

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

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

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

Steven H. Richman, General Counsel
Dorothy Delayo, Director, Personnel
John Owens Jr., Director, Campaign Finance Reporting
Robert Taylor, Finance Officer
Joseph LaRocca, Coordinator, Candidate Records Unit
Beth Fossella, Coordinator, Voter Registration
Rosanna Rahmouni, Coordinator, Election Day Operations
Steve Denkberg, Counsel to the Commissioners

GUEST: Mary Lou Urban, League of Women Voters
 Marjorie Shea, Women's City Club
 Teresa Hummel, Community Church of New York
 John Haggerty
 Vince Tabone
 Mark Herman

President Sampel called the meeting to order at 1:45 P.M.

Commissioner Polanco expressed thanks to Commissioner Graham

for his dedicated service and partnership, noting that this meeting may be his last in attendance as a Commissioner.

- Commissioner Schacher expressed her appreciation to Commissioner Graham for his dedication to the Committee for Human Resources and acknowledged his professionalism during his eight years as a Commissioner.
- President Sampel stated that he was sad to see Commissioner Graham leave. He stated that he enjoyed serving with him as a fellow Commissioner.
- Commissioner Stupp noted that even though she has only worked with him a short time, it has been special.
- Commissioner Dent also expressed her thanks and appreciation to Commissioner Graham.
- Secretary Umane stated that the Board appreciates Commissioner Graham's wit, diligence, and dedication to his job and the NYC Board of Elections.
- Commissioner Araujo thanked Commissioner Graham for his guidance.
- Commissioner Soumas stated that since his appointment in 2005, Commissioner Graham has always been a gentleman and it has

been a pleasure serving with him. He further acknowledged that Commissioner Graham's presence at today's meeting is the best evidence of Commissioner Graham's dedication to the people of the Bronx and the people of the City of New York because Commissioner Graham, as well as most of the Commissioners, was not being paid to attend this meeting, the salary cap having been exceeded.

- Commissioner Yennella thanked Commissioner Graham for his support and his honesty.

Commissioner Graham thanked the Commissioners for the experience and the challenges. He noted that the Board of Elections currently has about 350 employees working for us and asked that the Commissioners continue to do the right thing for them because they are the servants who work diligently on behalf of the voters of the City of New York. He expressed both his privilege and appreciation to all during his service as a Commissioner of the NYC Board of Elections and advised the advocacy groups that he would continue to do all he could to work with them.

President Sampel opened the floor for comments from:

- Mark Herman, a former Commissioner of the NYC Board of Elections.

President Sampel moved to table the minutes of December 16, 2008 and December 19, 2008 meetings. Secretary Umame seconded the motion, which was adopted unanimously.

The General Counsel gave the following reports in the absence of Mr. Cederqvist.

1 - On December 17, 2008 the City Council Committee on Governmental Operations held a Hearing regarding the 2008 Election Day Lines: Examining the Problem and Proposing Solutions. He reported that a copy of Mr. Cederqvist testimony is included in the agenda in addition to copies of other testimonies given during the hearing and materials prepared by the Council. The General Counsel noted that both NYC Council Member Inez Dickens and NYC Council Member Helen Seares rose to the Board's defense in pointing out the challenges the NYC Board of Elections' faces – they have served as District Leaders and experienced the problem of recruiting poll workers to work on Election Day and they

thought the NYC Board of Elections did an outstanding job on Election Day. The General Counsel reported that NYC Council Member Inez Dickens informed him that she volunteered for four hours on Election Day, without compensation, to serve as an Information Clerk at one of the poll sites in Manhattan because the Information Clerk who was appointed to work at that location did not have the skills necessary to move the lines along. NYC Council Member David Yassky specifically raised questions regarding the Brooklyn Supreme Court. The General Counsel reported that he and Brooklyn Board staff indicated the range of problems. The Council did recognize that a lot of the problems also related to a lack of adequate funding but they could not indicate a lot of assistance. The General Counsel further reported that in the agenda the Commissioners were provided with a copy of the response letter sent to the NYC Council Member Simcha Felder and Speaker Christine Quinn concerning the 3500 voter registrations that were discovered late. He reported that this matter was not raised during the Hearing.

