

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, NOVEMBER 18, 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: Commissioners Araujo, Dent, Graham, Polanco,  
Schacher, Soumas, Stupp

Marcus Cederqvist, Executive Director  
Pamela Perkins, Administrative Manager  
Steven H. Richman, General Counsel  
Valerie Vasquez, Director, Communications  
John Owens Jr., Director, Campaign Finance Reporting  
Joseph LaRocca, Coordinator, Candidate Records Unit  
John Ward, Finance Officer  
John O'Grady, Chief Voting Machine Technician  
Beth Fossella, Coordinator, Voter Registration  
Charles Webb III, Counsel to the Commissioners  
Steve Denkberg, Counsel to the Commissioners

GUEST: Steve Kitzinger, NYC Law Department  
Mary Lou Urban, League of Women Voters  
Marjorie Shea, Women's City Club  
Isreal Rodriguez, NYC Council  
Mark Herman  
Jerry Koenig  
Teresa Hummel, Community Church of New York

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In the absence of the President and Secretary, Commissioner Graham called the meeting to order at 1:50 P.M. and as the Senior Commissioner present assumed the Chair and designated Commissioner

Schacher, the Senior Republican present as Acting Secretary.

Commissioner Dent moved to approve the minutes of the October 14, 2008, October 21, 2008, October 28, 2008, and November 11, 2008 meetings with any necessary corrections. Commissioner Stupp seconded the motion, which was adopted unanimously.

President Graham moved to table the minutes of the October 3, 2008 and October 7, 2008 meetings. Secretary Schacher seconded the motion, which was adopted unanimously.

Mr. Cederqvist gave the Commissioners an update on HAVA. He directed the Commissioners attention to page 20 of the agenda which is a copy of the State Board of Election's weekly HAVA Compliance Report to the U.S. Department of Justice. The report provides no information on how the certification and implementation schedule will be affected by the U.S. Election Assistance Commission's recent decision to decertify SysTest.

Mr. Cederqvist also reported that the Board has been invited to participate in a Hearing conducted by the NYC Council Committee on

Governmental Operations on Tuesday, November 25, 2008 at 10:00 A.M.

on the following:

- Resolution 1251 urging the NYS Legislature to amend the State Election law permitting electronic voter registration;
- Resolution 1252 urging the NYS Legislature to pass A.4258/S.5013 allowing for same day registration; and
- A Resolution calling upon the U.S. Congress and the NYS Legislature to pass legislation to allow early voting.

He stated that, in past practice, the Board, as an administrative agency, has declined to take a position on proposed legislative such as these and asked the Commissioners for direction. Commissioner Polanco moved that the Executive Director and General Counsel should attend the hearing and be available to the Committee to provide any factual information upon request. Commissioner Schacher seconded the motion. The General Counsel stressed that these resolutions call on the United States Congress and the NYS Legislature to take action and that the NYC Council is seeking Board input on policy determinations that are beyond the jurisdiction of the Board. After discussion, the Commissioners unanimously agreed that the Executive Director and General Counsel should attend the NYC Council Committee on Governmental Operations' Hearing but that the

Board takes no position on the proposed resolutions.

Mr. Cederqvist reported that at their Commissioners' meeting on October 28<sup>th</sup>, the Commissioners adopted an amended pre and post Election Day Hours of Operation schedule for all Board of Election's employees. He asked the Commissioners to authorize Executive Management to alter the overtime schedule for specific Executive Office departments in an effort to minimize overtime expenses. President Graham moved to authorize Executive Management to make changes to the overtime schedule for specific Executive Office components. Commissioner Polanco seconded the motion, which was adopted unanimously.

