

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, AUGUST 18, 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, Schacher, Silie, Sipp, Soumas, Stupp

Marcus Cederqvist, Executive Director  
Steven H. Richman, General Counsel  
John Owens, Jr., Director, Campaign Finance Enforcement  
John Ward, Finance Officer  
Dorothy Delayo, Director, Personnel  
Troy Johnson, Coordinator, Candidate Records Unit  
Tom Sattie, Associate Staff Analyst, Candidate Records Unit  
John O'Grady, Chief, Voting Machine Technician  
Greg Lehman, Chief Clerk, Manhattan Office  
Tim Gay, Deputy Chief Clerk, Manhattan Office  
Barbara Conacchio, Chief Clerk, Queens Office  
Katherine James, Deputy Chief Clerk, Queens Office  
Christopher Manos, Temporary Attorney, Office of the General Counsel  
Diane Scopelliti, Temporary Attorney, Office of the General Counsel  
Charles S. Webb, III, Counsel to the Commissioners  
Steven B. Denkberg, Counsel to the Commissioners

GUEST:     Stanley Zalen, Co-Executive Director, NYS BOE  
              Cortney Gross, Gotham Gazette  
              Marjorie Shea, Women's City Club  
              Leo Glickman, Esq.  
              Ruben Dario Vargas  
              Adrienne Kivelson, League of Women Voters  
              Rima McCoy, CIDNY  
              Jose Adames

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President Umane called the meeting to order at 1:37 P.M.

President Umane acknowledged that Stanley Zalen, Co-Executive Director of the State Board, is in attendance. He noted that Mr. Zalen has served the State Board for over thirty-five (35) years and is a diligent, dedicated and knowledgeable Public Servant. President Umane welcomed and thanked Mr. Zalen, on behalf of the Commissioners and the staff, for his many years of service and friendship at the Board. Commissioner Schacher thanked Mr. Zalen, on behalf of the Brooklyn Office, for listening and caring for the difficulties she came across at the Board throughout the years.

Stanley Zalen stated that during the thirty-five (35) years the City Board had a constant changing cast of Commissioners and employees, but one thing has always been the same, and true for the current staff and Commissioners now as it was from the beginning, is dedication, hard work, frequent criticism largely underserved, and constant success during the elections.

President Umane convened the Hearings on the Prima Facie Defect on Specification of Objection No. NY137.

The determinations regarding the Specifications of Objections are recorded on the respective Clerks' Reports.

President Umane adjourned the hearings and convened the stated meeting.

President Umane made a motion to table the minutes of July 14, 2009, July 21, 2009, July 28, 2009 and August 3, 2009. Commissioner Soumas seconded the motion, which was adopted unanimously.

Commissioner Araujo requested to discuss a Queens personnel matter in Executive Session.

The Executive Director presented the HAVA report. He reported that last week there was a workstream exercise for the new voting system. A mock poll site was set up in the Commissioners' hearing room which included both voting machines, and the staff mock voted in a particular poll site flow. The staff gained valuable information from this exercise.

The Executive Director reported on an e-mail he received yesterday from the State Board regarding undervoting on the Ballot Marking Devices

(BMDs). Mr. Cederqvist forwarded the e-mail to the Commissioners. Both vendors will be programming the BMDs to accept undervoted ballots so the machine will not send a warning to the voter and the ballot will not get “bounced” back.

The Executive Director reported that he had a staff meeting logistically planning the possible run-off election on September 29, 2009. There is a high probability that there will be a run-off election. The timeline is two (2) weeks after the September 15, 2009 Primary Election. Mr. Cederqvist reported on a tentative calendar regarding the tasks that the Board has to complete within the two (2) week time period before the possible runoff election:

- September 16<sup>th</sup> - request for a special Commissioners’ Meeting in the morning to review the preliminary election night results and determine the possible ballot configurations
- September 16<sup>th</sup> and 17<sup>th</sup> - retrieving of lever voting machines and canvass of the paper ballots
- September 17<sup>th</sup> to 20<sup>th</sup> – printing of the paper ballots
- September 18<sup>th</sup> – recanvass of the lever voting machines for all boroughs
- September 19<sup>th</sup> – supplies for the runoff election delivered to

the Voting Machine Facilities

- September 19<sup>th</sup> to 22<sup>nd</sup> – set-up of the voting machines for the runoff election
- September 22<sup>nd</sup> – regular Commissioners’ Meeting with discussion if there will be a runoff election declared
- September 23<sup>rd</sup> – public viewing of the voting machines
- September 24<sup>th</sup> to 28<sup>th</sup> – shipping of the voting machines to the poll sites
- September 29<sup>th</sup> – Run-off Primary Election Day

The Executive Director requested a special Commissioners’ Meeting on September 16, 2009 at 10:00 A.M. President Umane moved to hold a special Commissioners’ Meeting on September 16, 2009 at 10:00 A.M. The motion was adopted unanimously.

