

MEETING OF BOARD OF CANVASSERS
AND THE MEETING OF COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, JUNE 5, 2012
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

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

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

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Dorothy Delayo, Director, Personnel
Raphael Savino, Director, Campaign Finance Enforcement Reporting
Valerie Vazquez, Director, Communications and Public Affairs
Joel Bermejo, Temporary Contract Attorney, OGC
Giacomo Kmet, Temporary Contract Attorney, OGC
Thomas Sattie, Associate Staff Analyst, Ballot Management
John O'Grady, Chief Voting Machine Technician, VEOU
John Naudus, Manager, Electronic Voting Systems
Beth Fossella, Coordinator, Voter Registration
Diane Rudiano, Chief Clerk, Brooklyn Office
Maryrose Sattie, Deputy Chief Clerk, Brooklyn Office
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Cathy Gray
 Zach Bolodkin
 Patrick McClellan, for Assembly Member Kavanagh
 Gene Berardelli, Esq., for Storobin
 Kate Doran, LWV
 A.B. Britton, Kings L.C. GOP - USA
 Isabel Pitaro, Citizens Union

Shauna Denkenson, NYC CFB
James Jonh, Min Kwan Center for Community Action
Seth Grossman, City Council
Artyou Matassi, City Council
Kamelia Kilawan, Gotham Gazette
G. Magpantay, AALDEF
John D. Smith
Alan Flacks, Member of NY Democratic County Committee

President Guastella called the meeting to order at 1:36 P.M.

President Guastella called the meeting of the Board of Canvassers in the City of New York to certify the results of the March 20, 2012 Special Election in the 27th State Senate District in Kings County.

President Guastella designated Commissioner Dent to serve as the other Democratic Commissioner to sign the Statement and Return of Canvass.

Secretary Umame designated Commissioner Schacher to serve as the other Republican Commissioner to sign the Statement and Return of Canvass.

President Guastella called upon Mr. Richman to provide some background information on the Special Election before the Board of Canvassers.

Mr. Richman reported that the Governor of the State of New York called a Special Election for March 20, 2012 to fill a vacancy in the Office of State Senator from the 27th State Senate District in Kings County. The Board conducted this Special Election and then sought to fulfill its statutory responsibilities under Title 2 of Article 9 of the New York State Election Law. The two (2) candidates in this contest brought proceedings under Article 16 of the NYS Election Law in relation to the preservation of ballots and the conduct of the recanvass of votes cast. In accordance with the provisions of Article 9, the Board conducted a recanvass of the votes cast at the poll sites using the ballot scanners and a canvass of absentee, affidavit, special and emergency ballots. During the canvass of absentee, affidavit, military, special and emergency ballots, the canvassing teams did not agree to open approximately 400 ballot envelopes. Under the order of the New York State Supreme Court, Kings County, these ballots were preserved for judicial review at the expiration of the statutory three day waiting period. Please note that this Board has appealed that Order to the

Appellate Division, Second Department. Judicial proceedings continued through the months of April and May. On April 30, 2012, the Supreme Court issued an Order relating to the disputed absentee, affidavit, military, special and emergency ballots. The Board then opened those ballot envelopes in accordance with the Court's Order and cast and canvassed the ballots therein pursuant to the Election Law. Following a trial before Justice Larry Martin, the Court issued a decision on May 7, 2012, dismissing the fraud claim of candidate Fidler and directing the Board to open the remaining 119 absentee ballot envelopes. On May 14, 2012, the Brooklyn staff completed the canvass and candidate Storobin had a 27 vote margin over candidate Fidler. In accordance with Section 14 of the Board's Post-Election Activities Procedures adopted in 2010 and pre-cleared by the Attorney General of the United States, a full manual recount of all the ballots cast in the Special Election was required since the margin of victory was less than one-half of one percent of the total votes cast. The Commissioners adopted additional guidelines to prepare the ballots for the recount on May 15, 2012. That manual recount began, upon notice to the candidates on May 17, 2012 under the direction of Brooklyn's Chief Clerk and Deputy Chief Clerk. That process concluded last Thursday afternoon, May 31, 2012. In addition, during the conduct of the audit of the

scanners, mandated by the NYS Election Law, a dispute arose as to the nature of certain reported discrepancies and the need to escalate the number of scanners to be audited. Since a full manual recount of all ballots cast was conducted that issue is now moot. Mr. Richman stated that this is the first time that the Board's manual recount procedures have been used since the introduction of the new poll site based optical scanning system of voting.

