

MEETING OF THE  
COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, DECEMBER 15, 2009  
AT 1:30 P.M.  
42 BROADWAY, 6<sup>th</sup> FLOOR COMMISSIONERS' ROOM  
NEW YORK, NY 10004

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PRESENT:                   President Frederic Umane  
                                  Secretary Julie Dent

Commissioners Araujo, Polanco, Schacher, 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  
Nicholas Squicciarini, Manager, Facilities  
John O'Grady, Chief, Voting Machine Technician  
Daniel Lavelle, Supervisor, Phone Bank  
Steven B. Denkberg, Counsel to the Commissioners  
Charles S. Webb, III, Counsel to the Commissioners

GUEST:    Marjorie Shea, Women's City Club  
            Mark B. Herman, SIDA  
            Rima McCoy, CIDNY  
            Adrienne Kivelson, LWVNYC  
            Mary Lou Urban, LWVNYC  
            Teresa Hommel, Community Church of New York  
            Alan Flacks, Member of NY County Democratic Committee  
            Jerry Koening  
            Tim Robbins, NYVV

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President Umane called the meeting to order at 1:40 P.M.

President Umame moved to table the minutes of November 17, 2009, November 24, 2009, December 1, 2009 and December 8, 2009. Commissioner Araujo seconded the motion, which was adopted unanimously.

The Executive Director presented the HAVA Update. He reported that the State Board certified both voting systems this afternoon. The systems are manufactured by ES&S and Dominion. Mr. Cederqvist stated that he will provide the Commissioners with the full transcript of the State Board meeting once it is released.

The Executive Director reported that the public demonstrations flyer is in the agenda and he recited the schedule. He noted that the flyer is posted on the Board's website and he mailed and e-mailed the schedule to elected officials, good government groups and disability organizations.

The Executive Director reminded the public that the Commissioners are scheduled to select the new voting system and privacy booth on January 5, 2009.

President Umame opened the floor for brief comments from Teresa

Hommel, a member of the public.

The Executive Director reported that one of the Board's workstream's prepared an updated generic draft poll site flow report and they will present it at the next Commissioners' meeting for their opinions and suggestions. Mr. Cederqvist explained that the workstream held several mock elections at the Board's office and the poll site exercises helped improve the poll site flow.

The Executive Director reported that he is trying to schedule a conference call with OGS to obtain information on the ordering process of the new voting systems.

The Executive Director reported that a letter from Dominion addressed to the President and Secretary of the Board, dated December 8, 2009, is in the agenda. The letter was written to clarify an aspect of Dominion's proposal. They state that their scanners are compatible with the current AutoMARK BMDs and offered to demonstrate both options to the Board and members of the public during the upcoming demonstrations and public hearing. Mr. Cederqvist stated that due to time sensitivity, he reached out to the Commissioners' Executive Committee for guidance and

they directed the following: 1. Dominion staff is allowed to meet with the Board's technical staff to demonstrate how both systems will be compatible; 2. Rather than sending a Board's BMD to the demonstrations, Board staff should provide Dominion fifty (50) pre-marked ballots that were marked on the AutoMARK BMD so Dominion may show that the ballots can be scanned with their scanners; 3. Contact the State Board to seek clarification if they certified this arrangement. Mr. Cederqvist reported that he asked the State Board staff if they tested this arrangement and if they will be certifying a BMD from one vendor for use with the scanner of another. The State Board staff responded that they did not have to certify it and the City Board can order scanners from Dominion and use the current AutoMARK BMDs if they chose to. The State Board is certifying both systems independently. Mr. Cederqvist reported that the Evaluation Committee is currently updating their Evaluation Report in case there were any changes to the systems in the previous nine (9) months. President Umane clarified that the Executive Committee suggested that the Board inquire if both systems by different vendors could be mixed and matched, and did not want to preclude anything. The Commissioners are not sure if the City Board received sufficient valid guidance yet from the State Board regarding this issue, and the Board should keep open as many options as possible. President Umane stated that their might be cost saving if it is an