Commissioner Soumas explained that the reason the City Council Committee on Governmental Operations had no questions about those alleged mishandled voter registration forms is because the Board of

Elections, in advance of the hearing, provided copies of all 3500 voter registration forms along with the history of each one of the voters affected in addition to an investigative report of why and how those voter registrations forms were mishandled. The problem resulted from the Federal Express delivering those voter registration forms to 32 Broadway, 17th floor rather than 32 Broadway, 7th floor. He noted that the NYC Council seemed rather satisfied with the fact that those voter registration forms had been processed timely to prevent any voter from being disenfranchised but noted that they did not go the extra step to say what a wonderful job the Board of Election's staff did in processing those voter registration forms. He stated that he will acknowledge the wonderful job Board staff did to make sure that no voter was disenfranchised in the November 4th General Election.

2 - A meeting was held on December 23, 2008 with members of the Office of the Secretary of State. The General Counsel noted that Marcus Cederqvist, Pamela Perkins, Joseph LaRocca and he met with two Deputy Secretary's of State, their Counsel, the Director of Intergovernmental Affairs and two of their editorial writers. He reported that on November 7, 2008 the Governor and the Secretary of State conducted a

review on how well New York City performed in the November 4th General Election. The Secretary of State has reached out to the NYS Election Commissioners Association and met with them as a group in Syracuse. They also met with various Advocacy groups and requested the copies of the recordings from the December 17, 2008 City Council Committee on Governmental Operations' Hearing. They wanted an overview from the Board of Elections staff what happened on Election Day and what steps could be taken to try and ameliorate some of those conditions. Board staff indicated, similarly to the ECA meeting, that adequate and consistent funding as well as not waiting to make changes at the last minutes is a key to ensuring orderly election administration. The other factor is the anomaly that everyone voted very early were the Board did not experience an evening rush, which normally we try to deal with and our poll workers adapted as best they could. In many cases they performed not in accordance of procedures. They worked the lines to try to move it along and we should all be please that we had such a high level of participation. It was the greatest voter turn-out in the history of the City of New York.

3 - On December 1, 2008, he circulated the 2008 Independent Nominating Petition Rules for the Commissioners' review and suggested

changes. He reported that proclamations are anticipated for at least three City Council vacancies.

4 - The General Counsel asked for authorization to have the Executive Director and the Deputy Executive Director send a letter to the Office of Management and Budget and the NYC Council regarding Funding for the 2009 Special Elections. The Commissioners unanimously agreed and directed Board staff to put together an analyzed report for their review and consideration at the next meeting.

5 - The General Counsel reported that the NYC Board of Election's Commissioners and staff has been invited to attend the Election Commissioners' Association 2009 Winter Conference. The Commissioners unanimously agreed to table this matter until the next meeting.

Secretary Umane noted that Marcus Cederqvist appeared on NY 1 on December 24, 2008 and he thought he did a tremendous job. He noted that he was prepared and responsive and did a great job. Commissioner Polanco noted that Valerie Vasquez Rivera was instrumental in helping to prepare Mr. Cederqvist for the NY 1 interview.

Commissioner Polanco expressed concern with recent reports concerning the Bronx Board of Elections. He asked the Commissioners to consider adopting a criminal background checks procedure for Board of Election's employees. After discussion, Commissioner Polanco directed the Director of Personnel to prepare draft regulations for conducting criminal background checks and submit it to the Commissioners for review no later than Tuesday, January 13, 2009. Commissioner Graham seconded the motion, which was adopted unanimously.

The General Counsel (in the absence of Mr. Ward) presented to the Commissioners the Finance Officer's Vacancy Report dated December 30, 2008 (including in the agenda).

Commissioner Soumas moved to grant a 210 sick leave advance to John Wolf, a Project Coordinator in the Executive Office. Secretary Umane seconded the motion, which was adopted unanimously.

Commissioner Soumas moved to grant 210-sick leave to Yolanda Sanders, an Administrative Assistant in the Manhattan Office. President Sampel seconded the motion, which was adopted unanimously.

Commissioner Stupp moved that the Board adopt the following

Resolution:

Whereas, the Appellate Division Second Department of the New York State Supreme Court has determined that all ballots in the 11th State Senate District determined by the bi-partisan teams of employees of the Board of Elections, designated by the Commissioners pursuant to Section 9-209(1) (a), to be invalid had not been voted upon by the Commissioners of this Board; and,

Whereas, the Appellate Division Second Department of the New York State Supreme Court determined that because there has been no vote of the Commissioners of this Board that the Courts were deprived of jurisdiction over the canvass of the votes in the 11th Senate District; and,

Whereas, the determination of the bi-partisan teams of employees designated by this Board to review ballots have been accepted by this Board of Elections in every contest in the City of New York, including each and every election contest in each political subdivision in the County of Queens, excepting the 11th State Senate District, for the 2008 General Elections; and,

Now, therefore be it resolved, by the Board of Elections in the City of New York, at this meeting of the Board held on December 30, 2008 that all determinations of the bi-partisan teams of Board of Elections employees upon ballots, wherein the subject ballots/ballot envelopes were determined to be INVALID are hereby affirmed and adopted as the final determination of this Board, so as to comply with the order of the Appellate Division.

