

MEETING OF THE BOARD OF CANVASSERS AND
THE MEETING OF THE COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, MAY 8, 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. Umane

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

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Ward, Finance Officer
Dorothy Delayo, Director, Personnel
Valerie Vazquez, Director, Communications and Public Affairs
Raphael Savino, Director, Campaign Finance Reporting Enforcement
Joel Bermejo, Temporary Contract Attorney, OGC
Giacomo Kmet, Temporary Contract Attorney, OGC
Troy Johnson, Coordinator, Candidate Records Unit
Shanette Brown, Administrative Assistant, Candidate Records Unit
Ryan Deahn, Administrative Assistant, Candidate Records Unit
Steven Ferguson, Director, Management Information Systems
Thomas Sattie, Associate Staff Analyst, Ballot Management
John Naudus, Manager, Electronic Voting Systems
John O'Grady, Chief, Voting Machine Technician, VEOU
Diane Rudiano, Chief Clerk, Brooklyn Office
Maryrose Sattie, Deputy Chief Clerk, Brooklyn Office
Anthony Andriulli, Deputy Chief Clerk, Staten Island Office
Lisa Sattie, Administrative Associate, Staten Island Office
Marie Lynch, Deputy Chief Clerk, Queens Office
Robert Pataky, Administrative Associate, Queens Office
Anthony Ribustello, Deputy Chief Clerk, Bronx Office
Marricka Scott-McFadden, Deputy Chief Clerk, Bronx Office
Gregory Lehman, Chief Clerk, Manhattan Office

Timothy Gay, Deputy Chief Clerk, Manhattan Office
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Kate Doran, LWV
Monica Bartley, CIDNY
Marjorie Shea, Women's City Club
Stewart Armstrong, CFB
John D. Smith
Alan Flacks, Member of NY County Democratic Committee
Cathy Gray

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

President Guastella announced that the Commissioners will conduct the Meeting of the Board of Canvassers to certify the results for the April 24, 2012 Republican Party Presidential Primary Election citywide before the regular stated meeting.

President Guastella designated Commissioners Soumas to serve as the 2nd Democratic Commissioner for the respective counties and Commissioner Dent to serve with her for Richmond County and the multi-county recaps. Secretary Umame designated Commissioners Stupp to serve as the 2nd Republican Commissioner for the respective counties

and Commissioner Schacher to serve with him for New York County and the multi-county recaps.

Mr. Ribustello and Ms. Scott-McFadden presented the signed Return of Canvass for the Republican Party Presidential Primary Election conducted in Bronx County on April 24, 2012 to the Canvassing Board for review and approval. They confirmed that the results presented are accurate and correct, there are no discrepancies to report, and the audit of voter verifiable audit records has been successfully completed. Commissioner Barrera moved to certify the Return of Canvass for Bronx County. Commissioner Polanco seconded the motion, which was unanimously adopted.

Ms. Rudiano and Ms. Sattie presented the signed Return of Canvass for the Republican Party Presidential Primary Election conducted in Kings County on April 24, 2012 to the Canvassing Board for review and approval. They confirmed that the results presented are accurate and correct. There were two (2) discrepancies that were investigated and did not affect the results. The audit of voter verifiable audit records has been successfully completed. Commissioner Schacher moved to certify the Return of

Canvass for Kings County. Commissioner Dent seconded the motion, which was unanimously adopted.

Ms. Lynch and Mr. Pataky, on behalf of Ms. Conacchio, presented the signed Return of Canvass for the Republican Party Presidential Primary Election conducted in Queens County on April 24, 2012 to the Canvassing Board for review and approval. They confirmed that the results presented are accurate and correct, there are no discrepancies to report, and the audit of voter verifiable audit records has been successfully completed. Commissioner Araujo moved to certify the Return of Canvass for Queens County. Commissioner Stupp seconded the motion, which was unanimously adopted.

Mr. Andriulli and Ms. Lisa Sattie, on behalf of Ms. DelGiorno, presented the signed Return of Canvass for the Republican Party Presidential Primary Election conducted in Richmond County on April 24, 2012 to the Canvassing Board for review and approval. They confirmed that the results presented are accurate and correct, there are no discrepancies to report, and the audit of voter verifiable audit records has been successfully completed. Secretary Umane moved to certify the

Return of Canvass for Richmond County. Commissioner Dent seconded the motion, which was unanimously adopted.