alternative and asked the EVS staff to look into this option. Secretary Dent asked Mr. Cederqvist about his report that the scanners do not have to be tested, which he mentioned in his report earlier. She inquired how the scanners were certified if they were not tested. Mr. Cederqvist replied that they were each tested as part of a system; the Dominion BMD and Dominion scanner and the ES&S BMD and scanner were tested and certified separately. The General Counsel stated that the statute allows up to two (2) certified voting systems per county. Mr. Cederqvist stated that the obligation would be on the City Board to ensure that the components of the two (2) systems were compatible. Secretary Dent was very concerned because it is a big obligation. She inquired who would determine if the systems are compatible. President Umane stated that the EVS staff would test the systems. Commissioner Polanco agreed with Secretary Dent and inquired if the Board has the capacity to test the two (2) systems at this point. He feels it is a big responsibility for the City Board. Commissioner Stupp was concerned if theoretically there was a lawsuit in the future, would the Board be protected. Mr. Cederqvist stated that both systems are certified. Commissioner Stupp replied that the systems are not certified together. Commissioner Polanco inquired with the General Counsel if there are any legal issues. Mr. Richman stated that the statute says that a local Board of Elections can use up to two (2) certified voting systems per

county and the City Board is at its own risk if it chooses to mix and match systems. Mr. Cederqvist suggested waiting for the EVS technical staff to report on the hybrid systems. Secretary Dent was very concerned about putting all the responsibility on the Board's staff to make sure that the two (2) systems work together. Commissioner Soumas felt that mixing and matching voting machines is like voiding a factory warrantee and would be a big mistake. Commissioner Polanco asked Mr. Richman to look into the OGS contract regarding this issue. Mr. Cederqvist responded that he will call or submit a letter to OGS regarding this issue. President Umane stated that the Commissioners' Executive Committee did not want to foreclose any options for the Board.

The Executive Director reported that the 2010 New York State Election Commissioners' Association Winter Conference schedule is in the agenda. He stated that the Deputy Executive Director circulated the email to the Commissioners.

The Executive Director noted that tonight is the annual meeting of the Voter Assistance Commission. The meeting will be held at the Council Chambers in City Hall at 6:00 P.M.

The Executive Director reported that the Director of Communications and Public Affairs requested to be added to the agenda to consider an outside vendor to film the public hearings and post them on the Board's website.

The Director of Communications and Public Affairs reported that the Board does not have the technology to post a live webcast on its website, but an outside vendor can film the public hearing and post it on her website instead. The total cost would be \$3,500. Commissioner Araujo inquired where the funds would come from. Commissioner Stupp suggested that a good government group could film the hearing if they were interested. President Umane stated that the Board has invited the NYC TV to film. Commissioner Soumas recommended moving the public hearing to the Council Chamber where the NYC TV cameras are already set up. Commissioner Stupp inquired if the official stenographer has been hired for the hearing. President Umane replied yes and that the funds are in the budget. Commissioner Polanco stated that the information from the public hearing is very important for the public, and felt that as an agency it should be more transparent because the Board has a lot to offer. Commissioner Soumas replied that the poll workers have to get paid before Christmas. President Umane stated that it is not necessary for the Board to spend the

money.

Commissioner Sipp agreed with Commissioner Polanco. He felt that the new voting system is a big change and people should be aware of it. Commissioner Sipp believed that the change in systems is going to be a shock to a lot of people so any opportunity to let them be aware of it, for better or worse, is important. If the Board gives this option to the public they cannot be accused for being in the dark if potentially things do not work as well as they hope they will in the next election cycle. He felt that the cost of \$3,500 is a worthwhile expenditure. President Umame inquired if the Board can reach out to DOITT to see if there is a cheaper way to webcast. Ms. Vazquez-Rivera stated that it is a matter of programming which is well established into the year already. She added that the Board's public hearing would remain on the vendor's website until the Commissioners ask to remove it.

Commissioner Polanco moved to hire the outside vendor and have the public hearing webcasted for \$3,500. Commissioner Sipp seconded the motion.

In a roll call vote of:

Three (3) in favor (Secretary Dent, Commissioners Sipp and Polanco); and

Five (5) opposed (President Umane, Commissioners Araujo, Schacher, Soumas, Stupp);

Commissioner Polanco's motion was not adopted.

Commissioner Stupp added that having a public hearing, which was already set and voted upon, in the week between Christmas and New Year's Eve, will always subject the Board to public criticism because it is a week where a lot of people take vacation. Commissioner Stupp suggested that since the Board is not doing the \$3,500 expenditure, the Board should notify the media and City Hall "big time" and hopefully the good government groups and people with great interest will attend the hearing. The General Counsel noted that the Staten Island Advance ran an article about the public demonstrations and public hearing. A copy of the news article is in the agenda.

The General Counsel reported that he received a request by the Governor's Office to participate in a conference call concerning poll site accessibility legislation next week. The State Board, State Division of Budget and the City's Legislative Office will participate in the call as well.

