

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, JULY 28, 2009  
AT 1:30 P.M.  
42 BROADWAY, 6<sup>th</sup> FLOOR COMMISSIONERS' ROOM  
NEW YORK, NY 10004

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P R E S E N T:           President Frederic Umane  
                              Secretary Julie Dent

Commissioners Araujo, Polanco, Sampel, Schacher, Silie, Sipp, Soumas,  
Stupp

Marcus Cederqvist, Executive Director  
George Gonzalez, Deputy Executive Director  
Pamela Perkins, Administrative Manager  
Steven H. Richman, General Counsel  
John Owens, Jr., Director, Campaign Finance Enforcement  
John Ward, Finance Officer  
Dorothy Delayo, Director, Personnel  
Rosanna Rahmouni, Coordinator, Election Day Operations  
Troy Johnson, Coordinator, Candidate Records Unit  
Tom Sattie, Associate Staff Analyst, Candidate Records Unit  
Greg Lehman, Chief Clerk, Manhattan Office  
Tim Gay, Deputy Chief Clerk, Manhattan Office  
Charles S. Webb, III, Counsel to the Commissioners

GUEST:    Rima McCoy, CIDNY  
            Teresa Hommel, Community Church of New York  
            Marjorie Shea, Women's City Club  
            Andrea Senteno, Citizen's Union  
            Mary Lou Urban, LWVNYC  
            Alan Flacks, New York County Democratic County Committee  
            Mark B. Herman, SIDA  
            Erika Winkler, Election Protection  
            Daniel Pudofsky, CUF  
            Mike McLaughlin, Brooklyn Paper  
            Celeste Katz, Daily News  
            Chris Bragg, City Hall News

Luna Liu, World Journal  
Lingjing Biam, Sinovision  
Stanley Schlein, Esq., for Bill DeBlasio  
Henry Berger, Esq., for Bill DeBlasio  
Lawrence Mandelker, Esq., for Alan Gerson  
Tara Hauam, for Paul Newell  
Joseph G. Gabor, Poll Worker  
Briget Rem, UFT  
M. Pung, AALDEF  
David Chen, NYT  
Mary Simon, KIM  
Mg Tosum, KIM  
Ninfa Segara, TB&A  
Paul Newell  
John Haggerty  
Dudley Gaffin, Esq.  
Nathan Smith  
Gwen Rocco  
Hagar Heymans  
Matt Wong  
Jillian Davidson  
Grace Yu  
Alex Schmidt  
Matt Smotkin  
John Roca  
Colin Liverpool  
Terry Hinds, Esq.  
Alexander Rabb  
M. Scott  
Jeremy Goldfeder, Esq.  
Peter Gleason  
Al Benninghoff

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

President Umane announced that there will be Manhattan, Bronx and

Staten Island personnel matters to be discussed in Executive Session.

President Umane made a motion to adopt the draft minutes of the Finance Committee Meeting for July 6, 2009 and July 16, 2009. Commissioner Soumas seconded the motion, which was adopted unanimously. President Umane made a motion to table the draft minutes of July 14, 2009 and July 21, 2009. Commissioner Soumas seconded the motion, which was adopted unanimously.

The Executive Director presented the HAVA update. The Executive Director reported on the Board's efforts in trying to apply the upgraded software and firmware for the Ballot Marking Devices (BMDs) for this year's elections. As discussed in prior meetings, the Board received permission from the State Board to use the updated software and firmware. Mr. Cederqvist reported that ES&S attempted to update the BMDs, but there were significant problems. He added that it is very late in the election preparation cycle to pursue the upgrade at this time; it presented great risks. The Board will use the BMD software version from last year's election and try to improve it. He reported that the EVS Department worked on the long boot-up time, and instead of placing a borough wide configuration on each BMD, the Board will use a poll site specific

configuration for each BMD which greatly reduces the boot-up time.

The Executive Director reported on a press release regarding Sequoia Voting Systems assigning the NYS voting system contract to its NYS partner and imagecast equipment developer, Dominion Voting Systems. A copy of the press release is in today's agenda.

