

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, MARCH 27, 2012  
AT 1:30 P.M.  
42 BROADWAY, 6<sup>th</sup> FLOOR, COMMISSIONERS' HEARING ROOM  
NEW YORK, NY 10004

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PRESENT: President Maria R. Guastella  
Secretary Frederic M. Umame

Commissioners Araujo, Barrera, Dent, Polanco, Schacher, Soumas, Sipp,  
Stupp

Dawn Sandow, Deputy Executive Director  
Pamela Perkins, Administrative Manager  
Steven H. Richman, General Counsel  
John Ward, Finance Officer  
Dorothy Delayo, Director, Personnel  
Raphael Savino, Director, Campaign Finance Reporting Enforcement  
Charles S. Webb, III, Counsel to the Commissioners  
Steven B. Denkberg, Counsel to the Commissioners

GUEST: David Simpson, for Storobin  
Kate Doran, LWV  
Cathy Gray  
Monica Bartley, CIDNY  
A.B. Britton, KLC – GOP USA  
Stewart Armstrong, Campaign Finance Board  
Marjorie Shea, Women's City Club  
Jonathan Yettin, KCDCC  
Seth Grossman, City Council  
Alex Camarda, Citizens Union  
John D. Smith  
Will Colegrove  
Patrick McClellan, for Assembly Member Kavanagh  
Geneva Butts  
Alan Flacks, Member of NY Democratic County Committee

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President Guastella called the meeting to order at 1:30 P.M.

Commissioner Barrera requested to discuss a Bronx matter concerning SHOUP lever machine rentals for Co-op City in public session and a Bronx personnel matter in Executive Session.

Mr. Richman requested to discuss a litigation matter in Executive Session.

Mr. Ward presented the Vacancy Report dated March 27, 2012. A copy of the report is the agenda.

Commissioner Barrera moved to convene a Party Caucus. Commissioner Dent seconded the motion, which was unanimously adopted.

After the Party Caucus was adjourned, the public meeting resumed.

President Guastella recognized Alan Flacks, a member of the public, who requested for the draft March 20, 2012 Commissioners' Minutes to be

revised. Mr. Flacks stated that he said that he would have monumental ingratitude, not gratitude, towards everyone if he was the Board's Executive Director.

Commissioner Barrera moved to approve the minutes of the March 13, 2012 and March 20, 2012 meetings as amended. Commissioner Barrera seconded the motion, with Commissioners Polanco and Sipp abstaining for the March 20, 2012 minutes. The motion was adopted. Commissioners Polanco and Sipp abstained because they were not present at that meeting.

On behalf of Co-op City in the Bronx, Commissioner Barrera submitted their annual request to use seventy (70) SHOUP lever machines for their May 16, 2012 Board of Directors Election. Co-op City would contract directly with the truckers and conduct and certify their election independently without Board personnel. Commissioner Barrera moved to approve Co-op City's request. Commissioner Polanco seconded the motion. Before a vote, Commissioner Umame stated that he has opposed Co-op City's request for the past 15 years. He stated that it is not the appropriate use of the Board's voting machines and currently the SHOUP

lever machines are in storage. Commissioner Barrera noted that this request has been approved every year. Commissioner Barrera moved to approve Co-op City's request. Commissioner Polanco seconded the motion, with Commissioner Umame opposing. The motion was adopted.

President Guastella moved to convene an Executive Session to discuss personnel and litigation matters. Commissioner Sipp seconded the motion, which was unanimously adopted.

Following the Executive Session, the open public meeting resumed and President Guastella reported on the action that was taken in Executive Session.:

- I. The Commissioners unanimously adopted the Committee Report to terminate Steven Goodner, a Voting Machine Technician (VMT) in the Bronx Office, effective immediately, and to place Kevin Dixon, a Voting Machine Technician (VMT) in the Bronx Office, on one (1) year probation, effective immediately.

Mr. Richman recalled that the Commissioners approved the

Designating and OTB Petition Rules for the September 11, 2012 Primary at the previous meeting. He requested for an amendment that in the list of appendixes rather than provide the sample petition form and the OTB petition instead substitute the reference to the statutory provisions which provide the actual sample of the form. The forms can be found in statutory Sections 6-132 and 6-166. Commissioner Umame moved to amend the Designating and OTB Petition Rules for the September 11, 2012 Primary in accordance with Mr. Richman's suggestion. Commissioner Araujo seconded the motion, which was unanimously adopted. Mr. Richman stated that the amendment will be reflected in the submission to the Department of Justice (DOJ).

