



# 2013

## THE ECA REPORTER Election Commissioners' Association of the State of New York

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## A Message from the President

By William Fruci, ECA President, (D) Commissioner, Saratoga County

After the challenges of 2012 with three primaries, a presidential election, and the always problematic redrawing of district lines, 2013 looked to be a comparatively quiet year. But that wasn't necessarily the case. All county boards of elections were mandated by court order to implement upgrades to voting systems due to the several lawsuits that were filed. This required updating each and every voting machine and also the Election Management System (EMS) to accept the new software version. In the process we all had to re-enter our legislative districts to meet the newly mandated system. Custodians, technicians, and election inspectors then had to be taught the machine changes.

Also during 2013, many counties had upgrades to their absentee ballot module along with other enhancements to their voter registration systems, such as email addresses. After two elections using the revised module, further refinements are likely to be made.

As all commissioners and their staffs know, odd-year local elections can be some of the most time-consuming with hotly contested races. Commissioners spent hours assisting candidates with all of the required petition filings and related notices and with the new filing software for financial disclosure reports.

Monthly conference calls between county commissioners and SBOE staff has resulted in open dialogue on policies and resolution of issues in a timely manner. A law passed this summer requires each BOE to post unofficial election night results on its website as soon as possible after the closing of polls. Some counties have been doing this on their own for some time, but all boards are now required to send their results to SBOE on election night to be uploaded on the state website. This year the results of the six State Constitutional amendments were posted within hours. Another forthcoming joint effort is establishing a state asset management tracking system, AssetWORKS, currently in pilot tests.

The association continues to have an extensive legislative agenda. Foremost among the proposals is to change the date for holding primary elections. As recently as early December, ECA provided comment to the Assembly Committee on Election Law on accommodating the federal MOVE Act to give military voters proper rights for absentee voting.

Events are high up on the association's to-do list. With the 99th Annual Winter Conference just a few weeks away at the Hilton Albany, the committee has planned a dynamic forum for sharing views and information on national and statewide policies and addressing implementation at the local level. As soon as the January conference is over, planning will begin for the meeting at the Georgian Lakeside Resort in lively Lake George, July 29 – August 1. And if that's not enough, the 100th Anniversary Committee has already started putting together the 2015 tribute to a century of election professionals serving as "guardians of democracy for all New Yorkers." [Mission Statement of ECA]

The ECA loses a friend this year with the retirement of Commissioner Evelyn Aquila after 24 years on the State Board. During her tenure, landmark changes impacted the way registration and voting procedures were implemented statewide, greatly affecting the daily operation of local boards and facilitating the ability of millions of voters to cast their ballots. We wish her a wonderful and much deserved retirement.

This is my second time as president of ECA, and I continue to be awed with the number of members who take the initiative to sign up for committees and volunteer their time. It is this dedication that makes the association so effective in serving the needs and interests of our members. Thank you. The ECA couldn't do it without you.

William Fruci,  
President

**ECA  
Winter Conference  
January 13-16, 2014  
Albany, NY**

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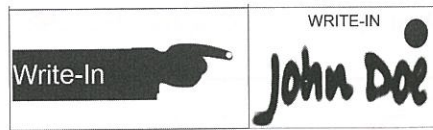
**ECA Officers & Committees List**

## A Field Day for Write-Ins

By Laura Costello, (D) Commissioner, Madison County

It wasn't that long ago that in order to vote a write-in on Election Day, you needed to open a slot above the offices listed on the face of the lever machines. You had to be careful to open the correct slot & write-in the name clearly with the pencil dangling in the booth. It helped to be tall.

Nowadays anyone can, and many will, do a write-in. Just write a name in the write-in box at the end of the column. It's easy. Maybe it's too easy for some voters that like to express their disappointment in the write-in box. Or their oddly placed sense of humor. This past November nearly 6% of our voted ballots had write-ins. Out of the 1,017 write-ins we recorded, 761 were from 3 write-in campaigns, another 82 were worth noting & 174 became scatterings.



