EVELYN AQUILA:** They have an excellent operations unit.

3 And they had some very, very bright young people who looked like they really knew what they
4 were doing and I was impressed.

5 **STAFF MEMBER BREHM:** They did look like they hadn't had much sleep though.

6 **EVELYN AQUILA:** No, they didn't, they looked exhausted; they did.

7 **KIM GALVIN:** Can I just add to that?

8 I know that there're a lot of counties watching and because we're talking about Nassau and the
9 extraordinary effort they put forth, it would be almost remiss if we didn't say that all the other
10 counties that haven't been such a problem up until this point we're all working as hard and did
11 the same things as well.

12 So I didn't want them to think, you know - -

13 **EVELYN AQUILA:** I think we - - that because we really affected the - - truthfully myself I
14 expected the worst because I thought they were resisting everything because of the lawsuit
15 and the way they had been communicating with us.

16 I really expected to go out there and find nothing happening and I suppose when you see
17 something is happening good that it's even better, but I did say, I must say - - and many of
18 them, we can talk about some other counties too.

19 **DOUG KELLNER:** It was more than something. I thought Nassau did an excellent job from
20 what I saw. They clearly had put in a good faith effort to - -

21 **EVELYN AQUILA:** Maybe they didn't want to disappoint - -

22 **GREGORY PETERSON:** It worked well though.

NYSBOE Board Meeting, Sept. 16, 2010

1 Obviously there were some glitches in the individual ED's, but on the whole it worked and it
2 was a good dry run in a sense that there was about ten percent of the people came out to vote
3 and at least on the election board end of it, they worked out a lot of the glitches.

4 I mean my particular area they had three machines that had a jammed paper that didn't print
5 out. One put the roll in wrong, things like that can certainly be corrected and with additional
6 training I think a lot of those problems will be obviated.

7 **DOUG KELLNER:** And I think that's the consensus statewide, those counties that had done the
8 pilot are a little bit further along than the counties that did it for the first time, but it's working
9 subject to lots of glitches.

10 **EVELYN AQUILA:** It proves when New Yorkers have their backs to the wall they fight.

11 [LAUGH]

12 **CO-CHAIR KELLNER:** Paul has specifically asked for authorization to have the office of the
13 Attorney General represent us in the lawsuit brought by the Conservative Party and the
14 Working Families Party to challenge the constitutionality of Election Law Section 7-912.

15 We can discuss that in executive session. I think I'd like to discuss how we're going to respond
16 to the lawsuit in executive session anyway or we could just vote the authorization now and still
17 have our discussion.

18 **JAMES WALSH:** We can do that and have the discussion in executive session.

19 **CO-CHAIR KELLNER:** All right so those in favor of asking the Attorney General to represent us
20 in that lawsuit say aye.

21 **PARTICIPANTS:** Aye.

22 **CO-CHAIR KELLNER:** Opposed?

23 All right so that's done and then we'll take up the substantive issues in the executive session.

1 **PAUL COLLINS:** Thank you.

2 **CO-CHAIR KELLNER:** Anything else on legal?

3 **STAFF MEMBER GALVIN:** No sir.

4 **CO-CHAIR:** All right.

5 **Election Operations Unit**

6 Then we'll turn to Election Operations.

7 **STAFF MEMBER SVIZZERO:** I don't have much to add to the operations report that Kim and
8 Bob just gave so I guess on behalf of Ops, you know, we spent a lot of time on the phone with
9 county boards dealing with building ballots. This is the first time they had that responsibility
10 so there were, we had a help desk set up. We had a lot of staff dedicated to assisting the county
11 boards in that regard.

12 We think overall it went very well.

13 We had people in 15 counties on primary day.

14 Some of them just got back yesterday so we haven't had a chance for, you know, a proper
15 debriefing of the staff, but we will have a report for you at the next meeting and if there's
16 anything monumental in our conversations we'll share those with Todd and Bob in the interim.

17 But we do feel that equipment worked the way that people expected it to work.

18 I think we're concerned that there be more hands on training for inspectors.

19 Inspectors are being overly helpful.

20 It's a new system.

21 They think voters are not familiar with it so we have had as we did in the pilot and we
22 cautioned against voters taking ballots, excuse me, inspectors taking ballots from voters and

NYSBOE Board Meeting, Sept. 16, 2010

1 putting them in scanners, standing too close to the scanner, reviewing a voter's ballot if they
2 want it spoiled and want another.

