

HEARINGS RELATING TO
INDEPENDENT NOMINATING PETITIONS FOR THE
MARCH 20, 2012 SPECIAL ELECTION
IN THE 27TH STATE SENATE DISTRICT AND
THE MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, FEBRUARY 7, 2012
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: President Maria R. Guastella
 Secretary Frederic M. Umare

Commissioners Araujo, Barrera, Dent, Polanco, Soumas, Sipp, Stupp

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Ward, Finance Officer
Raphael Savino, Director, Campaign Finance Reporting Enforcement
Dorothy Delayo, Director, Personnel
Valerie Vazquez, Director, Communications and Public Affairs
John Naudus, Manager, Electronic Voting Systems
Troy Johnson, Coordinator, Candidate Records Unit
James Howley, Administrative Associate, Brooklyn Office
Francenia Sims-Hall, Administrative Assistant, Brooklyn Office
Giacomo Kmet, Temporary Attorney, OGC
Joel Bermejo, Temporary Attorney, OGC
Charles C. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: A.B. Britton
 Kate Doran, LWV
 Frank V. Carone
 Jonathan Yedin
 Jeffrey Feldman

Stella Ma, AALDEF
Liz Brown, for Council Member Gale Brewer
M. Aronson
Teresa Hommel
Alan Flacks, Member of NY County Democratic Committee
Stewart Armstrong, CFB
Mariana Blume

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

President Guastella announced that the Commissioners will conduct the hearing on Specifications of Objections to Independent Nominating Petitions filed for the March 20, 2012 Special Election for Member of the New York State Senate in the 27th State Senate District in Kings County.

President Guastella announced the procedures to be followed during the hearing.

Mr. Richman reported that in accordance with the Commissioners' direction, notice was given to all interested and necessary parties concerning today's public hearing. Mr. Richman called the Calendar for the hearing.

Mr. Richman called the Kings County Clerk's Report on Specification of Objections. The Commissioners' determination is reflected on the Clerk's Report acted upon and is on file at the Board.

Mr. Richman asked for the Commissioners' authorization to begin printing regular Absentee and Special ballots in accordance with past policy. Secretary Umame moved for Board Staff to begin printing regular Absentee and Special ballots. Commissioner Dent seconded the motion, which was unanimously adopted.

President Guastella recessed the Hearings and the stated meeting of the Commissioners was convened.

Secretary Umame requested to discuss a Manhattan personnel matter in Executive Session.

Commissioner Stupp moved to adopt the minutes of the January 31, 2012 meeting. Commissioner Dent seconded the motion, which Commissioner Polanco abstaining. The motion was adopted. Commissioner Polanco noted that he was not present at that meeting.

Ms. Perkins reported on the Chief and Deputy Chief Clerks' Meeting which was held on February 2, 2012. They discussed Section 5-506 of the NYS Election Law which concerns the optional use of a computerized voter registration list. Ms. Perkins stated that the five (5) Borough Offices currently file their voter registration forms in alphabetical order. All Chiefs preferred to destroy all voter registration forms up to the last four (4) years which complies with the NYS Election Law. The Chiefs preferred to keep those voter registration forms in batch order rather than alphabetical order. Ms. Perkins noted that a Borough Manager was concerned about ensuring that all voter registration form had images in the computer system before destroying them. The Staff discussed implementing a procedure to conduct a file comparison by Election District and based on the number of images. If there are any discrepancies, then Borough Office Staff would investigate which voter registration forms are missing. Ms. Perkins stated that Board Staff will investigate this process further and will develop procedures for this process after the elections. Commissioner Dent asked Ms. Perkins to explain batch order. Ms. Perkins stated that Borough Staff scans in a batch of voter registration forms which are assigned a batch number. This method helps Borough Staff locate a particular voter registration form quicker.

