

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, AUGUST 25, 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 Polanco, 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  
Valerie Vazquez-Rivera, Director, Communications and Public Affairs  
Tom Sattie, Associate Staff Analyst, Candidate Records Unit  
John O'Grady, Chief, Voting Machine Technician  
Diana Scopelliti, Temporary Attorney, Office of the General Counsel  
Christopher Manos, Temporary Attorney, Office of the General Counsel  
Charles S. Webb, III, Counsel to the Commissioners

GUEST:     Stewart Armstrong, Voter Assistance Commission  
              Marjorie Shea, Women's City Club  
              Adrienne Kivelson, League of Women Voters  
              Teresa Hommel, Community Church of New York  
              Rima McCoy, CIDNY  
              Jose Adames  
              T.K. Small

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President Umane called the meeting to order at 1:38 P.M.

The General Counsel requested to add an additional legal item to the agenda.

President Umane made a motion to table the minutes of July 14, 2009, July 21, 2009, July 28, 2009, August 3, 2009 and August 11, 2009. Commissioner Soumas seconded the motion, which was adopted unanimously.

The Executive Director presented the HAVA report. He reported that there was a conference call this morning with the State Board and the Election Commissioners Association (ECA). The City Board participated as listeners only. The conference call was primarily focused on the 2009 Pilot Program which the Board is not participating in. A future conference call is scheduled with the State Board on October 1, 2009. Mr. Cederqvist will forward all information to the Commissioners when he receives it.

The Executive Director discussed that at the previous Commissioners' meeting there was a question whether the September 15, 2009 Special Election for the 38<sup>th</sup> Assembly District will be conducted on lever machines or paper ballots. The Queens Chief and Deputy Chief Clerk were present at the previous meeting and discussed how to plan for

the Special Election. He inquired if the Commissioners have direction for the staff. The General Counsel reported that he reviewed the legal status and case law which was requested by the Commissioners. He stated that the language of Section 7-200 in the Election Law is clear that all General and Special Elections shall be conducted on voting machines. There has not been a case where a Special Election for Member of Assembly, or any other public office other than a village or town official, have ever been conducted other than on a voting machine. The New York City Law Department reviewed the law, per Mr. Richman's request, and reached the same conclusion that the Board would be obligated to conduct the Special Election on a lever machine, unless the Board physically did not have sufficient voting machines or space. Mr. Richman reported that he also spoke with Anna Svizzero, Director of Election Operations, and Stanley Zalen, Co-Executive Director, at the State Board and they could not recall a Special Election being conducted on anything but a voting machine. Mr. Richman reported that there was one (1) case where a Special Election was held on Primary Election Day in Suffolk County where they used two (2) separate voting machines. Mr. Richman stated that with past guidance, the 38<sup>th</sup> Special Election does not qualify for exemption because the Board has the additional voting machines available. Commissioner Polanco supported for the Primary Election and Special Election be conducted on

voting machines in separate rooms. The General Counsel stated that the Board arranges one (1) designated room per poll site. The Board does not have a legal right to request for an additional room, but could separate a room to have the Primary Election on one side and the Special Election on the other side. Commissioner Polanco was concerned about conducting both elections in the same room on the same day. Commissioner Soumas stated that it will be problematic if the Board starts to look for additional rooms in the poll sites. Commissioner Umane was concerned that voters will be directed to vote in the Special Election, under Rule #4 (c) and (d) of the draft resolution, because they will be guided in a certain way.

Commissioner Soumas made a motion to adopt Commissioner Araujo's draft resolution in his absence, at his request, relating to the conduct of the Special Election in the 38<sup>th</sup> Assembly District on September 15, 2009. The draft resolution was distributed to the Commissioners.

Commissioner Polanco requested that the lever machines be used for the Special Election, but is separate and apart from the Primary Election. Commissioner Stupp added that today was the first time she read Commissioner Araujo's draft resolution. Reviewing the draft resolution quickly, she knows they are not interested, with the confusion

with the Special and Primary Elections, to combine the Election Districts. Commissioner Stupp suggested that the Special Election voters in the 38<sup>th</sup> Assembly District need to go to the sign-in tables they normally go to. If the Election Law stipulates that there should be voting machines for both elections, then that's okay, and if there is space in the poll site to have the General Election on one side, and the Primary Election on the other side so there is no pecking order to who goes in and geared to another room, then that's okay too. Commissioner Stupp wanted to make sure that the Special and Primary Elections are separate and clear for the voters.