3 So they're trying to understand the problems, but they have to do that at a distance so that
4 voters are still afforded the privacy that they are entitled to.

5 So we'll be making that part of our report as well.

6 Other than that we have ballot configuration issues, which as you know we've talked about in
7 house and we're hoping to deal with those after the general election and revisit ballot design
8 by way of usability and other issues so that's on our horizon as well.

9 I do want to thank the staff here that worked on specs.

10 We had 64 sets of objections that were filed with us, 23 sets of specifications were filed and
11 that's a lot of work as - - and the two directors alluded to.

12 And we had staff from almost every unit helping us out, working late at night.

13 They bought their Saturday so we didn't push the issue, but they understood the timeliness of
14 getting that work done and accommodated us very well in that regard.

15 We did have acceptance testing that finished up just prior to the primary for the remainder of
16 the scanners that were required in New York City for back up purposes.

17 We do have a couple of new orders for additional units coming in, one from [PH] Oswego that's
18 actually been filed with OGS so we do expect that we'll have some more units and perhaps
19 boards once they reflected on the use of the systems on Tuesday, especially those boards that
20 weren't in the pilot might be reconsidering the number of units they ordered and making some
21 changes there.

22 Other than that do we have anything else?

NYSBOE Board Meeting, Sept. 16, 2010

- 1 **CO CHAIR KELLNER:** Anna could you address the logic and accuracy testing issues that came
2 up with New York City.
- 3 **STAFF MEMBER SVIZZERO:** The logic and accuracy testing in New York City, we are
4 constantly revisiting our procedure and our formula for calculating test decks, but in New York
5 City we had issues of the length and the repetition of certain test decks and had they followed
6 our formula exactly the way our procedure required they would not have had time to put
7 voting systems out into the community and if they had they would have been without that
8 testing, which we are absolutely not enamored of as far as a proposal goes.
9 So we did listen to their request to modify how test decks were run.
10 We understood their issue.
11 We understood our solution.
12 We met with Bob Warren and staff in house and discussed it at some length and did advise
13 them that in the primary election they could make that change to the formula and the test deck
14 and abbreviate the testing so that there wasn't the repetitive work being done.
- 15 **CO-CHAIR KELLNER:** Anna let's break it down.
16 First of all the city gave the state board the request last Tuesday, right?
- 17 **STAFF MEMBER SVIZZERO:** Right.
- 18 **CO-CHAIR KELLNER:** It was Tuesday night, five o'clock on Tuesday.
- 19 **ROBERT BREHM:** Seven o'clock.
- 20 **CO-CHAIR KELLNER:** Seven o'clock?
- 21 **ROBERT BREHM:** It was late Tuesday.
- 22 **CO-CHAIR KELLNER:** And my understanding is that we only abbreviated the testing for the
23 ballot marking devices, but not for the scanners.

NYSBOE Board Meeting, Sept. 16, 2010

1 **STAFF MEMBER SVIZZERO:** No, the logic and accuracy, the comprehensive test decks, those
2 formulas were not modified at all.

3 It's the additional work and time involved in creating ballots on the [PH] BMD that impacted
4 using those ballots as part of the logic and accuracy tests.

5 So that is the accommodation that was made in the city.

6 By no means were the comprehensive test decks diminished in any way.

7 **CO-CHAIR KELLNER:** And so I guess I want to stress that there was a strong consensus, both
8 of the staff and the commissioners at the state board that we did not compromise the logic and
9 accuracy testing of the scanners at all in the accommodation that we did with the city.

10 That it was really related to the ballot marking devices, part of which arose out of the
11 complexity of the ballot in New York City because they had a number of judicial delegate
12 primaries, which in a typical judicial delegate primary you're adding 90 positions to the ballot
13 when you include the write-ins, the delegates and the alternates of each of the competing
14 slates.

