

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, JULY 3, 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, Polanco, Schacher, Sipp, Soumas

Pamela Perkins, Administrative Manager  
Steven H. Richman, General Counsel  
Raphael Savino, Director, Campaign Finance Enforcement Reporting  
Dorothy Delayo, Director, Personnel  
Valerie Vazquez, Director, Communications & Public Affairs  
John O'Grady, Chief Voting Machine Technician, VEOU  
Stephen Thompson, HAVA Training Specialist, Election Day Operations  
Rachel Knipel, Associate Staff Analyst, LAP  
Joel Bermejo, Temporary Contract Attorney, OGC  
Giacomo Kmet, Temporary Contract Attorney, OGC  
Jeffrey Lederman, Law Student Summer Intern, OGC  
Byron Zinonos, Law Student Summer Intern, OGC  
Steven B. Denkberg, Counsel to the Commissioners  
Charles S. Webb, III, Counsel to the Commissioners

GUEST:       Council Member Gale A. Brewer  
                  Antoinette Fuoto, CFB  
                  Bill Toth, CFB  
                  Kevin Ramnaraine, CFB  
                  Shauna Denkensohn, CFB  
                  Pat McClellan, for Assembly Member Brian Kavanagh  
                  Seth Grossman, City Council  
                  Marjorie Shea, LWV  
                  Rima McCoy, CIDNY  
                  Grace R., NY1 News

Cathy Gray  
Kate Doran, LWW  
Kate Taylor  
Chester Soria, WNYC  
Yana Paskova, NYT  
Susan Lerner, Common Cause NY  
Rachel Olshausen, Common Cause NY  
Claire Stottlemeyer, Common Cause NY  
A.B. Britton, KLC USA GOP  
Laura Wahmers, City & State  
Kamelia Kilawan, Gotham Gazette  
Juan Manuel Beniz, NY1 Noticias  
Carl Campanolo, NY Post  
John D. Smith  
Alex Camarda, Citizens Union  
Michelle Bright, Citizens Union  
Al Roundtree, NYDLC  
Alan Flacks, Member of NY Democratic County Committee

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Secretary Umane called the meeting to order at 1:39 PM in absence of President Guastella and announced that she is delayed in traffic. He asked the Commissioners to introduce themselves followed by senior staff.

Items added to the agenda:

- An Executive Session to discuss pending litigation was requested by the General Counsel; and
- Administrative Manager Pamela Perkins requested to discuss a personnel matter.

Commissioner Araujo moved to adopt minutes of the June 12, 2012 meeting. Commissioner Barrera seconded his motion, which did not pass due to lack of affirmative votes. Secretary Umame tabled the minutes for one week which was agreed to unanimously.

John O'Grady provided an overview of the June 26 Primary Election as follows:

- 1) There were 1,353 designated Poll Sites throughout the City of New York.
- 2) At 5:00 AM, 44 Poll Sites were reported "not opened".
- 3) At 6:00, an additional Poll Site was reported "not opened" bringing number to 45. He will provide further details as logistics come in.
- 4) 35 Poll Sites had reported accessibility issues.
- 5) 17 Poll Sites had designation issues. Those issues will be addressed with the Department of Education.
- 6) 3,084 scanners were deployed. Thirty one had to be replaced Citywide.
- 7) 1,382 BMDs were deployed. Twelve had to be replaced.

Mr. O'Grady reported that in accordance with Part 6210(b) of the NYS Board of Election's Rules and Regulations the county boards must conduct maintenance tasks and diagnostic testing of all voting equipment from January 15 to April 15. Such testing shall be administered periodically and be completed during the following periods in each year that equipment is in use. The State Board of Elections requires each Commissioner to certify their respective county. He provided a copy of the certification report for their information. Commissioner Araujo inquired about the statement that would be included with the certification. Mr. Richman replied that it has not been done and explained that at a previous meeting Commissioner Araujo asked legal to prepare a statement acknowledging that the Commissioners authorize certification based on reports submitted by the Borough Managers. Secretary Umame asked if Borough Managers can sign this form. Mr. Richman replied that State Board Rules require certification by the Commissioners of Elections. He will endeavor to have a draft copy prepared for Commissioner's review by the next scheduled meeting.