The Executive Director reported that there will be a Special Election for Member of Assembly 38<sup>th</sup> Assembly District, Queens. He reported that the Board received a Proclamation on Friday. The Special Election will be held on September 15, 2009 Primary Election Day. Mr. Cederqvist stated that he had a staff meeting yesterday and they discussed some logistical challenges for the Special Election and Primary Election held on the same

day. The Queens Chief and Deputy Chief Clerk participated in the meeting by conference call. Mr. Cederqvist reported from the meeting's discussion that the best course of action will be to have separate voting machines in each poll site. Vinny Pardon, Administrative Associate in the Queens Office, reported that thirty-seven (37) lever voting machines would need to be deployed. The other possibility would be to conduct the Special Election on paper ballots. The General Counsel stated that the statute requires that all General and Special Elections must be conducted on a voting machine, and a Primary Election should be conducted on a voting machine unless there is not enough space on the ballot, which causes a unique situation. Another issue discussed was the limited space at the poll sites to hold the extra voting machines and extra staffing. Barbara Conacchio, Chief Clerk of the Queens Office, stated that the poll sites in the 38<sup>th</sup> Assembly District might be overcrowded which may cause tension and dangerous situations among the voters and poll workers. Ms. Conacchio reported that the Board would have to hire one hundred and fifty-eight (158) poll workers and ten (10) coordinators if the Special Election is conducted on voting machines. If the Special Election is conducted on paper ballots, forty (40) poll workers and seven (7) coordinators would be needed. The General Counsel stated that the Primary Election can be conducted on paper ballots, but the Special Election must be conducted on voting machines.

The Chief Voting Machine Technician stated that the Primary and Special Election will have separate, different ballots. Katherine James, Deputy Chief Clerk in the Queens Office, reported that finding more space at the Department of Education poll sites will be a great burden. The General Counsel stated that the Department of Education is aware that Election Day trumps the needs of the school that day. The Board has to determine the problem poll sites as soon as possible.

Commissioner Araujo made a motion to conduct the 38<sup>th</sup> Assembly District Special Election on paper ballots and the Primary Election on the lever voting machines. Commissioner Soumas seconded the motion. The General Counsel reported that the Election Law prohibits a Special Election to be conducted on paper ballots unless there is a unique situation. The Board has a month to prepare the Special Election. The motion was not adopted.

Secretary Dent inquired how the Board will manage crowd control in order to direct people in the poll sites. Ms. Conacchio stated that a Special Election notice will be mailed to the voters in the 38<sup>th</sup> Assembly District. Secretary Dent stated that if the public is informed of the Special Election, then normally it will cut down the confusion at the poll sites. In essence,

the Board has to make sure the voters will know about the Special Election beforehand, maybe even beyond the Board's Special Election notice post card. Ms. James stated that the 38<sup>th</sup> Assembly District Coordinators and A.D. Monitors will have prepared information with specific check-off lists in order to serve the voters. They will also be equipped with appropriate voter sign-in books for the Primary and Special Elections.

After discussion, the General Counsel recited Section 7-200 in the Election Law. Commissioner Soumas suggested using Ballot Marking Devices (BMDs) for the Special Election. Mr. O'Grady stated that the BMD only marks the ballot; they do not tabulate the votes. The General Counsel stated that BMDs are not approved by the State Board, only Federal Court Order. The BMD does not replace the lever voting machine.

Commissioner Araujo requested to table his previous motion for one (1) week. President Umame directed the staff to prepare two (2) separate contingency plans for the Special Election. Commissioner Araujo directed the General Counsel to research Section 7-200 of the Election Law.

The General Counsel requested to set a date for the hearings of the September 15, 2009 Special Election Certificates of Nomination and the



Independent Nominating Petitions. Mr. Richman recommended Friday, September 4, 2009 at 2:00 P.M. for the Certificates of Nomination hearings, and the Independent Nominating Petitions hearings for Friday, September 11, 2009 at 2:00 P.M. President Umane suggested that a subcommittee can be created for the hearings. President Umane moved to set the dates for the hearings recommended by the General Counsel. Secretary Dent seconded the motion, which was adopted unanimously. The General Counsel reminded that the Board is in Federal Court on this matter until Thursday, 10 A.M. on an application on a preliminary injunction to set aside the Special Election.

Pursuant to the Commissioners' request, the General Counsel included all court decisions for all boroughs in the agenda.

The Coordinator of Election Day Operations distributed the Manhattan and Queens Poll Worker Exception Reports, and the Staten Island Amended Poll Worker Exception Report for the September 15, 2009 Primary Election. In addition, Ms. Rahmouni distributed the Queens Poll Worker Exception Report for the Special Election in the 38<sup>th</sup> Assembly District. Ms. Rahmouni requested approval from the Commissioners on the reports. Commissioner Sipp made a motion to adopt all Poll Worker

Exception Reports. Commissioner Araujo seconded the motion, which was adopted unanimously.

The Executive Director reported that tonight is the deadline for filing the Independent Nominating Petitions for the General Election at 12:00 A.M.

The Finance Officer reported on the Vacancy Report dated August 18, 2009.

President Umane opened the floor for brief comments from Jose Adames, a member of the public.

President Umane opened the floor for brief comments from Adrienne Kivelson, a member of the public.

President Umane made a motion to convene an Executive Session to discuss personnel matters. Commissioner Soumas seconded the motion, which was adopted unanimously.

Following the Executive Session, the open public session resumed

and President Umane reported that no action was taken in Executive Session.

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

The next stated meeting of the Commissioners is scheduled for Tuesday, August 25, 2009 at 1:30 P.M.