The paper ballot write-in worked out well for our write-in candidates. We had several town candidates running very efficient write-in campaigns, including flyers with an image of the ballot showing the candidate's name in the write-in box. We discussed the problem of fitting longer names cleanly in the box & showed the candidates how you could extend outside of the box vertically in some cases. Or if the candidate's office is in the last column, you can extend into the open space to the right. (Still, it's going to be risky running for the office following

the column that Joshua Smithjonesbrown is being written-in on.) Almost all of the write-in votes were correctly cast & counted.

The days of having the long scroll of write-in paper rolled out down the hallway while the commissioners & election clerks crawl around on their hands & knees recording the names are gone. Other than the few pollsites where the inspectors seemed to have shuffled the write-in ballots in with the rest of the voted ballots rather than place them in the provided write-in folder (we will be working on that) the process was easy. Once we finally located all the ballots they were piled up & counted, while we comfortably sat in chairs.

## Handicapped Accessibility and Voting

By Richard G. Hollis, (R) Commissioner, Allegany County

On August 4th, 2012 I became the Republican Election Commissioner in Allegany County. On August 6th, my first day on the job, we received a letter from the New York State Attorney General's Office of Social Justice concerning accessibility of three poll sites in Allegany County. The Attorney General's Office was looking for an immediate plan to bring these three poll sites into compliance with the Americans with Disabilities Act. I was not up on either this act or the fact that we were not in compliance. I phoned them about a week later to see what they were really interested in us doing. They wanted all our ADA reports on all our poll sites and so I created a spread sheet to comply with their request. This is where the interesting journey into ADA requirements really began.

Upon submission of this spread sheet it became obvious that almost all the poll sites in Allegany County were not in compliance with the ADA requirements. We hired an ADA expert from Directions in Independent Living in Olean, NY named Howard Cornwall. As a matter of fact, when we performed inspections in 2012, only one poll site was found to be in compliance. To say I was shocked would be an understatement. Little did I know the amount of work that would be required by me and Mike McCormick, the other new

Commissioner, to satisfy the NYSAG and come into compliance with ADA.

In January of 2013 on advice of the County Attorney we signed a Memorandum of Agreement with the NYSAG to bring our poll sites into compliance. This was not a negative thing to do. We did many inspections of our various poll sites and worked very closely with the Towns in the county to bring this to a successful conclusion. For the General Election in 2013 we had 34 poll sites, 33 poll sites were in full compliance and the 34th made substantial strides to come into compliance.

The Attorney General's office is very pleased with our progress but will not be totally happy until the 34th poll site is in complete compliance. We are working with

that town and hope to have them into full compliance for all elections in 2014. One other town had to spend over \$6,000 to come into compliance and they thought their poll site was "perfect". Upon completion of the work, which they fought us on vigorously, they admitted that it was the best thing they had ever done for their town hall and had greatly improved the appearance and access to the facility for every day not just Election Day. We have to thank the Towns for their efforts as the majority of the work and costs have fallen upon them to complete, we couldn't have done it without their efforts and a big thank you to Howard Cornwall for coming up with innovative ways to bring the towns into compliance at the least amount of cost.



[www.ag.ny.gov/](http://www.ag.ny.gov/)

# ADA

[www.ada.gov/](http://www.ada.gov/)

### As Another Year Comes to a Close...

By Nancy Leven, (R) Commissioner, Livingston County

I'm sure we all are happy that this election season year is now behind us. Local elections seem to take a much greater toll on all election personnel with our stress levels peaking near all-time highs.

Local elections bring more petitions, more candidates, more paperwork, more challenges, more phone calls and more complaints to our offices. However, on the flip side in each town it does get everyone discussing what direction their town should head in or who should be put in charge of doing it. With countywide positions it gets even more people discussing how their taxpayer dollars should be spent.

Candidates create websites and Facebook pages to push their message while their

supporters or critics add to those pages or their own sites with additional comments. Information goes online almost on a real-time basis but it leaves the voter to sort out the information to make a decision. I am not sure if all this activity has brought out more voters but it definitely creates a lot more discussion, at least it did in our county this year.