The Executive Director reported that every week he includes the State Board's HAVA update in the agenda packet. The status of the HAVA complaint that the City Board filed against the State Board is included in the weekly HAVA update. Mr. Cederqvist summarized that the City Board requested from the State Board a list of all potential voter registration duplications so a Notice of Intent to Cancel could be mailed in efforts to clean up the duplication list. The State Board responded with various questions in which the City Board responded on May 19, 2009. The State Board abruptly switched in the weekly updates on reporting two (2) separate issues with the City Board. Mr. Cederqvist requested authorization from the Commissioners to send a second letter to the State Board repeating the City Board's request to receive the potential duplicate list. President Umane moved to authorize Executive Management and the General Counsel to prepare a draft letter to the State Board follow-up on

the City Board's request. Secretary Dent seconded the motion, which was adopted unanimously.

The Executive Director reported that there was an issue with the Candidate Enrollment Issue Report for next week's Prima Facie Calendar. Approximately four hundred (400) candidates were designated who were on the report because they were reported as "Status X" (Inactive) in the Board's Voter Registration system. The Candidate Records Unit inquired if the candidates should be mailed a notice stating that there is a voter enrollment issue and can appear at the hearings. Mr. Cederqvist added that he did not think the candidates should receive the notice because they are registered voters. The voter will not be listed in the enrollment book on Election Day, but is allowed to vote by affidavit ballot which will make them an active voter in the system again. He requested guidance from the Commissioners. Commissioner Polanco inquired if signing a petition qualifies as an official communication to the Board. President Umane stated that they are registered voters and are able to stand for the office they were designated or nominated for. President Umane moved that sending a Prima Facie Defect Notice to the candidate is not required. Commissioner Polanco seconded the motion, which was adopted unanimously.

President Umame reported that he received two (2) Notices of Appearance. He stated that there are no public hearings regarding candidacies scheduled for today.

The General Counsel reported that last Friday the Board was served with an Order to Show Cause in the case of DeBlasio v. Board of Elections. He sought direction from the Commissioners on what position the Board should take if any, in the Supreme Court's hearing scheduled for next Monday. Commissioner Polanco moved to discuss this litigation matter in Executive Session. Commissioner Araujo seconded the motion, which was adopted unanimously.

Henry Berger, Esq. and Stanley Schlein, Esq. representing Bill DeBlasio, asked the Board to amend today's agenda to discuss the issue of the initial Cover Sheet disqualification relating to the DeBlasio litigation which will be discussed in Executive Session. President Umame stated that this matter should be presented at the Prima Facie hearings scheduled for Monday, August 3, 2009 along with the other Citywide offices. Mr. Berger stated that the lawsuit is returnable on Monday and he cannot attend both hearings. President Umame approved his concern that there are other candidates running for the same position as Mr. DeBlasio and normally the

Board would allow the other candidates' representatives participate. He was concerned that if they discuss the matter now there is no notice for any other candidate. Mr. Schlein stated that there were no specific objections against this candidate.

Commissioner Soumas made a motion to amend the agenda to hear the DeBlasio's matter. Commissioner Polanco seconded the motion. The motion was adopted with President Umane abstaining.

Mr. Schlein stated that the matter involves the filing of a Cover Sheet concerning the office of Public Advocate on the Democratic Party line of the City of New York for candidate Bill DeBlasio. He explained the chronology of events that led to the filing of the litigation. Mr. Schlein requested that the petitions be made available to the Commissioners.

After discussion, Commissioner Polanco made a motion to move into Executive Session. President Umane suggested convening Executive Session at the end of the meeting. There was no second to the motion. The motion was not carried.

After continued discussion, Commissioner Soumas moved to deem

the original Cover Sheet for candidate Bill DeBlasio valid, and for him to be placed on the ballot. Commissioner Silie seconded the motion. The motion was adopted with Commissioner Araujo abstaining.

President Umame stated that the Board staff acted properly, but the timing involved created a difficult situation for the DeBlasio campaign. The campaign did what it was supposed to do. It was only through the Board's diligence and perhaps strict construction of the Designating Petition Rules, that events unfolded in a manner that may have been unfair to the candidate. An inaccurate identification numbers may have been put on the Cover Sheet. There are a number of policy reasons for what the Board staff did.

Messrs. Schlein and Berger advised that Mr. DeBlasio will withdraw the Order to Show Cause.