Secretary Umane moved to place New York County on second call and to recess the Meeting of the Board of Canvassers pending the arrival of Manhattan's Chief Clerk and Deputy Chief Clerk. Commissioner Araujo seconded the motion, which was unanimously adopted.

President Guastella assumed the Chair of the stated meeting of the Board.

Mr. Richman conducted the hearing relating to the June 26, 2012 Federal Primary Election for a CRU Prima Facie matter regarding an OTB Petition. There were no appearances. Commissioner Umane moved to adopt the CRU Prima Facie Report. Commissioner Dent seconded the motion, with Commissioner Araujo abstaining. The motion was adopted.

Commissioner Araujo moved to print the Absentee and Military ballots for the 14th Congressional District. Secretary Umane seconded the motion, which was unanimously adopted.

Commissioner Araujo moved to adopt the minutes of the April 26, 2012 meeting. President Guastella seconded the motion, which was unanimously adopted.

Mr. Richman presented the revised draft State Legislative Proposal concerning the change of primary dates effective for 2013. A copy of his memorandum is in the agenda. Mr. Richman stated that he has re-drafted the Proposal to provide for a single primary date (last Tuesday in June) effective as of January 1, 2013, and to address the Board's urgent need to provide more than two (2) weeks between the 2013 municipal primary election and any required run-off primary for citywide office. Mr. Richman requested for the Commissioners to approve the revised draft. If approved, it will be transmitted to the appropriate State Government officials in advance of the May 22, 2012 activities in the State Capitol. Secretary Umane expressed that there are political ramifications to this issue and he stated that he would abstain on this recommendation. He stated that there is a physical impossibility to print the ballots and test all of the machines between the primary and the run-off elections. Mr. Richman stated that the current law does not work. Commissioner Soumas agreed with Secretary Umane's concerns and the impossibility of performance. Mr. Richman

withdrew his proposal. Commissioner Soumas moved for Mr. Richman to write a letter to the State Legislature explaining the problem with the current statute. Secretary Umame seconded the motion, which was unanimously adopted.

Mr. Richman presented the proposed hearing dates for the Specifications of Objections and related matters for Designating Petitions for the September 11, 2012 Primary Election. A copy of his memorandum is in the agenda. Mr. Richman recommended Monday, July, 30, 2012 beginning at 10:00 A.M. and continuing Tuesday, July 31, 2012 at 10:00 A.M., if necessary. The Hearings for Opportunity to Ballot (OTB) Petitions would be held on Tuesday, August 7, 2012 at 1:30 P.M. The final calendar would be issued and posted on the Board's website and a combined Calendar and Rules booklet would be printed for public distribution upon receipt of DOJ Pre-Clearance of the Rules. Commissioner Araujo moved to adopt the hearing dates for the Specifications of Objections and related matters for Designating Petitions for the September 11, 2012 Primary Election. President Guastella seconded the motion, which was unanimously adopted. Mr. Richman noted that the hearings' times can be adjusted a week before, if necessary.

Mr. Richman presented a brief summary of the proceedings in Kings County relating to the 27th State Senate District Special Election.

Mr. Richman reported that Justice Phyllis Flug issued an Order in Queens County yesterday concerning the 6th Congressional District which designated the Board to act as the Referee on an invalidating petition challenge to review additional specifications filed with a bill of particulars. Mr. Richman, Mr. Savino and Mr. Kitzinger vacated that Order and instead appointed a retired Justice to serve as the Referee. Mr. Richman thanked the Commissioners' Executive Committee for authorizing the Queens case.

Mr. Richman requested an Executive Session to discuss a litigation matter.

Secretary Umame inquired about a Manhattan Order to Show Cause that was issued today which concerns the 12th District. Mr. Richman stated that he has not received an Order yet.

Commissioner Stupp inquired why the Board was vacated to serve as the Referee for the Queens County 6th Congressional District matter.

Mr. Richman stated that the Board may have had a conflict of interest and technically the Board completed all of its duties on that matter.

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

Secretary Umame moved to reconvene the Meeting of the Board of Canvassers to certify the results for the April 24, 2012 Republican Party Presidential Primary Election for New York County. President Guastella seconded the motion, which was unanimously adopted.