Mr. Richman reported on the proposals for inclusion in the Board's 2012 Recommended Revisions in the NYS Election Law. He distributed copies of his revised draft report to the Commissioners. Mr. Richman summarized the proposals for the Commissioners. The significant categories include:

- Highest Priorities - The two (2) proposals that are deemed the highest priorities are mandated statutory funding formula and consolidated June Primary Election with municipal run-off in September
- Improving the design of the ballot to better serve the voters
- Modification of the statutory procedures upon the close of the polls
- Enhancing Election Day Operations and related activities
- Modifications to improve and enhance the efficiency and effectiveness of Board operations

Mr. Richman stated that he would like the final package to be sent to the Governor and Legislature before the end of this month. He requested for the Commissioners to act on this item at the next meeting. Secretary Umame inquired if there is a proposal concerning the closing of the polls which caused major criticism. He asked if a workstream has been created to explore the closing of the polls issue. Secretary Umame recalled that he

asked the Office of the General Counsel Staff to think “outside of the box” to change certain sections of the NYS Election Law to avoid some of the issues of cutting and pasting the results tapes. Mr. Richman stated that if the Board was able to increase the number of voters in each Election District (ED) and have one (1) scanner per each ED, the Inspectors can just sign the results tape at the end of the night, absent excess votes or unscannable ballots. This can be done without fundamentally altering the structure of the election system. Secretary Umane stated that he would like to know which sections of the NYS Election Law the Board needs to change in order to use the voting machines most effectively. He stated that the Board could report by machine opposed to ED which could facilitate the closing process and staff could perform the back up calculations the next day. Secretary Umane stated that there was a consensus among the Commissioners to facilitate a new closing process. Commissioner Stupp commended Secretary Umane and agreed that the Board must think “outside of the box.” She stated that the Board should consider using one (1) scanner per ED which would more quickly and accurately produce a results report tape that the Inspectors would just have to sign. It would not be necessary to cut the results tape by ED. Commissioner Stupp stated that the Board needs to move forward

with better closing procedures or the Board will be subject to criticism. She added that the voters would be justified in their anger if the Board does not do a better job with the closing process. Mr. Richman stated that the Board has to ensure the accuracy and integrity of the votes. The current law stated that the counting of the ballots has to take place at the poll site. Mr. Richman stated that the Board has to account for the ballots. Commissioner Sipp asked if the Board can designate EDs to particular scanners at the poll site so there will be a minimum amount of results tapes. Mr. Richman stated that the Poll Worker would have just a gross total. Secretary Umame recalled that cards were handed to voters at the poll sites when they signed in the Poll Books. That card was handed to the Poll Worker who then admitted the voter into the voting machine. He questioned if the Board could use those cards for the scanners which could indicate the specific ED so they could track the ballots. Mr. Savino stated that scenario was discussed during a meeting, but those ideas did not address the concerns of accounting for the ballot. Secretary Umame stated that candidates and voters want to know who won on Election Night as quickly as possible, and the Poll Workers and Inspectors work very long hours. Secretary Umame theorized that maybe the Election Law could be changed to allow NYPD Officers to download the results from the Portable

Memory Devices (PMDs) into a computer laptop then be transferred again at the Police Precinct. He suggested a printer to print the results based on EDs at the poll sites. He stated that the Board gets criticized for the closing process, but the Board is complying with the current legislation. Mr. Richman stated that a media outlet could fund a separate system to read the PMDs at the Police Precinct instead of having the Police Officers data enter the numbers and the Inspectors tallying the results. This system would create unofficial results, but it does not address the closing of the polls where the Inspectors account for all the ballots which is according to the law. Secretary Umane stated that the Inspectors could count the cards, per the previous scenario, as a way of backing up the number of ballots distributed or voided for a verification of a total number of ballots. Commissioner Polanco asked Mr. Richman if he was given a directive from the Commissioners. Mr. Richman replied yes; the Office of the General Counsel Staff was given the direction to review the closing procedures. Commissioner Polanco was concerned that the Commissioners gave a recommendation, but Mr. Richman was not comfortable with it. Mr. Richman stated that he reviewed the current law and developed an interim process to be in compliance. He stated that there were options given in a report, but they were not adopted by the Commissioners. Mr. Richman