Mr. Richman reminded the Commissioners that Governor Paterson vetoed legislation that would have mandated that all of the Board's poll sites meet DOJ's Guidelines for Poll Site Accessibility under the American Disabilities Act and HAVA. In the veto, Governor Paterson stated that he wanted to work with the City Board and the City of New York to develop a bill that would meet the goals of the vetoed legislation in a fiscally responsible manner. Mr. Richman also reported that he received a call today from Steve Williams of the City's Legislative Office to set up a conference call prior to Governor Paterson's call. The call will be with representatives from the Department of Education, DCAS, Office of the People with Disabilities, and possibly the Department of Design and Construction. The conference call will help determine what the Board's understanding is of the current status of poll sites and the implications of a bill such as the one subject of Veto Message #60 to the City of New York. Mr. Richman requested direction from the Commissioners on how the Board should respond to these requests. President Umane moved to authorize staff to participate. Commissioner Soumas asked for clarification on these requests. He suggested sending the Veto Message #60 to the Office of Management and Budget. President Umane stated that the Board is happy to participate, but there is a lot of research and will not be prepared to have a meaningful discussion until all of the "homework" is accomplished.

President Umane opened the floor for brief comments from Jerome Koenig, a member of the public.

President Umane opened the floor for brief comments from Rima McCoy, a member of the public.

President Umane stated that the Board has tried very hard to make all of the poll sites ADA compliant. He recalled that the Board has ordered extra ramps to help meet a goal of 100% compliance. Commissioner Schacher suggested that the meeting should be in person. Commissioner Soumas recommended for the Board to reply in writing concerning the fiscal impact issue. Mr. Richman asked for clarification. President Umane stated that he and the Board's team participate in the two (2) calls and advise them that the Board has identified three (3) poll sites which are not ADA compliant. Commissioner Soumas directed the Executive Director to participate on the calls as well. Secretary Dent asked for a clarification on who is on the Board's team that will be participating with Mr. Richman. President Umane replied the Chief Voting Machine Technician, Deputy Executive Director, Election Day Operations staff who has been working on this issue, and whoever Executive Management feels can contribute to the calls. Commissioner Soumas suggested that the Board should notify the

City Council's Committee on Government Operations and the Office of Management and Budget.

The Manager of Facilities and the Chief Voting Machine Technician reported on the status of storage facilities for lever machines. Mr. Squicciarini reported that DCAS will start construction on the Voting Machine Facilities (VMFs) for all boroughs in the beginning of 2010. The lever machines for Brooklyn and Staten Island will be stored in the old Brooklyn VMF which is located at 645 Clinton Street. A new temporary storage facility is located at 4312 Second Avenue, Brooklyn which will store the lever machines for Queens, Bronx and Manhattan. Mr. Squicciarini reported that last week he held a meeting with the Borough Managers to date them with the schedule. Mr. O'Grady reported that next Monday the Bronx VMF will be the first facility to move to 4312 Second Avenue, followed on Tuesday by the Manhattan VMF's lever machines, with the Queens VMF's lever machines next. At the end of next week, the Staten Island VMF will move to 645 Clinton Street. Once the lever machines are moved into these two (2) facilities, hundreds of skids and supplies will be moved, and the BMDs will be moved to 5112 Second Avenue which is the new Brooklyn VMF. Commissioner Schacher requested a copy of the moving schedule. Commissioner Sipp inquired how each borough's

machines got chosen to go to which facility. Mr. O'Grady replied that the determination was based on the available space of each facility. Commissioner Sipp inquired about the security measures because he understands that the Staten Island machines are to be stored at the current Brooklyn VMF. He has been advised that the facility is less desirable. Mr. O'Grady reported that there is an active alarm system and cameras in the facility. Mr. Squicciarini stated that the facility's structure is safe and functional. Mr. O'Grady stated that each lever machine will be covered with a plastic bag to prevent rusting in the event of a leak. Commissioner Sipp was concerned about puddles on the floor if there was a leak. Mr. O'Grady explained that if there is a leak the wheels are made of rubber and will not rust. Commissioner Sipp was very concerned about the condition of the facility and asked if there are other open issues with this building. Mr. Squicciarini replied that the leaks have been addressed in the past. Commissioner Sipp asked why the Board has not explored other facilities knowing about this ongoing problem and asked if there is a legitimate reason that the problem has not been resolved. Commissioner Soumas suggested holding off on any moving plans until all of the Commissioners review it. Mr. Cederqvist stated that the Brooklyn VMF has been used for several years to set up elections and suggested for Commissioner Sipp to take a tour with him and Mr. Squicciarini of the Brooklyn VMF.