President Guastella called upon Chief Clerk Diane Rudiano and Deputy Chief Clerk Maryrose Sattie to present their report and the Statement and Return of Canvass for this Special Election.

Ms. Rudiano and Ms. Sattie confirmed that the results presented are accurate and correct. There are no discrepancies to report to the Board. Ms. Rudiano and Ms. Sattie confirmed that a full manual recount of all the ballots cast in the Special Election has been conducted in place of the audit of voter verifiable audit records required by Section 9-211 of the NYS Election Law.

Ms. Rudiano and Ms. Sattie stated that Board Staff hand counted over 20,000 ballots in eleven (11) work days. They thanked Gregory Jackson and Matthew Graves for overseeing the recount in the Brooklyn VMF. In addition, they thanked Ms. Sandow and Ms. Perkins for sending great staff from the Executive Office to assist in the recount. Ms. Rudiano and Ms. Sattie thanked Mr. Richman, Mr. Savino and Mr. Kmet for their great legal assistance. Lastly, they thanked Mr. Ferguson, Mr. Hornak, Mr. O'Grady and Mr. Naudus for their assistance. Commissioner Schacher stated that she witnessed great work in Kings County and commended all of the dedicated staff members who assisted in the manual recount. Commissioner Dent agreed with Commissioner Schacher and thanked everyone who was involved with the recount in Kings County.

Commissioner Schacher moved for the Board of Canvassers to certify the Return of Canvass for the March 20, 2012 Special Election conducted in the 27th State Senate District in Kings County. Commissioner Dent seconded the motion, which was unanimously adopted.

Secretary Umame moved to authorize the use of the Commissioners' signature stamps as appropriate on each Statement and Return of

Canvass. Commissioner Schacher seconded the motion, which was unanimously adopted.

Secretary Umame moved to adjourn the meeting of the Board of Canvassers and to convene the weekly stated meeting of the Commissioners of Elections in the City of New York. Commissioner Dent seconded the motion, which was unanimously adopted.

Commissioner Schacher moved to table the minutes of the May 8, 2012 and May 15, 2012 meetings. Commissioner Soumas seconded the motion, which was unanimously adopted.

Ms. Sandow reported that she received an invitation to the Committee on Governmental Operations Hearing on June 11, 2012 at 1:00 P.M. to address Resolution No. 1343. A copy of the City Council's invitation is in the agenda. The resolution calls upon the NYS Legislature to pass and the Governor to sign into law legislation that would amend the NYS Election Law to modernize and streamline the procedures for the election night canvass and the reporting of unofficial election results. Ms. Sandow requested for authorization for Board Staff to testify at the

hearing. Commissioner Polanco moved to authorize Board Staff to testify at the Committee on Governmental Operations Hearing on June 11, 2012 to address Resolution No. 1343. Commissioner Stupp seconded the motion. Before a vote on the motion, there was discussion concerning the language of the bill and recommended revisions. Mr. Richman recommended revising the bill to address the scanning of emergency ballots at the poll site on Election Night. Ms. Sandow recommended revising the bill to allow either the Board's bi-partisan teams and/or the NYPD to transport the PMDs on Election Night. She explained that the boroughs may not be able to fill all of the Board's bi-partisan teams for Election Night therefore additional staff may be needed by the NYPD. Commissioner Soumas stated that there should be two (2) different standards for the City Board and for the other New York county boards of elections. Secretary Umane noted that the Commissioners received a copy of the bill at the beginning of the meeting and requested more time to review it. Secretary Umane moved for a Commissioners' Subcommittee to meet on Friday, June 8, 2012, either in person or via telephone conference, at 10:00 A.M. to discuss and approve recommendations for the bill, and then recommend the bill with the Board's revisions at the City Council Hearing on Monday, June 11, 2012. Commissioner Polanco

