

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, NOVEMBER 11, 2008  
AT 1:30 P.M.  
42 BROADWAY, 6<sup>th</sup> FLOOR HEARING ROOM  
NEW YORK, NY 10004

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P R E S E N T:           President James Sampel  
                              Secretary Frederic Umame

Commissioners Araujo, Dent, Graham, Polanco, Schacher, Soumas,  
Stupp, Yennella

Marcus Cederqvist, Executive Director  
Pamela Perkins, Administrative Manager  
Steven H. Richman, General Counsel  
Valerie Vasquez, Director, Communications  
Delores Delayo, Director, Personnel  
John Owens Jr., Director, Campaign Finance Reporting  
John Ward, Finance Officer  
Thomas Sattie, Ballot Coordinator, Candidate Records Unit  
Steve Ferguson, Director, MIS Unit  
John O'Grady, Chief Voting Machine Technician  
Beth Fossella, Coordinator, Voter Registration  
Nicholas Zimmitti, President, CWA 1183  
Steve Denkberg, Counsel to the Commissioners

GUEST:    Marjorie Shea, Women's City Club  
            Andrea Senteno, Citizen's Union  
            Mark Herman  
            Jerry Koenig  
            Teresa Hummel, Community Church of New York

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President Sampel called the meeting to order at 1:46 P.M.

President Sampel moved to table the minutes of the October 3, 2008, October 7, 2008, October 14, 2008, October 21, 2008 and the October 28, 2008 meetings. Secretary Umame seconded the motion, which was adopted unanimously.

Mr. Cederqvist gave the Commissioners an update on HAVA. He stated that the Co-Executive Directors of the State Board of Elections sent an email on October 29, 2008 and a copy of a press release announcing that the U.S. Election Assistance Commission has suspended the accreditation of Systest Labs and that it appears that the State Board has suspended certification for the new voting systems as well. He noted that there was a copy of the State Board's email and release in the information packet beginning on page 3. There has been no other information provided by the Board specifically detailing how this will affect the certification and implementation schedule for the new voting system.

Mr. Cederqvist also noted that there is a copy of the State Board's weekly HAVA Compliance Update to the court beginning on page 12 of the packet. He called attention to their continuing pronouncement that the State's overall activities and progress towards HAVA compliance is in

jeopardy. He further noted that the November 7<sup>th</sup> report indicates that the State Board has dismissed the Board of Elections in the City of New York's HAVA Complaint against the State Board of Elections with no information as to why the complaint was dismissed, simply stating in their report that "SBOE Commissioners issued a determination on 11/6/08 dismissing that complaint." He stated that this Board has received no other written or verbal communication from the State Board concerning their dismissal of the complaint but will forward such information if and when it is forthcoming.

Mr. Cederqvist then gave an overview of the November 4, 2008 General Election. He noted that it had been two weeks since the last Commissioner's Meeting as there was no meeting last Tuesday on Election Day. He reminded the Commissioners that they held a press conference prior to their last meeting in an attempt to provide information to the public about recent activities at the Board and some of the things that they could expect on Election Day, such as why they might be asked to vote using an Affidavit Ballot and what such a ballot is used for, etc. He stated that he believed the Commissioners did an excellent job of explaining many of the things that can be confusing to those who do not immerse themselves in

the minutiae of Election Law and that some of the reporters asked very good questions as well. He further stated it regrettably appeared that the press conference was considered by certain people at City Hall to be somehow an act of aggression and that there is evidence that people within the Mayor's office used the event to advance their campaign against the agency. He recognized Valerie Vasquez, the Director of Communications, and noted that she received calls from a television producer and a very prominent reporter at one of the city's premier daily newspapers simply to alert her to the fact that they had received numerous calls from staff at the Mayor's office trying to manufacture negative stories about the Board of Elections. He noted that Ms. Vasquez told him that the reporter told her that such calls were unprecedented and that the reporter usually has to call the Mayor's office for information, not the other way around. He stated that this was a good indication of the environment surrounding the agency heading in to Election Day.