15 And that when you go through every possible combination of those 90 additional that it
16 exponentially creates a huge amount of additional possibilities that the time and effort on a
17 ballot marking device to test those out is disproportionate to the security issues that are
18 raised, which are negligible because all the ballot marking device does is mark a ballot, does
19 not count the ballot.

20 **STAFF MEMBER SVIZZERO:** Ballot rotation impacts that as well and that's clearly a - -

21 **ROBERT BREHM:** Language rotation and a large number of [PH] JD delegates.

22 **CO-CHAIR KELLNER:** So in any event I wanted to stress that (1) we did not compromise on
23 the logic and accuracy testing with respect to the scanners and (2) that it was only doing what

NYSBOE Board Meeting, Sept. 16, 2010

1 I think we agreed was a more appropriate testing for the ballot marking devices in view of the
2 complexity of the ballot, that our regulations were overly severe for the ballot marking.

3 **ROBERT BREHM:** It's procedure more than a regulation. Yeah, but we look to make sure that
4 all of the functionality, the screens, the languages, the devices on the auto mark were being all
5 adequately - - and the question was how many ballots needed to be accomplished in order to
6 get a comfortable level of testing, but we did not compromise on testing every functionality on
7 the Automark. It was just the number of ballots it took to complete that.

8 **CO-CHAIR KELLNER:** We'll look at it after the election, but I think again the consensus was
9 that we will probably revise the procedures to make that permanent and not just, it's not just a
10 special exception for that time.

11 **STAFF MEMBER SVIZZERO:** We did approve them for the primary. We told them we'd
12 reconsider for the general as well, but I think moving beyond that point our philosophy with
13 text decks has been based on the concept that the ballots and our experience with them 'cause
14 clearly there wasn't any kind of a test deck being conducted on a lever machine.

15 I don't think I'd be remiss if I didn't say that, but our process was that the ballot was already
16 built in the absentee world, which is our only op scan experience here in New York.

17 And the ballot was already built and configured. You then had to program the ballot from the
18 printed document. What we're doing now is doing all of that programming first. So you're
19 testing what you configured as you go through building the ballot. The printing of it is the end
20 result now. In the absentee world it was the starting point.

21 So we really need to re-think our approach to test decks and we've been modifying that
22 formula all along, but now we really need to modify how we think about it and I think you'll see
23 a big change in what constitutes a test deck without compromising any of the logic and

NYSBOE Board Meeting, Sept. 16, 2010

1 accuracy at all because the building blocks have been completely reversed in the world that
2 we're in today as opposed to where we were last year at this time.

3 So that's - -

4 **ROBERT BREHM:** There's a difference that we were comfortable because the auto mark starts
5 with printed ballot. The EMS makes, you know, the configuration of the software and it creates
6 the PDF to print the printed ballot. I think we are not quite there yet to do the same change in
7 the dominion side because that starts with a blank ballot that the system then has. So we still
8 have to print those extra ballots in the dominion world in order to make sure that the system
9 properly creates the ballot that we expect it to make, but on the auto mark side since it starts
10 with a printed ballot and it only marks the ovals, we could do fewer tests to make sure that, we
11 had passed fewer pieces of paper through in order to be adequately assured that it was
12 working.

13 **CO-CHAIR KELLNER:** Anna, during the pilot project last year, there was one source code issue
14 that came out on the first use of the image cast.

15 Were there any ballot configuring or source code issues that came up in this last primary
16 election that we're aware of?

17 **STAFF MEMBER SVIZZERO:** We had none of those kinds of trouble cause at all. None of those
18 reports from our county boards. The systems, they did have a unit here and there that failed.
19 They had brought in replacement units, but nothing that rose to that level that we experienced
20 last year.

21 **CO-CHAIR KELLNER:** Do we know the reasons for the failures?

22 **STAFF MEMBER SVIZZERO:** We're still working on those. We got a little bit of a trouble call
23 on election day, but now that they have their standards back from the poll sites and can look at

NYSBOE Board Meeting, Sept. 16, 2010

1 the results and see what happened and interview the inspectors, we'll be having those
2 conversations with the county boards over the next several days.

3 **CO-CHAIR KELLNER:** But at this time you're not aware of a single ballot configuration issue
4 that came up during the primary?

5 **STAFF MEMBER SVIZZERO:** No.