seconded the motion. Commissioner Sipp abstained and requested for the full Board to review the recommended revisions. Commissioner Araujo requested for the recommendations to be circulated to all Commissioners before Friday's meeting. Secretary Umane withdrew his previous motion. Secretary Umane moved to hold a telephone conference on Friday, June 8, 2012 at 10:00 A.M. with the full Board or a quorum to discuss the recommended revisions to the bill. Commissioner Barrera seconded the motion, which was unanimously adopted. Commissioner Dent noted that she will not be available for Friday's meeting due to a graduation.

Commissioner Polanco requested to discuss a Bronx personnel matter in Executive Session.

President Guastella recognized Alex Camarda, a representative of Citizens Union, who stated that the Commissioners' telephone conference is not permitted under the Open Meetings Law.

Commissioner Polanco moved for the Board to reconsider the prior motion. Commissioner Stupp seconded the motion, which was unanimously adopted.

Commissioner Polanco moved to authorize the Commissioners' Executive Committee to review the bill recommendations by the staff relating to the City Council Hearing on Monday, June 11, 2012. Secretary Umane seconded the motion, with Commissioner Soumas opposing, and Commissioners Sipp and Dent abstaining. The motion was adopted.

Ms. Perkins requested to add an item to the agenda. She recalled that the Commissioners requested for a public demonstration of the three (3) ES&S long term options for Election Night Reporting. She reported that the ES&S public demonstration is scheduled for Tuesday, June 19, 2012. Ms. Sandow recalled that Judd Ryan, a representative of ES&S, informed the Commissioners at a previous meeting that all three (3) options would be ready for public demonstration, but she was informed by ES&S after the meeting that only two (2) options are available. The networking option cannot be demonstrated because ES&S reported that option is not ready and there are costs involved to develop that option. Mr. Naudus stated that ES&S plans to demonstrate Option #3 which is the 3rd addition of the Write Once Read Many (WORM) PMD device in the DS200 Scanner, and Option #4 which is the wireless transmission out of the DS200 Scanner. He stated that his proposed networking option is not

an existing ES&S product so it is not ready yet. Ms. Sandow stated that the cost issue to develop the networking option was not mentioned by ES&S at the previous Commissioners' Meeting. She stated that Mr. Ryan told Executive Management that the networking option cannot move forward due to costs. Secretary Umane stated that the Board is very concerned because ES&S is required to pay for all software and equipment under the contract. President Guastella recognized Charlie Laramy, a representative of ES&S, who confirmed that there are costs involved and they cannot start until the cost is approved. Commissioner Soumas questioned the costs. Mr. Laramy stated that any enhancements made to the voting machines which are requested by the City Board would have costs involved and those costs would have to be approved prior to the certification. Commissioner Soumas stated that the Board will not incur the costs for ES&S's research and development on the proposed networking option. There was a consensus among the Commissioners. Commissioner Polanco requested for Mr. Laramy to provide the City Board with an answer concerning this cost issue. Mr. Laramy stated that he will speak with his Corporate Office and get back to the Board. Ms. Sandow confirmed that ES&S's public demonstration is scheduled on Tuesday, June 19, 2012 for Options #3 and #4. It was noted that Chicago, IL uses

the wireless transmission system which was developed by ES&S. Commissioner Soumas questioned who paid for Chicago's system and reiterated that the City Board should not have to pay for ES&S's research and development costs.