Commissioner Schacher added that the roof has been patched a lot, but maintenance has been under control. Commissioner Polanco stated that he was frustrated that the Board does not have any options available and agrees with Commissioner Sipp's concerns. He inquired what the Board can do if Commissioner Sipp is not happy with the conditions of the VMF. Mr. Richman stated that DCAS provides the Board with the facilities. President Umane explained that the Board is in the process of starting a whole new acquisition of voting machines and the problem might be trying to find a new 100,000 square feet of storage space within New York City at a price the City can afford. He stated that the Brooklyn VMF is under an existing lease. President Umane stated that if Commissioner Sipp determines that the facility is not suitable for the voting machines, then the Board will have to contact DCAS and advise them to find another building. The problem might be finding a new building and then moving the voting machines in time for the new voting systems. Commissioner Soumas raised concerns that last week there was a meeting with the Borough Managers and Manager of Facilities who decided on the move plan without notifying the Commissioners. The Administrative Manager clarified that they have been working on the new voting systems plan since 2005. Ms. Perkins stated that the first issue discussed was that the current VMFs were not equipped to store the new voting systems. There were leak

problems, but the landlord fixed them. As a result of the process, DCAS located another facility where Brooklyn's new voting systems can be delivered and housed. In the interim with the need for immediate VMF renovations, the City has identified two locations where the lever machines can be stored. Ms. Perkins clarified that at the meeting last week there was no decision made by the borough managers. The meeting was to provide an update about the move. She informed the managers that this item was going to be included on the Commissioners' Agenda and was directed to brief their Commissioners. Commissioner Sipp stated that he was briefed, but it did not give him a picture that he was thought adequate for the lever machines. Ms. Perkins stated that by December 31, 2009 all machines have to be moved. Commissioner Sipp inquired if the Staten Island machines will be in jeopardy if stored in the Brooklyn VMF. Mr. O'Grady stated that all lever machines have had preventative maintenance for storage and he has taken every precaution to preserve the machines. There will be periodic checks at the facilities as well. Commissioner Araujo raised concerns that someone will not be in the facilities daily to report if there is a problem. Secretary Dent stated that she agreed with Commissioner Araujo's concern. She stated that the Brooklyn lever machines have been in the facility and have been conducting elections. Secretary Dent was concerned if no one is monitoring if there is a leak or

puddles, then there has to be a mechanism in place that someone is going to go to the facility and check on the machines that are stored there. She stated that anything can happen and Executive Management has to plan that someone has to check because if the Board has to use the lever machines in the future then they have to be in good working order. Secretary Dent feels that the Brooklyn VMF has been going pretty well because there has been staff there to report problems. She understands the urgency of the Board moving forward, but is concerned that the lever machines be kept in working order in case they need to be used in the future. Mr. Cederqvist stated that he will work with Mr. O'Grady and Mr. Squicciarini on developing a plan for that issue and requested assistance from the Brooklyn Commissioners. Commissioner Schacher requested a Democrat and Republican to check on the VMF together. President Umane instructed Executive Management to develop a procedure to ensure that these storage locations are monitored and checked. Commissioner Schacher inquired if the lever machines will require any regular maintenance while stored. Mr. O'Grady stated that the machines have had preventative maintenance. Commissioner Schacher inquired about weekly status reports and Secretary Dent requested the Commissioners get a copy of them. Mr. Squicciarini stated that he will provide the Commissioners with the reports.

The Finance Officer reported on the Comparative Expenditures dated December 15, 2009.

President Umane opened the floor for brief comments from Alan Flacks, a member of the public.

President Umane moved to convene an Executive Session to discuss personnel 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. Unanimously approved the termination of Linda Ward, Clerk in the Queens Voting Machine Facility, effective at the close of business today.
- II. In a vote, seven (7) in favor (President Umane, Secretary Dent, Commissioners Araujo, Polanco, Schacher, Sipp, Stupp) and one (1) opposed (Commissioner Soumas), the Commissioners approved to request the City to make a Budget Modification to move sufficient funds out of the Board's rent line to cover the

payment of poll workers, with instructions that the funds be moved as quickly as possible so they can be paid in time for Christmas.

President Umane adjourned the meeting.

The next stated meeting of the Commissioners is scheduled for Tuesday, December 22, 2009 at 1:30 P.M.