6 **CO-CHAIR KELLNER:** I mean I think that's a tremendous advance and that's something we've
7 never had with the lever machines. I can't remember a single lever machine election where we
8 didn't have some ballot configuration issues.

9 **STAFF MEMBER SVIZZERO:** We did have some test ballots that were left in the ballot box,
10 that kind of thing, but again those are people issues. Those aren't, you know, functionality of
11 the machine. They don't compromise the integrity at all. Everybody understands that the
12 ballot box has to be empty, you know. If there are issues with the memory cards, the
13 technician staff at the county board, they have crash kits, they can get out to these sites and
14 make those changes, but nothing that rose to that level that we encountered last year.

15 **EVELYN AQUILA:** In New York City when we were in the Bronx, a couple of the inspectors
16 said they had, you know, a machine that failed, but they said they could not get over that the
17 technician got there so fast.

18 And they said I remember waiting two hours where we waited ten minutes and that was a big
19 plus.

20 **ANNA SVIZZERO:** We've really, you know, encouraged the counties and if they read their pilot
21 reports - -

22 **EVELYN AQUILA:** I mean the machine they're at, when you have thousands of machines, one
23 or two somewhere you're going to have a problem.

NYSBOE Board Meeting, Sept. 16, 2010

1 There's no way you're going to get away with it.

2 **ANNA SVIZZERO:** I know our press in Albany is a little bit different than the New York City
3 press, but in Albany they reported that New York City experienced some issues in 15 polling
4 places and we thought wow - -

5 **CO-CHAIR KELLNER:** Fifteen out of 1,300. [LAUGH]

6 **ANNA SVIZZERO:** Fifteen is a big deal.

7 **DOUG KELLNER:** Right, with levers, so we were very pleased. The New York press is a little
8 bit different.

9 **CO-CHAIR KELLNER:** One was Bloomberg's and one was Senator Schumer's. [LAUGH]

10 **ALL PARTICIPANTS:** [LAUGH]

11 **CO-CHAIR KELLNER:** I do think that New York City did much better than they're being
12 credited for in the press.

13 **EVELYN AQUILA:** Right, absolutely.

14 **CO-CHAIRMAN KELLNER:** I can't help but note one of the things that is very unfair that Mayor
15 Bloomberg was attacking the City Board of Elections while ignoring that most of the machines
16 that could not be opened on time were because the police department had failed to deliver the
17 keys and Mayor Bloomberg perhaps forgets that the police department reports to him and not
18 to the Board of Elections.

19 **EVELYN AQUILA:** Plus the budget issue.

20 **CO-CHAIR KELLNER:** And the budget issue is a big one. The City Board did ask for more
21 resources to do better training and to increase inspector pay. My own evaluation is that what
22 they spent, that what they did was good enough. It could have been better and the public
23 concern, they forget that a lot of the things that would make the system perfect in an ideal

NYSBOE Board Meeting, Sept. 16, 2010

1 world are costly. So that yes everybody was well aware that we could have bigger ballots, but
2 it would have added one third to the cost of purchasing the voting machines to have a wider
3 scanner. We could have done more inspector training, but the cost would have added millions
4 and millions to the cost of preparing the election. And we could have curtained privacy booths,
5 which would also add significantly to the cost of the election and the decision was basically
6 made was this is how much we're going to spend and try to make our dollars as effective as
7 possible.

8 The one disappointment that I have is that there isn't greater attention given to the ballot
9 marking devices.

10 **EVELYN AQUILA:** They have this idea that it's only for disabled people and therefore it's very
11 hard to encourage them to say let the people use the ballot markers.

12 **CO-CHAIR KELLNER:** All right so last thing Anna is if you do hear of any ballot configuring
13 issues that come up, would you please let us know so that if there is a change that we're not
14 taken by surprise, that in fact it wasn't 100% on the ballot configuration.

15 **STAFF MEMBER SVIZZERO:** Just open up some of the polls, some of the school custodians
16 didn't realize it was 5:30 in the morning they were supposed to be there.
17 And the inspectors made it outside, you know, so there's a lot of things - -

18 **CO-CHAIR KELLNER:** Well that's nothing new.