The General Counsel reported on Assembly Bill No. 584. The bill requires each polling place to be accessible to physically disabled voters and mandates compliance with the guidelines issued by the Department of Justice to implement the federal Americans with Disabilities Act of 1990 for poll sites. At last week's meeting, the Commissioners directed that the staff

obtain the opinions of the Chief and Deputy Chief Clerks, Chief Voting Machine Technician, and Election Day Operations Unit, on this bill. President Umane stated that he received numerous correspondence on this bill over the course of the past week.

The Coordinator of Election Day Operations prepared and distributed a report for the Commissioners. Ms. Rahmouni reported that with the exception of parking spaces, which can be addressed, all of the Board's poll sites are ADA compliant except for (3) three sites: P.S. 110 and P.S. 119 in Brooklyn, and P.S. 2 in Queens. P.S. 110 is temporarily non-compliant because it is under construction. In P.S. 119 the gym is in the basement, about sixteen (16) steps down, so the voting machine has to be brought down by rope. P.S. 2 is non-compliant because the entrance door is only 30" wide. Also, the outside steps cannot be ramped because they are too steep and the platform is too small. The interior has two (2) sets of steps that cannot be ramped because of lack of space. Secretary Dent inquired how long the Board has used P.S. 119 as a poll site. Ms. Rahmouni reported that the Board has been using the site for approximately (8) eight years. She added that the borough office staff have continuously tried moving the poll site, but have not found an alternate site yet. Secretary Dent inquired if she has spoken to anyone from the

Department of Education about using the allocated HAVA grant money to bring the schools that are not in compliance with ADA guidelines in compliance. Ms. Rahmouni stated that she can look into that request. Commissioner Araujo inquired about the P.S. 2 poll site. Ms. Rahmouni stated that the Queens Office staff is trying to move the poll site, but have not found an alternate site yet. Commissioner Araujo inquired if the Board receives a waiver from P.S. 2. Ms. Rahmouni reported yes. President Umane stated that Assembly Bill No. 584 is very important to the disability community and all voters of the City, and has confidence that the Board could find three (3) alternate poll sites. President Umane moved that the Board advise the Governor that the EDO Unit has surveyed all of the poll sites and found only three (3) that are not ADA compliant, and the Board will try to locate alternative poll sites. Commissioner Silie seconded the motion, which was adopted unanimously. Commissioner Stupp commended Ms. Rahmouni for only having three (3) non-compliant poll sites in the City of New York.

The General Counsel requested the appointment of Petition and Cover Sheet Review Committees for Designating Petition matters for week of July 28-31, 2009, pursuant to the provisions of the NYS Election Law, the Rules and Regulations of the NYS Board of Elections (9 NYCRR 6215)

as well as the Board's Designating Petition Rules (Parts D and Rule J). The President and Secretary designated the members of the Petition and Cover Sheet Review Committee for Tuesday and Thursday of this week.

The General Counsel reported that he requests Board confirmation of instructions from the Executive Director to change the format of the NCN notices that are sent by the Board. He distributed a NCN notice template to the Commissioners for review. Mr. Richman summarized that for the last four (4) years the NCN notices have been mailed on behalf of the Commissioners of Elections and signed by the preparer of the notice. Commissioner Soumas raised some concerns and opposed that practice. Mr. Richman explained that five (5) years ago a question arose as to who issued the notice. At that time, the Commissioners, they directed the staff to follow a format to issue the notice by the appropriate staff member who drafted the notice, who is the same staff member who makes the presentation to the Cover Sheet Review Committee outlining the defects. Commissioner Soumas stated that the Commissioners have no statutory authority to delegate. Commissioner Soumas proposed anybody other than the Commissioners having their names signed. Mr. Cederqvist suggested for administrative reasons to have a space on the NCN notice for the staff member's initials. Commissioner Soumas stated that a staff

member's initials do not give the authority. Mr. Richman summarized Section 3-300 of the Election Law. Commissioner Soumas stated that no one can sign the Commissioners' names. Mr. Richman suggested including "Prepared by:" on the notice to indicate the staff member. Commissioner Soumas stated that the NCN notice does not have to be signed by any staff member of the Board. President Umane moved to sign the NCN notice as, "Very truly yours, The Commissioners of Elections in the City of New York" without signatures. Commissioner Sampel seconded the motion, which was adopted unanimously.