stated that he believes the Commissioners have the obligation of ensuring the integrity of the voting process at the poll sites. Commissioner Soumas recalled the Commissioners discussing this matter previously. He stated that he appreciates Mr. Richman's desire to abide by the law, however, the Board has to be a leader and figure out a solution and propose statutory amendments. The Board needs a statutory modification and not a new procedure. Mr. Richman stated that he offered a radical recommendation to eliminate EDs and to switch to poll sites as a fundamental unit so everything can be accounted for in the poll site. Each poll site would have to have the same ballots and the results tape would be the Return of Canvass for the poll site. Commissioner Soumas stated that the Board has to figure out the best way to service the Board's purposes. If it is a statutory modification then it should be included in the Board's proposal. Commissioner Soumas stated that the Legislature and the State Board never actually conducted an election. He stated that the Board has to figure out what is the best to serve the people of the City of New York and fitting into the current statutory scheme will not serve anybody's purposes. Mr. Richman stated that he offered options in December 2011, but the Commissioners did not agree to any of them. Commissioner Stupp asked Ms. Sandow if there is another proposal. Ms. Sandow stated that there is a

workstream that is conducting a comparison of the pros and cons of the ES&S options for the future, and Board Staff is working on the Election Night Results Reporting. There is currently no workstream for changes in the tallying for the Return of Canvas. Mr. Richman stated that he asked the Chief Clerks, Deputy Chief Clerks and Managers on December 22, 2011 to submit their recommendations, but there was no response. Commissioner Stupp inquired if the Queens Office is moving forward with another pilot program. Ms. Sandow reported that she met with the NYPD and the Associated Press (AP) and they would like to move forward with a Queens pilot for the Presidential Primary Election. They discussed the issues concerning the amount of time it took the NYPD Officers to bring back the PMDs to the Queens Borough Office. Most of the NYPD Officers did not follow the format which was to return the PMDs first and then the Return of Canvass to the Police Precinct. Ms. Sandow stated that the AP seemed very optimistic if the Board accepted Mr. Richman's proposal to have the NYPD Officers take the PMDs and return them to the Police Precincts to upload there. There is another meeting scheduled with the NYPD and AP in the future. Ms. Sandow stated that she will need approval from the Queens Commissioners to move forward with the pilot program. Commissioner Araujo asked Mr. Richman if he will develop modifications to

the law. Mr. Richman stated that he would like specific direction because he has already submitted several options outlining the pros and cons. He stated that he does not want to reduce the integrity of the process of each ballot cast and the paper trail and would need six (6) votes from the Commissioners to move forward. He reiterated that the Board has to account for spoiled ballots. Commissioner Sipp stated that a proposal needs to be created to change the statute which would ensure accountability. President Guastella asked Mr. Naudus if he has any input on this issue. Mr. Naudus replied that he does not have any input at this time.

President Guastella recognized Teresa Hommel, a member of the public, who stated that the scanner indicates the number of ballots that were passed through the scanner per ED which is printed on the results tape. She stated that it would be an easy change in the programming to display that information on the scanner's screen.

President Guastella recognized Alan Flacks, a member of the public, who suggested that NYPD Officers should not be given the PMDs to download onto a laptop because they may not know how to do it properly.

He felt that the PMDs should be given to the Election Day analysis employees at the Police Precinct who gives the information to the press.

Mr. Richman reported on the draft response to the NYS Board submissions regarding the June 26, 2012 Federal Primary Election. He distributed copies of Ms. Sandow's email with the attachments of draft responses concerning this matter to the Commissioners. He recalled that last Wednesday the State Board submitted two (2) responses (Republican and Democratic) to Judge Sharpe's order. Copies of the responses are in the agenda. Mr. Richman stated that in accordance with the Executive Committee, Board staff conducted an intensive review of how the City Board would address the technical and legal issues raised as this Board seeks to comply with the court's order. Mr. Richman and Mr. Ferguson reviewed the drafts for the Commissioners. President Guastella asked Mr. Richman which option he recommends for the petitioning period. Mr. Richman replied Option B which gives Board Staff more time to prepare prior to administrative/judicial review, however, Federal/Military ballots will go out with all candidates who file petitions. Secretary Umame agreed with Mr. Richman and moved to adopt Option B for purposes of submitting to the court. Commissioner Sipp seconded the motion, which was

unanimously adopted. Commissioner Sipp recommended a friendly amendment omitting the sentence, "The Court Order poses a challenge for all Boards of Elections, particularly to The Board of Elections in the City of New York." on Page #2, for stylistic reasons. Secretary Umane seconded the motion, which was unanimously adopted.