Commissioner Polanco made a motion to table this issue for one (1) week. He strongly recommended conducting the Primary Election and Special Election in separate rooms at the poll site. Secretary Dent inquired if the Board has time to table the issue. She directed a comment to Commissioner Polanco stating the Board does not know if the staff is able to identify or locate additional space in the public schools; perhaps it could work, but the Board has not tried yet. Secretary Dent requested to speak with the Administrative Manager and Chief Voting Machine Technician who are working closely with the staff to find out know if it is feasible and to remember that Commissioner Araujo requested this draft resolution for consideration. The Administrative Manager reported that there is no time

to table the issue; the Board has to secure space now. Ms. Perkins stated that the Board contracted both the public and private sites for the Primary Election only. Secretary Dent stated that safety issues at the poll sites are very important. An additional issue discussed was the quantity of BMDs at the poll sites in the 38<sup>th</sup> Assembly District. Commissioner Stupp inquired if the Board had sufficient voting machines and space in the poll sites to conduct the Primary and Special Elections in the same room, but separately. Mr. O'Grady reported that there are twenty (20) poll sites for the Special Election, and the Board has thirty-five (35) voting machines, if the Election Districts are combined. Commissioners Polanco and Stupp strongly suggested that each election should have its own BMD because it is two (2) separate elections. Commissioner Polanco stated that it is inherently unfair to conduct a Democratic Primary Election and Republican Special Election on the same BMD. Mr. O'Grady stated that the BMD can accept both elections. Commissioner Sipp inquired if a voter would receive both the Primary and Special Election ballots at the same time if they requested a BMD ballot. The General Counsel replied no, that a voter would have to get the ballots in a separate Primary Election line and Special Election line, and the voter would have to sign in the voter enrollment books twice. Commissioner Polanco stated that it would only be fair to have two (2) separate BMDS and it would be a practical approach for

the voters in the 38<sup>th</sup> Assembly District. He was concerned it might be an unfair disadvantage for one party. Commissioner Stupp stated that the Board has to make sure what voters go to do on Election Day is very clear in their minds. She stated that she does not like the sharing of a BMD, and the Board should put a BMD in a room where the Special Election is held and a BMD where the Primary Election is held. Commissioner Stupp strongly advised it should be inherently clear what the voters are doing, and at the previous meeting the Commissioners requested Mr. Richman to research the Election Law. Commissioner Soumas inquired with Commissioner Stupp that based on what she said if combining Election Districts makes sense. She stated that generally they do not like to combine Election Districts and thinks that the voters usually like to go to their Election District table that they are used to going to. Commissioner Stupp thinks it will make it clear to the voters what they are doing, so there is no confusion. She wants voters to go in to vote and for it to be very clear what they are doing. She does not want to share voting machines and would like separate rooms for each election. Secretary Dent inquired if that is providing the Board locates separate rooms in the poll sites. The General Counsel added that some private poll sites only have one (1) room. Commissioner Stupp stated that she spoke with Vinny Pardon, Administrative Associate in the Queens Office, and he mentioned setting

up a tent. President Umane stated that he would like to provide Special Election guidelines for the Board. Secretary Dent indicated she understood Commissioner Stupp's concerns and she too wanted to make sure that all voters were clear as to where they must go to cast their vote.

Commissioner Polanco was concerned that the poll workers may not follow through with the Special Election guidelines because it will be a very busy election. Secretary Dent directed a comment to Commissioner Polanco inquiring how he would know there will not be confusion sending people to another room to vote. She stated there is a better chance of less confusion if people vote in the same room where the poll workers can easily point to the area where voters should vote. Secretary Dent added that there are a lot of scenarios of what will work or will not work, and let's do what is best for the voters. Commissioner Soumas stated that the guidelines cannot be too rigid and the Board has to apply reasonable standards for the Special Election.