Mr. Lehman and Mr. Gay presented the signed Return of Canvass for the Republican Party Presidential Primary Election conducted in New York County on April 24, 2012 to the Canvassing Board for review and approval. They confirmed that the results presented are accurate and correct, there are no unexplained discrepancies, and the audit of voter verifiable audit records has been successfully completed. Secretary Umame moved to certify the Return of Canvass for New York County. Commissioner Araujo seconded the motion, which was unanimously adopted.

President Guastella thanked the Board Staff for providing the April 24, 2012 Republican Party Presidential Primary Election results in a timely fashion.

Commissioner Araujo moved to approve and adopt the Recap Statement and Return of Canvass for the April 24, 2012 Republican Presidential Primary Election for those Congressional Districts which cross county lines within the City of New York. Commissioner Stupp seconded the motion, which was unanimously adopted.

Secretary Umane moved to authorize the use of the Commissioners' signature stamps as appropriate on each Statement and Return of Canvass. Commissioner Araujo seconded the motion, which was adopted unanimously. Commissioners Araujo and Dent noted that they already signed their respective Statement and Return of Canvass.

Commissioner Dent moved to adjourn the meeting of the Board of Canvassers and to reconvene the weekly stated meeting of the Commissioners. Secretary Umane seconded the motion, which was unanimously adopted.

Ms. Vazquez presented the proposed 2012 Voter Registration Drive Campaign. She was approached by a representative of the advertising department at the NY Daily News who would like to collaborate with the Board to launch a Voter Registration Drive to reach out to people who are not registered to vote prior to the November 6, 2012 General Election. Ms. Vazquez stated that it would be a weekly print campaign in both the NY Daily News and Hora Hispana newspapers. The NY Daily news is circulated citywide and Hora Hispana is circulated in Manhattan, Brooklyn, Queens and the Bronx. It would be a ten (10) week print campaign, August 5, 2012 thru October 10, 2012, that would feature full page ads to direct potential voters to visit the Board's website or to visit a Borough Office. Ms. Vazquez stated that the Board's logo would be formally displayed and the ad would be paid by a corporate sponsor that does not sell alcoholic beverages or tobacco which would be approved by the Commissioners. Ms. Vazquez requested feedback from the Commissioners and authorization to move forward on this request. Commissioner Schacher stated that she is very leery of this request because the NY Daily News always lambastes the Board in their newspaper. Secretary Umame agreed with Commissioner Schacher. He stated that the Board should not do a joint venture with any newspapers and it would be a serious error to

get involved with a corporate sponsor. He stated that the Board is a public agency. Secretary Umane stated that the Board will process any voter registrations that the NY Daily News receives. Commissioner Araujo asked if Ms. Vazquez would be involved with selecting the various sponsors. Ms. Vazquez replied no. Commissioner Polanco stated that this proposal is a great idea to get New Yorkers to register to vote citywide. He stated that it would sanction awareness for a lot of young people. Commissioner Barrera asked if the Board can decide on this matter after they receive the list of corporate sponsors. Ms. Vazquez replied yes. Commissioner Barrera agreed with Commissioner Polanco and stated that this proposed campaign is a phenomenal method to get people to register to vote. Commissioner Soumas stated that he has some concerns that the proposed campaign is sponsor driven, there would be conflicts with other newspapers, and that all newspapers endorse candidates. Commissioner Stupp stated that the Board is a public agency and should not have a role to conduct any business with private sponsorships. Ms. Vazquez added that the Board proactively conducts bi-partisan Voter Registration Drives citywide. Commissioner Dent asked Ms. Vazquez to ascertain more information as to who the sponsors may be and come before the full Board for feedback and direction.

Ms. Vazquez stated that the Board would have final approval of the corporate sponsor(s). Secretary Umane moved not to go forward with the proposed NY Daily News campaign. Commissioner Schacher seconded the motion. In a roll call vote, there were three (3) in favor (Umane, Schacher, Stupp), five (5) opposed (Araujo, Barrera, Polanco, Soumas, Guastella) and one (1) abstention (Dent). The motion was not adopted. Commissioner Barrera moved to continue investigating the corporate sponsor(s) for the proposed NY Daily News campaign in order to make a later determination. Commissioner Polanco seconded the motion, with three (3) opposing (Umane, Schacher, Stupp). The motion was adopted.