Commissioner Dent moved for Board Staff to proceed to the next step in the 3% Audit in the 27<sup>th</sup> Senatorial District in Kings County. She stated that there was a discrepancy in the 3% Audit so by statute Board Staff has to proceed to a 5% Audit. Commissioner Araujo seconded the motion, with Commissioner Schacher opposing, and Commissioners Umame and Stupp abstaining. Before a full vote, Secretary Umame explained that he abstained because the Board's Rules states that they delegate these authorities to the Borough Commissioners and he does not

want to overrule them. Mr. Richman recited the Board's Rules and Regulations, Section 6210.18 (e), concerning this matter. Commissioner Dent explained that according to the results tape of the Scanner there were 104 votes, and Board Staff, in a bipartisan fashion, hand counted a total of 105 ballots. Commissioner Dent noted that the staff recounted the ballots four (4) times and came up with the same conclusion. Commissioner Schacher stated that she was advised that Board Staff hand counted 104 ballots three (3) times and there was one (1) ballot that was blank with the exception of one (1) check mark which the Scanner did not pick-up. She stated that the purpose of the audit is to see whether or not the Scanner correctly records what it is supposed to record. Commissioner Schacher stated that there was one (1) blank ballot and she does not think that they should continue to the next step considering the time and funds. Commissioner Araujo stated that he understands that if there is a split between the Borough Commissioners then the full Board can vote on the matter. Commissioner Dent noted that Ms. Sandow and Ms. Perkins spoke with the Commissioners' Executive Committee as it relates to this matter because the two (2) Borough Commissioners could not agree. Secretary Umame recalled that his vote at that time was not to overrule the Borough Commissioners.

President Guastella recognized Jonathan Yettin, a member of the public, who stated that he was present at the Brooklyn Voting Machine Facility observing the audit. Mr. Yettin stated that he is the Executive Director of the Kings County Democratic Committee and their position is to continue the audit. He feels that the NYS Election Law and the State Board's Rules and Regulations clearly state what to do in this particular scenario.

Commissioner Dent stated that the Board should govern themselves by the written Rules and Regulations. Mr. Richman recalled that Commissioner Dent's motion is to proceed with the 5% Audit. In a roll call vote, there were five (5) in favor (Araujo, Barrera, Dent, Guastella, Soumas), one (1) opposed (Schacher), and four (4) abstaining (Polanco, Sipp, Stupp, Umane). The motion was not adopted.

Commissioner Soumas stated that Judge Schmidt should be advised of this matter and he should oversee the process because there is a split among party lines. Commissioner Dent agreed with Commissioner Soumas and asked Mr. Richman how they will proceed from this point. Mr. Richman stated that if the Commissioners cannot achieve a majority

vote then the status quo remains. Prior to the point of certification, each Commissioner is required under the State Law to sign the certification that there are no unresolved discrepancies in the audit. If the Commissioners decline to sign it, then the Board has no authority to certify. At that point, either party could seek an intervention with the Judge. Mr. Richman stated that the audit is a preliminary step before the certification. Judge Schmidt will be getting a review after the process of reviewing the paper ballots is complete. Under the Appellate Division's rules, when the Board finishes its process, even if it is a split process, the Courts will obtain jurisdiction. Commissioner Soumas stated that it is apparent to him that the Court has just obtained jurisdiction on this matter. Commissioner Dent stated that she cannot sign anything indicating that there were no discrepancies because there was one (1) discrepancy which is unresolved.

Commissioner Dent reported that there is a typographical error on page #10 of the March 13, 2012 Commissioners' Minutes and asked for it to be revised. She stated that the sentence should read, "Commissioner Dent stated that the Board is not in the business of taking anything away from anyone."

Secretary Umane reported that it came to his attention that there were some errors made in the connection of printing some of the ballots for the 2012 Presidential Primary. Secretary Umane moved to authorize the reprinting of the ballots that were incorrectly printed for the April 24, 2012 Presidential Primary. Commissioner Araujo seconded the motion, which was unanimously adopted.

President Guastella moved to adjourn the meeting. Commissioner Araujo seconded the motion, which was unanimously adopted.

The next stated meeting of the Commissioners is scheduled for Tuesday, April 3, 2012 at 1:30 P.M.