The Coordinator of the Candidate Records Unit distributed and summarized a report on the status of the Specifications filed for the September 15, 2009 Primary Election.

The Deputy Executive Director recommended a schedule for the Hearings on Designating Petitions based on the number of Specifications that were filed as of last night.

Mr. Gonzalez requested approval of the schedule. The recommended schedule for hearings is:

Monday, August 3, 2009

10 A.M. Staten Island & Citywide

2 P.M. Brooklyn

Tuesday, August 4, 2009

10 A.M. Queens

2 P.M. Bronx

Wednesday, August 5, 2009

10 A.M. Manhattan

President Umame moved to adopt the schedule. Secretary Dent seconded the motion, which was adopted unanimously.

The Coordinator of Election Day Operations distributed the Staten Island and Bronx Poll Workers Exception Reports for the September 15, 2009 Primary Election. Commissioner Silie made a motion to adopt the Bronx Poll Workers Exception Report. Commissioner Polanco seconded the motion, which was adopted unanimously. Commissioner Sampel made a motion to adopt the Staten Island Poll Workers Exception Report. Commissioner Sipp seconded the motion, which was adopted unanimously.

The Finance Officer provided the Commissioners with the

Comparative Expenditures report dated July 28, 2009.

President Umane opened the floor for brief comments from Alan Flacks, a member of the public. President Umane requested for Board staff to look into the actual cost of the voter registration enrollment CD-ROM available for a FOIL request.

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

Following the Executive Session, the open public session resumed and President Umane reported that in Executive Session, the Commissioners took the following personnel actions:

- I. Following a hearing, Alice Gross, Administrative Assistant, is demoted to the title of a Clerk and placed on one (1) year probation.
- II. Following a hearing, Lloyd Garner, a Clerk assigned to the Manhattan Office, is placed on three (3) months probation and is directed to participate in the Employee Assistance Program (EAP).

- III. Following a hearing, Yolanda Sanders, Administrative Assistant assigned to the Manhattan Office, is placed on three (3) months probation and is directed to participate in the Employee Assistance Program (EAP).
- IV. Unanimously approved the promotion of John Fossella, a Clerk assigned to the Staten Island Office, to the title of Administrative Assistant.
- V. Unanimously approved to advance 210 hours of sick leave to John Greaney, a Clerk assigned to the Bronx Office.
- VI. Unanimously authorized John Owens, Jr., Director of Campaign Finance Enforcement, to participate in the Managerial raise and retro active pay based upon his date of appointment.
- VII. Unanimously authorized Greg Lehman, Chief Clerk of the Manhattan Office, to receive the Managerial raise based upon his date of appointment.
- VIII. Unanimously authorized Troy Johnson, Coordinator of the Candidate Records Unit, to receive the retroactive Managerial pay for that period when he served as the Chief Clerk of the Manhattan Office.
- IX. Appointed a Committee, compiled of two (2) Democratic (Commissioners Soumas and Araujo) and two (2) Republicans

(Commissioners Umane and Polanco), to hear a matter concerning candidate Elizabeth Totman.

The General Counsel announced an application on behalf of candidate Elizabeth Totman, with a signed Notice of Appearance by the candidate authorizing William Benninghoff to appear on her behalf.

Mr. Benninghoff stated that candidate Elizabeth Totman was aware that she was a candidate for New York Democratic County Committee, but unaware of the consequences. She is a Federal employee at the Environmental Protection Agency (EPA) and if she remains a candidate she will be in violation of the law. Due to her work schedule, Ms. Totman could not appear at the Board. The candidate would like to have her candidacy stricken. President Umane stated that in past Board practice if a person did not know they were being placed on the ballot, or understand the consequences of becoming a candidate, the Commissioners let them withdraw from the ballot even after the time for a declination has passed. Commissioner Polanco moved to permit the candidacy of Elizabeth Totman to be stricken. Commissioner Soumas seconded the motion, which was adopted unanimously.

President Umane moved to adjourn the meeting. Commissioner Araujo seconded the motion, which was adopted unanimously.

President Umane announced that the Hearings on Designating Petitions will start on Monday, August 3, 2009 and continue on Tuesday, August 4 and Wednesday, August 5.

The next Commissioners' meeting is scheduled for Monday, August 3, 2009 at 11:30 A.M.