Ms. Vazquez presented the revised draft Exit Letter proposal. A copy of the draft letter is in the agenda. Ms. Vazquez explained that an Exit Letter allows member of the press to gain access to various poll sites on Election Day in NYC. She received numerous complaints last Election Day because children were photographed or filmed in the common area of the poll site at some DOE public schools. Ms. Vazquez stated that the #5 bullet point was added to the Exit Letter which states, "If the poll site is located within a school, please be advised that the filming of any students is strictly prohibited by the Department of Education." Commissioner

Soumas asked who requested for this statement to be added to the Exit Letter. Ms. Sandow replied that Sal Calderone, the Director of School Facilities at the DOE, emailed the request. Mr. Richman stated that access to the press is supposed to be governed by rules adopted by the State Board and they have not issued any guidance on this matter. He stated that if the City Board starts responding to specific requests from specific landlords to add requirements then it would create all types of problems. Mr. Richman stated that if the DOE wants to enforce their own rule then they can assign their School Safety Division to oversee it. He stated that the Board designates poll rooms at public schools for election activities only, but some Principals do not adhere and allow children into the poll room area. Commissioner Polanco stated that sometimes it is hard to avoid children at some poll sites because voters have to walk through cafeterias to get to the poll room. He stated that some parents do not want their child filmed. Mr. Richman stated that the City Board cannot single-out private schools in this matter. Commissioner Dent stated that children are sometimes accustomed to walking within areas of their school and may be unaware that an Election is occurring. These children could be indirectly photographed with parental consent. She stated that the Board would be taking a proactive approach by merely informing the press not to

photograph children and respecting the rights of the parents. Commissioners Dent and Polanco stated that this rule should apply to all schools. President Guastella inquired if there was an incident in the past, so as a result, the DOE made this request. Ms. Vazquez stated that she received some phone calls from Teachers with concerns. Commissioner Dent clarified that the Teachers spoke on behalf of the parents. Ms. Vazquez reported that a Coordinator was approached by a Principal because she felt it was unfair to have NY1 News filming when the children were in the poll room. NY1 News complied and changed their camera angle. Secretary Umame requested for Board Staff to research the NYC Civil Rights Law regarding photography in a public place. He stated that law might have affect on this matter and may address various ages of people being photographed or filmed. He stated that the press has to comply with the Poll Site Coordinators and/or Board Staff on Election Day. Secretary Umame inquired which public schools this DOE request is for because there are Elementary, Intermediate and High Schools. Ms. Sandow believed that this request is for children under 18 years old. She stated that this rule should apply to both private and public schools citywide. Ms. Vazquez stated that the DOE was concerned that there was no specific language indicated that filming the students is strictly prohibited.

Commissioner Dent noted that parents usually sign a written consent form to allow their child/children to be filmed. Secretary Umane moved to table this matter for one (1) week to review the NYC Civil Rights Law on this matter. President Guastella seconded the motion, which was unanimously adopted.

Mr. Sattie reported on the amount of Absentee, Affidavit, and Poll Site ballots to order for the June 26, 2012 Federal Primary Election. A copy of his memorandum is in the agenda. Mr. Sattie recommended the following:

- Absentee Ballots – 2,000 per Lot for all parties, all boroughs with a contest (plus any reorders necessary if Borough Office Staff runs low);
- Affidavit Ballots – 25 per ED for all parties, all boroughs with a contest;
- Poll Site Ballots – 75% of all registered voters for all parties, all boroughs with a contest;
- Pack of 50 Ballots per ED to use as back-ups.

Secretary Umane stated that minor parties may have Primaries on June 26, 2012 and raised concerns about the amount of ballots to be

ordered for those parties. Mr. Sattie stated that the amount of ballots to be ordered for those minor parties would be adjusted accordingly. Commissioner Schacher moved to adopt Mr. Sattie's recommendation as amended. Secretary Umane seconded the motion, which was unanimously adopted.

President Guastella recognized Alan Flacks, a member of the public, who spoke about the Civil Rights Law concerning photography in a public place.