John O'Grady reported, on behalf of Daniel Lavelle, that the Manhattan Call Center received 824 calls on Election Day; Staten Island's

Call Center received 553. Manhattan resolved 721 calls by phone; Staten Island resolved 489.

### Categories of Complaints

- Scanners
- BMDs
- Poll worker problems
- Miscellaneous
- Poll Site supplies
- Interpreters; and
- Names not in Poll List Books.

John Naudus gave the following report concerning post election activities.

- 1) The reading of portable memory devices:
  - a. All five boroughs have completed task.
- 2) Review of Write-in names on Election Day Ballots.
  - a. Manhattan is 90% complete.
  - b. Bronx is complete.
  - c. Brooklyn is 50% complete.
  - d. Queens is complete.

- e. Staten Island is complete.

3) Recanvass of Election Day Ballots:

- a. Manhattan has 99% done.

- b. Bronx is complete.

- c. Brooklyn has not started.

- d. Queens is complete.

- e. Staten Island is complete.

4) Audit of Scanners:

- a. All boroughs are complete.

5) Recanvass of Emergency Ballots:

- a. Manhattan is complete.

- b. Bronx had no Emergency Ballots.

- c. Brooklyn has not started.

- d. Queens is complete.

- e. Staten Island had no Emergency Ballots.

6) Canvass of Absentee/Affidavit Ballots will start on Thursday, July 5, 2012 due to the holiday.

7) Manual entry of the recanvass into S-Elect:

- a. Manhattan has not started.

- b. Bronx is complete.

- c. Brooklyn has not started.
- d. Queens is complete
- e. Staten Island is complete.

Secretary Umame recognized Kate Doran, a member of the public. Ms. Doran asked if Mr. Naudus' report is included in the agenda. She will meet with Mr. Naudus at end of the meeting.

Rachel Knipel reported that there were 67 Poll Sites targeted for Bengali and/or Hindi Language Assistance. Due to successful outreach efforts, the Board was able to extend Bengali Language Assistance to P.S. 131 at AALDEF's request. Accordingly, each Poll Site was assigned a Bengali and/or Hindi Interpreter and received Supply Bags with all translated signage. Designated Poll Sites were also given Bengali translated Voter Registration Forms, Ballot Envelopes, the Voter's Bill of Rights, and "Mark Your Ballot" flyers. There were five monitoring teams from the Executive Office assign to cover these 68 sites in addition to Borough AD Monitoring Teams. Each team had a site visit list sorted so that sites with a larger Bengali/Hindi and Citizen of Voting Age with Limited English Proficiency (CVLEP) were visited earlier in the day. Improper

placement of Bengali signs next to the four language signs was the most commonly reported by the Monitoring Teams. This was remedied by speaking with the Coordinators at each site and then repositioning the signs. This will also be rectified in future elections as we move to five language sign. Time constraints for the June 26 Federal Primary Election did not allow for this. The Call Center logged five calls for Hindi/Bengali Interpreters and six calls for missing Bengali materials. The board was able to send out Stand by Bengali Interpreters to four of the five sites before the Stand by Pool ran out. The additional telephone request for a Bengali Interpreter was resolved by a monitoring team from the Executive Office visiting the site and learning that one of the Hindi Interpreters at the site also speaks Bengali. All calls for missing materials were resolved.

President Guastella acknowledged the presence of Councilwoman Gale Brewer.

Mr. Richman reported that in the mist of conducting the Federal Primary, the Board received a request for comment from the Governor's Counsel. The only Election Law Bill that passed both houses of the Legislature would, if enacted, require the Board to provide Russian

Language Assistance which would include ballots and other material. He explained that for each election, the Board would incur an additional \$600,000 - \$700,000 per election to provide 2700 Interpreters Citywide with related costs for salaries and training. In addition, there would be approximately \$6 million more incurred per election for ballots. The Board would also have to hire two Russian language translators at the current salary of \$40,628 each; plus temporary staff for the Phone bank at \$11.90 an hour. Russian translation software would have to be purchase for the systems and Voter Registration Forms would need to be updated with the new language at a cost \$13,000 - \$14,000 a year for 200,000 Russian Voter Registration Forms. With respect to adding to the Information Notice, there would be an additional incremental cost of a couple hundred thousand dollars as well as a relatively minor cost of \$1,000 for a voice license for a Russian Voice Synthesizer. In response to a question from Commissioner Umane, Mr. Richman replied that the current certified system under ES&S provides Russian language.