A number of towns across the state had very close races this year with the winners being decided by only a few votes and in some cases just one. Even some countywide positions were close with at least one decided by less than 100 votes. To me this means that the voters are taking an interest in what is happening in their area.

As we look forward to a new year with budgets prepared to fund whatever elections we will be holding next year including village, school, Federal Primary, State Primary and the General Election we can all be assured that as election professionals we will be able to handle whatever comes our way and the workload it brings with it.

I can't wait to see everyone at the Hilton Albany in January, we have so much to discuss at our next conference! Happy Holidays and I wish all of you a happy and healthy New Year.

Nancy Leven,  
NYSECA Executive Committee Chairman

## COMING SOON! A New Updated "How to Run a Board of Elections" Guide for Commissioners

Under the experienced leadership at the NYS Board of Elections, the Election Commissioners' Association had formed a subcommittee who has been working with the Election Operations Unit, Anna Svizzero and Joe Burns to completely update the Election Commissioners' User Guide. This updated guide will be full of extremely useful information to both seasoned and brand new Election Commissioners.

The Committee has just recently been given the task of reviewing the draft form of the guide as well as the Sample Forms for all Boards to have at their fingertips.

The committee has been very pleased to be a part of this very important task which will enable our counterparts to have a hands-on guide that will assist them in their day-to-day operation of a Board of Elections. This updated guide will be a good reference for all commissioners and deputies to use when not sure of how something should be done or where to look in the law book for the information you need.



## Fifty Million Dollars for NY Counties

**By Norman P. Green, (D) Commissioner, Chautauqua County**

Here's an idea!

Let's give fifty million dollars to the counties of New York State as an economic shot in the arm for 2014.

How can the State Legislature fund this great new economic plan? Will this be a state taxpayer giveaway or tax money shell game???

Nope. Albany can easily fund the fifty million bucks for New Yorkers by a fifty-seven County and New York City election operation budget savings resolution.

You see, New York State in recent history has legislated local and state Primary elections to be held on the first Tuesday after the second Monday in September. (The occasional collision with 9/11 memorial service respect has rightfully played some havoc with the date.) It's hard to pinpoint the cost of running county by county primaries for the political parties to sort out candidates, but \$50 million is one figure that has been bandied about over recent years.

On the other hand, the federal Military and Overseas Voter Empowerment Act (MOVE) requires that our military and overseas voters be transmitted a ballot by way of the Internet or U.S. Mail no later than 45-days before any election where a federal office such as Congress or President is to be voted on. That being said, the federal government can make no state mandates or laws "... not delegated to the United States by the Constitution..." *So the federal rule does not have to apply to the state local Primary elections, if New York State doesn't want to comply.*

The MOVE act and New York's stubborn refusal to change its own September Primary election date have resulted in a

giant collision. It is impossible to have ballots to military and overseas voters by the 45-day deadline within the confines of a September Primary election date and the filings from Supreme Court judicial district nominating conventions that come even later than the September Primary just add to the difficulty.

In 2012, U.S. District Court Judge Gary Sharpe stepped in to force compliance with the federal MOVE act and ruled that New York State is to hold its Federal Primary Elections at least eighty-days before any General Election where federal offices are to be voted on. The date Judge Sharpe chose is the fourth Tuesday in June for the federal election cycle that is part of the federal jurisdiction. (In his order, Judge Sharpe did give our State Legislature the leeway to change the June date, as long as any date chosen is at least eighty-days before the General Election.)

In 2012 when faced with the option of one combined Primary Election Day that meets Federal law for federal office elections, New York State failed to choose a new date and instead we had two separate Primary Elections at a cost of \$50 million to the localities for the extra Primary Election Day. Not only were there two elections, but also two election ballots were mailed to the military and some overseas voters for the General Election. (One ballot for federal offices and one ballot for local offices to be voted on.) The federal ballot met the federal law's deadline for a timely delivery to our U.S. overseas troops and our overseas workers. At the same time, the local ballot met no such deadline and possibly disenfranchised and no doubt confused and left our military personnel scratching their

collective heads as to why they got the two ballots in the mail.