Mr. O'Grady reported on the combined Election Districts (EDs) for the June 26, 2012 Federal Primary Election. He requested authorization from the Commissioners to allow Borough Staff to begin combining EDs where there are less than 100 voters. He stated that staff will create draft reports for the Commissioners. Secretary Umane moved to approve Mr. O'Grady's request to consolidate as much as possible where appropriate. Commissioner Araujo seconded the motion, which was unanimously adopted.

Mr. Naudus presented the Bronx Office, ES&S, and State Board's Over-Vote Reports which concerns one (1) Scanner used during the 2010 General Election in the Bronx that showed an excess number of over-votes. He stated that Bronx Staff, the State Board and ES&S investigated the matter. Copies of their reports are in the agenda. Mr. Naudus summarized the three (3) reports. He reported that ES&S found that the Scanner was improperly calibrated which caused it to pick up marks on the ballots and it needed to be warmed-up one (1) hour before calibration. The State Board asked the City Board to properly clean and calibrate the Scanners, and recommended to count the number of over-votes in each ED and launch an investigation if there is a high-number, and those Scanners should be included into the audit. Commissioner Barrera called upon Mr. Ribustello and Ms. Scott-McFadden. She stated that Mr. Ribustello and Ms. Scott-McFadden observed the testing of the Scanners in the Bronx and it was the same process for all Scanners. Mr. Ribustello stated that the Scanner was cleaned and calibrated with ES&S and there were no problems, but he was concerned about the high temperature of the Scanner when it was tested with ES&S. Commissioner Barrera stated that the Bronx Staff followed the procedures and correctly cleaned and calibrated all Scanners. Secretary

Umane asked if there is a warranty claim because the Board is in five (5) years of acquisition. He asked if ES&S can replace this Scanner.

President Guastella recognized Charlie Laramy, the ES&S Customer Service Manager for NYC, who addressed the Commissioners' concerns. Commissioner Barrera asked about the warranty. Mr. Laramy stated that ES&S determined that cleaning and calibrating the Scanner solved the over-vote issue. He stated that the high temperature occurred because the Scanner was not cleaned and calibrated correctly. Ms. Sandow stated that the City Board Staff is correctly following the procedures for all Scanners. She stated that this Scanner passed all of the testing so it was deployed on Election Day. Ms. Sandow stated that the City Board will have to modify the Scanner procedures to have all Scanners start-up 1 - 2 hours before any testing. Commissioner Polanco asked Mr. Laramy to replace the Scanner. Mr. Laramy stated that he will speak with his Corporate Office and get back to the Board today.

Mr. Naudus stated that the Scanners have to be tested at operating temperature and the procedures will be modified. Secretary Umame asked if there is any indication in the contract about the amount of start-up time

for the Scanners for optimum level. Mr. Naudus stated that the Scanners work when they are turned on, but the Scanners need to get to operating temperature for all testing. Secretary Umame stated that there is only one (1) Scanner citywide with an issue and this Scanner may be a “lemon.” He asked ES&S to consider that strongly when they make their determination. Mr. Richman stated that the City Board believes the Scanner is not functioning properly and under the warranty it needs to be replaced. Mr. Laramy stated that he will contact Mr. Naudus and Executive Management on this matter later today.

Mr. Ward presented the Vacancy Report dated May 8, 2012. A copy for the report is in the agenda.

Mr. Ward reported that the Mayor’s Executive Budget was released on May 3, 2012. A total of \$5 million in Personal Services (PS) was approved for Fiscal Year 2012 which will eliminate the PS deficit. A total of \$138,000 was approved for Fiscal Year 13 which will enable the Board to hire four (4) new employees; two (2) Bengali language Translators and two (2) Hindi/Punjabi speaking Clerks. Mr. Richman stated that they will be hired under a Federal Law requirement. Mr. Ward stated that there will be

other Budget Hearings in May and June and he will start drafting the Board's Testimony.

President Guastella recognized Marjorie Shea, a representative of Women's City Club, who asked about the candidate list and the Board's Annual Report. Mr. Richman stated that the candidate list is posted on the website. Ms. Vazquez stated that the Annual Report is in production.

Commissioner Polanco 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 action taken in Executive Session:

- I. The Commissioners unanimously approved for Jane Zito's leave balance to be paid out in accordance with her work schedule. Ms. Zito was a Trainer Assistant in the General Office.

Commissioner Soumas 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, May 15, 2012 at 1:30 P.M.