Mr. Richman reported that the bill A.10609, passed by the Legislature was drafted in a poor and unclear manner. Specifically, the bill does not provide any guidance as to how this Board, which is singled out in the

Legislation, should implement this process. The requirement in the law is that we have to provide all voting information and ballots in Russian to the extent needed to allow voters who speak Russian to participate effectively in the electoral process and all voting connected activity. These terms are not defined either in the Election Law or anywhere else in the Statute, including the General Construction Law. Its ambiguous terminology leaves the Board open to litigated challenges with respect to our compliance in addition to public criticism of not meeting our responsibilities. The bill does not make Russian a designated or covered language pursuant to §203 of the Voting Rights Act so the NYC Board has no guidance on how to implement such a provision. At least when the U.S. Department of Justice and the U.S. Census Bureau makes a language designation, DOJ has guidelines on how to meet compliance including using targeting formulas, providing oral assistance in multiple languages, and written assistance in a specific dialect. In order to ensure that the New York City Board of Elections would not be subject to claims that it failed to comply with this new statutory provision, if enacted, Mr. Richman recommends that the Board plan to implement this new language requirement at every Poll Site and on every ballot throughout the City of New York. He also stated that he also agrees with the Ballot Management Coordinator's recommendation that if we are

forced to extend the ballot to two pages, the font size should be increased to address concerns. If the State Legislature deems it necessary to add this new mandate, it's ironic and fitting that these same Legislators would now appear on page 2 or 3 of a new ballot. However, since the effective date is after the November General Election, they would not feel its impact unless the Commissioners of Elections in the City of New York determine, as a sign of good faith, to move forward with the implementation of this plan for this November General Election. In addition, the bill is written and its memorandum does not set forth a rational basis for determining the exclusion of other languages not covered by §203 of the Voting Rights Act and why they are not covered. Therefore this Act may be unconstitutional in a denial of equal protection to other language minorities, without a rational standard being established to justify this Board and the State of New York engaging in such conduct and action. In consideration of the cost to implement this plan, Mr. Richman recommends the following:

- a) That the Governor does not sign the bill for the reasons set forth in Mr. Richman's oral report.
- b) Provide the financial costs and related information to the State Division as the budget requested;

- c) Provide the preliminary cost analysis to the Mayor, Members of the City Council, and OMB so they can make their own judgment on the merit of this bill.

Commissioner Polanco noted the General Counsel's concerns and stated that though the Board's position should be that we administer elections, it makes sense to present these facts as outlined. Informing the Governor not to sign the bill would be an incorrect move because the Legislature has already made the decision to act, therefore the Board should guide them on how to best implement this plan for New York City. He moved to authorize that the facts be presented to the Governor's Office, that the Board takes a position not to reject the Legislation and present the unfunded mandate question as a reason in the response. Commissioner Soumas suggests rather than advocating or rejecting the merits of the bill, the Board should defer it to the Corporation Counsel on the issue of constitutionality and the City Council on the unfunded mandate issue. Commissioner Umane stated that it makes sense for them to provide basic information with concerns to the Governor without recommendations and include the suggestions presented by Commissioners Polanco and Soumas. Commissioner Umane seconded Commissioner Polanco's motion with his amendment, which was adopted unanimously. Mr. Richman stated that the

legal staff will prepare an analysis and comment with no recommendation and share that with the Mayor, the Members of the New York City Council, OMB, and the Corporation Counsel.

Mr. Richman gave an update on litigation relating to the June 26, 2012 Federal Primary. He provided copies of an Order to Show Cause In the Matter of Adriano Espaillat v. Board of Elections in the City of New York, ET. AL., which was signed in Supreme Court of the State of New York, County of New York relating to the 13<sup>th</sup> Congressional District, Democratic Primary. After consultation with Executive Committee and their approval, the Law Department prepared a response on the Board's behalf. A copy is included as well as the answer from Respondent Charles Rangel. Two of the other candidates did not appear. Candidate Craig Schley appeared Pro Se at the Court Hearing held yesterday. At the Hearing, Petitioner Espaillat moved to withdraw his proceeding after being served with a copy of the Board's response and so at the moment the entire proceeding is withdrawn. Therefore the Board continues to conduct its activities in accordance with the Election Law, the Voting Rights Act, and the Board's newly adopted procedures and as announced the Canvass of Paper Ballot Envelopes will begin on Thursday, July 5, 2012 at 10:00 A.M.