Secretary Umane seconded the motion. Commissioner Araujo objected to Commissioner Stupp's resolution and argued that it is wrong as to its characterization because there was no final determination made of the invalid ballots. He stated that this motion is an injustice to the voters of

the City of New York because the Board of Canvassers has not had an opportunity to object to the initial determination of the preliminary, wrong, or invalid ballots.

After a lengthy discussion and argument of the facts in this matter, the General Counsel attempted to clarify the procedures for canvassing ballots adopted by the Commissioners of Elections in the City of New York in 2001. He reported that prior to the canvassing of the ballots, Board staff track, by ED, the processing and disposition of all ballots from the preliminary determination of validity of the envelope, called a Batching Area. Normally this Batching Area would also be used for scanning but those procedures were modified by court order. Accordingly these were not scanned ballots. The Batching Area is the place where final validation of envelopes and ballots is performed. Ballot envelopes that have been examined by Board staff, and separated into valid and invalid groupings, are brought into this area. A set is made for each AD (for each Party) with all active EDs pre-printed on each set. Candidates or their representatives have the opportunity to observe the opening of the envelopes, and challenge, if they so chose, rulings by Board of Elections' staff regarding both envelopes and ballots in the same way as a preliminary determination

of validity is made of those that are presented. The General Counsel noted that in several cases he is lead to believe those determinations were reversed or at least split and that everything that the staff marked as preliminarily VALID was not counted because there were other objections made. Similarly, the next step in the administrative process that the Board staff has done in other counts is then to go to the INVALID ballots. He reported that the way Board staff has normally done that – and it was explained to both Commissioners – is if we've met the procedures and gave everybody the chance to get copies for both the VALID and INVALID envelopes, when an ED is called, each side can just object to the ones they didn't agree with and apparently he believes that didn't happen. When Board staff got to the valid envelopes, they reviewed each but didn't give the Candidates and/or representatives an opportunity to make a determination of whether Board staff made an erroneous determination on the ballots.

In a roll call vote to Commissioner Stupp's Resolution, it was adopted by a vote of 7 in favor (President Sampel, Secretary Umame, Commissioners Graham, Polanco, Schacher, Stupp, and Yennella) 3 opposed (Commissioners Araujo, Dent, and Soumas).

(A copy of the transcription is available upon request)

Secretary Umame moved a question whether to convene a meeting of the Board of Canvassers to rule on the total votes cast for the November 4th General Election in Queens County. Following, Commissioner Soumas moved to nominate the two Queens Commissioners. Commissioner Polanco seconded the motion. In a roll call vote, Commissioner Soumas' motion failed by a vote of 3 in favor (Commissioner Araujo, Commissioner Dent, Commissioner Soumas) and 7 opposed (President Sampel, Secretary Umame, Commissioners Graham, Polanco, Schacher, Stupp, Yennella).

The General Counsel reported that the Board has been served with a Federal Court Complaint in the matter of Jimmy McMillan claiming that the Board of Elections has no jurisdiction to rule a prima facie petition with one signature off the ballot.

Secretary Umame moved to direct the General Counsel to request that this litigation be vehemently defended. President Sampel seconded the motion, which was adopted unanimously.

Commissioner Polanco moved to grant 210 sick leave advances to both Jean Wiedler, a Clerk in the Bronx office and Kim Liedler-Ziegler, an Administrative Assistant in the Bronx Office. Commissioner Graham seconded the motion, which was adopted unanimously.

Commissioner Soumas moved to add the following changes to the Independent Nominating Petition Rules as follows.

- In rule "H11" at the end of the General Office's address to add, "7th floor"; and
- In Rule "H12", at the end of the second sentence add the words, "by determination of the County Commissioners' Committee"

Commissioner Araujo seconded the motion, which was adopted unanimously.

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

The next Commissioner's meeting is scheduled for Tuesday, January 6, 2008 at 1:30 P.M.