Mr. Cederqvist reported that he has received information that one of the city's major daily newspapers is conducting an investigation into the Board of Elections. Noting recent negative media reports, he recognized Valerie Vasquez, the Director of Communications, and noted that she has received numerous calls and emails from a reporter at the paper seeking information and that he has instructed her to provide any requested information in a timely manner. He also reported on a recent conversation

he had with someone at Election Protection, which was cited in a recent negative story about the Board in this publication, who informed the Board that the paper not only failed to speak with anyone at the organization to confirm information for the article but also that they cited information from the February Presidential Primary Election and reported it incorrectly to apply for the recent General Election. He stated that this, unfortunately, does not presage that the Board should reasonably expect any objective treatment in the upcoming article.

In response to a question from the Commissioners, the General Counsel explained that the Board of Elections is a public agency and therefore all of our records are available for public inspection and copying. If someone follows the procedures and submits a written Freedom of Information Law request, the Board is obligated to respond.

Following an inquiry from Commissioner Schacher, Commissioner Polanco stated that, "about a week and a half ago, he emailed his thoughts to the Commissioners regarding the Board's website and how we can provide more information to the public that everyone should know. After reviewing other agency websites, he saw their Commissioner's bios,

pictures, and information. He thought it a great idea for the Board to be able to have the NYC Board of Election Commissioners' bios linked to their names on the Board's website and that it's also important that we continue to update our website, with some unofficial data, to make information available to the public.”

Commissioner Polanco moved to direct Board staff:

A) To add the annual reports on the Board's website in a downloadable PDF version as well as a link version since its public information that we already have; and

B) To have the Commissioners bios from our annual reports linked to their names on the Board's website.

President Graham seconded the motion, which was adopted unanimously.

The General Counsel provided the Commissioners with his memorandum outlining the determination of the State Board of Elections in the matter of New York City Board of Elections v. New York State Board of Elections – HAVA Complaint [08-02]. The General Counsel reported that the State Board dismissed the NYC Board’s complaint on November 6, 2008 by letter dated November 13, 2008. The State Board states their

finding is that the Complaints' requested relief – that the Complaint be referred to the alternative dispute resolution agency for adjudication was contrary to the provisions of the HAVA law and the State Board rules. The General Counsel asked the Commissioners to note that this was not the actual relief sought in the complaint. The NYC Board sought a determination that the State Board's process for managing the Statewide Voter Registration List does not comply with the State Constitution, the Election Law and their own rules requiring a documented bi-partisan activity with respect to any voter registration transaction. Accordingly, the NYC Board did indicate that it would appear that the SBOE would have a conflict if it were to determine the merits of this complaint (which alleges illegal action by the State Board) by itself and suggested that the process be expedited rather than wait the full 90-days and move it to the alternative dispute agency for proper resolution. It is clear that the State Board did not address the merits of the NYC Board's complaint and instead made its determination on a narrow reading relating to the complaint processes procedures. The NYC Board still has not had a clear adjudication as to whether or not the State's system complies with the Constitutional and Statutory requirements. He gave the Commissioners two options for consideration and asked for a determination:

- 1) Whether to resubmit the Complaint without the requested relief to the ADR agency and let the State Board sit in judgment of itself; or
- 2) Consider litigation.

Charles Webb, Counsel to the Commissioners suggested that the Commissioners resubmit the Complaint without the requested relief and let the State Board make a decision. Commissioner Soumas noted that since the NYC Board filed the HAVA Complaint, there have been several U.S. District Court Decisions that support the NYC Board's position and finds that the Complaint has merit because the State Board's rules also violate the Voting Rights Act. After acknowledging the presence of Assistant Corporation Counsel Steve Kitzinger, Commissioner Soumas moved to discuss this matter in Executive Session. President Graham seconded the motion, which was agreed to unanimously.

The Finance Officer provided the Commissioners with a copy of the Comparative Expenditure Report dated November 18, 2008.

The Chief Voting Machine Technician gave an overview of the work related to the voting machines subsequent to the election.

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

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

Secretary Schacher moved to adjourn. Commissioner Soumas seconded the motion, which was adopted unanimously.

The next Commissioner's meeting will be held on Tuesday, November 25, 2008 at 1:30 P.M.