Commissioner Umame inquired whether the Board received reports from Poll workers or anyone else about people being turned away on Election Day from any polling places; or people not being able to work or vote or anything out of the ordinary from most every single election we've had in previous years.

Mr. Richman replied that the only thing out of the ordinary on Election Day was the extraordinary need in certain parts of Brooklyn, Manhattan and a few locations in the Bronx for additional Affidavit Ballots. He explained that;

- At a Poll Site on Morningside Drive, which serves the Poll Sites in that community from 106<sup>th</sup> Street to 124<sup>th</sup> Streets, that neighborhood had traditionally been represented in the old 15<sup>th</sup> C.D. In the current reconfiguration based on the Federal Court Order, only the blocks from 122<sup>nd</sup> Street to 124<sup>th</sup> Street; only one of the four EDs is in the new Congressional District. He stated that he was questioned by a voter who wanted to know why she couldn't vote for her candidate in this Congressional Primary when she has been voting at the same Poll Site for 20 years. This is the first time her name was not listed in the Poll List Book.

They found that this particular voter is now in the new 10<sup>th</sup> C.D. that is currently represented by Congressman Nadler who does not have a Primary. The voter stated that this “can’t be” because she has been represented by Charles Rangel as long as she’s lived in the neighborhood and she has a right to vote for him.

- Similarly, in Brooklyn, on the borderline between the 7<sup>th</sup> and 11<sup>th</sup> CDs; Congresswoman Maloney and Congresswoman Velazquez’s Districts, there were a large number of voters who came out. Some lived on the borderline of the new Maloney district and came out to vote in the Primary because they were advised to do so and told to demand an Affidavit Ballot even if their names were not in the Poll List Book so Brooklyn took the extraordinary measure of printing, in house, extra Affidavit Ballots to meet the need. Many will be found to be “out of district” when validated. There was also a similar concern in the Bronx where staff had to move Affidavit Ballots from one district to another. No persons who demanded an Affidavit Ballot, whether they are going to be counted or not, were denied that right. The Administrative Manager noted additional problems such as voters going to the Poll Site and voting at wrong ED and the Department of Education changing designated rooms which exacerbated issues. In response to a question from Commissioner Araujo, the Director of Communications

reported that legal advertisements were placed in various newspapers including the New York Post, El Diario, Sing Tal and World Journal, both Chinese publications; the Korean Times and El Tikana, which is a Bengali Newspaper a week before the Election, to inform the public of the upcoming Election. The advertisement included all relative Poll Site information and necessary contact numbers and encouraged voters to visit the Board's website and view their sample ballot. A day before the election, we ran another ad which included a contest list, website, and Phone bank information for voters to ascertain whether there is a Primary in their district. There were eighteen Poll Sites throughout the City of New York that had a Poll Site change; those voters received Poll Site Change Notices. Mr. Richman advised that the Board has no legal obligation to give any notification directly to voters accept for the annual Information Notice which is mailed between August 1<sup>st</sup> and 5<sup>th</sup> and in his determination, Judge Sharpe did not interpose any additional burdens or obligations on any Board throughout the State of New York.

Commissioner Polanco inquired whether the General Counsel is prepared to give a preliminary update as to why there was such a drastic reduction in the margin of victory the Press had given to Congressman

Rangel on Tuesday night. The General Counsel referred everyone to the Commissioners adopted statement on the Preliminary and Unofficial Nature of Election Night Returns. The fact is that during the canvass process on Election night, sometimes Poll workers make errors in filling out the Return of Canvass. The NYPD can also make errors, both in data entry and the transmission. This is the reason why the State prescribed such a comprehensive recanvass process, so literally we've met all our obligations ahead of schedule by having all the portable memory devices read in by Saturday evening. To ensure the integrity of the process including the paper trial, the PMD sticks are logged in. Poll workers are required to make sure that the seal numbers outside the pouch are correct and look at the seal numbers and serial numbers on the portable memory device to make sure it came from the right scanner so that if there is litigation, we have a paper trial to show that we've thoroughly followed procedures. In the meantime, the Board is moving forward in accordance with the lawful procedures adopted by the Commissioners of Elections in the City of New York however the reason this happened is people want instantaneous and perfect results; they can't have both.