Mr. Cederqvist reported that the City of New York had a record turn out of well over 2.3 million votes cast for President on the lever machines during Tuesday's election, a significant number of paper ballots (Affidavit, Absentee, etc.) which were also cast. Notwithstanding that New York State

Election Law does not permit “early voting,” the borough offices were inundated with voters looking to cast an absentee ballot in the weeks leading up to Election Day. He cited the example of the Manhattan Borough Office, which received visits from approximately 800 voters a day who wanted to vote by absentee ballot as opposed to a dozen or so people in the past. He believed that national media attention to early voting in other jurisdictions probably generated the increase in-office turnout.

Mr. Cederqvist reported that anecdotal accounts from Election Day suggest that there was an incredible turnout in the beginning of the voting day and that huge numbers of voters went to vote early in an effort to “beat the line”, instead “became the line.” He said that the reports he received from some of the veteran Board staff members suggest that the regular surge of voters in the evening prior to the close of the polls did not materialize this year because most voters chose to go to the polls early in the day. These observations suggest that most polling places, notwithstanding some anomalies, became relatively quiet after 11:00am or 12:00 noon. He reported that the canvass of the voting machines and the canvass and recanvass of all paper ballots will start on Wednesday, November 12<sup>th</sup>.

Mr. Cederqvist requested on behalf of George González, the Deputy Executive Director who was not present at the meeting, that the Commissioners authorize the Board to close on Friday, November 28, 2008 in lieu of Election Day, which is a holiday. Commissioner Graham moved to authorize the Board to close on November 28, 2008. Commissioner Dent seconded the motion, which was adopted unanimously.

At this point, Commissioner Polanco expressed his appreciation to Board staff and Poll Workers for conducting a successful election on November 4, 2008 and was proud of their efforts. He stated that he disagrees with the unflattering press that put the Board of Election's Commissioners and staff, who work very hard to safeguard the democratic system, in a bad light. He stated that the Director of Communications should respond to the press and explain the work the Board does.

The Executive Director further asked the Commissioners to authorize the Board to close on Friday, December 26, 2008 in lieu of the Columbus Day holiday and Friday, January 2, 2009 in lieu of the Veteran's Day holiday, both of which Board staff worked despite being holidays. After discussion, Commissioner Yennella moved to authorize the Board to close

on December 26, 2008 and January 2, 2008 with the exception of a “skeleton staff” at the Executive Office and each Borough Office to serve any members of the public that may need immediate assistance. Commissioner Graham seconded the motion, which was adopted unanimously.

Mr. Cederqvist closed his report by responding to Commissioner Polanco’s earlier comments that the agency should respond to the Mayor and news media. He commented that “a battered spouse knows better than to talk back to their abuser” and that Board staff have been careful not to respond to negative media reports notwithstanding factual inaccuracies because it would probably just make matters worse and further detract from the work that needed to be performed. Commissioner Schacher disagreed and felt that the Board should respond to these statements and that this is why the agency has a Communications Director. Mr. Cederqvist replied that he felt it was unwise to publicly confront someone who owns their own news network.

Commissioner Soumas expressed disagreement to comments made by Commissioner Schacher and stated that the way the Board answered its

critics, some whom are very powerful, was that in spite of the dire predictions of melt downs and pandemonium, the Board of Elections staged a remarkably successful election this past Tuesday. He stated that while conducting a poll site visit with an NYPD Captain he observed voters lining up outside of a poll site on West 97<sup>th</sup> Street at 5:00 A.M. He finds it humorous that members of the New York City Council say that there must be something wrong with the Board's Policies and Procedures if we have voters standing in line as early as 5:00 A.M. when the polls don't open until 6:00 A.M. He said that this demonstrates that people in the City of New York really cared and wanted to vote because they came out in record numbers to vote and we [the Board of Elections] handled it well. He noted that very few people served two and a half million people last Tuesday and that if they did; they probably got rich doing so. He reminded everyone that they do not get rich running elections but that they do so because they believe in the purpose and that he loses money during the time he spends at the Board instead of his law office. Accordingly, he felt it important to note that every time someone criticizes the Board of Elections for using 'antiquated systems' and being an 'antiquated agency', they should know that the Board of Elections does not get to pick the voting machines that we use. The Board of Election is an administrative agency and exists to do the