In 2014, another federal election year, absent any State Legislature action we again face the same reality as in 2012; that we will have two Primary Election days for the coming election year.

The New York State Election Commissioners Association (ECA) in 2012 unanimously voted to back the idea of one Primary Election. At the time, the ECA favored the fourth Tuesday in June. The date harkens back to earlier state history with a June local and state Primary date. The ECA chose the date for practical reasons, such as schools that are often used as poll sites would be out of session with security issues lessened. This earlier date would also even out the ever increasing workload and time issues that optical scan paper balloting has caused election boards. Over the past two years, the ECA has become unofficially fractured in its unanimity favoring a June Primary date, but the ECA members continue to be unanimous in our collective resolve that one Primary Election Day just makes sense for its cost and labor savings.

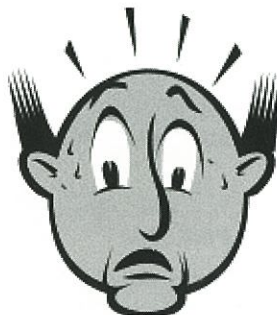
Without an early compromise in 2014, we can again expect two Primary Election Days in New York State for the 2014 election cycle. Our State Senate and Assembly is currently divided between a June and August resolution, with Gov. Cuomo offering no opinion. It's not too late for the State Legislature to quickly come together and agree on a date that will mean a fifty million dollar windfall savings for the localities and taxpayers of New York State.

## How NOT to Start Election Day!

**By Amy Daines, (R) Commissioner, Yates County**

At 4:46am I was en route to deliver a replacement key for a poll site and I get a text message from a site 18 miles away: "Amy, ALARMS going off inside and outside the building what do I do???"

I called 911 to alert them it was our Inspectors. I was asked "why I did not have them enter the code for the security system?"



My response was that I could not as we did not have a code as we did not know there was an alarm system.

The dispatcher began laughing and could not speak.

Poor Inspectors won't settle down for a month.

## 100th Anniversary of the NYS Election Commissioners' Association

By Sue Bahren, (D) Commissioner, Orange County

2015 will mark the 100th Anniversary of the NYS Election Commissioners' Association. Plans are currently underway to hold a gala event at our Spring Conference May 18th through the 21st, 2015 at the Otesaga Hotel in Cooperstown. Former Executive Director of the State Board of Elections as well as the Federal Election Assistance Commission, Tom Wilkey has agreed to serve as both historian and Master of Ceremonies for this grand event.

We have been busy contacting all Counties and NY for them to 'shake the bushes' and find former Commissioners and Deputy Commissioners to invite to this event.

Sue Fries, Bernadette Toombs and myself are serving on the committee and hope that all counties will search their archives for interesting facts, pictures or information that can be displayed at this event.

Sue Bahren,  
Orange County



## Don't Tell Me Your Vote Does Not Count

By Robert Howe & Thomas Brown, Commissioners, Cortland County

"It's a Tie" is not what candidates want to hear when the official results are in. Many local races for town offices across New York State have resulted in a tie vote. This is what is referred to as a Failure to Elect.

So what happens next.....Well for a Town Board Councilperson position there is no vacancy and the town has to wait until November 2014 General Election for the position to be placed on the ballot again to be voted on OR the Governor calls a Special Election for the position in that town.

Whatever the town does, this is their call not ours.

Please do not tell me your vote does not count!!!!!!!!!!!!!!

*Laws and cases to refer to:*

*2013 N.Y. Op. Atty. Gen. No. 4 (N.Y.A.G.), 2013 WL 3270041*

*Town Law 64(5); Public Officers Law 42(3); Constitution Article 6, 17(d)*

*Funk v. Board of Supervisors 1 NY2d 128 (1956)*



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