President Umane made a motion for the Board to conduct the Special Election using voting machines to be located to the extent reasonably possible using the Board's best efforts to conduct the elections in separate, apart and distinct locations at the poll site, which could include in different

rooms. But if it is in the same room the elections will be conducted in separate, apart and distinct as best the Board can make it. Once the motion is adopted, the Queens Commissioners can work the actual logistics with Senior Staff, EDO and other staff would be involved in those functions. Commissioner Stupp seconded the motion, with Commissioners Soumas and Polanco abstaining. The motion was adopted.

President Umane inquired if there are extra BMDs in the borough of Queens. Mr. O'Grady reported that there are estimated forty-five (45) spare BMDs. President Umane inquired if the board can use twenty (20) BMDs for the Special Election. Mr. O'Grady replied yes. President Umane moved to use two (2) separate BMDs for the Primary Election and Special Election with the sufficient staff that is needed. Commissioner Polanco seconded the motion, with Commissioner Soumas abstaining. The motion was adopted.

The General Counsel stated that BMD ballots may have to be a manual canvass because the NYPD may not be able to record the results on Election Day. He and Executive Management will conduct a meeting with the NYPD Operations on September 9, 2009. The NYPD has a Primary Election component in their computer system, but not a Special

Election component. The Inspectors would perform the tallies then give the figures to the NYPD and ask them to call in the results to the Board.

The General Counsel and the Finance Officer reported on changes to the draft Memorandum of Understanding (MOU) which is coordinated with the Department of Education Division of School Facilities for the HAVA Grant to improve DOE facilities used as poll sites. Mr. Ward distributed the revised draft MOU to the Commissioners and reported that there are changes to the attachments. Originally, Mr. Ward submitted a list of poll sites to the DOE that needed permanent construction. Due to time and staffing, the DOE cannot do every poll site estimate. A decision was made to rank the poll sites by borough and by number of voters with the idea if the DOE could do estimates, it would spread out among the five (5) boroughs at the same time. The DOE would start with the poll sites that have the most voters. Commissioner Sipp inquired if the boroughs will be worked on simultaneously and Staten Island not lose priority to any other boroughs. The Chief Voting Machine Technician replied that the DOE will work simultaneously with the five (5) boroughs and will work down the list. He added that the Board will approve the cost estimates. The General Counsel stated that the deadline to use the HAVA Grant funds is March 31, 2010. President Umame moved to adopt the changes to the MOU and

directed the staff to work with the DOE to improve the poll sites. Commissioner Polanco seconded the motion, with Commissioner Soumas abstaining. The motion was adopted.

The General Counsel reported that today he received a letter from Mitch Alter, Esq. for candidate Marquez Claxton, 31<sup>st</sup> Council District, seeking to direct the Board to reprint the absentee ballots to include her name. He stated that the Board was already served with an Order to Show Cause in Brooklyn, and by direction of the Executive Committee the Board is opposing it and researched the Election Law. The Law states that the Board shall no later than thirty-five (35) days before the day of the Primary Election reprint absentee ballots. Mr. Richman reported that he has to attend Supreme Court regarding this matter on Thursday, August 27, 2009 and asked for direction from the Commissioners. President Umane moved to maintain a consistent policy and directed the Corporation Counsel to oppose this matter. Commissioner Polanco seconded the motion, which was adopted unanimously.

The General Counsel reported that the most recent court decisions are in the agenda per the Commissioners' request.

Tom Sattie, Associate Staff Analyst in the Candidate Records Unit, reported on behalf of Troy Johnson, Coordinator of the Candidate Records Unit. Mr. Sattie distributed the revised draft Notice to all Candidates letter for the September 15, 2009 Primary Election. It is the same standard letter with one (1) change which includes the addition of canvass teams. The Executive Director reported that the Chief Clerk and Deputy Chief Clerks of the five (5) boroughs submitted the specific number of canvass teams to the Candidate Records Unit. Commissioner Silie corrected the telephone number for the Bronx Office. Commissioner Soumas moved to adopt the revised draft Notice to all Candidates letter with Commissioner Silie's correction. Commissioner Silie seconded the motion, which was adopted unanimously.

The Finance Officer reported on the Comparative Expenditures dated August 25, 2009.

President Umane opened the floor for brief comments from T.K. Small, a member of the public.

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

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