19 **STAFF MEMBER SVIZZERO:** I know that's nothing new, but it's just one of those things.

20 **CO-CHAIR KELLNER:** All right, well thank you Anna and thanks to everyone throughout the
21 state who worked so hard on running the election.

22 **Public Information / NVRA**

23 John Conklin, Public Information.

NYSBOE Board Meeting, Sept. 16, 2010

1 **STAFF MEMBER CONKLIN:** I guess really the only thing I need to add to the written report is
2 the discussion of press coverage from the election and I think we've touched on a lot of that
3 already.

4 I would say that I would try to provide some perspective in my comments that as a statewide
5 organization, the election went very, very well despite what was in the New York City press
6 and that there are issues there that need to be taken into account when reading those things.

7 The Mayor's rocky relationship with the New York City Board of Elections, those comments
8 should always be taken with a grain of salt, issues around resources that they've argued over
9 for years, that kind of stuff.

10 For the public information part, we probably got about 25 e-mails on election related issues.

11 I would say they fell into three categories.

12 One was I don't like this new machine, which is, you know, a complaint of a kind, but not
13 something that necessarily is actionable for us.

14 A specific issue that happened that may have been a deviation from our recommended
15 procedures that we'll follow up with or a complaint on a procedure that had nothing to do with
16 the new machines, but would have been a routine election day matter that could have
17 happened on any election day at any time.

18 So we'll be following up with those and I will forward some of those to Anna so she can address
19 them as well.

20 So but that's all I have.

21 **CO-CHAIR KELLNER:** Thank you John.

22 **Campaign Finance Unit**

23 Now to campaign finance, Elizabeth Hogan.

NYSBOE Board Meeting, Sept. 16, 2010

1 **STAFF MEMBER HOGAN:** Thank you Commissioners.

2 A review of the written report that I submitted relative to campaign finance is as I usually do
3 give you an update as to the value and the increasing numbers of different responsibilities that
4 we're having in the office from telephone calls to mail to, you know, all those kinds of things.

5 And I tried also in the report to give you a reference to the projects that different staff are
6 working on, different audits. Their educational and training staff has some specific projects
7 that they're working on at this time. Additionally of course in the midst of the primary and the
8 election, we're faced with six financial disclosure reports to be filed specific to those elections.

9 Last week the July periodic judgment was signed. We sued 443 people for not filing the July
10 periodic. Today the 32-day pre-primary order to show cause went up to court and had it
11 signed.

12 On the 29th we will be submitting the order to show cause for the 11 day pre-primary.

13 Next week the ten-day post primary financial report is due and then subsequent to that there
14 are three general election reports due between October 1st and the end of November and all of
15 those of course would be different stages of the lawsuits that we will engage in to see them
16 through.

17 Generally speaking that's a about all unless you have any specific questions and Bill if you want
18 to add anything.

19 **CO-CHAIR KELLNER:** Liz you had one big victory in court, the - - lawsuit.

20 Do you want to just mention that?

21 **STAFF MEMBER HOGAN:** Well the board was sued for basically on first amendment grounds
22 relative to political action committees and the limitations upon the activity that they can

NYSBOE Board Meeting, Sept. 16, 2010

1 engage in and issues of limits to committees making unauthorized and independent
2 expenditures on behalf of candidates.

3 There was an application in federal court before Judge Sharp for a temporary restraining order
4 against the board to prohibit us from enforcing those provisions and the Attorney General
5 assisted in representation in court.

6 I would like to thank [PH] Krista Rocking Kelly Munguist who really in such a short period of
7 time worked so hard to help Bill and I come to a position and make an appearance in court.

8 Basically the application to Judge Sharp was denied on a couple of grounds.

9 He went through the papers pretty thoroughly during the hearing and denied their application.

10 So that matter is pending and I believe that there is an appearance in federal court relative to
11 the complaint in December as far as I know at this point.

12 **CO-CHAIR KELLNER:** And the key issue here is that based on some of the recent U.S. Supreme
13 Court decisions and decisions in other circuit court of appeals, they were challenging the in
14 effect New York does not allow a political action committee to make direct expenditures.

15 Instead the organization has to set up a separate committee and the committee has to disclose
16 the candidates that it is endorsing and has to disclose its expenditures.