Commissioner Dent thanked Mr. Richman, Mr. Ferguson and the Board Staff who assisted in this response letter for being proactive and moving forward.

Mr. Richman stated that he will submit the amended response letter with the MIS Technical Group Meeting report attached. Secretary Umane stated that the response should be distributed for a press release and to the Chairs of the Ranking Members of the Assembly and Senate Election Law Committees. Commissioner Sipp recommended that Mr. Richman and Mr. Ferguson address the issue of the Judge's decision as well. Mr. Richman asked for authorization to use the Commissioners' signature stamps. Secretary Umane authorized the use of the stamps.

Mr. Naudus presented a review of the ES&S Modifications to DS200 and Auto-marks approved by the State Board on January 12, 2012. He distributed copies of the ES&S EMS Modification List and screen changes for the DS200 and Automark to the Commissioners. Mr. Naudus noted that this report is for informational purposes only and summarized the changes. Secretary Umame inquired if the language is consistent with the Order to Show Cause concerning the State Board and the Plaintiffs. Mr. Naudus stated that case is not settled yet and that it is language that was altered by ES&S and is not the final resolution. Secretary Umame stated that the language has to reflect what is settled and what was initially approved by the State Board. Mr. Naudus reported that he asked the State Board if the screens have changed due to the Orders to Show Cause. The State Board said no and that those changes will be included in the version of the software due out in June 2012 after the cases were settled. He stated that MIS Staff discovered that the screens changed when they received the software. Mr. Naudus called the State Board concerning this matter, but the State Board explained that there was confusion with ES&S concerning these changes. The State Board quickly compiled and sent a submission to the Department of Justice (DOJ) for pre-clearance last week. Mr. Naudus stated that this list of modifications was certified by the State

Board on January 12, 2012, but the software is different on the screen. Commissioner Soumas asked if the State Board decertified the existing system. Ms. Perkins replied no. Mr. Savino stated that the City Board hopes to use the improved software for the 2012 Presidential Primary Election. Commissioner Dent inquired if the Poll Worker's Manual will have to be updated to include the new information concerning the screen shots. She also asked if the Poll Workers will have to be trained as it relates to the changes. Ms. Perkins replied yes. Commissioner Stupp asked if the Board has ever considered a loose-leaf binder for the Poll Worker's Manual due to all of the changes. Mr. Richman stated that the Poll Worker's Manuals are reprinted once a year because there are always changes. If the Manuals have been printed before a new change, then it is released as Special Instructions.

Mr. Ward presented the Comparative Expenditures Report dated January 31, 2012. A copy of the report is the agenda.

Mr. Ward reported that Mayor Bloomberg made some adjustments to Fiscal Year 2012 Operating Plan on February 2, 2012. The Board is

funded for the March 20, 2012 Special Election, the June 26, 2012 Primary Election and for new needs.

President Guastella recognized Alan Flacks, a member of the public, who asked if item #3 (B) on the agenda will be available for the public at next week's meeting. Ms. Sandow replied yes. Mr. Flacks requested for the Board to print the agenda back-to-back and to include press clips. Mr. Flacks requested to speak about a personal matter concerning Ms. Rudiano. Secretary Umame stated that they will not discuss a non-Board issue. Mr. Flacks asked if Commissioner Schacher is well. Commissioner Dent replied yes.

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

Following the Executive Session, the open public meeting resumed and President Guastella reported the following action that was taken in Executive Session:

- I. The Commissioners unanimously granted an advance of seven

(7) days of sick leave hours for Rosanna Rahmouni, a Coordinator in the Executive Office.

Commissioner Sipp moved to adjourn the meeting. President Guastella seconded the motion, which was unanimously adopted.

The next stated meeting of the Commissioners is scheduled for Tuesday, February 14, 2012 at 1:30 P.M.