best job possible under the Election Law to serve the people of New York. He cited that the best evidence that the Board did their jobs well is that on Tuesday, November 4, 2008 only 16 of those antiquated machines were replaced. He further noted that Board employees, who are underpaid, really should be acknowledged for the work that they do on behalf of the City of New York. He said that he thought the Board did a phenomenal job and that he didn't want any thanks, acknowledging that it was probably beneficial since there were no prospects of receiving any anyway.

Commissioner Schacher reiterated that she felt that the Communications Director should be used to generate positive media coverage based on the overall success of conducting the election. Commissioner Polanco stated that he felt that the agency's Communications Director is excellent and that she should be used for such purpose. Mr. Cederqvist agreed that the Communication Director has great talent but as the agency's public information person, she spends all of her day replying to inquiries from the public and trying to assist them in getting information. As a staff of one, she is not able to pursue an affirmative public relations agenda. He noted that by comparison the Mayor's office has an enormous press operation and that they have the time and

resources to generate stories of their choosing, as evidenced by their recent efforts noted earlier, but that asking our Communications Director to do so would be at the sacrifice of everything else that she does on a regular basis. He noted that 16 machines were replaced on Election Day out of 7,451 that were deployed and that the staff is still collecting relevant data and will make all of it available to the public once the certification of the election is complete.

Commissioner Dent noted that Commissioner Polanco did an excellent job of conducting interviews over the last few weeks and encouraged him to continue doing so on behalf of the Board to help “get the message out.” Commissioner Graham agreed.

The President opened the floor for comments from:

- 1) Teresa Hummel

The General Counsel reported on the following litigation and asked the Commissioners for direction in these matters:

- 1) The Board was served, last night, with one of the two Orders to Show Causes relating to the 11<sup>th</sup> State Senate District

(Gennaro v. BOE, et. al., Index No. 27259/08 – NYS Supreme Court – Queens County); and

- 2) A Complaint filed in Molinari, et. al. v. Bloomberg, et. al. – U.S. District Court for Eastern District of New York – 08 –CV-4539 (Judge Korman) seeking to bar the Board from listing the names of term-limitedd elected officials on 2009 ballot.

Secretary Umame moved to discuss these matters in Executive Session. Commissioner Graham seconded the motion, which was adopted unanimously.

The Finance Officer provided the Commissioners with a copy of the Comparative Expenditure Report dated November 4, 2008 as well as the Vacancy Report dated November 11, 2008 (these reports were contained in the agenda packet).

Commissioner Soumas moved to grant a 30-day sick leave advance to John Wolf, a Project Coordinator, in the Executive Office, retroactive to October 27, 2008. Secretary Umame seconded the motion, which was adopted unanimously.

Secretary Umane announced the passing of Daniel Defrancesco, who served the Board of Elections for 35 years. Since his retirement as the Executive Director of the Board, he continued to provide advice and counsel to election administrators throughout this State. Secretary Umane asked all present to observe a moment of silence for Mr. Defrancesco. A moment of silence was observed.

In recognition of Veteran's Day, President Sampel asked all to observe a moment of silence in honor of the men and women who served in our armed forces "to protect our right to have meetings like these." A moment of silence was observed.

Secretary Umane moved to convene an Executive Session to discuss litigation and personnel matters. President Sampel seconded the motion, which was adopted unanimously.

The President reported that there was no action taken in the Executive Session.

President Sampel moved to adjourn. Commissioner Polanco seconded the motion, which was adopted unanimously.

The next Commissioner's meeting will be held on Tuesday, November 18, 2008 at 1:30 P.M.