17 And that disclosure requirement and the prohibition on making independent expenditures
18 directly by the Pac is the subject of the injunction.

19 And it's a very complicated issue and based on the federal case law I thought that you and the
20 Attorney General's Office just wrote an excellent brief and I know that you and Bill worked
21 nights to put together those papers and I want to acknowledge that.

22 And I think it's a significant victory.

23 **STAFF MEMBER HOGAN:** Thank you Commissioner.

1 **EVELYN AQUILA:** During a very busy time at the office too. I think that should be noted. It
2 wasn't easy.

3 **STAFF MEMBER HOGAN:** Thank you.

4 **Information Technology Unit**

5 **CO-CHAIR KELLNER:** If there's nothing else for campaign finance, we'll move to information
6 technology.

7 **TODD VALENTINE:** George is out today.

8 I guess as I always say, no news from Information Technology is the best news so that's great.

9 [LAUGH]

10 **New Business – Reso on Temporary Staff Contract**

11 All right, then there's no old business pending, we'll move to new business.

12 The first is a resolution to approve additional funding for temporary contract staff.

13 Does anybody have any questions on the resolution?

14 All right, those in favor of the resolution say aye.

15 **PARTICIPANTS:** Aye.

16 **CO-CHAIR KELLNER:** Opposed?

17 It's approved.

18 **Reso to Allocate Funds to CQCAPD**

19 Next is the, oh you use all these abbreviations and then I can't undo this - -

20 **ROBERT BREHM:** Commission on Quality of Care and Advocacy for Persons with Disabilities.

21 **CO-CHAIR KELLNER:** Thank you.

22 Say it loud enough that - -

NYSBOE Board Meeting, Sept. 16, 2010

- 1 **ROBERT BREHM:** Commission on Quality of Care and Advocacy for Persons with Disabilities.
2 It's abbreviated CQC - - but there's even a longer abbreviation.
- 3 **CO-CHAIR KELLNER:** All right and this is the authorization of funds not to exceed \$50,000
4 from our state operations and from HAVA in order to fund these projects and if you want to tell
5 us what the projects are in two sentences?
6 Greg, do you want to - -
- 7 **JOHN CONKLIN:** Do you want to outline what you're doing?
- 8 **GREG JONES:** Sure, briefly by the way we're pretty much in place already.
9 In addition to providing technical assistance to the State Board of Election on issues with
10 people with disabilities as well as the various county boards, we're going to also continue to
11 maintain our web page where we have lot of election resources, links to the state board web
12 site, etc.
13 In addition to those items we have taken the films on the operations of the DVDs and the
14 scanners.
15 We will work those, but that's rough footage from [PH] SOE software and we have done DVD,
16 which has all the video, it's an open captioned DVD on the operation of the BMD's as well as the
17 scanners.
18 The intent of that was to get it out to independent living centers across the state and to county
19 boards if they wanted to use it for training.
20 It's now in a format that could be displayed on a screen without looking really fuzzy
21 It could also be used for local training events, that kind of thing, as well as for duplication for
22 people who may not have access to the Internet because of whatever reason.
23 That has been done.

NYSBOE Board Meeting, Sept. 16, 2010

1 I gave a copy to John last month.

2 The other part of the proposal, the new parts of the proposal are that we're going to have an on
3 line survey.

4 It's meant to be kind of a snapshot of people's experiences at the polls.

5 This is kind of a once in a lifetime chance with these major changes just to kind of see how
6 people felt about it in general terms.

7 It's not meant to focus in on any particular aspect such as the ramp was too steep or anything
8 like that.

9 It's more of a snapshot type thing about how you felt about the various components including
10 the access to the poll site, poll worker attitudes, the usability of the BMD's.

11 We are asking that they supply the county and the poll site if they can recollect it.

12 It's nine questions with drop downs.

13 It is accessible to everyone including people who are blind.

14 And after that we'll put together what we've kind of been calling a user's guide, which is
15 probably a misnomer, just going to be more of a snapshot essentially of how voters with
16 disabilities in the state have found the voting experience.

17 Again it's not meant to be critical.

18 Oh and the other component is we're really looking for people to give us one positive aspect of
19 the voting experience and one negative aspect of the voting experience.