Mr. Sattie provided an update on the bilingual ballots proposal. A copy of his detailed report is in the agenda. Mr. Sattie provided a summary of his report. Secretary Umane inquired about the amount of ballots to be used for the Scanner and BMD testing. He asked if it would reduce the amount of testing if the different styles of ballots were laid out with the same oval positions. Mr. Naudus stated all languages would have the same style number and oval positions. The printer samples ballots to create a test deck which would reduce the time and number of ballots for testing. Mr. Naudus stated that if the City Board were to consider this as an option then staff would draft a letter to the State Board asking for guidance on how they would be required to test ballots using that method. Secretary Umane disagreed that additional space would be required in some poll sites to handle the different versions of bilingual ballots for a given election on Election Day. He stated that the ballots can be stored safely in the large ED Supply Carts. Secretary Umane stated that having

signs that express which language ballots are available at the poll site is a great idea. He stated that Poll Worker sensitivity training for voters requesting a ballot in the language they choose and for the visually impaired is very important. Secretary Umare reported that the Board was asked to provide this ballot information to some members of the Legislature. He asked Mr. Sattie to review and edit the report and to present it for the next Commissioners' Meeting.

Ms. Fossella reported on the last day to register for the September 13, 2012 Primary Election. She stated that Friday, August 17, 2012 was the last day to register in the original September 11, 2012 Primary Election Calendar. In past practice, the City Board's Executive Office is open until midnight to accept walk-in voter registration forms. Ms. Fossella reported that the last day to accept walk-in voter registration forms became Sunday, August 19, 2012 when the Primary Election was changed to September 13, 2012. She stated that the State Board issued a new Calendar, but they still list the last day to register as Friday, August 17, 2012. Ms. Fossella asked the Commissioners for guidance on this matter. Mr. Richman explained that if a voter registration deadline falls on the weekend, then it falls back to the last business day.

Per past practice, the City Board has opened the Executive Office until midnight on the last day to allow new voters to register. Some Commissioners were concerned with the cost of overtime for staff on a Sunday. Mr. Richman stated that minimal staff would be working.

President Guastella recognized Alan Flacks, a member of the public, who spoke about the General Construction Law.

Commissioner Sipp moved to open the Board's Executive Office on Sunday, August 19, 2012 from 9:00 A.M. to 12:00 A.M. to accept walk-in voter registration forms consistent with past practice. Commissioner Araujo seconded the motion, with Secretary Umane and Commissioner Soumas opposing. The motion was adopted.

Ms. Vazquez provided an update on the revised Information Notice. She stated that the Board testified before the City Council last week and discussed the importance of the legally required Information Notice and that there would be additional costs to include the three (3) pages of text in Bengali and to incorporate the voter's new poll site. Ms. Vazquez stated that the printer vendor's deadline is June 15, 2012 in order to reach the 4

million voters legally by August 6, 2012. Ms. Vazquez reported that Council Member Gale Brewer stated that the City Council's budget determination would be released after June 15, 2012. Ms. Vazquez asked direction from the Commissioners. Ms. Perkins stated that the Board would like to send the printer vendor's letter to both the Office of Management and Budget (OMB) and the City Council to request special approval of funds for the Information Notice. There was a consensus that the printer vendor's timeline letter should be sent to OMB and the City Council and to include samples of the proposed Information Notice and the "Plan B" Information Notice which removes all educational content in all languages.

Mr. O'Grady reported on the hash code checking in the Borough Voting Machine Facilities (VMFs). Bronx, Queens, Manhattan and Staten Island VMFs have completed the task. Brooklyn is scheduled to complete the task Thursday morning. Mr. O'Grady reported that the prequalification testing of the pre-marked test ballots is scheduled to start tomorrow afternoon. He stated that the VMF activities should be completed by June 16, 2012.

Mr. O'Grady provided an update on the transport roller replacements. A total 837 units have been replaced to date citywide in Phase I. Phase II will start in July with a balance of 892 units to be replaced citywide. Mr. O'Grady stated that the Voting Machine Technicians (VMTs) are learning how to replace the transport rollers and it is going great.

On behalf of Mr. Ward, Ms. Perkins presented the Vacancy Report dated June 5, 2012. A copy of the report is in the agenda.

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

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

- I. The Commissioners unanimously approved an advance of twelve (12) days of sick time for Shanette Brown, an Administrative Assistant in the General Office.

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

The next stated meeting of the Commissioners is scheduled for Tuesday, June 12, 2012 at 1:30 P.M.