The Administrative Manager responded that the numbers reported are not from the Board of Elections. The Board can view the numbers that the NYPD is inputting into their system at the end of the night. However, the NYPD's policy is to enter a "0" when the numbers written on the Return of Canvass are illegible or when all numbers have not been totaled all the way down. The Board receives Preliminary Results after the NYPD has recorded 100% of the precinct's reporting and some of these numbers are "0", some accurate, and others are errors that were made either by the Inspector or NYPD as an inputting error. The Board of Elections does not give out final numbers until the Commissioner's certify election results. All post election activities must be completed before the Certification of Results is presented to this Board, so those numbers and the drastic reduction in the margin of victory the Press gave to Congressman Rangel following the June 26<sup>th</sup> Primary Election cannot be explained. The Return of Canvass Form is in duplicate; one copy is returned to the Board and used in the recanvass process, one copy by law remains with the Police Commissioner to maintain custody in case of any questions on Election Night Results, and the third copy is made available to the Press. That is what was reported by the Associated Press.

Mr. Richman reported that Sec. 9-126(1) of the New York State Election Law describes in detail how the closing procedure happens in the City of New York. He explained that the News Election Service was a group that TV Networks, Radio Stations and large newspapers put together in the 60's and 70's. The AP has now inherited that role but it was a media organization that paid for the design of the NYPD system and its implementation. Commissioner inquired if there are copies of these Returns of Canvass available today for the public to look at. Ms. Perkins replied yes and asked them to see Valerie Vasquez at the end of today's meeting.

President Guastella recognized Alan Flacks, a member of the public.

Mr. Ward presented the Comparative Expenditures Report dated June 9, 2012 and the Vacancy Report dated July 3, 2012.

Commissioner Soumas stated that Honorable A. Gail Prudenti is the Chief Administrative Judge of the State of New York. He moved to have the General Counsel send a letter, today, requesting that no judge who is up for reelection be assigned to any Election Law case. There is an appearance

of impropriety and potential influence. Secretary Umame seconded the motion, which was adopted unanimously.

The General Counsel reported that Pursuant to the Notice to Candidates the last week of May, the canvass of Absentee, Military, Special, Federal and Affidavit Ballots cast in the Democratic Primary, 13<sup>th</sup> Congressional District will begin at 10 AM in the respective borough offices of Manhattan and the Bronx on Thursday, July 5, 2012. They will begin with utilizing two bi-partisan canvassing teams in each borough. Each candidate, at that time, will be permitted to have a Watcher and a note-taker sit at the table to be able to make objections to the cast opening or not opening of specific ballots. The candidates Rangel and Espaillat have requested/received or are in the process of receiving copies of all Paper Ballot Envelopes that we have received together with the preliminary findings of Board staff so that they can be prepared to make any further objections when the process begins. At the same time on Thursday, all other paper ballots in the other contests will go through the same process.

The Administrative Manager on behalf of Dawn Sandow and herself thanked all the Board staff. She stated that this year has been challenging

with the redistricting of the Congressional lines, State Assembly lines; having to add a new language in Queens, prepare for a Special Election followed by the April 24<sup>th</sup> Primary Election and the June 26<sup>th</sup> Primary Election. Now, we must get ready for the September 13<sup>th</sup> Primary Election and many of the staff have been working long hours; holidays and weekends. The Executive Managers want them to know how much they are appreciated for their hard work and dedication.

President Guastella moved to convene an Executive Session to discuss a litigation matter. Secretary Umame seconded the motion, which was adopted unanimously.

President Guastella reconvened the open public meeting and reported that no action was taken in Executive Session.

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

The next stated meeting of the Commissioners is scheduled for Tuesday, July 10, 2011 at 1:30 P.M.