20 Last time around in the pilot project we had a lot of anecdotal information from people locally,
21 especially who are blind that for the first time had voted independently and privately and
22 those are the kinds of things that we're really trying to capture and will make that report when
23 it's finished available to the board.

NYSBOE Board Meeting, Sept. 16, 2010

1 The survey I think I can safely say is now complete.

2 It's nine questions as I say.

3 I expect a bit more of a snapshot rather than a critique of every aspect of the voting experience.

4 **CO-CHAIR KELLNER:** Thank you Greg and we appreciate your efforts and we appreciate you
5 coming by to explain them to us. On the resolution those who are ready to vote on. Those in
6 favor say aye.

7 **PARTICIPANTS:** Aye.

8 **CO-CHAIR KELLNER:** Opposed?

9 I think the resolution is adopted.

10 **Discussion on Ballot Usability**

11 The next item on the agenda is a discussion on ballot usability.

12 And I added this item to the agenda because I wanted to make sure that we highlight the fact
13 that we are hearing the comments around the state.

14 I think one issue we're aware of is privacy and I think we're, from our point of view we
15 understand that that's an issue and it's one that really is one that addresses training of the
16 inspectors throughout the state.

17 The other issue is we hear comments about the readability of the ballot and some of them are
18 political in nature.

19 People are trying to breakdown our full face ballot statute and I'm unsympathetic to that
20 because I think that some of the experiences outside the country that don't use the full face
21 ballot show that the full face ballot is actually more usable for the voter than splitting it up by
22 office because it's much less likely that a voter is going to skip an office on the full face ballot.

NYSBOE Board Meeting, Sept. 16, 2010

1 And the best example of that is the Sarasota County Florida congressional race where a
2 substantial number of voters skipped the congressional race because of the way that ballot
3 was set up and if they were using a full-face ballot, I think that that kind of problem would not
4 have happened.

5 I also find it interesting that people complain about the full face ballot when we don't use a full
6 face ballot in the primary and they still complained and that just tells me that there's a political
7 agenda when they talk about the full face ballot as the reason our primary ballots are not
8 readable because the one has nothing to do with the other.

9 I think the biggest problem is that we try to put so much on the ballot that the print is often too
10 small and that there are ways that we could better utilize the available real estate on the ballot.

11 And I've also mentioned the need to get people to use the ballot marking devices if they need
12 glasses and haven't brought them to the polls, then just use the ballot-marking place.

13 One of the comments I have and that the counties and the ballot format is that even when there
14 are a small number of races on the ballot and there's lots of blank space on the ballot, we don't
15 blow up the ballot to a larger size to make it more readable.

16 And I also notice that a lot of the demonstration ballots used a larger size type face that what
17 we're using for our real ballots in an election.

18 So the ice cream ballot that we use to demonstrate the machines had larger typeface on it than
19 what we're using in the general election.

20 And so I just make those comments to start it off and I understand that Anna has committed
21 that her staff will make this a priority after the general when we do the evaluation of what we
22 need to change for next year.

NYSBOE Board Meeting, Sept. 16, 2010

1 **EVELYN AQUILA:** I think it's a very important issue and I know that, don't think we'll be able
2 to change much for November, but I'm hoping that for next year.
3 I don't know.
4 I'm not a lawyer.
5 So I can't say if this was legal or not, but I think just telling you what office the candidate was
6 running for took like four lines and then the poor name would be there.
7 And maybe we could just say Governor, Attorney General and I don't know what all the other
8 writing was truthfully, but it took a lot of space.
9 And this is the first time, you know, out of the shoot.
10 You have to give everybody chances and everybody said the same thing.
11 They'd like the printing to be a little bigger if possible and if anybody's staff can come up with
12 something better, it will be Anna Svizzero's because nobody works as hard or does as much.
13 So I'm very - -
14 **STAFF MEMBER SVIZZERO:** Thank you.
15 **EVELYN AQUILA:** You're welcome Anna.
16 It's praise that you seldom get and you well deserve.
17 I'm sure that next year we'll be singing a different song here about things like that.
18 There were at least in Brooklyn and New York City, I think all of the city of New York, we're
19 magnifying the envelopes and things, but some of the older people's complaints, like at my
20 church they all know who I am so I hear everything and on Sunday I can imagine.
21 They were saying, you know, they had to their glasses with one hand; keep their ballots
22 straight with the other so they didn't go outside the oval.
23 So they want things a little bigger and certainly George knew.

NYSBOE Board Meeting, Sept. 16, 2010

- 1 We told everybody and the inspectors who are very vocal about it.
- 2 And I know that it will be corrected as they say, but we have to give people time.
- 3 The next election is upon us really and I'm sure by this time next year we will have everything
- 4 much better.
- 5 I have no doubt; I have no doubt.
- 6 But it is a question that was brought up again and again by the layperson going into vote.
- 7 **CO-CHAIR KELLNER:** Anything else?
- 8 Thank you.
- 9 **EVELYN AQUILA:** I think we should say we found the four counties and everything was really
- 10 good.
- 11 We were in Nassau and you're in the Bronx.
- 12 The Bronx was running - -
- 13 **CO-CHAIR KELLNER:** I wouldn't say everything was really good, but - - It was good.
- 14 It was much better than I expected.
- 15 **EVELYN AQUILA:** It got rid of the police, but other than that - - [LAUGH]
- 16 **CO-CHAIR KELLNER:** I'll say one thing it was a lot better than the impression that's left after
- 17 reading the newspapers in New York City.
- 18 **EVELYN AQUILA:** Yes, that's what I have to say.
- 19 It was 100% better than what you would have thought after picking up on at the newspapers.
- 20 **CO-CHAIR KELLNER:** Most voters had no trouble whatsoever and most polling places opened
- 21 on time.
- 22 **EVELYN AQUILA:** I think somebody said, maybe it was you Anna, it was people problems;
- 23 people problems with the new, you know, what do I do now, how do I do this?

NYSBOE Board Meeting, Sept. 16, 2010

1 And even some people couldn't, you know, we'll mark your ballot for television, you know, and
2 people, I don't need to put it in that folder.

3 I mean I saw people in my - - I don't want to put it in that folder.

4 You have to, you know, so with those kind of things that are probably already cleared up.

5 **CO-CHAIR KELLNER:** The next item on the agenda is enforcement matters.

6 Does anybody want to take up any of those in executive session?

7 **Enforcement Determinations**

8 All right so we move the adoption of the report from the campaign finance unit.

9 Those in favor say aye

10 **PARTICIPANTS:** Aye.

11 **CO-CHAIR KELLNER:** Opposed?

12 And I note that one of our determinations on this included an admonition to a police chiefs
13 association for making an endorsement of the candidate in public with some of the members in
14 uniform.

15 And we've noted that the statute prohibits law enforcement officers from participating in
16 political campaigns and I think we agree that an admonition warnings so that kind of conduct
17 does not happen again in the future is most appropriate.

18 All right, perhaps we should talk about our next meeting and then we'll do the executive
19 session.

20 Do you have the calendar there?

21 So what do we have in mind, the first week of October?

22 **EVELYN AQUILA:** I like Thursdays, Thursdays is the best day of the week for me as well as
23 everybody else.

NYSBOE Board Meeting, Sept. 16, 2010

- 1 **CO-CHAIR KELLNER:** How's the 7th?
- 2 **JAMES WALSH:** The 7th works for me.
- 3 **GREGORY PETERSON:** The first Thursday, October 7th.
- 4 **CO-CHAIR KELLNER:** Okay, all right so tentatively we're scheduled for noon on Thursday,
- 5 October 7th.
- 6 I don't anticipate that we'll be taking any votes from the executive session so we can, those
- 7 who are watching on the Internet can safely turn us off. [LAUGH]
- 8 **GREGORY PETERSON:** If they haven't already. [LAUGH]
- 9 **CO-CHAIR KELLNER:** So the motion is to go into executive session to discuss litigation
- 10 matters.
- 11 Those in favor say aye
- 12 **PARTICIPANTS:** Aye.
- 13 **CO-CHAIR KELLNER:** Opposed?
- 14 All right, so we're in executive session.
- 15 **Executive Session**
- 16 [END AUDIO]
- 17 **End.**